Anti-money laundering and counter-terrorist financing measures

Republic of the Marshall Islands

Mutual Evaluation Report

November 2024

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering / counter terrorism financing (AML/CFT) measures in place in the Marshall Islands as at the date of the conclusion of the onsite visit (7 December 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Marshall Islands AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

1. Many of the main money laundering (ML) risks and the overall low terrorism financing (TF) risks are well understood by key authorities, but the detailed nature of risks from the offshore corporate sector (non-resident domestic entities (NRDE)) is not yet comprehensively assessed and understood. While risks in the new not-for-profit decentralised autonomous organisations (DAO) sector have been well assessed, the for-profit DAO sector has not been assessed and ML/TF risks in the DAO sector are not well understood by all relevant authorities. The Trust Company of the Marshall Islands (TCMI), as the Registrar for NRDE, does not proactively share its indicators of NRDE risk with other agencies to ensure NRDE risks are well understood.

2. The national risk assessment (NRA) identified, and to some extent assessed, risks posed by corruption, bribery and misappropriation of public funds (including procurement fraud). However, given recent high-profile cases involving such risks, an updated assessment is needed.

3. Coordination at policy and operational levels was generally well supported but was not well demonstrated. At the time of the onsite visit Marshall Islands authorities were responding to policy recommendations contained in the NRA and working towards issuing a national AML/CFT strategy.

4. The Marshall Islands Financial Intelligence Unit (FIU) was developing its capacity, but further support is needed to ensure high quality intelligence is developed and disseminated. The FIU provides strong support to law enforcement agencies (LEA) and supervisors, but overall LEA did not demonstrate experience of developing financial intelligence for financial investigations, in particular with cases associated with Marshall Islands offshore entities (NRDE).

5. Potential ML cases are not actively pursued and there are few measures to ensure that potential ML cases are identified and investigated. The Attorney-General's Office (AG's Office) and the Marshall Islands Police Department (MIPD) lack resources, especially human resources, and

financial investigation training to use financial intelligence and to conduct ML and asset tracing investigations. LEAs and the FIU did not use investigative strategies to obtain information on BO

6. and control of legal persons or arrangements in the course of developing financial intelligence or conducting financial investigations.

7. Implementation of measures to trace, restrain and confiscate proceeds and instruments of crime was not sufficiently prioritised or supported. Authorities have not maintained data and statistics to demonstrate the operation of its asset recovery system.

8. TF risks in the Marshall Islands are generally low and the Marshall Islands had recently adopted a new policy on CFT investigations, however, there is limited capacity and capability of LEAs to conduct investigations of TF. Marshall Islands authorities are clear that they would seek to cooperate closely with foreign partners on any potential TF case.

9. The Marshall Islands has comprehensive legal and regulatory frameworks for targeted financial sanctions (TFS) against terrorism and proliferation of WMD. Implementation of the TFS framework is supported by guidance and outreach, but there is no supervision of TFS yet.

10. Measures to protect domestic NPOs from potential TF abuse are reasonable, but monitoring had not yet taken place with the NPO DAO sector to mitigate potential TF risks. There are significant resources challenges with the Registrar for Resident Domestic Entities (RDE) operated by the AG's Office, responsible for monitoring of the higher-risk NPOs in the DAO sector.

11. The Marshall Islands has introduced generally comprehensive risk-based AML/CFT preventive measures for FIs and DNFBP and has issued guidance to support implementation. The banks, in particular, are supporting risk-based implementation and a degree of implementation is noted in non-bank FI sectors. Banks and remitters have a longer experience of implementing controls due to home supervisor requirements and pressure to maintain correspondent banking relationships. MIDAO (which is involved in forming every DAO) was only subject to AML/CFT requirements as a DNFBP at the end of the onsite visit.

12. Market entry fit and proper controls are being implemented, but the new fit and proper regulations were not yet fully applied for existing banks and financial service providers.

13. Risk-based supervision has focused on banks, which reflects the risks and materiality of the sector in the Marshall Islands. Supervision is well supported, although full scope supervision has not extended to implementation of TFS obligations. Findings of supervision have provided a basis for remedial action and the supervisor has taken steps to enforce compliance.

14. The Registrar for NRDE (TCMI) has taken steps to identify and enforce a prohibition on NRDE who were found to be virtual asset service providers (VASPs). Some DAO are operating as VASPs but have not been subject to regulation or supervision as VASPs.

15. The Marshall Islands has not implemented effective measures to prevent the misuse of legal persons for ML/TF purposes, particularly in the offshore corporate sector (NRDE) and the recently formed DAO sector.

16. While there are legal obligations on certain NRDE to record all shareholder and beneficial ownership (BO) information, and on all other NRDE to provide BO information upon request, there are no other mechanisms to ensure accurate BO information is available to authorities when needed. There are gaps with obligations to file basic information on directors and few obligations to file BO information with the RDE registrar (AG's Office) or NRDE registrar (TCMI). There are few data sets and reliable mechanisms to verify the BO information provided by NRDE (other than those NRDE which issue bearer shares) or other legal persons and limited bases to ensure the accuracy of BO information provided. TCMI holds relatively more data to assist with BO verification for NRDE exposed to the maritime sector. There are no controls on the use of nominee directors, nominee shareholders or share warrants issued in bearer form.

17. The Registrar for NRDE (TCMI) responds quickly to requests from competent authorities for the available basic or BO information provided by NRDE upon request.

18. For RDE, including DAO, there are similar gaps with obligations to file basic and BO information with the AG's Office as corporate registrar. At the time of the onsite visit MIDAO (a private company), as the single entity providing company services to DAO, did not obtain BO information when forming and managing DAO. No enforcement action has been undertaken by the Corporate Registrar for RDE (AG's Office) in relation to RDE.

19. The Marshall Islands demonstrated responsiveness to police to police and to MLA requests. The Marshall Islands demonstrated that it receives a large number of requests for information on NRDE but makes very few outgoing international cooperation requests. The use of outgoing requests for assistance is not wholly in keeping with the risk profile. The lack of a case management system and resourcing in the AG's Office has undermined the number of MLA requests made by the Marshall Islands.

Risks and General Situation

2. The Republic of the Marshall Islands (RMI or Marshall Islands) is a small island nation in the northern Pacific Ocean with a population of approximately 42,000. The Marshall Islands' total GDP in 2022 was estimated at US$ 279 million and the economy remains dependent on donor funding.

3. The Marshall Islands' small size and its economic and cultural context see it have a relatively low domestic ML risk and low TF risks. The Marshall Islands has a two domestic banks, one development banks and one branch of a US bank. NBFIs are chiefly remitters. The Marshall Islands has a sizeable offshore corporate sector (non-resident domestic entities, or NRDE), and a new sector of decentralised autonomous organisations (DAO) which present high transnational ML risks. Both sectors are promoted internationally, with the offshore corporate sector (NRDE) promoted and facilitated by a large pool of qualified intermediaries (QI) worldwide that are not subject to the Marshall Islands AML/CFT regulatory regime. The Marshall Islands has been vulnerable to investors proposing virtual asset and "Web 3.0 schemes"[1] (unsupervised) which present significant ML/TF and reputational risk to Marshall Islands.

[1] DAO are key structures in 'Web 3.0' a platform built on blockchain and controlled by its users e.g. decentralised web 3 crypto exchanges or Web 3 Gaming. The DAO sector poses ML/TF vulnerabilities due to a number of factors including lack of regulations providing for the supervision and monitoring.

4. The Marshall Islands faces some challenges with the capacity and sophistication of its regulatory and supervisory regime. The Marshall Islands does not have an independent central bank or financial sector regulator, but the Banking Commission is the regulator and supervisor of the financial sector (for prudential and AML/CFT purposes) and the DNFBP sector (for AML/CFT). The Banking Commission reports to the Minister of Finance. The Maritime Administrator and Registrar for NRDE (both TCMI) nominally come under the Minister of Transport, but not clearly for its corporate registry function. The onshore corporate regulator and Registrar for RDE is the AG's Office.

Overall Level of Effectiveness and Technical Compliance

5. On technical compliance with the FATF Standards, the Marshall Islands has generally strong results with compliance of its legal and regulatory framework. On effectiveness, many of the changes to the legal and regulatory framework have occurred quite recently before the on-site visit, and while some initiatives are beginning to show results, other areas require further reforms and sustained operational results to lead to changes in the effectiveness of the overall system. The biggest challenge for risk mitigation remains with transparency weaknesses with the Marshall Islands corporate sector, in particular offshore entities (NRDE) and emerging risks from the new DAO (a type of RDE) sector.

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

6. The Marshall Islands has taken a range of steps since its last MER to assess and increase its understanding of ML/TF risk. The National Risk Assessment (NRA) identifies threats and vulnerabilities: sectorial vulnerabilities (in the FI/DNFBP sectors), functional vulnerabilities (vulnerabilities that impact functions to combat ML/TF) and overarching vulnerabilities (cross cutting vulnerabilities across the functional and sectoral vulnerability framework). The nature of the high level of risk associated with the NRDE offshore corporate sector was covered, but not set out in sufficient detail in the 2020 NRA.

7. Competent authorities demonstrate a good understanding of the ML and TF risks within the Marshall Islands, though financial crime risks associated with corruption and bribery, misappropriation of public funds and procurement fraud require additional assessment following several recent cases related to these risks.

8. Risks posed by offshore entities have not been sufficiently assessed and understood. Risks posed by NPO DAO have been well assessed but further steps need to be taken to assess the entirety of the DAO sector as it evolves.

9. Risk assessments were being used to prepare AML/CFT strategies, but these had not been completed at the time of the onsite visit.

10. AML/CFT policy coordination processes through the National AML/CFT Council are well established, but operational cooperation on AML/CFT was not well demonstrated. Information sharing is well supported with statutory powers and several interagency agreements. Operational level cooperation and coordination is conducted at an ad hoc agency-to-agency level. Further resources and coordination will be needed to enhance operational-level inter-agency cooperation mechanism in future ML cases.

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

Use of financial intelligence to investigate ML, TF, predicate offence and to trace assets (IO.6)

11. The Marshall Islands FIU is developing its capacity, but further support is needed to ensure high quality intelligence is developed and disseminated. The FIU provides some support to LEAs as well as strong support to supervisors and the risk assessment work of the National AML/CFT Council.

12. LEAs make limited use of financial intelligence in investigations of predicate offences and asset tracing due to variable understanding of its use, limited capacity and knowledge of how to use financial intelligence and the benefits of financial intelligence to LEAs. Marshall Islands LEAs demonstrated some experience of investigating some financial aspects of fraud, tax evasion, corruption, human trafficking, and illicit drugs. However, the FIU and LEAs did not demonstrate experience of developing financial intelligence or investigating offences associated with the Marshall Islands' offshore entities (NRDE) or DAO including offences which affect or concern the Marshall Islands.

13. The FIU has not provided sufficient feedback to reporting entities on the SARs submitted.

Investigating, prosecuting and sanctioning ML (IO.7)

14. The Police Department (MIPD) is mandated to investigate all types of crime including ML, TF and parallel investigation of ML/TF. Within the MIPD, the Criminal Investigations Division (CID) is designated to carry out investigations of ML and predicate offences. The AG's Office is responsible for criminal prosecutions, including ML and predicate offences.

15. The MIPD and Auditor General's Office (OAG) demonstrated some experience of investigating some financial aspects of fraud, tax evasion, corruption, human trafficking, and illicit drugs. Other LEAs had not advanced predicate investigations that might have led to potential ML cases.

16. The AG's Office lacks guidance to conduct financial investigations, prosecutions, and asset restraint. There is a need for AG's Office staff to have further mentoring to enhance prosecution skills and to better support investigations by the MIPD, OAG and other agencies. The AG's Office has a new case management system for investigation/prosecution related to trafficking in persons, including the recording of numbers and types of crimes. However, this does not yet extend to other financial investigations and ML prosecutions.

17. LEAs have not undertaken any ML investigations involving offshore entities (NRDE). As outlined in IO.2, Marshall Islands receives many requests from foreign competent authorities relating to NRDE, however these do not result in the initiation of any financial investigations or ML cases in the Marshall Islands.

18. Potential ML cases have not been actively pursued. During the period under review the Marshall Islands has only opened one ML investigation, and no ML charges have been laid nor any ML matters taken to trial. The one ML case related to tax evasion and corruption. During the same period there appears to have been a greater number of high-value predicate cases. There are no measures in place to ensure that potential ML cases are identified and investigated. The Marshall Islands has a high-capacity judiciary that appears well resourced and capable of considering complex ML trials, however ML matters have not come to trial.

Restraining and confiscating proceeds and instruments of crime (Immediate Outcome 8)

19. Marshall Islands does not maintain data on criminal proceeds or instruments of crime assets seized or confiscated Feedback from case officers suggests the figures are very low overall. LEAs and the AG's Office have not sought or provided international cooperation for seizing and confiscating proceeds of crime overseas or proceeds in the Marshall Islands from foreign offences.

20. The Marshall Islands judiciary is well resourced and capable of considering restraint and confiscation actions. LEAs and the AG's Office identified impediments to obtaining restraining orders until very late in a criminal investigation for assets that may become subject to confiscation,

21. Marshall Islands did not demonstrate the effective implementation of the cross-border cash declaration system.

Terrorist and Proliferation Financing (Chapter 4 – IO.9, 10, 11; R.1, R.4, R.5-8, R.30, R.31 & R.39)

Investigating, prosecuting and sanctioning terrorist financing (Immediate Outcome 9)

22. In line with the Marshall Islands' low TF risk profile, there have been no investigations, prosecutions or conviction of TF in the Marshall Islands. LEAs do not have the capacity or expertise to investigate TF, should the need arise. In such cases, LEAs would need to rely on assistance from foreign partners. The Marshall Islands has a CT/CFT Procedure which sets out a response and coordination plan should a TF matter arise, however it does not include further practical CFT steps to be taken by relevant agencies.

Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)

23. Marshall Islands has a comprehensive legal framework in place to implement targeted financial sanctions (TFS) related to terrorism. Implementation of the framework is supported by guidance and outreach. The effectiveness of the TFS regime has only been demonstrated to some extent and there is a lack of supervision of TFS. In practice, FIs demonstrate an understanding of TFS obligations and conduct sanctions screening. There was a lack of domestic cooperation and coordination on TFS implementation.

24. TCMI, as Registrar for NRDE and Maritime Administrator, has taken a range of steps to implement TFS screening in the NRDE sector, with depth amongst those NRDE exposed to the maritime sector but the lack of steps to verify BO information reduces the effectiveness of sanctions screening.

25. Measures to protect domestic NPOs from potential TF abuse are reasonable. The Marshall Islands has not yet effectively regulated, supervised or monitored NPO DAO so that TF risks are identified and mitigated. There are significant resources challenges with the Corporate Registry for RDE (AG's Office) responsible for conducting risk-based monitoring of the higher-risk NPOs in the DAO sector. *Preventing persons or entities involved in the proliferation of WMD from moving and using funds (Immediate Outcome 11)*

26. Marshall Islands has a comprehensive legal framework in place to implement TFS related to PF and guidance has been issued. The mechanisms for the competent authority to provide notifications of designations and de-listings to covered entities have not been implemented.

27. Supervision has not been conducted to assess reporting entities' implementation of their TFS obligations. However, in practice FIs appear to understand their TFS and wider AML/CFT obligations and conduct sanctions screening. DNFBP did not demonstrate an understanding of their TFS obligations.

28. TCMI, in its capacities as Registrar for NRDE and Maritime Administrator, has well-developed mechanisms to screen for sanctions and cooperates with international authorities to share information. TCMI shares intelligence and other information on NRDE screening upon request with other members of the National AML/CFT Council. The lack of proactive sharing of such information by TCMI with other competent authorities limits domestic cooperation and coordination on the implementation of TFS in the offshore corporate sector.

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

29. The Marshall Islands has introduced generally comprehensive legal and regulatory frameworks for risk-based preventive measures for FIs and DNFBP. Guidance has been issued to support implementation and the banks, in particular, are supporting risk-based implementation. MIDAO (which is involved in forming DAO) was only subject to AML/CFT requirements as a DNFBP at the end of the onsite visit.

30. In general, some higher risk reporting entities, and particularly the banks, have a good understanding of their risk situation and obligations while lower risk FIs and DNFBP have an adequate understanding, with the exception of the legal sector which appears largely unaware of their obligations. There is a lack of information provided for sector specific guidance including typologies.

31. Implementation of CDD measures is adequate, however some reporting entities have challenges in obtaining corporate documentation due to various inefficiencies in certain government departments. Most reporting entities expressed challenges in identifying the family and friends of close associates of domestic PEPs and implementing the required ECDD given the size and context of Marshall Islands. Most reporting entities have a good understanding of STR/SAR obligations and some high risk reporting entities have implemented risk-based AML/CFT policies and controls.

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

32. Market entry fit and proper controls are being implemented, but the new fit and proper regulations are yet to be applied to existing banks and financial service providers.

33. Risk-based supervision has focused on banks, which reflects the risks and materiality of the sector in the Marshall Islands. Supervision is well supported, although full scope supervision has not extended to implementation of TFS obligations. Findings of supervision provide a basis for remedial action. The supervisor has taken steps to enforce compliance.

34. The Marshall Islands has not yet implemented a comprehensive framework to regulate and supervise VASPs, but some controls have been implemented. The Registrar for NRDE (TCMI) has taken steps to identify and enforce a prohibition on NRDE who were found to be offering virtual asset service, which is not permitted by the Registrar (TCMI). Some DAO are operating as VASPs but have not been subject to AML/CFT supervision.

35. While the AML/CFT supervision framework has been applied to banks, and to a limited extent money remitters, the impact of supervisory actions on DNFBP and VASPs was not demonstrated. In addition to its remedial actions and powers, the Banking Commission has demonstrated that it takes steps to impose sanctions for non-compliance of AML Regulations.

Transparency and Beneficial Ownership (Chapter 7 – IO.5; R. 24-25)

36. The Marshall Islands has not implemented effective measures to prevent the misuse of legal persons for ML/TF purposes, particularly ensuring up to date and accurate basic and beneficial ownership information is available to competent authorities for legal persons formed in the offshore corporate sector (NRDE) and the recently formed DAO sector.

37. There are a number of mechanisms to obtain BO on NRDE. All NRDE have an obligation to provide BO information to the Registrar for NRDE (TCMI) upon request, and as part of this, qualified intermediaries (QI) undertake to provide identified data to the Registrar without delay upon request. Every holder and BO of bearer shares must be recorded with TCMI to maintain the validity of the shares. The Registrar for NRDE (TCMI) has limited mechanisms to verify BO information. Insufficient basic information on directors is kept at the Registrar for NRDE (TCMI). TCMI is able to use information it holds on NRDE that issue bearer shares and any BO information included in a Declaration of Incumbency and information of NRDE associated with Marshall Islands-flagged vessels. There are no controls by corporates on nominee directors, nominee shareholders or share warrants in bearer form.

38. TCMI, as the Registrar for offshore entities (NRDE) shares the available basic or BO information upon request.

39. The Registrar for NRDE (TCMI) has taken some enforcement action against NRDE for failures to provide basic and BO information. No enforcement action has been undertaken by the Corporate Registry for RDE (the AG's Office) in relation to RDE. including DAO, that fail to provide required information.

40. There are obligations for transparency of trusts in the Marshall Islands, but there has not been any use of such powers to obtain information from trustees of domestic or foreign trusts as the national policy of the Marshall Islands is to prohibit the settlement and registration of trusts of all forms, including foreign trusts.

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

41. Marshall Islands has a legal framework that allows it to provide constructive mutual legal assistance (MLA). Marshall Islands authorities demonstrated that they provide constructive and timely international cooperation through their regional and international networks when requested.

42. There is a quick turnaround of information in response to MLA requests, including in relation to the available basic and beneficial ownership information of NRDE.

43. Marshall Islands authorities have yet to make an extradition request. Authorities indicated its a willingness to pursue extradition, but cases demonstrate that the authorities in the Marshall Islands face challenges in relation to meeting the real and perceived costs involved in making an extradition request. The Criminal Extradition Act establishes the legal framework for extradition in Marshall Islands, however extradition requests to the Marshall Islands are rare.

Priority Actions

1) Urgently review and assess risks posed by the NRDE (offshore entities) sector and complete a risk assessment of the for-profit DAO sector.

2) Updated risk assessments related to corruption, bribery and misappropriation of public funds (including procurement fraud) in light of recent cases.

3) Develop a concise national AML/CFT strategy to help apply a risk-based approach to the highest risks, prioritise limited resources, and develop goals and timelines beyond completion of the mutual evaluation. This should particularly target offshore corporate sector (NRDE), the DAO sector and risks associated with corruption, bribery and misappropriation of public funds.

4) Address resourcing and staffing challenges of agencies, especially the AG's Office and LEAs.

5) Issue and implement agency-level priorities on tracing, freezing and confiscating instruments and proceeds of crime and maintain data and statistics on actions taken on asset recovery. Issue guidance / SOP for asset management.

6) Further develop the December 2023 CT and CFT Procedures to ensure readiness with a CFT response plan that includes practical steps, particularly fast-response international cooperation.

7) Effectively regulate and monitor or supervise DAO so that ML and TF risks are identified and mitigated. Provide sufficient resources for the Corporate Registry for RDE (including DAO) to effectively conduct risk-based monitoring of the higher-risk NPOs in the DAO sector.

8) Continue risk-based supervision, fully implement fit and proper controls of FIs and DNFBP and ensure the supervision and further support for TFS implementation.

9) Ensure the availability of timely and accurate BO information by implementing a comprehensive regulatory framework and measures for TCMI, as the Registrar for offshore entities (NRDE) to obtain, verify and ensure the accuracy and currency of the information relating to NRDE and to include it in a BO registry of TCMI. The AG's Office, as the corporate registry for RDE, should do the same for DAO and for other RDE.

10) Enhance AML regulation and supervision of entities involved in the formation and registered agent of DAO to address the risks posed to the Marshall Islands by these entities.

11) Extend AML Regulations, including the fit and proper frameworks and supervision, to DAO which operate as VASPs; as well as to DNFBP providing company formation services for DAO.

12) Ensure effective government oversight and accountability of TCMI as the Registrar for NRDE, including accountability by ministers and parliament on regulation and enforcement of obligation on TCMI and NRDE. The Marshall Islands should take steps to ensure that promoters of the RMI registry for offshore entities (NRDE) do not promote confidentiality and features of NRDE that present challenges for transparency.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

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

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
LC	**LC**	**LC**	**LC**	**LC**	**C**
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
C	**PC**	**C**	**C**	**C**	**C**
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
C	**LC**	**PC**	**C**	**C**	**C**
R.19 - Higher-risk countries	**R.20** - Reporting of suspicious transactions	**R.21** - Tipping-off and confidentiality	**R.22** - DNFBP: Customer due diligence	**R.23** - DNFBP: Other measures	**R.24** - Transparency & BO of legal persons
LC	**LC**	**C**	**C**	**LC**	**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 DNFBP	**R.29** - Financial intelligence units	**R.30** - Responsibilities of law enforcement and investigative authorities
C	**LC**	**LC**	**LC**	**LC**	**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
LC	**PC**	**NC**	**LC**	**C**	**LC**
R.37 - Mutual legal assistance	**R.38** - Mutual legal assistance: freezing and confiscation	**R.39** - Extradition	**R.40** - Other forms of international cooperation		
LC	**LC**	**LC**	**LC**		

MUTUAL EVALUATION REPORT OF THE REPUBLIC OF MARSHALL ISLANDS

Preface

This report summarises the AML/CFT measures in place in the Marshall Islands as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Marshall Islands' 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 (as amended). The evaluation was based on information provided by the Marshall Islands, and information obtained by the evaluation team during the onsite visit to Marshall Islands from 27 November to 7 December 2023.

The evaluation was conducted by an assessment team consisting of:

- Ms Ko-Fan Lin, Chinese Taipei Financial Intelligence Unit, MJIB (law enforcement expert)
- Ms Esther Sue, Fiji Financial Intelligence Unit, Fiji (FIU and law enforcement expert)
- Mr Alex Gehring, US Treasury, United States of America (financial expert)
- Ms Cheryl McCarthy, Financial Supervisory Commission, Cook Islands (financial expert)
- Ms Avril Wadelan, New Zealand Ministry of Justice (legal expert)

The assessment process was supported by David Shannon, Margaret Stone, Joëlle Woods, Erin Lubowicz, and Lauren Hirsh of the APG secretariat.

The report was reviewed by the FATF Secretariat; Mr Chandima Bandara of the Financial Intelligence Unit, Sri Lanka; Mr Timothy Underhill (Australian Federal Police); and Ms Ann Grace Pacis of the Bangko Sentral ng Pilipinas (BSP).

Marshall Islands previously underwent an APG Mutual Evaluation in 2011, conducted according to the 2004 FATF Methodology. The 2011 evaluation has been published and is available at www.apgml.org.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1. The Republic of the Marshall Islands (Marshall Islands) is a small island nation. Marshall Islands is an archipelago of 29 atolls and five single islands, situated in the northern Pacific Ocean. The overall population as of July 2023 is 41,996.[2] Over one-half of the population lives on the island of the capital city, Majuro. The outer islands are sparsely populated.[3] There is a large population of Marshallese residents outside of the Marshall Islands, with the largest concentration residing in the United States of America (US).[4]

2. The legal system in the Marshall Islands is patterned on common law proceedings as they exist in the US. The Marshall Islands judiciary includes the Supreme Court, High Court, District Courts, Community Courts and the Traditional Rights Court as well as a judicial service commission and court staff.[5] The Traditional Rights Court deals with customary law and land disputes.[6]

3. The 1979 constitution established a parliamentary government, with a President as Chief Executive and Head of State. The President is elected by the Nitijela (Parliament) from among its members. The Council of Iroij is the upper house of the Marshall Islands bicameral parliament, while the Nitijela is the elected lower house. The Council is comprised of 12 tribal chiefs who advise the Presidential Cabinet and review legislation affecting customary law or any traditional practice, including land tenure. Legislative power resides in the Nitijela which comprises 33 senators elected by 24 electoral districts which correspond roughly to each atoll of the Marshall Islands. The judicial power of the Marshall Islands is vested in the Supreme Court, the High Court, the Traditional Rights Court and such district, community or other courts as are established by law.

4. The Marshal Islands economy remains dependent on grants and donor funding[7]. Until 1986 the Marshall Islands was a US-administered Trust Territory of the Pacific Islands.[8] Since 1986, the relationship between the Marshall Islands and the US has been defined by the Compact of Free Association whereby the US provides annual payments and defence, as well as special provisions governing mutual assistance and cooperation in law enforcement matters.[9] Revenue from the ship registry and offshore corporate sector (NRDE) is the 3rd largest source of income to the Marshall Islands after Compact funding and fishing rights.

5. The Marshall Islands' total GDP in 2022 was estimated at US$ 279.7 million (US$ 6,727 per capita).[10] The Marshall Islands' economy is largely cash-based, with limited use of electronic payment systems, and uses US currency.

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[2] https://worldpopulationreview.com/countries/marshall-islands-population

[3] https://data.worldbank.org/country/MH

[4] https://www.wilsoncenter.org/article/displacement-and-out-migration-marshall-islands-experience

[5] https://rmicourts.org/the-judiciarys-courts-and-personnel/#:~:text=The%20Marshall%20Islands%20judiciary%20(%E2%80%9CJudiciary,service%20commission%20and%20court%20staff

[6] NRA Vol. 1

[7] https://www.dfat.gov.au/geo/republic-of-marshall-islands/republic-of-the-marshall-islands-country-brief

[8] https://www.state.gov/reports/2023-investment-climate-statements/marshall-islands

[9] https://unsdg.un.org/un-in-action/republic-marshall-islands

[10] https://data.worldbank.org/country/MH

6. The Marshall Islands operates a large, open ship registry. Marshall Islands is the legal domicile of many of the world's largest shipping companies, with the third-largest fleet of ships in the world (over 5600 vessels totalling more than 202 million gross tonnes as of 31 January 2024).[11]

7. The Marshall Islands operates an offshore corporate sector (NRDE), but no offshore banks or offshore trusts. A substantial portion of the offshore corporate sector interlinks with the maritime registry.

8. The Marshall Islands financial sector is small, comprising of one branch of a US bank, one domestic bank and a development bank servicing the whole country and one new commercial bank currently only servicing the capital and providing relatively limited services. There are five money lenders, two money transfers/remitters, three general insurance companies and one credit union. There are no real estate agents, one company service provider, one accounting firm and 73 lawyers.

9. The Marshall Islands has made progress since the last APG ME in 2011, particularly in relation to AML regulations of FIs and DNFBP, risk-based supervision of banks and the expansion of the FIU from 2021 following staff turnover, clarification of the ML offense, enactment of a targeted financial sanctions (TFS) framework, implementation of beneficial ownership (BO) and bearer share transparency obligations for NRDE, and expansion of MLA.

10. Marshall Islands' economy is recovering after COVID-related lockdowns between 2020 and 2022. The Marshall Islands economy contracted significantly during the COVID period, with particular contraction in the fisheries sector. The non-fisheries sector benefited from the revival of donor-financed construction activities and investment associated with preparations for the Micronesian Games in 2024. The volatility in fishing revenues and copra output could impact economic growth and the current account.[12]

11. In keeping with the Compact of Free Association between the Marshall Islands and the US, the Marshall Islands uses the US dollar. Legislation was passed in early 2018 to permit the issuance of a digital currency (the SOV), which, if issued, will serve as the second legal tender in Marshall Islands. The SOV has not yet been issued and the websites related to its development[13] no longer exist, but the legislation to permit the issuance of the SOV remains in force in the Marshall Islands.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

12. The Marshall Islands' small size and its economic and cultural context see it have a relatively low domestic ML risk and low TF risks.

13. In contrast, Marshall Islands globally active offshore corporate sector (non-resident domestic entities, or NRDE), and separately a new sector of decentralised autonomous organisations (DAO), present high transnational ML risks. Both sectors are promoted internationally.

[11] https://www.register-iri.com/info-center/fleet-highlights/

[12] https://www.imf.org/en/News/Articles/2023/07/07/republic-of-the-marshall-islands-concluding-statement-of-the-2023-article-iv-consultation-mission

[13] https://sov.foundation/ and https://sov.global/

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14. The lack of comprehensive basic information or transparency of beneficial ownership (BO) information of offshore companies (NRDE) presents continuing ML risks that are not sufficiently mitigated. These risks were identified in the previous two MERs. The offshore corporate sector (NRDE) is promoted and facilitated by a worldwide network of Qualified Intermediaries (QI). Most of the QI sector is outside of the Marshall Islands and those QI are not subject to the Marshall Islands AML/CFT regulatory regime.

15. The DAO sector in the Marshall Islands is new and the Decentralised Autonomous Organisations (DAO) Act 2022 and the Non-Profit Entities Act, 2020 allow for the registration of for-profit and not-for-profit DAO as limited liability corporations in Marshall Islands. DAO are a form of legal persons. They may operate autonomously through the implementation of pre-set rules embedded within smart contracts, use block chain technology and do not need any human intervention or control e.g. directors' decisions. DAO are often governed by a native crypto token held by a member. Anyone who purchases and holds these tokens gains the ability to vote on important matters directly related to the DAO.[14] DAO are key structures in 'Web 3.0' a platform built on blockchain and controlled by its users e.g. decentralised web 3.0 crypto exchanges or Web 3.0 gaming. All DAO in the Marshall Islands must use the private Marshall Islands-based firm MIDAO to assist with registration processes and to continue a relationship as the DAO's resident agent. The DAO sector poses ML/TF vulnerabilities, due to a number of factors including lack of regulations for the supervision and monitoring of DAO and limited staffing resources of the Marshall Islands Registrar of RDE, housed in the AG's Office.[15]

16. The taxable income of a resident company is subject to tax at 3% of turnover.[16] NRDE and NPOs are exempt from tax.[17] Personal or individual tax rates are: eight percent (8%) upon the first USD$10,400 and twelve percent (12%) upon the amount over USD$10,400.[18] A non-resident tax rate is ten percent (10%) on the gross income earned.

17. The Marshall Islands was placed on the EU list of Non-Cooperative Jurisdictions for Tax Purposes (list) and removed from the list, on several occasions in the past 6 years:

(a) In December 2017, the Marshall Islands was listed by the EU for facilitating offshore structures and arrangements aimed at attracting profits without real economic substance - not applying the base erosion and profit shifting (BEPS) minimum standards or committing addressing those issues by 31 December 2018.[19]

[14] https://www.coindesk.com/learn/what-is-a-dao/

[15] Terrorism Financing Risk Assessment of Decentralised Autonomous Organisations in the RMI, May 2022

[16] https://orbitax.com/taxhub/corporatetaxrates/MH/Marshall-Islands

[17] https://nomadcapitalist.com/finance/offshore/marshall-islands-business-corporations-act/#:~:text=Non%2Dresident%20companies%20not%20conducting,other%20relevant%20sources%20of%20revenueand s107 of the Non-Profit Entities Act 2020

[18] https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1989/1989-0050/IncomeTaxAct1989_2.pdf

[19] https://data.consilium.europa.eu/doc/document/ST-15429-2017-INIT/en/pdf

(b) On 13 March 2018[20] it was removed from the list as a result of its commitments at a high political level to remedy the EU's concerns.

(c) The Marshall Islands enacted the Economic Substance Regulations, 2018 (ESR), to improve its tax policy framework. The ESR was amended in February 2019 to address EU comments.

(d) On 12 March 2019[21] the Marshall Islands was re-listed as the EU did not consider the ESR, as amended, as fully satisfying the EU's economic substance criterion. The Marshall Islands amended the ESR again in August 2019.

(e) On 10 October 2019,[22] the Marshall Islands was removed from the EU list pending the results of the review of the OECD's Global Forum on transparency and exchange of information. In November 2019,[23] the Marshall Islands was rated as Largely Compliant by the Global Forum with respect to the OECD Exchange of Information on Request standard, which satisfied the EU's criteria.

(f) In February 2023 the Marshall Islands was re- listed by the EU over concerns that it has a zero or only nominal rate of corporate income tax, attracting profits without real economic activity and was found to be lacking in the enforcement of the ESR.

(g) In October 2023, it was removed from the EU list "as it has made significant progress in enforcement of economic substance requirements" and clarified, enacted, followed up, and monitor the implementation of its commitments to the EU.[24]

18. The Marshall Islands' cash economy[25] also represents some vulnerability, with limited uptake of electronic transactions. These risks should be understood in the context of the majority of all transactions occurring through banks or money remitters.[26] A mentioned above, banks and money remitters in the Marshall Islands are subject to risk-based AML/CFT supervision.

19. The Marshall Islands is vulnerable to unsolicited offers of investment or concessions by foreign promoters for revenue-generating schemes. This is in keeping with the experience of many small island states in the region. In recent years a number of such schemes have been proposed and have either led to passage of legislation or consideration of bills without effective interagency risk assessments being conducted prior to progressing with these revenue-generating schemes. Many of the schemes involve high risk services or activities including citizenship by investment, special

[20] https://www.consilium.europa.eu/en/press/press-releases/2018/03/13/taxation-3-jurisdictions-removed-3-added-to-eu-list-of-non-cooperative-jurisdictions/

[21] https://www.consilium.europa.eu/en/press/press-releases/2019/03/12/taxation-council-revises-its-eu-list-of-non-cooperative-jurisdictions/

[22] https://www.consilium.europa.eu/en/press/press-releases/2019/10/10/taxation-2-countries-removed-from-list-of-non-cooperative-jurisdictions-5-meet-commitments/

[23] https://www.oecd.org/ctp/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-marshall-islands-2019-second-round-89b5f984-en.htm

[24] https://www.consilium.europa.eu/en/press/press-releases/2023/02/14/taxation-british-virgin-islands-costa-rica-marshall-islands-and-russia-added-to-eu-list-of-non-cooperative-jurisdictions-for-tax-purposes/

[25] See pg. 26 in Volume 3 of NRA

[26] NRA, Vol IV, at p52

economic zones, virtual assets and Web 3.0 activities.[27] DAO are key structures in 'Web 3.0' a platform built on blockchain and controlled by its users e.g. decentralised web 3.0 crypto exchanges or Web 3.0 gaming. The DAO sector poses ML/TF vulnerabilities due to a number of factors including lack of regulations providing for the supervision and monitoring.

Country's risk assessments

20. The Marshall Islands' National Risk Assessment (NRA) was completed in 2020 and reflected qualitative information provided by the government and private sector. The NRA lacked quantitative analysis of statistical data[28], given the limited range of available statistics and case studies. The NRA found that there is an overall low crime rate in the Marshall Islands with very few white collar offences. The NRA recognised credible allegations and periodic prosecutions for misuse of government funds and abuse of public office for private gain. Government procurement and transfers appear most vulnerable to corruption, and personal relationships sometimes play a role in government decision.

21. The NRA includes a list of the "highest level threats" faced by Marshall Islands: ML, trade-based ML (TBML), cybercrime and hacking, tax evasion, smuggling, drug related activities, embezzlement, fraud, corruption and bribery, and misconduct in office.[29] The NRA highlights the likelihood that most illicit funds are laundered offshore, and that most cases involve offending at a low monetary level despite the risks that larger amounts of funds are involved in most predicate offending and ML.[30]

22. The assessment team supported the findings of the NRA and other risk assessments that the highest sectoral vulnerabilities are posed by banks and the offshore corporate sector (NRDE) and the new DAO sector.

23. In addition to the NRA, the National AML/CFT Council has adopted a TF risk assessment of NPOs (2023) and an ML/TF assessment of DAO (2022). The Council was in the process of finalizing a ML risk assessment of the offshore corporate sector (NRDE) at the time of the onsite visit. This step is welcomed, considering the vulnerabilities and the recognition in the 2020 NRA that obtaining adequate BO information on NRDE (offshore entities) is of paramount importance.

Scoping of Higher Risk Issues

24. *Capacity and capability of AML/CFT agencies*: The NRA highlights deficiencies in the capacity and capability of supervisors and LEAs, as well as a lack of statistical information, which impacts Marshall Islands' ability to fully understand and respond to its risks.

25. *Corruption, bribery, misappropriation of public funds (including procurement fraud)*: Recent high-profile cases and detailed discussions with officials highlight significant risks from corruption and bribery and misappropriation of public funds, including procurement fraud. The assessment team

[27] These have included 2018 and 2020 proposals for a Rongelap Atoll Special Administrative Region (RASAR) and a 2021 proposal for a Digital Economic Zone of Rongelap Atoll (DEZRA).

[28] Republic of the Marshall Islands: ML/TF National Risk Assessment (Government version), at p.3

[29] NRA, Vol IV, at p49

[30] NRA, Vol IV, at pp50-51

found that these risks are at a higher and more systemic level than was outlined in the NRA and require additional assessment.

26. *The offshore corporate sector (NRDE):* The offshore corporate sector includes approximately 41,000 NRDE that service maritime and wider customer base globally. There are limited effective transparency obligations on NRDE. The NRDE Regulation 2023 does not include any DNFBP in company formation or ongoing company services. TCMI has, under the relevant statute, served as the Registrar for NRDE since 1990. TCMI is wholly owned by a private US firm, IRI. Under statute, the TCMI has statutory roles to administer the Marshall Islands maritime and corporate programs.[31] IRI and other online sources advertise the Marshall Islands as an attractive company formation destination, which offers minimal reporting requirements and high levels of confidentiality.[32]

27. *Shipping registry* – The Marshall Islands operates a large, well regulated open shipping registry with the third-largest fleet of ships in the world. TCMI has served as the Maritime Administrator of the Marshall Islands since 1990. The assessment team focused only on the Maritime Administrator as far as it is connected to the offshore corporate sector and vulnerabilities of entities involved with the shipping registry to PF sanctions evasion and to potential ML or TF.

28. *Decentralised autonomous organisations (DAO)* - The DAO sector poses potential vulnerabilities due to a number of factors including DAO's involvement with crypto currency and other virtual assets (VA), some DAO' provision of VA services (VASPs) and the lack of regulations and supervisory capacity for the DAO sector, particularly with the Corporate Registry for RDE (the AG's Office).[33]

Materiality

Nature of the economy

29. External grants, taxation, fishing receipts and shipping registry and corporate fees are the key sources of the Marshall Islands government revenue. The Government of Marshall Islands is the country's major employer, followed by the commercial and retail sectors. The construction industry is expanding but there is limited domestic production. Fisheries, copra, handicrafts and subsistence agriculture are the most significant sectors of the economy.[34]Primary export products include frozen fish (tuna), tropical aquarium fish, ornamental clams and corals, coconut oil and copra cake, and handicrafts.[35]

30. The Marshall Islands is highly vulnerable to the impacts of climate change including rising sea levels, ocean inundation and more frequent extreme weather events such as droughts and storms. The authorities' climate adaptation priorities, as set out in the 10-year National Strategic Plan, to improve

[31] In addition, IRI provides administrative and technical support to TCMI in its statutory roles as Registrar for NRDE and Maritime Administrator. An intercompany agreement governs the terms and scope of these services. The services include providing a website and employing staff who have been appointed as Deputy Registrars by TCMI in its capacity as Registrar. IRI was approached by the Marshall Islands in 1990 to assist in administering the maritime and corporate programs upon their inception.

[32] https://bbcincorp.com/offshore/articles/marshall-islands-ibc

[33] Terrorism Financing Risk Assessment of Decentralised Autonomous Organisations in the Marshall Islands, May 2022

[34] https://www.dfat.gov.au/geo/republic-of-marshall-islands/republic-of-the-marshall-islands-country-brief

[35] https://www.state.gov/reports/2023-investment-climate-statements/marshall-islands/

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the resilience of infrastructure, address vulnerability of built environments, and safeguard water and food supplies.[36]

31. Financial products and services are relatively simple in the Marshall Islands and are characterised by high rates of short-term consumer credit ('payday lending'), which reflects an absence of credit cards and a reliance on government payments. Marshall Islands households are at risk of high-debt stress due to large indebtedness at relatively high rates of interest. This debt is largely secured against the payroll of public sector employees through direct allotment, which guarantees repayment. Allotments or debt repayment average 47 percent of total wages.[37]

Financial inclusion and reliance on cash

32. The Marshall Islands faces significant challenges with reductions in correspondent banking relationships (CBR) in recent times. There is some pressure on the only remaining CBR held by the largest commercial bank. There are concerns that the lack of clear AML/CFT measures have the potential to affect Marshall Islands remaining U.S. correspondent banking relationship and that AML/CFT compliance issues have been a factor in trends with loss of CBRs in Pacific jurisdictions. A loss of the CBR would adversely affect the economy and could disrupt international payments and economic activity, and weaken financial inclusion, especially for the outer islands which are served by the Bank of the Marshall Islands. As mentioned earlier, the Marshall Islands' economy is largely cash-based and represents some vulnerability, with limited uptake of electronic transactions.

33. The Marshall Islands has signed an MOU with a US-based firm to launch a pilot of national digital payments system using the US Dollar, with the aim of advancing financial inclusion and empowering businesses of Marshall Islands.[38] Further, as mentioned in Chapter 5, as a forward thinking initiative to promote financial inclusion one of the banks in the Marshall Islands offers outer-island 'mobile' banking through ships.

Exposure to trade and finance with the DPRK

34. The Marshall Islands is not directly exposed to trade and finance with the DPRK or with Iran.

35. Marshall Islands' shipping related NRDE (offshore entities) increase vulnerability to PF related activities. TCMI implements a range of measures in its shipping registration processes to respond to and mitigate PF and sanctions evasion risks associated with both DPRK and Iran.

Weighting

36. For the reasons of their relative materiality and risk in the Marshall Islands, shortcomings in preventive measures were weighted most heavily for banks; medium weight for MVTS; lower weight for lawyers and accountants. The absence of AML/CFT controls and supervision on entities providing company services to NRDE and DAO was also given significant weight, particularly given the vulnerability and the lack of beneficial ownership information associated with these sectors. This

[36] https://www.imf.org/en/News/Articles/2023/07/07/republic-of-the-marshall-islands-concluding-statement-of-the-2023-article-iv-consultation-mission

[37] https://pitiviti.org/storage/dm/2022/11/rmi-fy22-brief-final-sep2022-digital-remediated-20221107214523802.pdf

[38] https://www.aap.com.au/aapreleases/cision20231023ae44973/

weighting is based on the relative importance of each sector and the Marshall Islands' risks, context and materiality. Shortcomings in supervisory measures were weighted most heavily for banks; medium weight for MVTS; lower weight for lawyers and accountants.

Structural Elements

37. Marshall Islands has been vulnerable to investors proposing virtual asset and "Web 3.0 schemes" to members of parliament, which present significant ML/TF and reputational risk to Marshall Islands. DAO are key structures in 'Web 3.0' a platform built on blockchain and controlled by its users e.g. decentralised web 3 crypto exchanges or Web 3 Gaming. Risks posed by the Sovereign or SOV, the RASAR[39], and DEZRA[40], as well as DAO, were progressed to various stages before a full understanding of risk could be assessed. Several Marshall Islands agencies realised the risk such schemes posed, and have been somewhat successful in mitigating negative effects, such as in the case of the DEZRA.

Political stability

38. The political system in the Marshall Islands reflects reasonable stability, with regular parliamentary elections. In keeping with challenges faced by many small island states, conflicts of personal/family interest may trump constituents' interests.

Political commitment to AML/CFT

39. The Marshall Islands government demonstrates a degree of high-level commitment to address AML/CFT issues, however there are numerous other resourcing needs competing for government revenues. In keeping with pressures on other fragile states, parliamentarians and private actors have made proposals to introduce new initiatives to reduce AML/CFT controls to open up a low-rules environment to attract investment and revenue to the Marshall Islands, which would have the effect of reducing AML/CFT controls.

40. The Marshall Islands government has been rebuilding the FIU and Banking Commission since 2020. Progress in this regard shows a clearer political commitment to implement AML/CFT measures in accordance with the FATF recommendations.

Stable institutions with accountability and integrity

41. There are significant challenges with the stability of key AML/CFT institutions as institutions are small and some agencies face complete staff turnover from time to time. This is exacerbated in those agencies where professional staff may be drawn to higher paid employment off-island (e.g. from the Banking Commission or the AG's Office).

[39] The Rongelap Atoll Special Administrative Region (RASAR) proposal sought to establish an autonomous special economic zone with limited application of Marshall Islands law on an uninhabited atoll. Bills to create the RASAR were introduced in 2018 and 2020 but failed to pass.

[40] The Digital Economic Zone of Rongelap Atoll (DEZRA) proposal sought to create an autonomous digital economic zone/virtual domicile focused on blockchain technology and virtual assets, while exempting the zone from certain tax, securities, and other laws. A bill to create the DEZRA was introduced in 2021 but failed to pass.

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42. Accountability and integrity amongst some institutions remain significant challenges. Since the last ME the Auditor General's Office (OAG) has significantly increased its staffing and capacity. The OAG is working with government stakeholders on a number of identified weaknesses with integrity, transparency and accountability of public funds, but there remains a long way to go.

43. Fiscal accountability remains a challenge in the Marshall Islands, including significant issues associated with the administration of local governments and relatively poor tax collection.

Transparency

44. Not all government ministries produce an annual report with audited financial statements made available to the public or to the parliament. However, the OAG has taken steps to improve compliance with transparency requirements of various ministries and agencies, but there is a long way to go.

45. Governance and transparency arrangements are not well developed for the Registrar for NRDE (offshore companies). As a privately held maritime and corporate registry provider[41], TCMI's functions are not sufficiently transparent to any competent authority in the Marshall Islands government or to a minister or to the parliament. TCMI is a privately owned subsidiary of a US corporation (IRI).

46. TCMI indicated that it undergoes an annual external audit on the terms of the agreement with the Marshall Islands, but the scope of the audit is unclear, and the report is only filed with the Minister of Transport. The Marshall Islands did not demonstrate that the Minister of Transport actually receives or does anything with the audit report of TCMI's contract with the Marshall Islands government in relation to these functions. TCMI provides a portion of its earnings to the Marshall Islands government, pursuant to periodic agreements with the authorities although the details are generally not made public. Revenue from the ship registry and offshore corporate sector (NRDE) is the 3rd largest source of income to the Marshall Islands after Compact funding and fishing rights. In 2018 the IMF reported that a total of USD$7.5 million (3.3% of GDP) from the ship registry was expected to be provided to the government budget in Fiscal Year 2018.[42] TCMI reported that revenue to the Marshall Islands from the TCMI was significantly higher at the time of the onsite.

47. Media reporting on financial crime and AML/CFT matters occurs to some degree in the Marshall Islands. There is reasonable public coverage of financial crime cases in the local media and foreign media covering Marshall Islands issues. This contributes to stakeholders having some understanding of the risks and context of ML/TF.

The rule of law & judicial capacity, independence and efficiency

48. There are challenges with rule of law that arise due to the capacity challenges of key government institutions, and the dynamics of political and chiefly influence. It is rare for high-level elected officials to be indicted for corruption. Recurring capacity constraints and turnover of experienced staff within the AG's Office (which is also the public prosecutor) results in challenges with trial experience.

[41] https://www.register-iri.com/about-iri/

[42] IMF Country Report No. 18/271 *Correspondent Banking Relationship Pressures*, August 10, 2018

49. In contrast to this, if matters come before the courts, the Marshall Islands has a strong and high-capacity judiciary. The Marshall Islands courts are led by highly experienced and well trained judicial and registry officers, with a mix of local and ex-pat judges and well supported case management processes. The Marshall Islands courts regularly consider complex international litigation matters associated with the shipping registry, in addition the wider range of domestic criminal, civil and administrative matters.

Other contextual factors

Maturity and sophistication of the regulatory and supervisory regime

50. The Marshall Islands faces challenges with maturity and sophistication of its regulatory and supervisory regime. The Marshall Islands lacks a central bank or an independent financial sector regulator. The Banking Commission is the regulator and supervisor of the financial sector (prudential and AML/CFT) and of the DNFBP (AML/CFT). The Banking Commissioner is empowered to make decisions on analysis and dissemination without recourse to the Minister.

51. The Banking Commission is well led but has been nearly completely rebuilt since 2015 having been reduced to a single staff member. The Marshall Islands is pursuing a possible larger scale reform to establish an independent monetary authority to take on central bank roles as well as supervisory and regulatory roles (prudential and AML/CFT).

Level of corruption and the impact of measures to combat corruption

52. Recent high-profile cases and detailed discussions with officials highlight significant risks from corruption and bribery and misappropriation of public funds, including procurement fraud. As outlined in the section above scoping higher risk issues, this includes risks at the levels of the parliament, national and local government. The assessment team finds that these risks are higher than were assessed in the NRA.

53. As outlined in the previous MER, voters tend to look to elected representatives for financial assistance, which pressures elected officials to use government authority to provide patronage to extended family members and supporters. This has frequently led to allegations of nepotism in government hiring, contracting and procurement. In this context, significant new misappropriation risks arise from amendments to the Procurement Code in 2023 which introduced a $50,000 threshold.

Background and other Contextual Factors

54. The Marshall Islands faces significant pressure and real risks that commercial banks will lose correspondent banking relationships (CBR). Banks in the Marshall Islands have lost or had reductions in CBR connections in recent years. Regional research indicates that the loss of CBR chiefly reflects commercial considerations, but that AML/CFT compliance concerns has been a factor in trends with loss of CBRs in Pacific jurisdictions. There are wider compliance, reputation and supervision issues that need to be considered to support continuing CBR and possible additional CBRs. These issues need to be more closely understood by all branches of government and taken into account when setting priorities and mitigating risks and ensuring compliance and effectiveness that supports improved reputation for AML/CFT compliance.

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AML/CFT strategy

55. The Marshall Islands did not have a standalone AML/CFT strategy, but elements of a strategy are included in the 2020 NRA. While the NRA identified legal entities and beneficial ownership as one of seven functional vulnerabilities, the mitigating strategy was vague and did not result in authorities addressing the underlying vulnerability, which is that TCMI as the Registrar for offshore entities (NRDE), lacks sufficient information on NRDE's beneficial owners and any mechanisms to verify records of beneficial owners that may be provided to the registrar. During 2023 the National AML/CFT Council considered the threats, vulnerabilities, and priorities identified in the NRA and worked on a national AML/CFT plan and draft an NRA Strategies, Action Plan, and Status document.

56. In December 2023 the Marshall Islands adopted a CT/CFT procedure that clarifies the roles and responsibilities of stakeholders and key steps to be taken in potential cases of terrorism or TF.

57. There are good working relationships across key agencies, and experience working with US LEAs on crime cases should help in the event of a TF case. While there is no formal coordination specific to TF, the National AML/CFT Council is in place.

Legal & institutional framework

58. A number of agencies and authorities and a private entity (TCMI) exercise AML/CFT functions as summarised in Table 1.1. Coordinating bodies are set out in table 1.2.

Table 1.1 – Marshall Islands' Authorities and Private Entity (TCMI)

Authority	Responsibility
Banking Commission	Responsible for market entry, licensing, prudential and supervision of most financial institutions. Includes the FIU.
Financial Intelligence Unit (FIU)	Responsible for the FIU function, for AML/CFT supervision of FIs /DNFBP / VASPs. Further roles of supporting inter-agency cooperation (AML/CFT Council). The FIU is established within the Banking Commission.
Marshall Islands Police Department (MIPD)	Responsible, as the primary law enforcement agency, for investigating all crimes in the Marshall Islands including ML and TF .
Customs Authority	Responsible for collecting direct and indirect taxes, customs duties, managing the security and integrity of Marshall Islands' borders and the movement of people and goods.
Department of Tax and Revenue	Responsible for collecting direct and indirect taxes and investigating and enforcing tax laws. Responsible for administering Foreign Investment Business Licence (FIBL) applications by any non-citizen owner.
Attorney-General's Office (AG's Office)	Provides advice to government, represents the government in civil litigation, all criminal prosecutions, and undertakes legislative

	drafting. The AG's Office is designated as the central authority for MLA and extradition. Operates the registries for resident domestic entities (RDE) including, NPOs and DAO.
Director of Public Prosecutions (DPP)	Responsible for all criminal prosecutions including ML and TF under delegation from the AG. DPP is part of the AG's Office's
Minister of Transport	Responsible for the Marshall Islands agreement with TCMI including receiving annual audit reports from TCMI.
Ministry of Foreign Affairs	Responsible for promoting and protecting Marshall Islands' interests abroad including through diplomatic missions.
Auditor-General's Office (OAG)	Conducts independent audit of public finances and is responsible for investigation of corruption or misappropriation of public funds.
Marshall Islands Bar Association	Oversees the legal profession. Lawyers are admitted to practice by the Chief Justice of the Supreme Court.
Private entity	**Responsibility**
Trust Company of the Marshall Islands Inc. (TCMI)	Under statute the TCMI performs the roles of Registrar for Non-Resident Domestic Entities (NRDE) and the Marshall Islands Maritime Registry.

Table 1.2 AML/CFT co-ordinating bodies

Authority	Responsibility
National AML/CFT Council	Policy Level coordination committee comprising members including the AG's Office, Banking Commission, FIU, Marshall Islands' Police Commissioner, Chief of Customs, Chief of Tax and Revenue, Auditor General, Registrar for RDE (AG's Office), Registrar for NRDE (TCMI) and the Registrar of Foreign Investments. Statutory role in relation to TFS implementation. Responsible for preparation and endorsement of draft regulations; risk assessments, etc.
NRA Working Group (NRAWG)	The NRAWG forms part of the national AML/CFT Council and includes 11 government agencies, 12 private sector institutions and 1 industry association

Financial sector, DNFBP and VASPs

59. When assessing the effectiveness of preventive measures and AML/CFT supervision, the assessment team gave the highest importance to banks, followed by entities involved in the formation and administration of non-resident domestic entities (NRDE) and the DAO sector.

Table 1.3: Regulated FI and DNFBP– September 2023

Type of FI	No. Entities	Assets (USD)	Fin. Sector assets (%)
Banks (two domestic commercial banks, one branch of a U.S. bank, and one development bank (government-owned)	4	$373,588,194	86.9%
Credit union (one employee credit union)	1		
Credit Institutions (issuing small value loans)	5	$33,800,059	7.8%
Money Transmitters (two agents of MoneyGram and one agent of Western Union)	2	$495,286	0.1%
Insurance companies - two branches of U.S.-based insurers (offering limited life insurance products) and one local firm (primarily property insurance)	3	$21,882,582	5.2%
VASP (registered),	0		
Total FI	**15**	**$429,766,121**	**100%**

Type of DNFBP	Number
Lawyers and notaries	73
Accountants	1
Trust and Company Service Providers	1
Casinos, real estate, dealers in precious metals or stones	0

60. There are no casinos, real estate agents or dealers in precious metals or stones in the Marshall Islands.

61. The only company service provider outside of lawyers is MIDAO which provides services to DAO but was only notified of its AML/CFT obligations as a DNFBP in December 2023.

62. There are no real estate agents in the Marshall Islands as the market for land title transfer is very small and complex. There are informal referrals within the community network but they are negligible. All land in the Marshall Islands is owned by Marshallese individuals. Foreigners cannot own land in the Marshall Islands. Land is held in perpetuity by members of clans and extended families, and certain lands and fishing waters are held by the entire community. Land inheritance is matrilineal.

63. The use of land is determined by all three social classes in the Marshall Islands, namely the Iroij (chief), the Alap (owner or elder) and Rijerbal (worker or commoner). Iroij have ultimate control of such things as land tenure, resource use and distribution, and dispute settlement. The Alap supervises the maintenance of lands and daily activities. The Rijerbal are responsible for all daily work on the land including cleaning, farming, and construction activities.

64. All three tiers of land users must agree to any transfer of land title. Since 2004 any proposed transfer needs to be registered with the Land Register. The Land Register then must go through a process of public consultation.

65. There are no dealers in precious metals or stones in the Marshall Islands.

66. Lawyers in the Marshall Islands also provide company formation services for domestic corporations. A very limited number of lawyers in the Marshall Islands are QI who may provide services to NRDE.

67. Accountants based in Guam do audits of major companies and national and local government agencies. There is a branch of a large international accountancy firm with a small office in the Marshall Islands. There is neither a professional accountancy association nor any legal requirements governing the accountancy profession in the Marshall Islands. Except for the branch office of an international accountancy firm, the accountants in private practice provide bookkeeping and accountancy services to small family-owned businesses. The local office of the international accountancy firm does not provide company formation service nor hold funds in trust for clients.

Preventive measures

68. The Marshall Islands has significantly enhanced its AML/CFT regulatory framework for preventive measures, including major reforms in 2017, 2020, 2022 and 2023. The centrepiece of the AML/CFT laws, the AML Regulations 2002 was amended in August 2023 and the DAO Act was introduced in 2022. While Marshall Islands has a relatively new legal framework for some preventive measures, including enhanced and specific measures, financial institutions have been applying CDD and record keeping measures due to the nature of the products that they provide (remittances) and the nature of their financial institutions (foreign owned banks and maintaining CBR).

69. Competent authorities have obtained the close cooperation of financial institutions to work with supervisors and regulators to prepare guidance and conducting training and awareness.

Legal persons and arrangements

Table 1.4: Types of legal persons in the Marshall Islands

Resident domestic entities (RDE) -all registered with the Registrar for RDE (AG's Office)		
All RDE	• All registered with the Registrar for RDE (AGO) • No requirement to lodge yearly returns, accounts, or financial statements • No requirement to file changes in members, managers, shareholders or partners • Must keep BO information and provide truthful details upon competent authority's request • Must file quarterly tax returns	
Type and Number	**Governing laws**	**Basic characteristics & significance**
Limited Liability Company (LLC)	Limited Liability Company Act of 1996	• Formed pursuant to an LLC agreement -classes of members and their rights (incl. voting) • Have managers and members (natural or legal persons, domestic or foreign) who can be resident or non-resident • No directors and no share issued. • Can be single member LLC (manager and member roles) • Lodge certificate of formation with the Registrar (AGO)
Corporation	Business Corporations Act (BCA)	• Lodge articles of incorporation (including number of shares, initial directors details, etc) and any changes with the Registrar • Have directors (natural persons) and shareholders (natural persons or legal persons), who can be domestic or foreign

Limited partnership	Limited Partnership Act	• Lodge certificate of limited partnership (and any changed details) with Registrar • Formed by 2 or more partners comprising 1 or more general partners and 1 or more ltd partners. Partners can be natural or legal person (domestic or foreign)
Co-operatives / co-operative associations	Co-operatives Act	• Lodge articles of incorporation (including classes of shares & rights) and any changes. Report annually on the number of shareholders, share par value etc. • Can be shareholders holding shares (with par value) or members without shares - 5 or more resident members (natural or legal persons). At least 3 directors - natural persons
Decentralized Autonomous Organisations (DAO)	DAO Act 2022; and Limited Liability Company Act of 1996 46 NPO DAO 10 for-profit DAO	• The Registrar for DAO is the Registrar for RDE (AGO) • MIDAO is the sole resident agent of all DAO pursuant to a written agreement with the Marshall Islands government • Can be for profit or NPO (required to also to register under the Non-Profit Entities Act, 2020) • Formed by one or more members sign a certificate of formation and LLC agreement • LLC Act applies to DAO, as either a member managed DAO; or an algorithmically managed DAO • As per LLC features above a member can be natural person or a legal person (domestic or foreign). • Lodge certificate of formation, LLC agreement. Report shows time of formation and annual report and includes details of beneficial owner (full legal name, date of birth, residential address and address and blockchains of all wallets connected with the DAO). The certificate of formation or LLC agreement membership interest or member's ownership right, members' voting rights etc • Obliged to keep BO information at the DAO & provide truthful details upon competent authorities' request.
'Offshore' legal persons		
Non-resident domestic entities (NRDE)		
All NRDE	• All registered with the Registrar for NRDE (TCMI) • Exempt from tax in the Marshall Islands • Do not do business in the Marshall Islands • No requirement to submit any changed details or to lodge yearly returns, accounts, or financial statements, or changes in members or managers • Must keep BO information at the company (offshore) & provide truthful details upon TCMI request.	
Type and/or Number	**Governing laws**	**Basic characteristics & significance**
Limited Liability Company (LLC) 2,924	Limited Liability Company Act of 1996	• Statute designates TCMI as sole registered agent of all NRDE for service of legal process, notice, or demand • Must lodge with TCMI an LLC agreement- classes of members & managers + their rights • Have managers and members (natural or legal persons, domestic or foreign), but no directors. Can be single member LLC (manager + member roles). • Members or managers can be resident or non-resident

		• Lodge certificate of formation to Registrar for NRDE (TCMI) • Allows for series LLCs
Corporation 38,215	Business Corporations Act (BCA)	• Statute designates TCMI as sole registered agent of all NRDE for service of legal process, notice, or demand • Have directors (natural persons domestic or foreign) and shareholders (natural persons or legal persons, domestic or foreign). No controls on nominees • Must lodge articles of incorporation (information including the number of shares, bearer shares and bonds the entity is authorised to issue, initial directors' details, etc) and any changes to articles with the Registrar for NRDE (TCMI)
Limited partnership 61	Limited Partnership Act	• Statute designates TCMI as sole registered agent of all NRDE for service of legal process, notice, or demand • Must lodge certificate of limited partnership (and any changed details) with the Registrar for NRDE (TCMI) • Formed by two (2) or more partners comprising 1 or more general partners and one or more limited partners. Partners can be natural or legal person (domestic or foreign) • No requirement to lodge the partnership agreement
Foreign Maritime Entities – registered with TCMI as the Registrar for NDREs and as Maritime Administrator		
Foreign Maritime Entity (FME)	Business Corporations Act (BCA)	• Statute designates TCMI as registered agent of all FME and TCMI in the Marshall Islands for service of legal process, notice, or demand • foreign entities which have power to own or operate vessels can be registered as a FME which grants them sole and limited authority to own and operate and Marshall Islands flagged ship • Provide contacts to TCMI as the Registrar for offshore entities (NRDE) and lodge a completed application form, certified articles of incorporation (or equivalent) and evidence of incorporation • FME registration does not change the entity's domicile or tax residence (the entity remains resident in and governed by the laws of a foreign country). An FME is not an NRDE.

Offshore entities or corporates

Non-Resident Domestic Entities (NRDE)

70. As of 30 November 2023, the numbers of NRDE are as follows. The majority of which are in the shipping sector.

Table 1.5: Registered Non-Resident Domestic Entities, NRDE

Entity Type	***Number***
Corporation	38,215
Limited Liability Company	2,924
Limited Partnership	61
TOTAL	41,200

71. Marshall Islands LLC include a structure of series LLC which are established under the Limited Liability Act (s. 79) which contain separate units that operate independently from each other. Each unit is isolated from the liability exposure of the other units in the same series LLC. A series LLC is both a holding company and subordinate companies (as units), independent from each other with separate business operations, but keeping within a single legal entity. The Series LLC members or shareholders can own and modify multiples of units under the umbrella series LLC. Each unit can have different assets, different members and therefore different risk portfolios. Every unit may have its own share capital of the overall company share capital, assets and liabilities and the income and costs of each unit may be kept separate. Each unit owner owns only a percentage of the overall series LLC. This structure is often used hedge funds, venture capital funds and real estate investors.[43] Series LLCs are being marketed for use by DAO.[44]

72. Under Marshall Islands law NRDE are domestically formed but are not allowed to do business in the Marshall Islands. NRDE (offshore entities) are not liable for tax in the Marshall Islands.

73. Under Marshall Islands statute, the TCMI, a private company is the Marshall Islands NRDE registrar. TCMI also operates the Marshall Islands' maritime registry under statute. TCMI is a subsidiary of a US company, International Registries Inc. (IRI). The IRI provides a number of key services to TCMI in the process of administering the registries.

74. The NRDE Registrar (TCMI) does not deal directly with an applicant for incorporation. The registration process for NRDE involves QI that work with the IRI (i.e. company formation service providers), such as accredited and licensed attorneys, accountants, or corporate formation specialists based around the globe. Only TCMI-accredited QI may submit a request and associated documents and information to form an NRDE. Documents may only be filed for an NRDE by a QI.

75. QIs are not regulated or supervised by any Marshall Islands government authority, and many QIs are in jurisdictions where DNFBP are not included in AML/CFT controls. To be approved by the Registrar for NRDE (TCMI), QI must either demonstrate that they are subject to CDD requirements in the jurisdiction where they are located or declare that they will meet FATF standards. They must also satisfy the NRDE Registrar that they perform screening against UN, US, EU, and other sanctions lists and that they will provide identification data and other KYC documentation to the Registrar without delay upon request. However, if TCMI considers they have failed to meet these standards they may be subject to heightened CDD requirements by TCMI, such as requiring that up-to-date BO information be provided with every request for service (filing, copies, etc.) or struck off as QIs.

76. The table below shows the location of QIs and the number of NRDE registrations by jurisdiction of the QI for the 12-month period of 20 July 2022 to 20 July 2023 (top ten only).

Table 1.6: Location of QI and numbers of NRDE introduced by QIs in those locations

Jurisdiction of QI	*Number of NRDE Formed*
China	1,369
Greece	1,102
Turkey	829
Hong Kong, China	573

[43] https://fsi.taxjustice.net/fsi2022/KFSI-15.pdf

[44] For example, see https://www.midao.org/, which states that "MIDAO helps DAO and Web3 projects form DAO LLCs and Series DAO LLCs" in the RMI

United Arab Emirates	506
United States	500
Cyprus	257
United Kingdom	210
Singapore	148
Switzerland	140

77. The offshore corporate sector includes foreign maritime entities (FMEs), which are legal persons registered with the registrar of foreign investment under the Foreign Investment Business License Act 1990 and TCMI as the Maritime Administrator. FME are foreign corporate entities which have power to own or operate vessels can register in the Marshall Islands as an FME. Registration as an grants the foreign entity the sole and limited authority to flag a vessel in the Marshall Islands directly (i.e., without the need to separately incorporate an NRDE). FME registration does not change the entity's domicile or tax residence (the entity remains resident in and governed by the laws of a foreign country) and does not authorise the entity to do business in the Marshall Islands. TCMI as the Registrar receives evidence of incorporation and a completed application form that must include, among other things, the full names and addresses of the persons vested under law with management of the entity. While there are no obligations to obtain or produce BO information of a FME, the Marshall Islands reports that basic and beneficial ownership for FMEs is collected by the Maritime Administrator (TCMI) during vessel registration.

Table 1.7: Registered foreign maritime entities

Entity Type	*Number*
Foreign maritime entity	2008

78. A reasonable number of foreign entities re-domicile to the Marshall Islands as NRDE. Re-domiciliation is the process whereby a foreign entity transfers its domicile/existence into the Marshall Islands (see, e.g., Division 14 of the BCA). Upon re-domiciliation, the foreign entity ceases to exist in the foreign country and becomes a domestic Marshall Islands entity, whether an RDE or an NRDE. It then is resident in the Marshall Islands, governed by Marshall Islands law.

Table 1.8: Companies re-domiciling in the Marshall Islands as NRDE

Year	*Companies re-domiciling into Marshall Islands as NRDE*
2019	235
2020	160
2021	305
2022	189
2023	150

Resident domestic entities (RDE)

79. The AG's Office is the Registrar for RDE and NPOs including DAO and NPO DAO. As of 30 November 2023, the numbers of RDE are as follows.

Table 1.9: Registered Resident Domestic Entities (RDE)

Entity Type	*Number*
Corporation	346
Limited Liability Company	85
Limited Partnership	3
NPO	255
TOTAL	**689**

Trusts

80. The Marshall Islands legal framework provides for the formation and legal recognition of trusts, including a Marshall Islands Trust ('offshore' trust for non-resident beneficiaries). The creation of trusts, obligations on trustees (whether natural persons or trust companies) is covered by the Trust Act of 1990. The licensing of trust companies and trustees is governed by the Trust Companies Act 1994 and the Trustee Licensing Act 1994.

81. Three categories of trust are recognised under Marshall Islands law: (1) domestic trusts (resident beneficiaries) whose proper law is the law of the Marshall Islands; (2) Marshall Islands Trusts with at least one trustee licensed in Marshall Islands and non-resident beneficiaries, and whose proper law is the law of the Marshall Islands (Trust Act 1994, s.101A(h)); and (3) foreign trusts (Trust Act 1994, s.101A(e)) whose proper law is that of a jurisdiction other than the Marshall Islands.

82. Marshall Islands does not have an operating trust sector as the authorities have continued a policy to not licence trust companies or trustees or to activate its trust registry. The Registrar of Trusts (Majuro International Trust Company) has been inactive since it was formed. This position remains unchanged from the 2011 MER. As a result, no trust (Marshall Islands trust or domestic trust) has ever been registered.

83. Marshall Islands authorities indicated that foreign trusts do not operate in the country. However, given the permissive nature of Marshall Islands law with respect to foreign trusts, and the prevalence of foreign trusts in regional investment projects, the assessment team is of the view that trustees of foreign trusts are likely to operate in the Marshall Islands to some extent.

Supervisory arrangements

84. The Banking Commission (which includes the FIU) is the prudential regulator and supervisor of the financial sector. The Banking Commission is the AML/CFT regulator and supervisor for FI and DNFBP (including lawyers, notaries and accountants) under the Banking Act. The Banking Commissioner has powers under the Banking Act 1987 to carry out inspections and issue compliance orders to regulated entities and to refer violations of the Banking Act and its regulations to the AG's Office for assessment of fines or other penalties. At an institutional level the Banking Commission and FIU have developed a risk rating matrix for FIs, which forms a foundation for conducting risk-based supervision. Rules-based AML/CFT supervision of the financial sector has taken place over a number of years and, since 2020, risk-based AML/CFT supervision has commenced with the banking sector.

85. There are no Marshall Islands regulated DNFBP connected to the NRDE sector. However, the Registrar for NRDE (TCMI) has monitored for and actively enforced the prohibition on NRDE engaging in insurance, VASP, trust services, or banking business.

86. The new DAO sector was largely unregulated and unsupervised for AML/CFT at the time of the onsite visit. The one entity providing company services for DAO was only informed of its AML/CFT obligations at the time of the onsite visit and had not been subject supervision.

International Cooperation

87. The Marshall Islands has been responsive to incoming requests for assistance, and these have predominantly related to the offshore corporate sector (NRDE) and have been responded to quickly.[45] As outlined in IO.2 and IO.5, concerns remain about the accuracy of information available to TCMI (the Registrar for NRDE) from NRDE to fulfil international cooperation requests.

88. The Marshall Islands has on limited occasions sought legal assistance in respect of pursuing domestic ML associated predicate offences, but MLA has not been considered by most Marshall Islands LEA on a continuing basis. The number of requests made is not consistent with a number of high risk threats identified in the NRA.

89. Marshall Islands authorities have yet to make an extradition request. Authorities demonstrated a willingness to do so in relation to domestic ML associated predicate offences but face challenges in relation to meeting the costs involved in making an extradition request.

[45] NRA Volume 4 page 25

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key findings

a) The National AML/CFT Council members had a generally good understanding of the Marshall Islands' ML and TF risks but understated the ML/TF risks that NRDE and DAO LLCs pose.

b) Marshall Islands should be commended for the separate risk assessment it conducted on the NPO DAO sector, which raise significant AML/CFT concerns, however the Marshall Islands has not assessed for-profit DAO.

c) There is no detailed risk assessment of the NRDE sector or the roles of TCMI, IRI and QIs in company services or separately, an assessment building on the analysis in the NRA of risks posed by corruption, bribery and misappropriation of public funds (including procurement fraud).

d) Since the issuance of the NRA, the National AML/CFT Council has taken some steps to address the priority areas, but had not finalised a coordinated, national AML/CFT strategy. The FIU maintains a work plan with timelines that was adopted by the National AML/CFT Council.

e) Gaps remain with collecting data relating to ML/TF trends and risk information to support further identification and assessment of risks.

f) The Banking Commission and the Office of Auditor General (OAG) have made strides to increase resources to be applied to AML/CFT. However, the AG's Office and, to some extent, the Police are under-resourced.

g) Marshall Islands lacks effective controls to ensure adequate interagency risk assessments are conducted prior to progressing with revenue-generating schemes, such as those involving virtual assets and Web 3.0.[46]

h) There is a lack of clear procedures for the National AML/CFT Council to agree to risk assessments.

i) There are weaknesses with operational level cooperation on high risk areas.

j) Risk-based exemptions or simplified measures are not utilised to promote financial inclusion.

k) LEAs' understanding of TF risk is reasonable, but there are insufficient steps to monitor and keep across any changing TF risks that may affect the Marshall Islands and TF typologies.

[46] DAO are key structures in 'Web 3.0' a platform built on blockchain and controlled by its users e.g. decentralised web 3 crypto exchanges or Web 3 Gaming. The DAO sector poses ML/TF vulnerabilities due to a number of factors including lack of regulations providing for the supervision and monitoring.

l) Extensive use of cash in Marshall Islands presents a key ML vulnerability.

m) Authorities lack an understanding of risks associated with VASPs.

Recommended Actions

a) Urgently finalise a sectoral AML/CFT risk assessment of the offshore corporate sector.

b) Conduct additional assessments, building on the NRA, of risks posed by corruption, bribery and misappropriation of public funds (including procurement fraud).

c) Develop a concise national AML/CFT strategy to help apply a risk-based approach to the highest risks, prioritise limited resources, and develop goals and timelines beyond completion of the mutual evaluation. This should particularly relate to the offshore corporate sector (NRDE), the DAO sector and risks associated with corruption, bribery and misappropriation of public funds.

d) Prioritise AML/CFT data collection including data related to ML/TF trends to support a more precise understanding of ML/TF risks.

e) Address resourcing and human resources challenges affecting agencies, especially the AG's Office and LEAs.

f) Implement effective controls to ensure adequate interagency risk assessments are conducted prior to progressing with revenue-generating schemes, such as those involving virtual assets and Web 3.0.

g) Create standard procedures for the National AML/CFT Council to develop and agree to updated risk assessments.

h) Enhance operational-level cooperation and coordination relating to key risk areas, in particular risks from corruption and bribery and misappropriation of public funds (including procurement fraud).

i) Consider applying risk-based exemptions or simplified measures for low-risk scenarios, sectors and customers categories based on findings of NRA and other risk assessments to enhance financial inclusion.

j) Authorities to develop an understanding of VASP and acquire sufficient regulatory information to determine which DAO may be operating as a VASP.

k) Ensure FIs and DNFBP are adequately reporting SARs and ensure timely and comprehensive analysis by the FIU.

90. 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.

2

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

91. Marshall Islands has a small financial sector comprising of four banks, a limited number of credit institutions, and two money transmitters. The DNFBP sector includes lawyers, notaries, and one accountant.

92. High risk predicate offenses in Marshall Islands include tax evasion, drug smuggling, embezzlement, fraud, corruption, and bribery. The small financial sector limits the potential scale of illicit funds to flow through the domestic economy. Marshall Islands however is exposed to additional risks emanating from its offshore corporate sector (NRDE). The risks were identified in the National Risk Assessment but require a more detailed sectoral analysis, given the size of the sector and limitation on TCMI to collect basic and BO on all entities at the time of formation.

93. Marshall Islands conducted an ML/TF NRA between September 2017 and April 2020, which was endorsed by Cabinet on August 13, 2020. The assessment was conducted by the National Risk Assessment Working Group (NRAWG), which consisted of 11 government agencies, 12 representatives from private sector institutions (which at the time represented 94% of the commercial banks, insurance companies, money transmitters, and credit institutions in the Marshall Islands) and the Marshall Islands Law Society representing lawyers, one of two DNFBP sectors in Marshall Islands (the other being notaries).

94. The Banking Commissioner and FIU Manager are responsible for coordinating the working group, which includes eight subgroups to conduct analysis of threats, national vulnerability, vulnerability of specific sectors, vulnerability of products and a TF risk assessment. The working group includes representation from the banking, credit, DNFBP and insurance sectors and a broad range of government agencies.

95. The NRA identifies threats, sectoral vulnerabilities (an overview of FI/DNFBP sectors exposed to ML/TF), functional vulnerabilities (vulnerabilities that impact functions to combat ML/TF) and overarching vulnerabilities (cross cutting vulnerabilities across the functional and sectoral vulnerability framework). The nature of the high level of risk associated with the offshore corporate sector Marshall Islands was not sufficiently assessed in the NRA.

96. The NRA is based primarily on surveying of key public and private sector representatives from reporting entities, complemented by limited factual evidence where available, to identify the ML/TF risks for the jurisdiction. The NRA identified the lack of available statistics relevant to ML/TF as an overarching vulnerability that requires urgent government consideration. Notably, the Marshall Islands' small evidence base of STRs, and zero ML or proceeds of crime cases prosecuted resulted in a greater reliance upon qualitative and subjective information to inform the NRA. This approach is understandable given the limited statistical and anecdotal evidence base to draw on, however it does reflect a moderate shortcoming in the approach.

97. There are also moderate deficiencies in the NRA methodology. The same calculation is used to calculate likelihood and consequence (function of vulnerability and threat, resulting in these two factors not being distinct). The NRA identifies a substantial number of risks as being highly likely. The high number of highly likely ML/TF risks limits the utility of the NRA as a tool for applying a risk-based approach to allocating resources. Further, only the highest rated threats and vulnerabilities are

explicitly detailed in the NRA. Details on low risks could have been relied upon to consider exemption applications.

98. The Banking Commission held a workshop in April 2023 that included 21 participants from government and 11 participants from the private sector to present on the threats and vulnerabilities identified in the NRA and the goals, objectives, and strategies to address those threats and vulnerabilities.

99. In November 2023 Marshall Islands conducted outreach to several NPOs to discuss NPO registration requirements and efforts to mitigate ML and TF risks in the NPO sector, although this did not include NPO DAO.

100. The NRA findings were communicated broadly to stakeholders and banks and most DNFBP were aware of the identified risks. Marshall Islands financial institutions do not provide accounts or services to NRDE (offshore companies) or DAO, citing the elevated risks associated with those entities.

101. Marshall Islands conducted sectoral risk assessments in 2023 on the risk of TF through NPO and a separate assessment of NPO DAO, which reflected an understanding of the evolving risk DAO present to Marshall Islands.

102. Some challenges are noted with the system for updating risk assessments including a lack of clarity around procedures when a council member objects to risk assessment findings. Clear procedures should be determined for the National AML/CFT council to consider and agree to risk assessments to ensure the assessments are adopted in a timely fashion, address evolving risks, and reflect the views of key stakeholders. The August 2020 NRA includes a statement that it will be updated/amended on a regular basis, and that a subsequent assessment will be undertaken again in five years.

103. At the time of the onsite visit the NRAWG was in the process of performing a sectoral ML risk assessment of the Marshall Islands' Registry for NRDE operated by TCMI, which is a welcome development considering the vulnerabilities posed and the recognition in the 2020 NRA that obtaining adequate NRDE BO information is of paramount importance. The NRA identified legal entities and beneficial ownership as one of seven functional vulnerabilities and presented mitigating strategies to review, update and where necessary develop, the policies and procedures of the TCMI registries to ensure that the identified risks are mitigated.

104. Competent authorities had a generally good understanding of the ML and TF risks within the Marshall Islands, one exception being the full extent of financial crime risks associated with corruption and bribery, misappropriation of public funds and procurement fraud which remain under assessed in the NRA.

105. Competent authorities did not have a well-developed understanding of the risks offshore entities such as NRDE and DAO pose to the international financial system and the severe risks (reputational, legal) that could affect the Marshall Islands government if entities established under Marshall Islands law (NRDE and DAO) facilitate ML/TF outside the borders of Marshall Islands. The NRA does not provide any available statistics on which the National AML/CFT Council could rely on to further its understanding of these matters.

106. The risks posed by the unique regulatory model for NRDE have not been sufficiently assessed and understood. Risks (including those outlined below) have not been considered that arise from the

particular arrangement of using TCMI, the privatised registrar for NRDE, to perform functions concerning NRDE, TCMI's role of approving QIs which represent NRDE.

107. The Marshall Islands recently published the DAO NPO Risk Assessment which identified a range of vulnerabilities. The DAO risk assessment rightly points out that the Registrar for RDE in the AG's Office responsible for registering DAO (and other resident domestic corporates) is under resourced. Regulations have not been issued that would provide clear requirements for supervision and monitoring. The DAO risk assessment also highlights the difficulty of ascertaining the beneficial owners of DAO given their ability to quickly change ownership and the potential for an individual to hold multiple digital wallets to gain a controlling stake without the knowledge of the supervisor.

108. In relation to the NRA, due to the lack of available statistics relevant to ML/TF, the NRAWG relied on qualitative survey responses from its members (11 public sector agencies and 12 private sector participants and one industry association) to assess threats and vulnerabilities. In addition, eight working groups were created to analyse threats, vulnerabilities, risks, and various sectors in more detail. This approach is understandable given the limited statistical base to draw on, however as the NRA acknowledges, there are limitations on the conclusions one can draw about risk-based solely on qualitative information.

109. The data was assessed to determine the Marshall Islands' threats and vulnerabilities to ML (including a detailed analysis of predicate crimes, particularly those identified as the highest threat), terrorism and TF (including those from the NPO sector), and proliferation financing. Overarching, functional, and sectoral threats were all considered. To arrive at the highest priorities for action, the Marshall Islands weighed the likelihood and potential consequences of the identified threats and vulnerabilities.

110. The NRA reasonably concludes that the level of onshore ML/TF risk, in global terms, is very low in Marshall Islands and that it is highly likely that risk of ML is principally offshore. The NRA reports no evidence of TF in Marshall Islands. While the assessment team finds that it is likely that the risk of TF within Marshall Islands is low, the DAO NPO sectoral risk assessment rightly points out that the risk of ML/TF from DAO extends to the international financial system due to the authorities lack of understanding and lack of supervision of DAO. The risks NRDE pose also extends to the international financial system due to authorities incomplete understanding of NRDE basic and beneficial ownership.

111. There is broad agreement among agencies and the private sector regarding the highest ML/TF risks and as cited in the NRA, the understanding that the extensive use of cash in Marshall Islands presents a key vulnerability.[47]

112. The NRA identifies numerous highly likely threats and vulnerabilities. Marshall Islands would benefit from further differentiation and prioritisation of the identified threats and vulnerabilities to better inform resource allocation.

113. The Marshall Islands has been vulnerable to investors proposing virtual asset and "Web 3.0 schemes", which present significant ML/TF and reputational risk to Marshall Islands. For example,

[47] See pg. 26 in Volume 3 of NRA.

initiatives such as the Sovereign (SOV)[48], the RASAR,[49] and DEZRA,[50] as well as DAO, were progressed to various stages before a full understanding of risk could be adequately assessed. Several Marshall Islands agencies realised the risk such schemes posed, and have been somewhat successful in mitigating negative effects, such as in the case of the RASAR and DEZRA, however a more thorough risk assessment should be embedded in government processes prior to passing legislation. A key example is that possible future development of a central bank digital coin (CBDC) should be undertaken with caution and in consultation with multilateral stakeholders and the conduct and consideration of risk assessments. The SOV has not yet been issued and the websites related to its development[51] no longer exist.

114. The SOV Act was passed in early 2018, remains in effect, and could be implemented on relatively short notice. No AML/CFT risk assessment[52] was finalised at the time of the onsite and key questions around how the SOV would function or how risks would be mitigated were not addressed. This remains a significant source of potential risk of fraud, market manipulation, ML and TF if the SOV were to be issued. Concerns arise that these risks, and of the lack of clear mitigating measures, have the potential to affect Marshall Islands remaining U.S. correspondent banking relationship.

115. Although the NRA identifies legal entities, shipping, registry and beneficial ownership as one of five functional vulnerabilities, the risks associated with NRDE (offshore entities) is understated given the ease with which companies can be created and challenges with transparency of their beneficial ownership and control. Marshall Islands should be commended for the separate risk assessment conducted on the NPO DAO sector, which raises significant AML/CFT concerns, however the assessment is limited to non-profit DAO and does not include for profit DAO. The assessment does not fully consider the risks associated with DAO falling within the FATF definition of Virtual Asset Service Providers (VASP). This is a substantial shortcoming. Marshall Islands authorities do not have sufficient regulatory information to determine which DAO may be operating as a VASP.

116. The NRA considered proliferation financing risk and rightly points out that the most significant vulnerabilities for PF arise from the work of TCMI, particularly in terms of registering ships and NRDE. The NRA notes that the vulnerabilities for PF linked to Marshall Islands-flagged ships or NRDE providing assets or financial services which are used for the purpose of transport, transfer,

[48] The Declaration and Issuance of the Sovereign Currency Act 2018 was passed in the Nitijela in 2019. This law declared the Sovereign (SOV) as legal tender of the Marshall Islands for all debts, public charges, taxes and dues. SOV was to circulate as legal tender in addition to the US Dollar. The SOV was to be introduced via an Initial Currency Offering ("ICO") and would be non-redeemable. The SOV has not yet been issued and the websites related to its development no longer exist, but the legislation to permit the issuance of the SOV remains in force in the Marshall Islands.

[49] Legislation to create the Rongelap Atoll Special Administrative Region (the "RASAR") would have significantly changed the laws on the Atoll to attract foreign businesses and investors, such as by lowering or eliminating taxation and relaxing immigration regulations. In December 2022, Cary Yan and Gina Zhou pled guilty to conspiring to violate the U.S. Foreign Corrupt Practices Act ("FCPA") in connection with a multi-year scheme to bribe government officials in the Marshall Islands to pass legislation that would benefit their business interests. The legislation did not pass.

[50] In 2021 RASAR initiative was repackaged by Cary Yan and other proponents as the Digital Economic Zone of Rongelap Atoll (the "DEZRA") and promoted as way to address the Marshall Islands' economic development by creating an autonomous digital economic zone/virtual domicile focused on blockchain technology and virtual assets, while exempting the zone from certain tax, securities, and other laws. The legislation did not pass.

[51] https://sov.foundation/ and https://sov.global/

[52] The IMF conducted a detailed assessment of the risks associated with the SOV in mid-2018 (IMF Country Report No. 18/271) and has addressed SOV in many other reports and discussions with the Marshall Islands, according to Marshall Islands.

transhipment or the delivery of materials or related materials that may be used in or for nuclear, chemical or biological weapons.[53]

117. TCMI, as the Registrar for NRDE and the Maritime Administrator, has a well developed understanding of risk especially for shipping companies, due to its coordination with international organisations and foreign governments, including the UN Panel of Experts and the U.S. All known parties to any NRDE or maritime transaction are vetted by the Registrar for NRDE or the Maritime Administrator respectively through a commercial database, which combines the UN, US, EU, and other national and international sanctions lists and lists of persons publicly accused, investigated, arrested, charged, indicted, detained, questioned, or put on trial related to any criminal activity. The Maritime Administrator also proactively monitors vessels for potential sanctions evasion with a state-of-the-art location monitoring system, issues guidance and notices related to illicit shipping and sanctions evasion practices, and subjects vessels to ongoing physical inspection.

118. High ML and financial crime risks associated with corruption and bribery, misappropriation of public funds and procurement fraud remain under-assessed. At the time of the onsite visit there were numerous ongoing high-profile cases related to these risks. Challenges are noted with potential conflicts of interest, political pressure and poor systems and a critical resource shortage to coordinate and act against these risks, particularly with the under-resourcing of the AG's Office. Audits of local governments (financial and compliance) reflect multi-year delays. Significant new misappropriation risks arising from amendments to the Procurement Code in 2023 ($50,000 threshold). Taken together, these corruption, bribery and misappropriation risks (including from procurement) highlight the need for further assessment and understanding of related ML risks and enhanced operational level cooperation to address the risks.

119. Overall, Marshall Islands has made great strides in understanding its ML/TF risks since the last ME and has largely created the infrastructure to maintain this progress going forward. However, this may be challenged by the lack of AML/CFT-related statistics, the lack of political will to address sensitive issues such as corruption, bribery, and fraud, and the significant risks posed by NRDE and DAO.

120. The relative ease with which investors have been able to propose schemes and gain approval before adequate risks assessments can be conducted, present significant vulnerabilities. More attention should be paid to mitigating the vulnerabilities associated with NRDE (offshore entities) and DAO.

National policies to address identified ML/TF risks

121. The NRA identifies five priority mitigation strategies for the risks identified in the NRA, which serve as the basis for addressing the risks through coordinated policies.

[53] NRA Volume 4, page 29.

Table 2.1: Priority Risk Mitigation Strategies Arising From the NRA

Risk Mitigation Strategies from the 2020 NRA and Weaknesses	Steps taken
Priority 1 Review the resourcing of the Marshall Islands FIU and ensure an adequate and effective AML/CFT supervisory program.	Hiring additional staff for the FIU and the Auditor-General
Priority 2 Develop and implement systems to collect and record statistics and other date collection relevant ML/FT. Weaknesses: include limited resources of operational agencies (such as Police and AG's Office), requiring training on ML and ML prosecution to be given to AG's Office.	The FIU has commenced data collection processes to capture some AML/CFT outputs from various agencies.
Priority 3 Resourcing of law enforcement and other operational agencies in the Marshall Islands AML/CFT program Actions to be taken including collection of relevant statistics is insufficient, increasing resources of operational agencies.	The FIU signed an agreement with AUSTRAC to implement the TAIPAN system (to enable the collection of data related to ML/TF trends - not yet operational at the time of the onsite) The AG's Office has launched an electronic system to track investigations and prosecutions (currently focused only on human trafficking cases)
Priority 4 Implementation of a law relating to proliferation financing.	Implemented a PF law
Priority 5 Review, update and where necessary develop the policies and procedures of TCMI and its registries to ensure an adequate and effective Marshall Islands ML/TF and PF risks are mitigated.	1) updated laws and policies such as those affecting bearer shares 2) amended legislation covering TCMI's powers and NRDE and the Economic Substance Regulations, 2018 3) enhanced TCMI's screening systems and expanded its compliance team. TCMI became a member of the National AML/CFT Council 5) increased enforcement action actions/auditing of NRDE and expanded audit team

122. Marshall Islands should be commended for addressing key aspects of the NRA's priority strategies. The National AML/CFT Council approved a document before the onsite which lists the threats and vulnerabilities identified in the NRA and provides a status of actions taken to mitigate the

threats and vulnerabilities. Of the strategies, Marshall Islands has addressed NRA Priority 1, by hiring additional staff for the FIU. The Banking Commission Special Revenue Fund, from licensing fees and fines, was used to fund and hire four additional FIU staff for FIU in 2021 (two compliance officers, one compliance analyst, and one intelligence analyst) for FY20-21, with recruitment for three of the four positions completed. This is a key step to enable the FIU to conduct an adequate supervisory program (though this has not yet been achieved). The FIU is also developing a case management system that would allow for the collection of statistics relevant to AML/CFT regime. Marshall Islands has also made legislative changes to address the NRA's recommendations, including amendments to the Associations Law and legislation to implement TFS. Likewise, the Auditor General has taken positive steps to increase resources. In relation to Priority 3, the AG's Office has launched an electronic system to track investigations and prosecutions, but currently it is focused only on human trafficking cases. It is unclear whether other LEA will prioritise collection of ML/TF statistics and how long it will take before quantitative data can be fed into the risk assessment process. In relation to NRA Priority 5, some progress has been made in updating laws and policies, such as those covering bearer shares, however NRDE (offshore entities) continue to pose significant potential risk of facilitating ML, PF and TF due to insufficient collection of BO information. In addition, TCMI also promulgated and implemented the Economic Substance Regulations, 2018, was appointed to the National AML/CFT Council, has taken steps to enhance its screening systems and expand the compliance team, and has increased audits and other compliance actions of NRDE and expended the audit team and has increased compliance and audit staff.

123. The Marshall Islands has increased resourcing for the Banking Commission, which reflects an understanding of risk. The increased resourcing has enabled the Commission to begin to use a risk-based approach for onsite FI supervision. The OAG has also received resources, which may reflect an understanding of corruption-related risks (though the NRA's assessment of corruption risks is not sufficiently detailed to fully address these risks).

124. In relation to NRA Priority 3, the FIU signed an agreement with Australia's FIU, AUSTRAC, to implement the TAIPAN system, which should greatly improve its ability to collect data related to ML/TF trends.

125. The NRA has resulted in the development of NRA Strategies, Action Plan, and Status document setting out priority actions. Overall, the Marshall Islands is still in the process of adjusting its strategic focus to allocate resources to these identified priorities. While the NRA strategies have resulted in meaningful progress, they are not detailed enough to provide sufficient guidance to agencies, and only address the five priority areas.

126. In late 2023 the National AML/CFT Council issued a Procedures for Terrorist Threats/Acts and Terrorist Financing which includes a plan and responsibilities for responding to potential cases of terrorism and TF. The Procedure reasonably sets out the practical responsibilities to act in cases of TF.

127. Risk mitigation strategies have not yet been devised to take account of the DAO risk assessment or the yet to be completed assessment of the offshore corporate sector (NRDE).

Exemptions, enhanced and simplified measures

128. There are provisions in the AML Regulations for the Banking Commissioner to grant exemptions in limited circumstances if there is a proven low risk of ML/TF. The Marshall Islands has not made any exemptions or exceptions to AML/CFT requirements pursuant to the AML Regulations. The NRA focuses on high risk areas, which limits its utility to be used for justifying exemptions. This impact the

ability to demonstrate simplified CDD would be tied to demonstrated low risk. Given Marshall Islands' risk and context and the findings of risk assessments, there are opportunities for the Marshall Islands to consider justified exemptions and apply simplified measures for lower risk scenarios sectors and customers categories to enhance financial inclusion.

Objectives and activities of competent authorities

129. Considering the inclusive effort to draft the NRA, competent authorities are well-versed and in broad agreement on the risks facing Marshall Islands including those risks highlighted above. However, poor resourcing and the challenges associated with recruiting qualified human resources pose an especially acute challenge to implementing effective policies.

130. Marshall Islands has not allocated resources to ensure those entities providing company services to offshore entities (NRDE) and DAO incorporated in the Marshall Islands (DAO and NRDE) are properly supervised for AML/CFT. This is a substantial gap that arises, in part from the Marshall Islands privatised corporate registrar arrangement the NRDE sector. TCMI, as the Registrar for offshore entities (NRDE) devotes significant resources to screening for sanctions compliance, and any public accusation, investigation, arrest, charge, indictment, detention, questioning, or trial related to any criminal activity, and to assessing and monitoring QIs for compliance with its CDD and sanctions screening criteria, however, it does not otherwise monitor the offshore sector or QI for AML/CFT compliance. Company formation and management services for NRDE (offshore companies) are solely undertaken by QIs approved by TCMI as the Registrar for offshore entities (NRDE), but these are not subject to enforceable AML Regulations under Marshall Islands law. The AG's Office is especially under-resourced, which is a vulnerability since it serves as the Registrar for RDE, including DAO LLCs.

131. A lack of comprehensive and coordinated national AML policies also hampers an understanding of priorities and results in a reactive approach to addressing risks as they occur.

132. The Banking Commission is the lead agency responsible for the detection and prevention of ML/TF. It prioritises supervisory activities based on a risk-rating matrix developed as an output of the NRA. Aside from the Banking Commission, it is not clear how agencies prioritise and integrate AML into their agency priorities.

National coordination and cooperation

133. The National AML/CFT Council is formed under the Banking Act to advise Ministers and to make policies in relation to AML/CFT and to assist the Banking Commission in the coordination between various Government ministries, agencies and other statutory entities on matters relating to AML/CFT. All the key agencies involved in AML/CFT (which form part of the NRWG) are included in the National AML/CFT Council.

134. The National AML/CFT Council meets regularly to discuss AML/CFT issues, but it has focused its efforts on policy issues and preparing for the mutual evaluation. More emphasis should be placed on operational level coordination.

135. AML/CFT policy coordination through the National AML/CFT Council is fairly well established, though operational sharing has not been demonstrated. An exception is the operational sharing between the OAG and the Police, which appears to be quite strong on specific cases. There is a need for more regular operational-level cooperation and coordination in relation to priority risk areas, including corruption, bribery and misappropriation of public funds.

136. The National AML/CFT Council is responsible for coordination on CFT issues and issued CT/CFT Procedures in December 2023 to support a coordinated approach in case TF matters are detected. A majority of the members of the Council are also members of the Marshall Islands Counter Terrorism Committee (CTC), which under the supervision of the Permanent Secretary of the Ministry of Foreign Affairs and Trade, is responsible for counter-terrorism implementation strategies. In practice, the CTC rarely meets, but it provides a potential additional framework for cooperation on CFT matters.

137. The National AML/CFT Council adopted formal Procedures for Referring Targets for Targeted Financial Sanctions and De-listings and has undertaken several sectoral risk assessments.

138. Operational level cooperation and coordination is not done through the National AML/CFT Council but is conducted at an ad hoc agency-to-agency level. For example, the MIPD in February 2023 called together agencies including the FIU, Department of Immigration, Department of Labor, and the AG's Office to discuss a suspected human trafficking case and the possibility of these agencies sharing necessary information that could assist the MIPD with its investigations.

139. The National AML/CFT Council is assigned responsibility for PF coordination corresponding to its ML/TF responsibilities. The Council coordinated to develop March 2023 guidance on requests for TFS de-listing and unfreezing and April 2023 guidance on targeted financial sanctions for reporting entities.

140. Operational cooperation and information sharing is well supported with statutory powers and a number of interagency agreements. The Banking Act provides the Banking Commissioner and FIU with broad authority to receive and disseminate information in order to facilitate coordination and cooperation. There are also MOUs between LEAs and other agencies for inter-agency cooperation on the sharing of information. An MOU on the Foreign Investment Business License (FIBL) Applications was agreed in April 2019. Pursuant to the FIBL Application MOU, the FIU conducts financial background checks/due diligence for all investors and potential foreign employees.

141. TCMI plays a critical role in the National AML/CFT Council due to the information it possesses on threats and risks to the shipping and NRDE sectors as well as in some cases basic and beneficial ownership of entities. Employees of IRI also provide legal advice and draft legislation or regulations, often at the request of other members of the Council. TCMI shares information related to the maritime and corporate registries with other parts of the Marshall Islands government. TCMI reports that cases of special concern involving NRDE or Marshall Islands-flagged vessels are regularly discussed in detail with the President, members of Cabinet (including the Minister of Transportation and the Minister of Foreign Affairs), the Attorney-General, and others.

Private sector's awareness of risks

142. Nearly all reporting entities are represented in the NRAWG which appears to have added to their broad awareness of the risks cited in the NRA. The NRAWG last met in April 2023 to discuss the NRA's threats, vulnerabilities, and priorities and work on a national AML/CFT plan. The NRA was also disseminated directly to reporting entities.

143. While adequate efforts were undertaken to convey the results of the NRA, understanding of risk is uneven. Banks having the highest level of understanding, while other financial institutions and DNFBP are lagging in their risk understanding. Adequate efforts were undertaken to convey the results of the NRA results to the private sector. Banks displayed a better understanding of overall risks than other reporting entities, including DNFBP. This is in keeping with the weight given the banking sector

in IO.4. The National AML/CFT Council hosted a workshop for the private sector in April 2023 to present on the threats and vulnerabilities applicable to respective sectors as per the NRA findings, and risk mitigation strategies.

144. The AML Regulations expressly require FIs and DNFBP to incorporate information about higher risks identified at the national level into enterprise risk assessments.

Overall conclusion on Immediate Outcome 1

145. The Marshall Islands demonstrates some of the characteristics of an effective system. In determining the rating, greater weight is given to Marshall Islands' understanding of its ML/TF risks and its national policies and activities to address the identified risks, which require major improvements. The conclusions of the NRA provide a starting foundation for Marshall Islands' understanding of ML/TF risks, though key areas of risk including the NRDE sector (offshore entities), DAO, and corruption and bribery require additional assessment and coordination to better understand and mitigate evolving risks. There is no sectoral ML/TF risk assessment of the NRDE sector, one of the highest risk sectors identified. Competent authorities did not have a well-developed understanding of the risks NRDE and DAO pose. Policy level coordination is well-supported through the National AML/CFT Council. Operational level cooperation and coordination is conducted through ad hoc agency-to-agency level arrangements was not well demonstrated. Major improvements are required in operational level coordination mechanisms across the public sector. The least weight is applied to the areas of exemptions, enhanced and simplified measures and steps taken to raise awareness of ML/TF risks with FI/DNFBP.

146. **Marshall Islands has a moderate level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Use of Financial Intelligence (Immediate Outcome 6)

a) There have been improvements in the re-established FIU, particularly with the creation and dissemination of financial intelligence, however major improvements are still required as the FIU lacks a detailed analytical system with suitable data entry and data storage systems or adequate physical and IT security procedures.

b) Generally, the FIU provides adequate financial intelligence and other relevant information to LEAs and strong support to supervisors.

c) The FIU had not sufficiently developed financial intelligence related to high risk sectors (NRDE or DAO) or higher risk crime types.

d) The FIU has requested and used the information obtained from competent authorities (Department of Tax & Revenue, Customs, MIPD, OAG, Immigration Department, and the Registrar for NRDE (TCMI),) in intelligence products.

e) LEAs, in general, have limited understanding of the benefits and use of the financial intelligence, and some LEAs lack resources and capacity to act on financial intelligence. LEAs did not demonstrate experience of developing financial intelligence or investigating offences associated with the Marshall Islands offshore corporate sector (NRDE).

f) LEAs do not make effective use of the spontaneous disclosures provided by the FIU and do not take a proactive approach to carry out parallel financial investigations on the predicate and related ML offences.

g) LEAs do not develop their own financial intelligence and rely on the FIU to generate intelligence.

h) While the FIU undertakes operational intelligence, it is yet to undertake strategic analysis, particularly in relation to the highest risk sectors.

i) The FIU has provided only limited feedback on STR/SAR quality, typologies and trends to the reporting entities.

ML Investigation and prosecution (Immediate Outcome 7)

a) LEAs demonstrated some experience of investigating financial aspects of predicate offences, including through inter-agency cooperation and joint investigations. ML laundering cases have almost never been undertaken arising from these predicate offences.

b) Potential money laundering cases are not actively pursued. There are no measures in place to ensure that potential ML cases are identified and investigated.

c) Only one case of ML, which related to tax evasion and corruption, has been charged in the last 5 years. This case did not proceed to trial due to challenges with securing cooperating witnesses.

d) The very few ML cases do not sufficiently demonstrate that ML cases are well investigated, nor LEAs abilities to conduct financial investigations or prosecutors conduct of ML trials.

e) The AG's Office and the MIPD lack resources, especially human resources, and the agencies receive limited financial investigation training.

f) The AG's Office lacks guidance and prosecution skills to best support financial investigations and prosecutions and to better support investigations by the Police, OAG and other agencies.

g) The OAG has recently increased its capacity for investigating crimes involving public funds, which is an important development considering Marshall Islands' risk and context. The OAG is increasing its technical resources and skills to pursue more complex elements of ML associated with corruption offences.

Confiscation (Immediate Outcome 8)

a) There are no policies to prioritise asset tracing and confiscation at agency or national levels and the Marshall Islands has not maintained data and statistics to demonstrate the operation of its asset recovery system.

b) The POCA limits the timing of obtaining a restraining order, which undermines the effectiveness of the asset recovery system and may contribute to the absence of asset freezing actions.

c) There are no standard operating procedures for seizure and confiscation in any relevant agency

d) LEAs have seized and confiscated instruments and very limited experience of proceeds of crime (in bank accounts) in predicate crime cases. In the absence of ML cases there have been no ML-related confiscation.

e) The AG's Office is responsible for managing and disposing of seized assets. Authorities did not demonstrate cases of managing assets to convert seized assets into cash or other steps to preserve the value of seized or confiscated assets. It lacks resources, which undermines their ability to guide LEAs in financial investigations and asset restraint. There are also gaps with comprehensive training.

f) LEAs and the AG's Office have pursued international cooperation for seizing and confiscating proceeds of crime overseas or proceeds in the Marshall Islands relating to foreign offences.

g) Marshall Islands did not demonstrate that cross border cash declarations are collected.

h) Customs does not implement risk-related measures to detect falsely or undeclared cross-border movement of cash and BNIs. Customs shares some information on suspicious activities with LEAs in limited cases, and if they keep and manage cargo declaration information.

i) Customs does not implement outgoing declaration for cross border movements of currency and BNIs.

3

Recommended Actions

Use of financial intelligence (Immediate Outcome 6)

a) Implement a more detailed FIU analytical system, streamline processes of data entry, and ensure robust physical and IT security procedures for data storage and access to confidential information and contingency planning.

b) The FIU should make greater use of the financial intelligence that it receives from foreign counterparts to develop further financial intelligence for domestic and foreign dissemination, in particular related to the highest risks (e.g. the NRDE sector or the DAO sector).

c) The FIU should proactively make data such as CTRs available to the Division of Tax & Revenue and the OAG to support intelligence development for high risk offences (corruption and misappropriation of public funds and tax evasion).

d) LEAs should build their capability to develop and use financial intelligence for predicate investigations, asset tracing and ML investigations. This could include regular engagement between LEAs and the FIU at the earliest stages of enquiries and investigations.

e) As per IO.1, consider SOP or MoU for operation level cooperation/coordination between LEAs and other competent authorities for intelligence development / early stages of investigations to ensure a consistent approach when cases arise.

f) LEAs should provide feedback on dissemination reports, crime trends and typologies to the FIU. The FIU can incorporate this feedback to improve dissemination reports and to guide reporting entities.

g) Information sharing between LEAs, regulators and the FIU should be increased to share of cases to build typologies to guide competent authorities and reporting entities.

h) Ensure further training and skills development of FIU staff in key areas such as financial intelligence analysis

ML investigation and prosecution (Immediate Outcome 7)

a) LEAs should increase financial investigations that may lead to ML cases through a focus by MIPD and AGO on key risks and cases that include proceeds of crime.

b) Enhance investigative resources and coordination and enhance operational-level inter-agency cooperation mechanism to support ML cases in keeping with the priority strategy in NRA.

c) Enhance capability of LEAs and AG's Office to investigate and prosecute predicate crimes and ML, particularly those identified as higher level of threats like corruption and TBML and the role of 3rd party launderers. Powers of LEAs should be strengthened (e.g. telephone intercepts).

d) Ensure more training and support from international partners to build AML/CFT capacity to conduct financial investigations and ML prosecutions. In particular enhanced training and support to new staff and succession planning.

e) Establish systems for data collection regarding cases investigated and prosecuted to better monitor the conduct of cases and national threats and risks.

f) Enhance governance and independence of LEAs and Attorney General's Office in investigation and prosecution of ML cases.

g) LEAs should also prioritise financial investigations when financial gain has been identified.

Confiscation (Immediate Outcome 8)

a) Issue and implement agency-level priorities on tracing, freezing and confiscating instruments and proceeds of crime and maintain data and statistics on actions taken on asset recovery.

b) Amend the POCA to ensure asset restraint can occur at the earliest stage of investigations.

c) Establish and implement standard operating procedures on seizure and confiscation in LEAs and the AG's Office. Asset seizure and restraint training to be provided to AG's Office.

d) The Police and the AG Office should conduct asset tracing investigations for all major profit driven crime cases. International cooperation should be pursued to support tracing and seizing assets that have moved outside of the Marshall Islands.

e) Increase the use of asset tracing, restraint and confiscation in relation to higher risk offences, in particular corruption and misappropriation cases, tax offences, etc.

f) Issue additional guidance / SOP for asset management relating to seizure to confiscation, and ensure that agency is able to convert seized assets into cash. Gains from seizure and confiscation should also be well managed.

g) Customs should cooperate with other agencies to gather risk information and should enhance its ability to target and detect undeclared or falsely declared and suspicious activities.

h) Customs should consistently share information on suspicious matters and information obtained through the declaration/disclosure process with FIU and LEAs in order to assist case analysis and investigation.

i) Customs should implement outgoing declarations of movements of currency and BNIs.

j) Ensure further training and skills development of FIU staff in key areas such as financial intelligence analysis.

147. 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 ML/TF)

148. The Marshall Islands' FIU was first established in 2000 by Cabinet Minute 236 and established in legislation by Section 182(1) of the Banking Act. The Banking Act sets out the functions, duties and powers of the FIU.

149. The FIU serves as the national central agency for receiving and collecting financial transaction information filed by reporting entities, conducting analysis, and disseminating information to the relevant LEAs. The FIU has further roles of AML/CFT supervision and supporting inter-agency cooperation (the National AML/CFT AML Council) and there is a cross-sharing of staff between these functions. There was a nearly complete turnover of FIU staff in 2021. The FIU is staffed by the Head of FIU, FIU Manager, Senior Intelligence Officer, two Intelligence Analysts, and two Compliance Officers.

150. Financial intelligence is developed by the FIU. Despite the FIU conducting preliminary financial inquiries and referring potential ML cases to LEAs, there has been limited use of financial intelligence to investigate ML/TF.

Use of financial intelligence and other information

151. LEAs make limited use of financial intelligence in investigations of predicate offences or asset tracing due to variable understanding of its use, limited capacity and knowledge in how to use financial intelligence and limited understanding of the benefits of financial intelligence to LEAs. Generally, LEAs do not appear able to develop their own financial intelligence to further support investigations. Financial intelligence is generally only used to investigate predicate offences.

152. LEAs primarily use the FIU to assist in identifying bank accounts in order to execute search warrants. The assessment team observed that the LEAs made limited use of STR/SAR or CTR information from the FIU. The FIU has provided information to LEAs in a timely manner.

153. Marshall Islands LEAs demonstrated some experience of investigating some financial aspects of fraud, tax evasion, corruption, human trafficking, and illicit drugs. LEAs in the Marshall Islands did not demonstrate experience of developing financial intelligence or investigating offences associated with the Marshall Islands' offshore corporate centre or sector (NRDE).

154. In 2020 there there was an ML investigation conducted in parallel with a predicate investigation involving a former manager of a bank. The Office of the Auditor General (OAG) led the investigation with support from Police and the FIU. Intelligence was provided and supported in addition to those provided in the FIU's dissemination. The dissemination was based on a SAR submitted by a bank. The case was prosecuted for ML but was settled with a fine paid by the defendant.

155. There have been no disseminations of TF-related intelligence in Marshall Islands. While this is consistent with the generally low risk of TF, the assessment team noted that there was one intelligence referral with a CFT background from a foreign counterpart. The FIU was unable to provide an update on the matter to the assessment team as the intelligence was received before the new FIU staff were hired and there were no records of receiving the intelligence.

STRs received and requested by competent authorities

156. The FIU receives SARs and CTRs from major reporting entities (banks and MVTS) – see the table of STR/SAR in IO.4). SAR reporting by banks and MVTS is broadly in keeping with the risk profile with the exception of corruption and misappropriation of public funds. There are very few SARs identified and filed relating to these key risks. The lack of SARs related to corruption undermines the ability of the FIU to produce relevant financial intelligence or share SARs with competent authorities.

Table 3.1: STRs received

	STRs Received				
	2019	**2020**	**2021**	**2022**	**2023**[54]
Banks	14	28	25	33	10
FSP	0	1	0	0	0
MVTS	8	2	3	8	1
DNFBP	0	0	0	0	0
Total	**22**	**31**	**28**	**41**	**11**

157. While DNFBP are included in the AML/CFT framework, the FIU has not received any SARs from DNFBP (lawyers and accountants or any entities providing company services), which reflects the position that only a small number of lawyers involved in the formation or management of NRDE are in the Marshall Islands or covered by Marshall Islands law. As outlined in IO.3 and IO.5, MIDAO, as the entity providing company services to DAO, was not subject to SAR reporting until the time of the onsite visit.

158. The FIU has not provided sufficient feedback to reporting entities on the SARs submitted, however reporting entities have stated that they have seen matters that were a result of SARs reported in the news. The FIU can also provide enhanced awareness and guidance to ensure all reporting entities, regardless of size and complexity are aware of their SAR obligations including suspicious activity indicators and typologies that are in line with Marshall Islands' risks. At the time of the onsite visit the FIU was implementing plans to review all reported SARs submitted within the last 6 years after the review process for prioritisation has been completed. The FIU intends to then provide feedback to the reporting entities on those SARs that were of high quality and used for intelligence purposes for dissemination to LEAs for possible investigation and prosecution. The FIU also plans to do the same for all CDRs disseminated to LEAs, to receive the same feedback on their usefulness. LEAs acknowledged the importance of providing feedback to the FIU.

159. The contents of SARs reported to the FIU appears to be of sufficient quality to support FIU analysis. Reported SARs include details of customers, basis for suspicion and related transaction and CDD data. The FIU is able to go back to a reporting institution to receive further information as needed and has done so in some cases.

160. The FIU has only received one Currency Declaration Form ($10,000 and above). There is very limited implementation of the currency declaration system when persons enter the Marshall Islands. There is no implementation of currency declaration when a person leaves the Marshall Islands.

161. SAR and CTRs are manually entered by the FIU onto their database. The process is time consuming and an ineffective use of resources at the FIU. This also impacts the FIU's ability to conduct real-time operational analysis. At the time of the onsite visit the FIU was in the early stages of obtaining a database (Taipan) which should help to address data inputting challenges.

162. Competent authorities have requested SAR and CTR information from the FIU in limited circumstances.

[54] As of 1 January – 31 July 2023.

163. The FIU receives spontaneous disclosures from foreign FIUs through the Egmont Secure Web (ESW), however there is no process regarding how the FIU should prioritise and action this information. In the absence of a clear process, it is not clear that other agencies are consulted in relation to these incoming sharing incidents of such data from the ESW.

164. The FIU receives enquiries from foreign jurisdictions, however, there are no clear processes to handle the enquiries from other FIUs. The FIU has made further enquiries to foreign counterparts and cited one case where they requested for further information to assist an ongoing investigation.

165. Most the spontaneous disseminations from foreign FIUs and inquiries to the Marshall Islands FIU from foreign partners relate to offshore entities (NRDE). The FIU has not produced tactical or strategic intelligence products related to these disclosures or requests.

Case study

FIU receiving and responding to request to information relating to NRDE

In September 2023, the FIU received a request from a partner FIU through ESW related to two natural persons accused of ML and four NRDE potentially connected to those persons. The request sought corporate documents, identities of directors, and basic and beneficial ownership information on the NRDE and any records related to the two natural persons. Upon receipt of the request, the FIU sought the requested information from all available sources, including the Registrar for NRDE.

Information requests were sent to the Registrar or NRDE (TCMI) on 27 September 2023. On 1 October 2023, they responded to the FIU with all available information on the four NRDE, stated that a search of their records identified no connection between the two natural persons and any NRDE, and stated that additional information had been demanded from the NRDE in accordance with the Associations Law. Available information at that time included formation dates (all formed between 2009 and 2015), dissolution dates (all dissolved between 2015 and 2018), and all documents filed with the Registrar (including articles of incorporation and dissolution documentation for each). Available documents also included those received during a 2022 post-dissolution recordkeeping audit of one of the four NRDE by TCMI, which included the name and address of the director and officer; the name and address of the nominee director and officer; and the name, address, passport, and foreign account information of the shareholder and BO. These were provided to the FIU.

As the following information was not readily available to, or held by, the to the Registrar or NRDE (TCMI) at the time a demand for records was sent to each of the four NRDE, through its QI, by TCMI on 29 September 2023. All responded on 31 October 2023. The responses included the name and address of the director(s) and officer(s), the name and address of the nominee director(s) and officer(s), and the name and address of the shareholder(s) and beneficial owner(s) for each NRDE prior to dissolution (all dissolved between 2015 and 2018). All information and documents received were forwarded to the FIU by TCMI on 1 November 2023.

The FIU immediately forwarded all information and documents received from TCMI to the partner FIU. No follow-up requests were received from the partner FIU.

Operational needs supported by FIU analysis and dissemination

166. Financial intelligence is developed by the FIU and while it is sufficiently staffed to conduct financial intelligence, the FIU team is fairly new and would benefit from further training on financial and other intelligence analysis.

167. At the time of the onsite visit the FIU database remained rudimentary and not able to manage, store and access current and legacy data to meet the needs of the FIU. There are also major issues with data entry and data storage of confidential information which results in inefficient use of FIU resources. However, the FIU is implementing database solutions to address this.

168. Despite not having the legal provisions to request for information from competent authorities, the FIU has demonstrated the ability to access tax information. This has been used in dissemination reports which also includes analysis of currency transaction reports (cash transactions US$10,000 and above) and banking information.

169. The FIU's analysis process is now supported by an SOP developed in 2021. Recent disseminations show improving analysis, going from summaries of grounds of suspicion to deeper analysis of bank and CTR data, and the use of other data such as tax records.

170. The FIU shared six cases where financial analysis products were spontaneously provided to LEAs. Three of these occurred in 2020 and three in 2023 with no spontaneous disseminations in 2021 or 2022. The lack of disseminations in 2021/22 occurred during COVID and turnover of all FIU staff during that period. LEAs did not demonstrate that they had opened or furthered existing investigations in response to the disseminations from the FIU.

171. Apart from spontaneous disclosures and disclosures upon request, LEAs do not have access to currency transaction reports (CTRs).

172. The FIU shared three cases where financial analysis products were provided by the FIU to LEAs on their request to support investigations. These requests were related to banking records. While there was potential for ML investigations and tracing of criminal proceeds, financial intelligence was primarily used to support predicate offence investigations.

173. In addition to providing spontaneous disclosures, the FIU supports the operational needs of the MIPD and OAG by providing information upon request. The domestic competent authorities rely on the FIU to obtain bank account information without a warrant to facilitate active investigations. There is no request for analysis of FIU data or any other data available to the FIU.

174. The Department of Tax and Revenue has made requests for information from the FIU to assist in credibility/due diligence checks for Foreign Investment Business Licenses (FIBL) and those requests have been actioned.

175. The Customs Authority has not made any requests for information from the FIU.

176. Competent authorities are not tracing proceeds of crime and conducting financial investigations. This reflects a need to greatly improve the use and development of financial intelligence for asset tracing and ML investigations by the competent authorities.

177. General feedback from other competent authorities is that the FIU intelligence products have been useful to obtain records and add intelligence to investigations. The competent authorities

acknowledge that LEAs should provide more formal feedback on FIU intelligence products to the FIU. While feedback from the competent authorities is not structured or regular, the small population and limited context within Marshall Islands has led to informal feedback loops, which appear to be effectively utilised. Competent authorities also stated that FIU disseminations are prioritised and investigation files are opened when a spontaneous disclosure is received from the FIU. However, the Marshall Islands did not sufficiently demonstrate that this occurs.

Cooperation and exchange of information/financial intelligence

178. The FIU demonstrated that while not having legal powers to directly request for information or data from competent authorities, they are able to request, obtain and use the information and data from competent authorities in an intelligence product. The FIU disseminates intelligence products either electronically through email or hand delivers products. The mode of dissemination is dependent on the receiving authorities' security procedures/protocols.

179. For example, the MIPD, OAG, Department of Tax and Revenue and Customs Authority provided examples of cases where information was shared with the FIU during investigations. Since MIPD has powers to execute search warrants and conduct investigations, there are a number of referrals from the OAG, Department of Tax & Revenue and Customs Authority. The MIPD has also received assistance from various US law enforcement agencies, however, there has been limited training provided.

180. The FIU has protocols to protect the confidentiality of information. These protocols are part of the FIUs SOP on Confidentiality and Data Security. The FIU in principle ensures the protection of FIU intelligence by placing caveats on intelligence disseminations. There are concerns regarding the physical security of the FIU office and data. The FIU should consider placing more controls/features to ensure the physical security of the FIU and the data it holds.

181. As the Registrar for NRDE, TCMI receives information about risk events involving NRDE that could be shared with the FIU to support a shared understanding of risk and the development of financial intelligence to aid the work of competent authorities in the Marshall Islands. The AG's Office has not yet received information on risk that could be shared with the FIU. TCMI shares information related to the maritime and corporate registries with other parts of the Marshall Islands government. TCMI reports that cases of special concern involving NRDE, or Marshall Islands-flagged vessels are regularly discussed in detail with the President, members of Cabinet (including the Minister of Transportation and the Minister of Foreign Affairs), the Attorney-General, and others.

Overall conclusion on Immediate Outcome 6

182. Since a large-scale turnover of FIU staff in 2021, the FIU has re-started the production and dissemination of financial intelligence and is taking steps to implement a database solution. The assessment team observed an improvement in the dissemination reports produced by the FIU. During the onsite by the assessment team, it was noted that while there were standard operating procedures on information storage, processes and records these documents could be further strengthened to ensure that they can enable succession planning during staff turnover. Improvements are needed to the physical and electronic security of the FIU and its data including placing more controls/features for access to the FIU office and ensuring historic reports are kept securely. The data must also be easily accessible by the analysts, the current database is only accessible from one computer, requiring the analysts to take turns to use this machine and save and transfer data to their own computers. While most of the spontaneous disseminations received from foreign FIUs and inquiries to the Marshall Islands FIU from foreign partners relate to offshore entities (NRDE) the FIU has not produced tactical

or strategic intelligence related to the offshore corporate sector. LEAs are aware of the information available to them from the FIU and rely on the FIU to provide information such as bank account to details to assist in predicate investigations. Most requests were received from the Auditor General's Office and were related to higher risk predicate crimes such as procurement fraud. While there was no formal feedback from the LEAs to the FIU, relevant authorities demonstrated that feedback was shared informally

183. **The Marshall Islands has a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

Potential cases of ML identified and investigated, and different types of ML being investigated and prosecuted

184. The Marshall Islands Police Department (MIPD) is the general LEA mandated to investigate all types of crime including ML, TF and parallel investigation of ML/TF. The Criminal Investigations Division (CID) is designated to carry out investigations of ML and predicate offences. The AG's Office is responsible for criminal prosecutions, including ML and predicate offences.

185. Other investigating agencies may work with Police and the AG's Office on specific types of predicates offence. For example, the Department of Tax and Revenue is responsible for the investigations of potential tax crimes, potential customs offences are investigated by Customs, potential marine related environmental crimes are investigated by MIMRA (the Marshall Islands Marine Resources Authority), potential environmental crimes outside of Marshall Islands fishery waters are investigated by EPA, and the OAG investigates potential misuse of public funds or corruption.

186. During the period under review the Marshall Islands has only opened one ML investigation which related to corruption, tax offences and ML. ML charges were laid in that case, but the ML trial did not proceed due to challenges obtaining cooperating witnesses. It appears that the ML aspects of the investigation were reasonably pursued but further details of the ML case were not provided.

187. The MIPD and OAG demonstrated some experience of investigating some financial aspects of fraud, tax evasion, corruption, human trafficking, and illicit drugs. Other LEAs had not taken forward predicate investigations that might have led to potential ML cases. The predicate investigations by MIPD and the OAG also demonstrate, to some extent inter-agency cooperation and joint investigations.

188. ML cases have almost never been undertaken arising from predicate offences. There appear to be capacity challenges with identifying potential ML cases. In addition, the case provided by Marshall Islands does not demonstrate that ML cases are well investigated.

189. Complex cases in Marshall Islands usually connect with foreign jurisdictions, especially the United States. The connections involve foreign offenders, the commission of crime activities overseas, proceeds of crime being sent outside of Marshall Islands. However, limited requests to foreign competent authorities had been made from Marshall Islands' LEAs and AG's Office when investigating and prosecuting such cases of predicate offences and they have not led to ML cases.

190. The AG's Office launched a new case management system for investigation/prosecution related to trafficking in persons, including the recording of numbers and types of crimes. However, this does not yet extend to other financial investigations and ML prosecutions. Financial investigations using developing patterns of financial intelligence, financial leads and evidence could lead to increased

effectiveness of ML investigations and prosecutions. It could potentially lead to an ML case against an NRDE, relying on mutual legal assistance; or result in offering MLA to another jurisdiction for a prosecution in that jurisdiction.

191. Further resources and coordination will be needed to enhance operational-level inter-agency cooperation mechanism in future ML cases. The AG's Office and the Police lack resources, especially human resources since there are only seven (7) investigators and three (3) prosecutors, and these agencies receive limited financial investigation training.

192. The AG's Office lacks guidance to conduct financial investigations, prosecutions, and asset restraint. There is a need for AG's Office staff to have further mentoring to enhance prosecution skills and to better support investigations by the Police, OAG and other agencies.

193. The AG's Office faces particular resource challenges, with high turnover of experienced staff and a very high workload. While prosecutors in the AG's Office receive valuable training and development, there are further acute capacity building needs (trial management) relating to financial crime cases.

194. The Police and the AG's Office receive some training and operational support from foreign counterparts, e.g. from Australia (AFP) and US (FBI). OAG staff participate in a number of capacity building training programs. The Department of Tax and Revenue participates in pacific regional training programs. All LEAs and the AG's Office require further training, with the greatest training needs being with the AG's Office.

195. The OAG has recently increased its capacity for auditing and investigating crimes of public funds, which is an important development considering Marshall Islands' risk and context. The OAG has been increasing technical resources and skills to pursue more complex elements of financial investigations, including ML associated with corruption offences. At the time of the onsite visit there were a number of complex ongoing investigations with the OAG which involved potential proceeds of crime.

196. There is some information sharing between LEAs and FIU, but the Customs Authority has never shared information with FIU or other agencies. There is no formal procedure for providing feedback from relevant authorities to FIU and limited feedback was provided in practice.

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

197. ML investigations and prosecutions are not consistent with national threats and the risk profile for ML cases. A particular concern is that LEAs have not undertaken any ML investigations involving offshore corporates (NRDE). As outlined in IO.2, Marshall Islands receives many requests from local and foreign competent authorities relating to NRDE, however these do not result in the initiation of any financial investigations or ML cases in the Marshall Islands. Similarly, TBML is identified in the NRA as a high threat, but Marshall Islands did not demonstrate any cases of investigating TBML.

198. During the period under review the Marshall Islands only undertook and completed one ML investigation and the case did not proceed to a full trial. Prosecutors identified challenges with obtaining the cooperation of witnesses in the ML case and proceeded with a plea-bargaining arrangement in lieu of prosecuting ML. The offender paid a fine and was prohibited from doing business.

Types of ML cases pursued

199. Potential ML cases are not actively pursued, which has resulted in only one case of ML in the last 5 years, which related to tax evasion and corruption. There are limited measures in place to ensure that potential ML cases are identified and investigated.

200. The AG's Office's ability to secure evidence, in particular from cooperating witnesses, is a challenge in some complex cases. Moreover, independence of the AG's Office faces a number of practical challenges, noting the Marshall Islands' small size and cultural issues.

201. The Marshall Islands has a high capacity judiciary that appears well resourced and capable of considering complex ML trials. However, as these matters have not come to trial, the quality of briefs of evidence and the experience of the conduct of ML trials was unable to be assessed.

Effectiveness, proportionality and dissuasiveness of sanctions

202. In the only ML case Marshall Islands investigated, the offender entered a plea bargain, paid fine and was prohibited from doing business. However, no other ML cases have been prosecuted and as such, no criminal penalties or sanctions for ML have been applied. The information on ML sanctions is limited, therefore, the effectiveness, proportionality and dissuasiveness of sanctions are unclear.

Use of alternative measures

203. During the period under review the Marshall Islands opened one ML investigation which related to corruption, tax offences and ML. ML charges were laid in that case, but the ML trial did not proceed because prosecutors identified challenges with obtaining the cooperation of witnesses. Prosecutors and proceeded with a plea bargaining arrangement in lieu of prosecuting ML. The offender paid a fine and was prohibited from doing business.

Overall conclusion on Immediate Outcome 7

204. ML investigations and prosecutions are not consistent with national threats and the risk profile. During the period under review the Marshall Islands had only opened one ML investigation and no ML charges had been taken to trial. While the Marshall Islands demonstrated a number of complex predicate offence cases involving proceeds of crime, capacity challenges were an impediment to parallel ML cases. Marshall Islands receives many requests from foreign competent authorities relating to NRDE, however these do not result in any financial investigations being initiated in the Marshall Islands. The Marshall Islands has a well-resourced high capacity judiciary capable of considering complex ML trials.

205. **Marshall Islands has a low level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

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

206. The Marshall Islands does not pursue asset tracing and confiscation as a policy objective at agency or national levels. There are also no standard operating procedures for seizure and confiscation in any relevant agency.

207. Very little data is maintained by Marshall Islands authorities on instruments or proceeds of crime that property that is or has been subject to restraint or confiscation. In the absence of such information, authorities are not well supported in setting policy objectives related to asset recovery.

208. LEAs and the AG's Office did not demonstrate regular practice of restraining assets at an early stage of an investigation to secure assets that may become subject to confiscation. There is a deficiency with the POCA in relation to the timing of obtaining a restraining order, which undermines effectiveness and may have contributed to the absence of asset freezing action. s237 of the POCA unduly limits the AG's Office to only being able to apply for a restraining order when a person has been convicted, charged or is 'about to be charged' with a serious offence. This is in contrast to the grounds on which the courts can grant a restraining order (s238 of the POCA), which can occur much earlier in the investigation.

209. Some cases show that LEAs have seized and confiscated instruments and very limited experience in dealing with proceeds of crime (in bank accounts) in predicate crime cases. Marshall Islands authorities have experience of seizing vehicles, yachts, helicopter and gambling machines, cigarette manufacturing equipment as instruments of crime. In the absence of ML cases there have been no ML-related confiscation cases. Marshall Islands authorities do not maintain data of proceeds or instruments of crime confiscated, or realisation of property pursuant to confiscation orders.

210. The AG's Office lacks resources, which undermines their ability to guide LEAs in financial investigations and asset restraint. There are also gaps with comprehensive training (trial skills, etc) for employees, especially for the new prosecutors in the Office on asset recovery.

211. The AG's Office is responsible for managing and disposing of seized assets. The POCA provides a basis to obtain relevant orders to manage seized assets, but Marshall Islands authorities did not demonstrate cases of managing seized or confiscated assets to convert seized assets into cash or other steps to preserve the value of seized or confiscated assets.

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

212. LEAs and AG's Office have limited experienced any international cooperation for tracing and seizing proceeds of crime overseas or proceeds in the Marshall Islands relating to foreign or proceeds offences. The Marshall Islands has not pursued confiscation of proceeds from foreign offences and very limited proceeds that are located outside of the Marshall Islands.

213. Discussions with case officers indicate that there are few cases that include confiscation orders and the value of confiscation orders obtained are low. There have been no cases of orders for property of corresponding value.

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

214. Customs authorities did not demonstrate that the incoming passenger declaration system is well implemented. Customs does not implement outgoing declaration for cross border movements of currency and BNIs.

215. Marshall Islands did not demonstrate how many cross border cash declarations are made as data was not kept on the operation of the system. Only one in-bound cash declarations has been shared with the FIU. Customs keep incoming cash declarations in paper form, but there is no systemic storage and management for declarations.

216. Customs does not implement risk-related measures to detect falsely or undeclared cross-border movement of cash and BNIs. It is not clear that Customs shares cargo related suspicious activities with other competent authorities and if they keep and manage cargo declaration information. Customs will implement the ASACUDA system in early 2024 which should assist with targeting cargo smuggling risk and some aspects of undeclared cash.

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

217. Marshall Islands did not demonstrate confiscation results, which is not in keeping with the identified ML risks or national policies and priorities.

218. The absence of asset freezing / confiscation is in keeping with the Marshall Islands TF risks. The CT/CFT Procedures does not outline key practical steps to be taken during investigation to identify assets that may become subject to freezing. Under s237 of the Proceeds of Crime Act 2002, the AG may apply to the high Court for a restraining order against any covered property, to for example, prohibit the defendant from dealing with the property. Relevant agencies lack standard operating procedures for seizure and confiscation related to criminal cases of TF. See IO.8.

Overall conclusion on Immediate Outcome 8

219. There are no policies to prioritise asset tracing, restraint and confiscation at a national level and no policies or procedures at agency levels. Marshall Islands does not maintain any data on assets seized or confiscated, and feedback from case officers suggests the figures are very low. Marshall Islands did not demonstrate the effective implementation of any cross-border cash declaration system. LEAs and AG's Office have not experienced any international cooperation for seizing and confiscating proceeds of crime overseas or proceeds in the Marshall Islands from foreign offences.

220. **Marshall Islands has a low level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

TF investigation and prosecution (Immediate Outcome 9)

a) Assessments of TF risks supports the possible identified of TF cases

b) At the end of 2023 the Marshall Islands adopted a CT and CFT Procedure broadly covering investigations, key agencies' roles and responsibilities, prosecution, multi-agency co-operation and co-ordination and the national counter terrorism strategies. However, the procedures are relatively light on guidance and practical steps to execute the key elements of the framework.

c) There is limited capacity and capability of LEAs to conduct investigations of TF. Marshall Islands authorities are clear that they would seek to cooperate closely with foreign partners on any potential TF case.

d) The absence of TF investigations or prosecutions is in keeping with the Marshall Islands risk profile.

TF preventive measures and financial sanctions (Immediate Outcome 10)

a) The Marshall Islands has a generally robust legal framework for TFS, and some implementation is taking place, particular by banks and the larger MVTS.

b) There is some awareness across public and private stakeholders in relation to the obligations for TFS against terrorism, but a deeper understanding is required by smaller reporting entities and some implementing agencies.

c) Marshall Islands agencies have only recently commenced implementing the procedures to notify FIs and DNFBP of TFS listings and de-listings.

d) There is reasonably well-established practice of sanctions screening by banks and one MVTS, however supervision of TF-related TFS implementation has not yet taken place with smaller FIs and DNFBP.

e) There have been no assets frozen or proposals for designation, which is in keeping with the Marshall Islands' risk profile.

f) Information available for sanctions screening is limited since collection and verification of BO information for NRDE and DAO is not comprehensively conducted. There is screening by the Registrar for NRDE (TCMI) of available data on NRDE and on maritime registry information holdings by the Maritime Administrator.

g) The Marshall Islands has reasonably assessed the risks of misuse of charities and other NPOs for TF abuse, however the Marshall Islands has not yet issued NPO regulations to apply focused and proportionate measures to higher-risk NPO DAO in line with the risk-based approach.

h) Marshall Islands has taken some steps to increase awareness among NPOs of TF risk mitigation, but more engagement and outreach (including guidance) is needed to public and private stakeholders and specifically DAO NPOs.

i) The Marshall Islands has not yet effectively implemented oversight of NPO DAO so that TF risks are identified and mitigated. There are significant resource challenges with the Registrar for RDE (the AG's Office) responsible to oversee the higher-risk NPOs in the DAO sector.

PF financial sanctions (Immediate Outcome 11)

a) The Marshall Islands has a generally robust legal framework for TFS relating to PF and some implementation is taking place in particular by banks and the larger MVTS.

b) The Marshall Islands has procedures to notify FIs and DNFBP of TFS and PF listings and de-listings, but this had only begun to be implemented at the time of the onsite visit.

c) There is some awareness across public and private stakeholders in relation to the obligations for TFS relating to PF, but a deeper understanding is required by smaller reporting entities and some implementing agencies.

d) While there is reasonably well-established practice of sanctions screening by banks and one MVTS, supervision of TFS and PF implementation has not yet taken place with smaller FI and DNFBP. Marshall Islands agencies have not had a reason to enforce responsible entities' compliance with AML/CFT obligations.

e) Sanctions screening is conducted by TCMI on available data on NRDE and a number of instances are noted of matches with designated entities or those working at their direction one instance is noted of a match with a designated entity. This has included taking action to strike off a designated NRDE from the register and to proactively provide all available information to the UN Panel of Experts.

f) There are weaknesses with TCMI sanctions screening as the collection and verification of BO information for NRDE in some cases is not well supported, so information available for screening is limited in those cases.

g) Marshall Islands, through TCMI, demonstrated good cooperation with the UN and other foreign agencies to obtain information on sanctions implementation in the NRDE registry and maritime registry.

h) TCMI has a reasonable awareness of risks of sanctions evasion, but this is not as well understood by other agencies or by NRDE. There are challenges with inter-agency cooperation and information sharing in relation to implementation of TFS relating to PF, including TCMI proactively sharing information on sanctions evasion risk and cases of potential sanctions matches.

i) For DAO, there are weaknesses with sanctions screening as the collection and verification of BO information is not well supported.

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Recommended Actions

TF investigation and prosecution (Immediate Outcome 9)

a) Ensure investigators and the FIU maintain an up to date understanding of the Marshall Islands' TF risks to support potential TF investigations. This should include monitoring regional and global trends through the Pacific Transnational Crime Coordination Centre (PTCCC) and other channels that might change the Marshall Islands' TF risk profile, including risks associated with TF through offshore companies (NRDE) and through DAO.

b) Ensure that all key agencies (LEAs, port authority, etc) have an awareness of December 2023 CT and CFT response plans to ensure readiness to respond to any potential future case.

c) Further develop the December 2023 CT and CFT Procedures to ensure readiness with a CFT response plan that is tailored to the situation in the Marshall Islands and includes sufficient practical steps in particularly fast-response international cooperation and inter-agency actions.

e) Conduct preparedness exercises and training covering areas such as investigating TF particularly in relation to the use of DAO.

f) Seek further capacity building and guidance for LEAs and prosecutors to ensure the CT and CFT Procedures can be well implemented should the need arise.

TF preventive measures and financial sanctions (Immediate Outcome 10)

a) Build awareness across public and private stakeholders and specifically DAO NPOs in relation to the TFS regime, noting the obligation extends to "all persons".

b) Follow existing procedures to notify FIs and DNFBP of TFS listings and de-listings.

c) As per IO.3, include TF-related TFS implementation in offsite and onsite supervision of reporting entities.

d) Improve BO information collection and verification for NRDE and for DAO and ensure TFS screening extends to BOs of those legal persons.

e) Issue NPO regulations, including applying focused and proportionate measures to higher-risk DAO NPOs in line with the risk-based approach.

f) Effectively regulate and monitor or supervise DAO so that TF risks are identified and mitigated. As part of this, provide sufficient resources and staffing for the Registrar for RDE to effectively conduct risk-based supervision and monitoring of the higher-risk NPOs in the DAO sector.

g) Where NPO DAO engage in VASPs activities (e.g. if they issue tokens), regulate them as VASPs and apply targeted AML/CFT controls (see IO.3).

h) Conduct outreach and provide guidance to the NPO sector especially DAO NPOs, on controls to mitigate TF risks given the high risk of TF abuse in the DAO NPO sector.

PF financial sanctions (Immediate Outcome 11)

a) Increase awareness across public and private stakeholders in relation to the TFS related to WMD proliferation and the risks of sanctions evasion involving the Marshall Islands.

b) Follow existing procedures to notify FIs and DNFBP of PF TFS listings and de-listings.

c) Support inter-agency cooperation on CPF at policy and operational levels including regular information sharing about sanctions evasion risk and cases of potential sanctions matches amongst Marshall Islands agencies. As part of this, TCMI should share risk assessment information with other members of National AML/CFT Council.

d) Issue enhanced guidance for TFS, particularly focused on those sectors at greater risk of TFS evasion.

e) Improve BO information collection and verification for NRDE and for DAO and ensure TFS relating to PF screening extends to BOs of those legal persons including NRDE and DAO.

f) Include PF TFS implementation in offsite and onsite supervision of reporting entities and ensure enforcement of obligations as needed.

221. 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

222. The Marshall Islands' TF risk has been assessed to be low in the NRA. While the broad policy and structural frameworks are in place to respond to any instances of TF, it is not clear there is sufficient operational knowledge about TF typologies to ensure instances of TF can be identified by LEAs. This is particularly the case for DAO, where it was not clear that the AG understood the ways that DAO (through crypto) could be used for TF.

223. Consistent with the low TF risk profile of Marshall Islands, there has not been any prosecution or convictions of TF within Marshall Islands. The Marshall Islands has a strong legal framework to combat TF, which largely follows the TF Convention.

TF identification and investigation

224. Marshall Islands has recently put in place a plan for the identification and investigation of CT and TF dated December 2023 (CT/CFT Procedures), which reflects and builds on the good working relationships across key agencies and experience working with US law enforcement. The CT/CFT Procedures allocates the AG's Office as responsible for taking appropriate measures to ensure terrorism and terrorist financing are investigated and for prosecuting terrorism and terrorist financing offenses. The Attorney General also has the authority to cooperate and share information on terrorism and terrorist financing with partner jurisdictions.

225. The new CT/CFT Procedures provides an important basis to respond to possible terrorism or TF matters, but with no experience or practical preparation on dealing with TF investigations, it is not evident that if an instance of TF were to occur, there would be adequate awareness within the AG's Office to ensure initiation and proper management of the investigation. The CT/CFT Procedures does not outline key practical steps to be taken during investigation to investigate assets related to terrorism or TF to prove the TF offence or to identify assets that may become subject to freezing. Under s.237 of the Proceeds of Crime Act 2002, the AG may apply to the high Court for a restraining order against any covered property, to for example, prohibit the defendant from dealing with the property. Relevant agencies lack standard operating procedures for seizure and confiscation related to criminal cases of TF (see IO.8).

226. The Marshall Islands acknowledged that there is limited capacity and capability domestically to conduct investigations of TF, and that the Marshall Islands would likely rely on the expertise and assistance from foreign partners. In particular, the authorities have confirmed that assistance would likely be sought from LEAs from the United States.

227. Given the low-level TF risk in the Marshall Islands, utilising the available assistance from the United States and other partners appears prudent. However, in the absence of further work domestically, the Marshall Islands LEAs do not have the ability to identify, gather information about or initiate investigations in relation to TF.

228. The CT/CFT Procedures also outline the MIPD as being responsible for preventing, detecting, and apprehending all persons who are attempting to commit or committing an offense under any law, including the Counter Terrorism Act.

229. As outlined in IO.6, the FIU demonstrated improving capacity for developing and disseminating financial intelligence. While no financial intelligence has been developed in relation to TF, this is in keeping with the Marshall Islands' risk profile.

TF investigation integrated with – and supportive of – national strategies

230. The CT/CFT Procedures cover both CT and CFT and largely the same agencies are involved and with similar roles across both CT and CFT. The CT/CFT Procedure provides that the AG is responsible for investigating TF and that the MIPD is the lead investigative agency for potential threats of terrorism, terrorism acts or TF in the Marshall Islands. The Procedure also provide that coordination between agencies on CT and CFT is the responsibility of the National AML/CFT Council.

231. The CT/CFT Procedures were very new at the time of the onsite visit. Marshall Islands authorities had not yet taken steps to ensure they are aware of their responsibilities and that agency level operating procedures reflect the 2023 CT and CFT Procedures.

Effectiveness, proportionality and dissuasiveness of sanctions

232. There is a comprehensive legal framework in place with measures against natural and legal persons convicted of TF offences with a significant sanction – life imprisonment – available. These sanctions appear to be proportionate and dissuasive and would support the application of effective sanctions. The minimum custodial sentence of 30 years for the TF offence is disproportionate, and may dissuade competent authorities from prosecuting the offence, and law and justice sector representatives noted the conditions of the prison in Marshall Islands (and the complete lack of prison facilities for female offenders) further dissuade application of lengthy sentences. However, given that

the TF offence has not been used in the Marshall Islands, there is no basis on which to assess how well the sanctions are being applied in practice.

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

233. The Marshall Islands has not demonstrated that other criminal justice or other measures are applied to disrupt TF activities where it is not practicable to secure a conviction. This is consistent with the low risk of TF.

Overall conclusion on IO.9

234. Consistent with the Marshall Islands' low TF risk profile, there have been no investigations, prosecutions or conviction for TF in the Marshall Islands. The Marshall Islands has issued a CT/CFT Procedure to respond to potential terrorism or TF matters which outlines some of the responsibilities of agencies. The CT/CFT Procedure is a welcome development. The procedures cover both terrorism financing and countering terrorism. The Attorney General's Office has been designated as the lead investigative agency for terrorism financing, while the Marshall Islands Police Department has been designated the leading agency for investigating threats of terrorism. Additionally, there is a comprehensive legal framework in place for TF. While there has been no instance of TF in the Marshall Islands, there is a need for authorities to test their responses to a potential incident by further developing CT and TF procedures to ensure readiness with a CFT response plan that is tailored to the situation in the Marshall Islands and include sufficient practical steps for fast response inter-agency actions and international co-operation. While LEAs do not have the capacity or expertise to investigate TF and, they have indicated that should the need arise, they would need to rely on the assistance from foreign partners as has been done in investigations of other types of crimes.

235. **The Marshall Islands has a moderate level of effectiveness for IO.9.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

236. The Marshall Islands has the legal framework to implement TF-related targeted financial sanctions (TFS) under the United Nations Sanctions (Implementation) Act 2020 and the corresponding regulations, the United Nations Targeted Financial Sanctions (Terrorism & Proliferation) Regulations 2020.

237. The National AML/CFT Council adopted the Procedures for Referring Targets for TFS in early 2023. That document sets out mechanisms for identifying targets for domestic designation based on the criteria set out in UNSCR 1373 and for designation proposals under UNSCR 1267/1989, UNSCR 1988, UNSCR 1718, and their successor resolutions. It describes the applicable designation criteria and evidentiary standard for each, and it details procedures for referrals of targets by the Council. Case report templates for individuals and entities are provided to aid in the information collection and referral processes.

238. Guidance on TFS for reporting entities has been issued and is publicly available. The Guidance on TFS summarises the legal and regulatory framework for TFS, details TFS obligations, provides processes for requesting authorisations, outlines TFS enforcement, reviews de-listing and false positives, and includes a form to report any TFS measures taken. The Marshall Islands has also

developed the Guidance on Requests for De-listing and Unfreezing and distributed the guidance to covered entities.

239. While there is a lack of evidence to confirm how effectively TFS without delay would be applied to freeze assets in case of a match, the lack of occurrences is reasonable based on the low domestic level of TF risk.

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240. The Marshall Islands has not proposed entities to the 1267/1989 or 1988 Committees. This is in line with Marshall Islands' risk profile for TF.

241. There have been no listing proposals and requests from other countries to designate under UNSCR 1373. This is in line with the Marshall Islands' risk profile for TF.

242. Understanding of obligations to implementing TFS is mixed. In discussions, stakeholders confirmed receipt of the lists. Banks and remitters appear to have an understanding of screening steps upon receipt of updated lists. Other sectors lack an understanding of the utility of these lists and what to do if a match was identified. There was no evidence that DNFBP implement sanctions screening.

243. The largest FIs have followed their home supervisor or correspondent banks' requirements for sanctions screening prior to the Marshall Islands issuing more detailed guidance on TFS. The banks and one of the MVTS agents use software to screen for UN sanctions. Another MVTS agent screens manually and on an ad hoc basis and relies primarily on backend screening by the MVTS headquarters compliance office.

244. Prior to the onsite, the FIU circulated consolidated lists to the private sector. While there are processes in place to distribute sanctions list updates to reporting entities, the procedure had not yet been sufficiently implemented. Except for the banks, and one MVTS, reporting entities did not have an understanding of their obligations in relation to screening for TFS and freezing assets. FI/DNFBP were not sufficiently supported in building their awareness of screening requirements.

245. On the whole, there is adequate implementation of TF TFS in the Marshall Islands -regulated shipping sector through the Maritime Administrator and Registrar for NRDE (TCMI) and their parent company, IRI which provides administrative and technical support services to TCMI through the pool of QIs approved by the Registrar (TCMI). This TFS implementation has been in place prior to the Marshall Islands issuing more detailed guidance on TFS. However, NRDE present a higher sanctions evasion risk due to the difficulty of verifying BO for NRDE. In general, NRDE connected to the maritime industry undergo more scrutiny by the Maritime Administrator (TCMI) and associated sanctions screening than those NRDE not related to the maritime industry. This is due in part to stricter regulatory requirements inherent in the shipping industry.

246. All parties to a vessel registration (including all owners, beneficial owners, and operators), all vessel identifiers, and all seafarers serving onboard a vessel are screened against all UNSCR lists and a variety of other national and international criminal lists using a commercial screening database. Identification documents, proof of residence, police clearance certificates, and other documentation is collected as needed to affirmatively rule out potential matches, The technology continuously screens these parties, vessel identifiers, and seafarers and automatically notifies compliance personnel if any is subsequently added to a sanctions list or is publicly accused, investigated, arrested, charged, indicted, detained, questioned, or put on trial related to any criminal activity, including terrorism or TF.

247. There may be very little information on NRDE to support sanctions screening for those entities that are not closely associated with a Marshall Islands registered vessel. This is because CDD

information is not collected in all cases at the point of company formation or ongoing relationships with an NRDE.

248. The following table sets out NRDE for which TCMI, in its capacity as Registrar for NRDE or Maritime Administrator, may hold director, shareholder and BO information. TCMI holds current basic/BO information related to NRDE linked to Marshall Islands-flagged vessels (item 1) and NRDE with bearer shares (item 2) in all cases. Other NRDE may record director, shareholder and BO information with TCMI by submitting a Declaration of Incumbency. Between January 1, 2018 and the onsite in December 2023, 21,667 NRDE (that had not issued bearer shares or were among the NRDE linked to Marshall Islands-flagged vessels through ownership) filed a Declaration of Incumbency (item 3). In the case of item 3 in the table below, TCMI may hold director, shareholder and BO information, but because the filing is voluntary, that information may be outdated. Of the 41,201 NRDE at the time of the onsite, TCMI held verifiable director, shareholder and BO information on at least 14,164. For the remaining NRDE, TCMI relies on voluntary Declaration of Incumbency filings- of which approximately 10,000 are recorded each year.

Table 4.1: NRDE that may have filed information with TCMI relevant to BO

Source of Information	*# of NRDE*
1. NRDE linked to Marshall Islands-flagged vessels through ownership[55]	13,432+[56]
2. NRDE with bearer shares (net of 1)[57]	732
3. NRDE with Declarations of Incumbency (net of 1 & 2)[58]	21,667
TOTAL	***35,831+***

249. For other NRDE, TCMI as the Registrar for NRDE may only have the name and address of the QI that performed the company formation services unless TCMI was to make a specific request for further information from a QI about an NRDE or from the NRDE pursuant to the powers granted under the Associations Law. In cases where TCMI made such requests, the information the QI holds or the NRDE produces is sometimes incomplete.

250. The authorities indicated that there have not been any matches (false positives or legitimate hits) with persons or entities designated to UNSCR 1267 or those acting on their behalf of at their direction. As such no freezing actions have been taken or reported and no associated reporting made to the FIU. No SARs have been received by FIU in relation to designated persons or entities.

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

251. The Marshall Islands framework for regulating NPOs under the Non-Profit Entities Act provides for clear requirements and procedures with respect to the creation, governance, reporting and record-keeping requirements, and dissolution of non-profit entities engaging in activities in the Marshall Islands.

252. In May 2022 the National AML/CFT Council assessed the TF risks associated with Marshall Islands DAO NPOs and also undertook a separate Assessment of The Risk of Terrorist Financing

[55] The only direct searchable link between the NRDE registry database and the ship registry database is in respect of vessel ownership by NRDE.

[56] Beyond ownership, vessels typically have many NRDE associated for management, operations, manning, bunkering, chartering, etc, but the system does not currently capture or link to which of those are NRDE.

[57] 818 NRDE, less 86 linked to RMI-flagged vessels by ownership.

[58] 24,879 NRDE, less 3,212 with bearer shares and/or linked to RMI-flagged vessels by ownership.

Through NPOs in November 2023. The assessments concluded that domestic NPOs are low risk and DAO NPOs present a high risk. These assessments are found to be compelling. DAO NPOs have registration requirements but are not subject to risk-based supervision or monitoring.

253. As noted in IO.1, the overall risk of TF in Marshall Islands is low, however the risk of Marshall Islands NPO DAO being misused for TF outside of the Marshall Islands was assessed by the Marshall Islands to be high, due to incomplete BO information and lack of risk-based supervision.

254. Marshall Islands recently identified the subset of NPOs vulnerable to TF abuse but has not yet applied focused and proportionate measures to those higher risk sectors in line with the risk-based approach (NPO DAO).

255. The technical nature of DAO and lack of understanding of how they operate, are significant barriers to effective oversight of NPO DAO. The AG's Office lacks sufficient resources to effectively conduct risk-based supervision or monitoring of the higher-risk NPO DAO. There are concerns that LEA and the AG's Office lack capacity to gather information to investigate and lack mechanisms for international cooperation to combat TF abuse of NPO DAO.

256. Pursuant to s108, s117, and s118 of the Non-Profit Entities Act, 2020, formation, reporting and record-keeping requirements are imposed on non-profit entities. The non-profit sector is subject to the same annual reporting and record-keeping requirements as entities registered to do business in the Marshall Islands. Additionally, non-profit entities are also subject to a penalty or potential dissolution for failure to file an annual report or keep reliable records.

257. Marshall Islands has recently undertaken some outreach to NPOs on TF risk mitigation. The Banking Commission conducted an event with the Marshall Islands Council of Non-Governmental Organisations (MICNGO) in November 2023 with a few of the largest domestic NPOs to discuss the findings in the NRA. This event did not include DAO NPOs. The domestic NPOs the assessment team met with had a basic understanding of their legal obligations.

258. The AG's Office likely has sufficient capacity to regulate domestic NPOs but lacks sufficient resources and training to regulate NPO DAO.

Deprivation of TF assets and instrumentalities

259. Marshall Islands law provides for immediate effect of sanctions. The regulations cover prohibition against dealing with property, prohibition against making property available, prohibition against making financial or related services available. The Marshall Islands has not identified terrorism-related sanctions matches and has therefore not had an opportunity to apply in practice the mechanisms for freezing assets related to the UNSCRs.

260. There is no evidence of TF activities in the Marshall Islands and no confiscation of proceeds or assets and instrumentalities involving any terrorists, terrorist organisations or terrorist financiers has occurred. This is in keeping with the risk profile.

261. In 2023 the National AML/CFT Council issued *Procedures for Terrorist Threat/Acts and Terrorist Financing*, which describes processes for TF investigation, prosecution, international cooperation, and multi-agency cooperation and coordination. These procedures provide a reasonable basis for LEA to address TF cases if they were to arise.

Consistency of measures with overall TF risk profile

262. The overall TF risk profile of Marshall Islands relating to the formal financial sector is low. However, there are two sectors that pose a high level of risk: DAO NPOs and NRDE. Neither sector is supervised or monitored, which compounds the risk. For NRDE, the inability of TCMI to verify BO information held by QIs in some cases is an added vulnerability to effective sanctions screening.

263. While the overall risk profile domestically is low, the risk of illicit funds, possibly including TF, transiting through the Marshall Islands DAO sector and offshore corporates sector (NRDE) is higher. Competent authorities have yet to adapt to this evolution of risk.

Overall conclusion on Immediate Outcome 10

264. The Marshall Islands has the legal framework in place to implement TF TFS, with only minor technical deficiencies. In addition, guidance on TFS for reporting entities has been disseminated, banks and remitters generally understand screening obligations, and there are procedures in place to communicate listing updates. However, the effectiveness of the TFS regime has not been demonstrated in practice. Although the TF risk profile of Marshall Islands relating to the formal financial sector is low, Marshall Islands has identified the DAO NPO sector as presenting a high risk of TF. Initial outreach has been conducted to domestic NPOs, however the high risk DAO NPO sector has not been subject to either supervision or monitoring and Marshall Islands has not applied focused and proportionate enforcement measures. The technical nature of DAO and lack of understanding of how DAO operate, are significant barriers to effective oversight of NPO DAO. The AG's Office lacks sufficient resources to effectively conduct risk-based supervision or monitoring of the higher-risk NPO DAO. NRDE also present a high risk due to the inability of competent authorities to verify BO information, in some cases which reduces the efficacy of sanctions screening. TCMI does not have procedures in place to share intelligence and other information on NRDE with members of the National AML/CFT Council unless requested, limiting domestic cooperation and coordination on TFS implementation if there were to be a TF-related case to share.

265. **Marshall Islands has a moderate level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

266. The Marshall Islands implement TFS related to proliferation of WMD under the UN Sanctions Act and UN Targeted Financial Sanctions Regulations of 2020. There are minor shortcomings in the legal framework to implement TFS without delay. While the mechanisms for the competent authority to provide notification of designation to FIs, DNFBP, and those suspected to be in possession of freezable assets are in place, they had not been tested by the time of the onsite.

267. The National AML/CFT Council's Procedures for Referring Targets for TFS and the Guidance on TFS for Banks, FSPs, & DNFBP both address TFS related to proliferation, including UNSCR 1718 (2006) and UNSCR 2231 (2015) and successor resolutions.

268. Competent authorities did not communicate specific changes to UNSCRs applying TFS relating to PF to covered entities until just prior to the onsite visit. For example, in 2023, the UN 1718 Sanctions Committee amended entries on its sanctions list on two occasions on 30 June and 16 August. Similarly in 2022 there were three occasions in which the Committee amended entries. These updates were not

communicated to covered entities, however the Banking Commission has adopted an SOP for communicating such changes going forward.

269. There have been no cases in which entities in the Marshall Islands have frozen, without delay and without prior notice, the funds or other assets of persons or entities designated by the UN pursuant to UNSCR 1267 and successor resolutions. Given the context of the country with a small financial system, this is reasonable.

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270. The primary exposure to potential PF arises from the NRDE sector, the shipping registry, and the DAO sector.

271. On the whole, there is adequate implementation of TFS for proliferation of WMD in the shipping sector. However, NRDE present a higher risk of sanctions evasion due to the difficulty of verifying BO for offshore entities and screening the BOs. In general, NRDE connected to the maritime industry undergo more scrutiny by TCMI than those not related to the maritime industry. This is due in part to stricter regulatory requirements inherent in the shipping industry. For Maritime-related NRDE, the Maritime Administrator has more points of data on NRDE that result in more accurate BO holdings and TFS screening.

272. All parties to a vessel registration (including all owners, beneficial owners, and operators), all vessel identifiers, and all seafarers serving onboard a vessel are screened by the Maritime Administrator (TCMI) against all UNSCR lists and a variety of other national and international sanctions and criminal lists using a commercial screening database. Identification documents, proof of residence, police clearance certificates, and other documentation is collected as needed to affirmatively rule out potential matches. The technology continuously screens these parties, vessel identifiers, and seafarers and automatically notifies compliance personnel if any is subsequently added to a sanctions list. or is publicly accused, investigated, arrested, charged, indicted, detained, questioned, or put on trial related to any criminal activity, including any related to PF. The Maritime Administrator also proactively monitors vessels for potential sanctions evasion with a location monitoring solution and issues guidance and notices related to illicit shipping and sanctions evasion practices. All vessels registered in the Marshall Islands are subject to ongoing inspections requirements, including an annual inspection by a dedicated Marshall Islands nautical inspector.

Marshall Islands Maritime Registry information sharing on sanctions violations

The Marshall Islands Shipping Registry was a founding member of the Registry Information Sharing Compact ("RISC") in 2019, which creates a system for flag states to notify each other when a vessel is denied registration or is de-registered for suspected sanction-related activity. RISC gives the Marshall Islands access to information on vessels not in its fleet and allows the Marshall Islands to apply its sanctions screening practices to assist smaller flag States, which are often more vulnerable to sanctions evasion. The RISC includes over 40% of the world's merchant shipping tonnage.

273. The Marshall Islands shipping registry include more than 5,600 vessels typically owned by NRDE (offshore entities). Each ship has multiple companies associated with them which perform a range of functions. All known parties are checked automatically every 12-24 hours and false positives

are cleared according to detailed methodology, with escalating approval requirements under different circumstances.

274. TCMI has taken an active role in working with the UN Security Council's Panel of Experts and United States agencies to exchange information and promulgate standards to enhance compliance.

275. In the event TCMI was required to freeze or seize entities based on a UN sanction, it could strike a ship from the registry or revoke permission to navigate or annul a company (which happened in the case of *Kingly Won*).

276. Shipping registries have an obligation to ensure designated entities are identified and prevented from undertaking PF related transactions. While the Maritime Administrator's (TCMI)) compliance program is adept at detecting whether its vessels and associated entities appear on any global watch lists, there are gaps in basic and BO information of some NRDE not associated with the maritime registry. For NRDE associated with vessel registrations, basic and beneficial ownership information is collected and maintained as part of every vessel registration, along with information on the vessel operators, the seafarers serving onboard, and the vessel itself, and is updated with every registration change, renewal, or other transaction.

277. Domestically, there was only limited evidence that TCMI shares intelligence and other information on NRDE (e.g. BO information) with members of the National AML/CFT Council.

278. The NRA identifies the registration of ships and NRDE as presenting a medium risk for PF, due in part to the size of the Marshall Islands Shipping Registry. The assessment team concluded that NRDE not associated with the shipping sector present a higher relative risk, specifically since basic and BO information provided by QIs is not able to be verified and those intermediaries and are not regulated or supervised in the Marshall Islands.

279. TCMI, the Maritime Administrator has a well-developed understanding of risk of sanctions evasion. If a Marshall Islands -flagged vessel engages in suspicious behaviour, such as entering an area that has been identified as higher risk for sanctions evasion (e.g. ship-to-ship transfers), the Maritime Administrator is notified, and sends a warning to the vessel, and assesses whether further investigation is necessary.

280. The average age of tanker ships on the registry is seven years and valued at over $100 million. The Maritime Administrator cited these factors as contributing to a low risk that Marshall Islands -flagged vessels would take on DPRK business.

281. One Marshall Islands entity has been listed on a UN sanctions list (*Kingly Won International Co., Ltd.,).* It was detected and forcibly dissolved by TCMI, in its capacity as Registrar for NRDE, before it was listed by the UN Security Council.

282. There have been a number of Marshall Islands NRDE listed in UN DPRK Panel of Experts reports in the past five years relating to facilitating DPRK sanctions evasion. These cases are set out below.

a. The 7 March 2023 UN Panel of Experts Report of the 1718 DRK Sanctions Committee identified two ships acquired by the DPRK, the *An Hai 6* (aka *Rak Won 1*) and *Anni* (aka *Kyong Song*). Both ships were sold to NRDE a few months before being sold to buyers purportedly in Japan but then sailing instead to the DPRK. The *An Hai 6* was registered to the Marshall Islands incorporated *Pearl Marine Shipping Co., Limited. Wuzhou Shipping Co., Ltd*, a Marshall Islands NRDE incorporated the *Anni*. The ships were flagged by China at the time of sale to the NRDE

and then reflagged from China to Niue before sailing to DPRK. Neither ship had ever been flagged in the Marshall Islands, and neither NRDE was associated with a Marshall Islands-flagged ship. In both cases, the Registrar for NRDE (TCMI) assisted the Panel in its investigations by providing relevant data, including names and identification documents for the officers, directors, and shareholders of the NRDE (all were natural persons) and details of their QIs. Though neither NRDE was designated by the UN, the Registrar for NRDE (TCMI) froze all services to both NRDE upon receipt of the Panels requests and then forcibly dissolved both NRDE.

b. The 2 March 2020 UN Panel of Experts Report of the 1718 DRK Sanctions Committee identified the Sierra Leone-flagged vessel, Sen Lin 01, as directly delivering refined petroleum to DPRK in violation of UN sanctions. The registered ship owner, *Deepika Shipping and Trading Ltd*, was an NRDE. The Registrar for NRDE (TCMI) annulled the company in November 2019. In addition, the Togo-flagged vessel *DN5505*, was cited as carrying coal originating from DPRK. *Do Young Shipping*, an NRDE was the registered owner of the vessel *DN5505*. Neither ship had ever been flagged in the Marshall Islands, and neither NRDE was associated with a Marshall Islands-flagged ship. The Registrar (TCMI) assisted the Panel in its investigations by providing all available information on the NRDE, including names and identification documents for officers, directors, and shareholders (all were natural persons) and details of the QI used by the NRDE. Though neither NRDE was designated by the UN, TCMI froze all services to the NRDE upon receipt of the request from the UN Panel.

c. On 30 March 2018 the UN designated an NRDE, *Kingly Won International Co., Ltd*. In 2017, Tsang Yung Yuan (aka Neil Tsang) and *Kingly Won* attempted to engage in an oil deal valued at over $1 million with a petroleum company in a third country to illicitly transfer oil to the DPRK. *Kingly Won* acted as a broker for that petroleum company and a Chinese company that reached out to *Kingly Won* to purchase marine oil on its behalf. The Registrar for NRDE (TCMI) had dissolved the NRDE upon receiving notice of the NRDE's activities from an international partner 30 days before the UN designation. The Registrar communicated its actions and all information on *Kingly Won* to relevant partner jurisdictions, including a passport for Tsang and corporate documents showing Tsang as the sole officer, director, and shareholder. TCMI also immediately performed a search in its system for any other individuals or entities associated with *Kingly Won* or Tsang and found none. Neither *Kingly Won* nor Tsang was associated with a Marshall Islands-flagged vessel. This example demonstrates good cooperation with the UN and international partners.

d. In 2017, the Hong Kong, China-flagged tanker *Lighthouse Winmore*, owned by a Hong Kong, China company but chartered at the time to *Oceanic Enterprise Ltd.,* an NRDE, engaged in ship-to-ship transfers of marine diesel to DPRK-flagged tankers. Operational instructions were sent by *Billions Bunker Group Corporation*, an NRDE. Records held by the Registrar for NRDE (TCMI) identified Chen Shih-Hsien as the sole officer, director, and shareholder of both NRDE. Services to both NRDE were immediately frozen. All available information for both NRDE, including a passport for Chen, was provided by the Registrar (TCMI) to the UN Panel of Experts. The Registrar also searched its database to identify any other NRDE connected to *Oceanic Enterprise Ltd*. *Billions Bunker Group Corporation*, or Chen. Two other NRDE were identified, and services to those NRDE were frozen. All available information on those NRDE was likewise provided by TCMI to the Panel, and TCMI then forcibly dissolved all four NRDE. Neither the *Lighthouse Winmore* nor any NRDE were designated by the UN, but the action by the Marshall Islands responds to actions taken by other jurisdictions following identification of sanctions evasion.

283. There is a concern that while TCMI, in its capacities as Registrar for NRDE and Maritime Administrator, has a good awareness of PF sanctions evasion risk and is actively screening for PF-related TFS, it does not sufficiently coordinate and share information with other Marshall Islands authorities on its PF related TFS implementation work. There was no evidence TCMI shared information or intelligence on entities identified by the UN Panel of Experts with other Marshall Islands competent authorities to support investigations of potential violations or breaches of TFS. Risk assessments conducted by TCMI are not shared with other members of the National AML/CFT Council.

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

284. The Marshall Islands has not identified any funds or other assets of individuals and entities designated by the UN Security Council in relation to PF. As noted above, the Registrar for NRDE (TCMI) forcibly dissolved *Kingly Won*, which demonstrates aspects of screening and implementation. There is no instance in which the reporting entities in the Marshall Islands have identified assets and funds held by designated persons or entities.

FIs and DNFBP' understanding of and compliance with obligations

285. Prior to the onsite, the FIU circulated consolidated lists to the private sector. Stakeholders confirmed receipt of the lists, but aside from the banks and MVTS, there was a lack of understanding of the utility of the lists and what to do if a match was identified. While there are processes in place for the competent authority to communicate designations to FIs and DNFBP immediately, the procedure had not yet been implemented.

286. The largest FIs have followed their home supervisor or correspondent banks' requirements for sanctions screening prior to Marshall Islands issuing more detailed guidance on TFS. The banks and one MVTS use software to screen for UN sanctions. Another MVTS screens manually and on an ad hoc basis and relies primarily on backend screening by the headquarters compliance office.

287. While the banks and one MVTS have a good understanding of TFS obligations, there was no evidence that other reporting entities understand their obligations in relation to screening for PF TFS and freezing assets.

288. No freezing actions have been taken under the PF TFS regime by FIs or DNFBP, which is in keeping with the Marshall Islands' context for its financial sector and onshore corporate sector.

289. As set out in I.O. 10, there may be very little information on NRDE to support sanctions screening for those entities that are not closely associated with a Marshall Islands registered vessel.

290. The following table sets out NRDE for which TCMI, in its capacities as Registrar for NRDE and Maritime Administrator, may hold director, shareholder basic or BO information. TCMI holds current basic and BO information related to NRDE linked to Marshall Islands-flagged vessels (item 1) and NRDE with bearer shares (item 2) in all cases. Other NRDE may record director, shareholder and beneficial ownership information with TCMI by submitting a Declaration of Incumbency. Between January 1, 2018 and the onsite in December 2023, 21, 667 NRDE (that had not issued bearer shares or were among the NRDE linked to Marshall Islands -flagged vessels through ownership) filed a Declaration of Incumbency (item 3). In the case of item 3, TCMI may hold director, shareholder and BO information, but because the filing is voluntary, that information may be incomplete or outdated. Of the 41,201 NRDE that were registered at the time of the onsite, TCMI held verifiable director, shareholder and beneficial ownership

information on 14,164. For the remaining NRDE, TCMI relies on voluntary Declaration of Incumbency filings - approximately of which 10,000 are recorded each year.

Table 4.2: NRDE that may have filed information with TCMI relevant to BO

Source of Information	*# of NRDE*
NRDE linked to Marshall Islands -flagged vessels through ownership[59]	13,432+[60]
NRDE with bearer shares (net of 1)[61]	732
NRDE with Declarations of Incumbency (net of 1 & 2)[62]	21,667
TOTAL	***35,831+***

291. For other NRDE, TCMI as the Registrar for NRDE may only have the name and address of the QI that performed the company formation services unless TCMI was to make a specific request for further information from a QI about an NRDE or from the NRDE pursuant to the powers granted under the Associations Law. In cases where TCMI made such requests, the information the QI holds or the NRDE produces is sometimes incomplete.

292. Private sector organisations do not engage their memberships to raise awareness of TFS obligations.

Competent authorities ensuring and monitoring compliance

293. The Marshall Islands has not implemented any measures to monitor compliance by FIs and DNFBP. There was no evidence of competent authorities'' supervision of TFS requirements for PF.

294. The Banking Commissioner has not conducted supervision of reporting entities on TFS as part of onsite examinations. The Bank of Marshall Islands and Bank of Guam examination reports did not address TFS.

295. The FIU plans to seek approval from the Attorney General and the Minister of Justice to assist with the supervision of FIs monitor compliance with TFS requirements. This will also include bringing DNFBP under supervision to monitor compliance with TFS requirements. Once approval is granted by the Office of the AG or Minister of Justice, the FIU plans to amend its AML/CFT Supervision Manual to also include TFS compliance examination procedures.

296. Those DAO which fall under the FATF definition of VASPs are not regulated as such, and while they are subject to asset freezing obligations under TFS, they have not been included in outreach. This presents a PF vulnerability. DAO did not demonstrate an understanding of their obligations regarding TFS relating to PF.

[59] The only direct searchable link between the NRDE registry database and the ship registry database is in respect of vessel ownership by NRDE. That link shows that 13,432 NRDE were directly linked to RMI-flagged vessels through ownership.

[60] Beyond ownership, vessels typically have many NRDE associated for management, operations, manning, bunkering, chartering, etc but, the system does not currently capture or link to which of those are NRDE.

[61] 818 NRDE, less 86 linked to RMI-flagged vessels by ownership.

[62] 24,879 NRDE, less 3,212 with bearer shares and/or linked to RMI-flagged vessels by ownership.

297. TCMI is not subject to clear governance frameworks and QIs are not subject to supervision for TFS under Marshall Islands law (see IO.3).

Overall conclusion on Immediate Outcome 11

298. Marshall Islands has the legal framework in place to implement TFS related to PF, however the mechanisms for the competent authority to provide notifications of designations and de-listings to covered entities were implemented just prior to the onsite visit and were therefore not tested. Competent authorities have not communicated changes to UNSCRs applying TFS relating to PF to covered entities. Supervision has not been conducted to assess covered entities' implementation of their obligations. FIs understand their obligations under the Banking Act and AML Regulations and conduct sanctions screening however DNFBP did not demonstrate an understanding of their obligations. PF vulnerabilities are presented by those DAO which fall under the FATF definition of VASPs, but are not regulated as such and have not been included in outreach on TFS. Incorporation of NRDE presents a high risk due to the lack of basic and BO information in some cases on NRDE available for screening and the inability of TCMI to consistently verify BO information collected by QIs, which was weighted heavily. In addition, QIs are not regulated or supervised in the Marshall Islands. TCMI has well-developed mechanisms to screen for sanctions and cooperates with international authorities to share information. The case of the *Kingly Won* demonstrates that TCMI has the capability to act against NRDE that own or control or act on behalf of designated entities and to rapidly share information on NRDE with international partners. However the number of NRDE that appear in UN Panel of Experts reports underscores the heightened risk exposure. TCMI does not proactively share intelligence and other information on NRDE with members of the National AML/CFT Council, limiting domestic cooperation and coordination.

299. **The Marshall Islands has a moderate level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

a) The Marshall Islands has significantly enhanced its AML/CFT regulatory framework for preventive measures, including major reforms in 2020, 2022 and 2023. The centrepiece of the AML/CFT laws, the AML Regulations 2002 was amended in August 2023.

b) While the Marshall Islands has a relatively new legal framework for some preventive measures, including enhanced and specific measures, banks and remitters have been applying reasonably comprehensive CDD and record keeping measures over a longer period due to the nature of the products that they provide (remittances) and the nature of their financial institutions (foreign owned banks and maintaining CBR) and foreign supervisor requirements.

c) In general, high risk entities such as banks have a good understanding of their ML/TF risks and obligations.

d) DNFBP such as legal professionals/lawyers have very low levels of awareness of ML/TF and the obligations under the AML Regulations.

e) Entities involved in the formation and administration of NRDE and the DAO sector are not subject to AML/CFT requirements as DNFBP.

f) Risk-based exemptions and simplified measures have not been utilised in low risk scenarios.

Recommended Actions

a) The Marshall Islands should further support understanding and implementation of AML Regulations to entities involved in the formation and administration of NRDE and the DAO sector, given the risks posed to the Marshall Islands.

b) The Marshall Islands should implement a more streamlined approach to applying risk-based exemptions and implement simplified CDD for low risk sectors to better support financial inclusion.

c) The FIU should consider providing simplified guidance of AML/CFT obligations for all reporting entities including guidance regarding:

- Detection and reporting of SARs;
- High risk area, particularly corruption, bribery, and misappropriation of public funds (including procurement); and
- Handling domestic PEPs, considering the challenges posed in small communities such as Marshall Islands.

d) The FIU should consider issuing simple guidance for developing internal controls for Non-Bank Financial Institutions (NBFIs).

e) Continue active outreach to raise awareness of the ML/TF risks and the obligations under the AML Regulation amongst reporting entities, particularly higher risk DNFBP.

f) Marshall Islands should consider streamlining government processes to more efficiently provide required documents to facilitate the opening bank accounts to reduce any undue regulatory burden on FIs and DNFBP.

300. 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)

301. *Financial institutions:* Of the three commercial banks, two are domestic owned banks. One of these banks was issued a licence in early 2023 and is still at an early stage of operation and was only offering limited lending and remittance services at the time of the onsite visit. The second domestic bank has the largest market share of the financial sector in the Marshall Islands. The bank has implemented AML/CFT controls and measures before legislation was updated to comply with the requirements to maintain their correspondent banking relationship. The third bank is U.S. owned and is supervised by the United States Federal Deposit Insurance Corporation (FDIC) and FINCEN. Details of the Marshall Islands financial sector are given in Chapter 1.

302. *DNFBP:* AML Regulations apply to all types of DNFBP as defined by the FATF, however in practice they are not being targeted for AML/CFT obligations (see further below). While most of the DNFBP are small in size and of low risk, MIDAO (which is involved in forming DAO) was only subject to AML/CFT requirements as a DNFBP at the end of the onsite visit.

303. *VASPs:* As outlined in IO.1, depending on the business undertaken, certain DAO may fall within the FATF definition of Virtual Asset Service Providers (VASP). The Marshall Islands has not yet regulated any DAO as a VASP or MIDAO, which provides company services to all DAO in the Marshall Islands. The Marshall Islands authorities do not have sufficient regulatory information to determine which DAO may be operating as a VASP.

Weighting

304. For the reasons of their relative materiality and risk in the Marshall Islands, shortcomings in preventive measures were weighted most heavily for banks; medium weight for MVTS; lower weight for lawyers and accountants. The weak implementation of AML/CFT controls on entities providing company services to NRDE and DAO was also given significant weight. This weighting is based on the relative importance of each sector and the Marshall Islands' risks, context and materiality. See Chapter 1, section 1.4.3 for more detail about the risk, materiality and weighting of each sector in the Marshall Islands' context.

305. Meetings with the private sector did not reveal any fundamental concerns about the implementation of preventive measures. Overall, the assessors found that:

- *Heavily weighted*: the two large banks demonstrated good awareness and implementation of preventive measures
- *Medium weighted:* MVTS are largely aware of and implement preventive measures

- *Lower weight:* implementation is minimal amongst lawyers and the accounting firm is only minimally involved

306. Assessors' findings on IO.4 are based on interviews with a range of private sector representatives, statistics, case files and examples of supervisory actions, and information concerning the relative materiality and risks of each sector (including risk assessments). The assessors met with most FIs in the Marshall Islands and many DNFBP.

Understanding of ML/TF risks and AML/CFT obligations

FIs

307. Banks and FSPs are required to undertake and maintain a risk assessment to identify, assess and understand the ML/TF and proliferation financing risks they face (Section 2C of the AML Regulations).

308. The banking sector appears to have a good understanding of its ML/TF risks and AML/CFT obligations. Participants of this sector were engaged and consulted in the 2020 NRA process. They were involved in regular follow up meetings and briefings on the NRA. While the amendments to include comprehensive AML/CFT obligations in the AML Regulations are fairly recent (2021 and 2023), the banks have already been implementing measures to conduct and respond to an enterprise risk assessment as one is a foreign owned bank while the other is required to meet the obligations to maintain their sole correspondent banking relationship.

309. Other smaller financial institutions such as credit institutions and insurance companies have a limited understanding of their ML/TF risks and AML/CFT obligations, however, this is consistent with the ML/TF risk they pose. The credit institutions primarily provide payday loans to Marshall Islands citizens with loan repayments obtained directly from the customers salary through regular allotments. The insurance companies primarily provide vehicle insurance, with limited offering of life insurance.

310. The two foreign MVTS providers have a basic understanding of their AML/CFT risks but a good understanding of their AML/CFT obligations. They were also engaged in the 2020 NRA process. Two of the banks are agents of the MVTS providers, while engagement and involvement in the risk assessments have been good, this has primarily been from the banking side of the business.

DNFBP

311. Engagement with the DNFBP is new and has primarily focused on education and awareness on the NRA findings and their AML/CFT obligations.

312. DNFBP, particularly lawyers, have a minimal understanding of ML/FT risks and their obligations under the AML Regulations. There appears to be a view amongst the legal practitioners that the ML/FT obligations do not supersede legal privilege and that they are not obligated under the AML Regulations when they offer services that meet the definition of a DNFBP.

313. An AML/CFT guidance was issued in September 2022 for DNFBP, however, there appears to be little awareness of the guidance in the sector. While the guidance is lengthy and detailed, the sector may benefit from a more simplified guidance that could also be adopted as an internal control.

314. Most DNFBP have been assessed as medium and low risk in the NRA except for the TCSP (MIDAO, which is yet to be supervised) and motor vehicle dealers. MIDAO provides company services

to all DAO registered in the Marshall Islands and as such meets the definition of a DNFBP. While MIDAO was unregulated as a DNFBP until just before the end of the onsite visit, the Marshall Islands has conducted a risk assessment to identify high risks in the DAO sector.

315. While the entity that provide TCSP services to DAO meets the FATF definition of a TCSP, they had not been subject to AML/CFT obligations relating to assessing and responding to ML risk prior to the ME onsite visit.

Application of risk mitigating measures

FIs

316. The two larger banks which account for the majority of the financial sector assets, have implemented internal compliance policies and programmes that demonstrate an improved approach to ML/TF risk mitigation. AML/CFT guidance tailored to banks and FSPs was issued in September 2023.

317. Despite the risk and context of the Marshall Islands, and many areas where there are proven low risks, the Marshall Islands has not implemented risk-based exemptions and there are very few instances of simplified measures based on risk.

318. Given the size, context and resources of government institutions, some banks face challenges obtaining documents from their customers as the documents need to be obtained from a government agency that may be facing various capacity issues. This presents some challenges and delays in the CDD process.

319. In addition to the AML/CFT requirements in the Marshall Islands, the local bank has implemented other risk-based measures to ensure that its sole correspondent banking relationship is maintained. This includes avoiding business in high risk areas such as NRDE, DAO and VASPs and conducting ECDD on internal thresholds based on the risk that the bank has identified.

320. The two MVTS providers have also implemented internal compliance policies and programmes that demonstrate an improved approach to ML/TF risk mitigation. They have also implemented other risk-based measures such as conducting ECDD on internal risk-based thresholds that have been set.

DNFBP

321. As previously noted, awareness of CDD requirements and obligations under the AML Regulations is very low across all DNFBP.

Application of enhanced or specific CDD and record keeping requirements

322. The two major banks have measures in place to comply with CDD and record keeping requirements, including applying enhanced CDD on high risk customers. Given that one of the banks is a US Bank and the other is a domestic bank with a correspondent banking relationship with a US bank, these measures were in place before the amendments to the AML Regulations were enforced.

323. The two major banks have measures in place to identify beneficial owners during the account opening stage. The banks complete a customer assessment form and a beneficial ownership form if the customer indicates that the account will be held beneficially. If the banks are unable to identify the beneficial owners, then an account will not be opened. The banks face challenges when verifying beneficial ownership as there are delays in receiving supporting documents for commercial and

corporate accounts. This includes business licences and corporate documents that need to be obtained from a government agency.

Financial Inclusion Initiatives- mobile banking through ships

To promote financial inclusion, one of the banks offers outer-island 'mobile' banking through ships. Cash is taken by bank employees to the outer islands every second month and various transactions are facilitated by the employees. The transactions are recorded and the remainder of the funds are returned to Majuro where reconciliations and updates to any electronic records are done.

324. The two major banks and MVTS providers implement additional CDD measures for customers and transactions identified as higher risk.

325. Record keeping requirements in the Marshall Islands exceed the FATF standards. The Banking Act requires that the Banking Commissioner, AG's Office, FIs and DNFBP to maintain suspicious transaction reports for fifteen (15) years. Representatives from the financial sector described difficulties in meeting the requirements to maintain records for 15 years. The extensive timeframe makes it difficult to physically and electronically store and retrieve information and records.

DNFBP

326. While the AML Regulations are applicable to DNFBP, enhanced or specific CDD and record keeping requirements are not effectively implemented. Some DNFBP collect limited CDD information but not for the purposes of the AML Regulations and are not aware that the AML Regulations also apply to them.

Application of EDD measures

FIs

327. Given that one of the Marshall Islands' major banks is a domestic bank, maintaining a correspondent banking relationship has been a major priority. This has been a challenge, as it has lost most of its correspondent banking relationships reportedly due to de-risking by former counterparts. It currently maintains only one correspondent banking relationship and has implemented measures and requirements by the correspondent bank to continue the relationship. The other local bank does not have wire transfer facilities as it is yet to form a correspondent banking relationship with an offshore bank.

328. There is a range of guidelines for enhanced due diligence measures as provided under the Banking Act 1987 and AML Regulations, 2002. Section 3A.2 of the AML Regulations stipulates that CDD must be applied on a risk basis, including enhanced CDD for higher risk and existing customers, and "politically exposed persons". While 2023 amendments to the AML Regulations now include domestic PEPs and international organisation PEPs, there has been no supervision of the application by the financial sector of these new requirements and it is not clear how far their implementation has gone beyond the large banks.

329. Banks and other FIs noted the challenges of implementing the requirement to identify domestic PEPs family and close associates, given the small community and context in the Marshall Islands where everyone either knows or is related to each other. Some reporting entities rely on local knowledge of staff to identify relatives and associates of domestic PEPs. The challenge of identifying domestic PEPs is of particular concern given recent high profile cases and detailed discussions with officials, highlighting significant risks from corruption and bribery and misappropriation of public funds, including procurement fraud.

330. Banks and financial institutions are sent notifications of UN sanction list updates by the FIU. Most of the banks and financial institutions with a higher risk rating, utilise commercial databases to search against UN and other sanctions listings while the remainder utilise the listing and notifications provided by the FIU. Lower risk entities such as the insurance companies, credit companies, accountants and lawyers do not have a practice of screening TFS lists.

331. The banks have policies in place to take measures to prevent the misuse of technology in ML/TF schemes. This includes measures such as the refusal to engage with any person or entity that is engaged in cryptocurrency, DAO and other virtual asset services.

332. The two banks have a good understanding of wire transfer requirements. Originator's and beneficiaries' basic information is required for any inward or outward wire transfer with respondent banks ensuring originator and beneficiary information is included. One domestic bank does not have wire transfer facilities. The two MVTS providers follow their head office compliance and monitoring process in respect of originator/beneficiary information. The Marshall Islands does not have a de minimis threshold for cross border wire transfers. No enhanced or specific measures in terms of wire transfers are implemented by FIs.

DNFBP

333. As previously noted, awareness of CDD, including enhanced CDD requirements and obligations under the AML Regulations is very low across all DNFBP.

Reporting obligations and tipping off.

334. Suspicious transactions have been reported by the banks and FSPs. From 2019 to 2023 there were 133 SARs reported to the FIU. The following table outlines the SAR reporting profiles for the different sectors in the Marshall Islands:

Table 5.1 - Suspicious Transaction Reports (STRs) Received

	STRs Received				
	2019	**2020**	**2021**	**2022**	**2023**[63]
Banks	14	28	25	33	10
FSP	0	1	0	0	0
MVTS	8	2	3	8	1
DNFBP	0	0	0	0	0
Total	**22**	**31**	**28**	**41**	**11**

[63] As of 1 January – 31 July 2023.

335. The FIU is satisfied with the quality and timeliness of STRs received and stated that the information received was sufficient to initiate and support analysis.

336. The quantity of reports by the banking and MVTS sectors appears adequate taking into account the Marshall Islands risk and context. The majority of SARs were submitted by banks, which matches their risk profile and volume of business. Banks pay close attention to cheque fraud, wire transfers, PEPs and activities relating to high risk jurisdictions.

337. There have been no reports of SARs related to TF or proliferation financing. This is in keeping with the Marshall Islands' risk profile.

338. No SARs have been received from DNFBP, which partly matches the risk profile. However, as previously mentioned, awareness of CDD requirements and obligations under the AML Regulations is very low across all DNFBP.

339. The Banking Act and AML Regulations set out measures to prevent tipping-off and the majority of reporting entities who met with the assessment team were aware of these obligations.

340. The assessment team noted that reporting entities may refuse certain suspicious transactions before referring the matter to the Banking Commission. The Marshall Islands must ensure that reporting entities understand that when suspicious transactions are refused, this would/could tip-off the customer.

Internal controls and legal/regulatory requirements impending implementation

FIs

341. The AML Regulations and AML and CF of Terrorism Guidelines for Banks and FSPs requires the banks and FSPs to develop effective internal policies, procedures and controls that identify, measure, manage and monitor ML/TF risks.

342. The two larger banks have implemented internal controls and polices to comply with AML/CFT requirements. These internal controls and policies have been assessed by the FIU through onsite examinations. In most cases the deficiencies have been acknowledged and the appropriate remedial actions were taken to rectify the deficiencies.

343. The MVTS providers, as agents of foreign companies also have internal controls and policies. Other financial service providers do not have formal internal controls and policies in place.

DNFBP

344. DNFBP are required to implement internal controls and procedures under the AML Regulations. However, as previously mentioned, awareness of AML/CFT requirements and obligations under the AML Regulations is very low across all DNFBP.

345. While the Banking Act and AML Regulations describe the obligations of reporting entities including DNFBP, the general understanding amongst some DNFBP (law firms and accountancy firms) is that the requirements do not override their client privilege.

346. Entities providing TCSP services to NRDE (pursuant to FATF's definition) have not been brought into the AML/CFT framework. Such services in these circumstances are likely to pose a higher risk of ML/TF.

347. MIDAO, which engages in the formation of DAO has also not been brought into the AML/CFT framework including the requirement to implement internal controls and procedures under the AML Regulations.

Overall conclusion on Immediate Outcome 4

348. In general, some higher risk reporting entities, notably banks, have a good understanding of their risk and obligations while lower risk reporting entities have an adequate understanding, with the exception of the legal sector which appears largely unaware of their obligations. Implementation of CDD measures is adequate, however some reporting entities shared challenges in obtaining corporate documentation due to various inefficiencies in certain government departments. Most reporting entities expressed challenges in identifying the family and friends of close associates of domestic PEPs and implementing the required enhanced CDD given the size and context of Marshall Islands. Most reporting entities have a good understanding of SAR obligations and some high risk reporting entities have implemented risk-based AML/CFT policies and controls. Entities providing TCSP services through their engagement in the formation of legal persons including NRDE and DAO pose a higher risk of ML/TF, however, these entities have not been brought into the AML/CFT regulatory framework.

349. **The Marshall Islands has a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

a) The Marshall Islands has a broad supervisory framework for implementing risk-based supervision. However, there are gaps in the entities subject to AML/CFT supervision in the Marshall Islands, which, given the risks, undermines effectiveness. MIDAO, which provides company services to DAO; some DAO which appear to operate as VASPs, was only included as a DNFBP at the end of the onsite visit.

b) DAO which operate as VASPs are captured by the Banking Act 1987 and would therefore are subject to licensing, fit and proper checking and ongoing supervision however DAO are not yet regulated for AML/CFT.

c) Fit and proper controls are implemented in relation to banks, and new regulations relating to fit and proper requirements for FIs were issued in late 2023. Fit and proper controls are implemented for lawyers, but not for other DNFBP.

d) Supervisory authorities have a reasonable understanding of the risks for the currently regulated sectors to support supervision. There are gaps with detailed understanding of risks for the unregulated VASP sector and those entities the entities providing company services in the Marshall Islands but are not yet regulated for AML/CFT (see point above). Some of the higher risk areas (for example risks from corruption, misappropriation of public funds including procurement-related risks) are not well understood by supervisors.

e) The Banking Commission and FIU have developed a risk rating matrix for FIs, which forms a good foundation of conducting risk-based supervision but is limited in providing them with identifying and maintaining an understanding of risk of each FI.

f) Full scope supervision has not extended to implementation of targeted financial sanction (TFS) obligations.

g) The conduct of onsite supervision is well supported by manuals and plans, and the findings of supervision reflect improving quality of supervision that supports remedial action and, to some extent, necessary enforcement. Offsite supervision has commenced but is at an early stage.

h) The banking sector has been subject to supervision with a second round of full scope supervision taking place at the time of the onsite visit. NBFI have only been subject to offsite supervision. No DNFBP supervision has taken place. As the AML/CFT supervision framework has yet to be applied fully to most FIs, (other than banks, and to a limited extent money remitters) DNFBP, and VASPs the impact of supervisory actions is low

i) The Marshall Islands demonstrated good use of remedial measures (applicable to banks) to address findings of weakness with AML/CFT compliance, but enforcement action, including fines, have not yet been implemented.

j) Marshall Islands demonstrated a range of activities to promote a clear understanding by FIs and DNFBP with their AML/CFT obligations and ML/TF risks.

Recommended Actions

a) The Banking Commission should extend fit and proper controls and AML/CFT supervision to the entity providing company services in or from Marshall Islands (MIDAO) and apply fit and proper testing for all non-bank FIs including money remitters.

b) Marshall Islands should identify those DAO that operate as a VASP and ensure that the licensing, fit and proper requirements are applied to those DAO and that ongoing risk-based AML/CFT supervision is applied.

c) The FIU and Banking Commission should cooperate to enhance risk information available to supervisors to ensure a deeper risk-based approach to supervision. This should include further refining risk rating matrix for FIs and DNFBP.

d) The FIU should supervise TFS implementation, including adding TFS to the supervision manual.

e) Continue implementation of risk-based AML/CFT supervision and relevant enforcement to all operating non-bank FIs and DNFBP sectors in the Marshall Islands. It is recommended that set timeframes to supervise those sectors should be developed, taking into account the level of ML/TF risks.

f) Determine where simplified measures may be appropriate to be applied to lower risk FIs and DNFBP.

g) The FIU with support of the Banking Commission should provide FIs and DNFBP with more guidance, training and feedback on which would assist those entities with meeting their AML/CFT obligations and the role they have in fighting ML/TF in the Marshall Islands.

Immediate Outcome 3 (Supervision)

350. The Marshall Islands has a risk-based supervision framework at various levels of implementation. The primary focus of the framework is on FI sectors, in particular banking. Of the three commercial banks, two are domestic owned banks. One of these banks was issued a licence in early 2023 and is still at an early stage of operation and was only offering limited lending and remittance services at the time of the onsite visit. The second domestic bank has the largest market share of the financial sector in Marshall Islands. The bank has implemented AML/CFT controls and measures before legislation was updated to comply with the requirements to maintain their correspondent banking relationship. The third bank is U.S. owned and is supervised by the United States Federal Deposit Insurance Corporation (FDIC) and FINCEN. While most of the DNFBP are small in size and of low risk, there is an entity providing limited TCSP services as registered but it is not yet regulated for AML/CFT purposes, despite its higher risk of ML/TF. In addition, certain DAO (depending on the business they conduct) may fall within the FATF definition of VASP. The Marshall Islands has not yet licensed or regulated any DAO as a VASP. Marshall Islands authorities do not have sufficient regulatory information to determine which DAO may be operating as a VASP. There are no casinos, real estate agents, nor precious metals or stone dealers operating in the Marshall Islands.

Weighting

351. For the reasons of their relative materiality and risk in the Marshall Islands, shortcomings in supervision were weighted most heavily for banks; medium weight for MVTS; and other non-Bank FIs; lower weight for lawyers and accountants and the insurance sector. The absence of AML/CFT supervision on MIDAO (providing company services to DAO) was also heavily weighted based on the relative importance of the sector, the type of service provided but importantly the Marshall Islands' risks, context and materiality.

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

352. The Banking Commission is the licensing and supervisory authority for banks, credit institutions, insurance companies, money remitters and virtual asset service providers. Institutions licensed, regulated or supervised by the Commission are also supervised for AML/CFT obligation under the AML Regulations 2002. This was taken over by the FIU as a separate division of the Banking Commission in late 2021.

353. The Banking Commission undertakes comprehensive licensing for banks which include fit and proper testing of owners, the Board and CEO, although the Banking Commission has implemented specific requirements for fit and proper testing. Regulations issued pursuant to the Banking Act relating to fit and proper requirements applying to licensed banks and FSP were introduced in December 2023. The assessment team were advised of one case example in which a board member's proposed appointment to a Marshall Islands bank was declined as the individual wasn't considered satisfactory for appointment.

354. The licensing for non-bank FIs includes fit and proper testing of ownership and management, however as the fit and proper regulations for non-bank FIs were enacted in December 2023, they had not yet been implemented at the time of the onsite. Prior to December 2023 fit and proper risk was mitigated to a certain extent by the small sized community of the Marshall Islands and familiarity of the Banking Commission with community members. The Banking Commission has not declined or revoked a licence application for these FIs to date.

355. All FIs are also required to submit an Ownership and Control Report (OCR) to the Banking Commission on an annual basis (Section 2A.5 AML Regulations 2002, as amended). The OCR contains details on the owners of the FIs, including any changes within the preceding year and so it provides some information as to the ownership and control of FIs. The Banking Commission was given further powers in December 2023 to prevent or remove a person from an ownership or management position. OCR are used by the Banking Commission in support of fit and proper checking.

DNFBP

356. Amongst DNFBP sectors only lawyers have any market entry controls. The legal sector is the main DNFBP sector operating in the Marshall Islands and a number of lawyers perform company services. Lawyers are required to be admitted to the Marshall Islands Bar Association by the Chief Justice of the High Court. Admission and ongoing fit and proper checking are overseen by the Marshall Islands Courts and the Chief Justice of the High Court. Admission procedures include background checks and competency and ethics examinations. Sanctions are applied to those lawyers who breach Standards of Professional Conduct (which include committing predicate offences).

357. There is one accountancy firm in the Marshall Islands, however there are no controls over accountants' ability to operate in the Marshall Islands.

358. MIDAO provides company services to all DAO registered in the Marshall Islands and as such meets the definition of a DNFBP but market entry controls have yet to be applied to MIDAO. There are no Marshall Islands regulated DNFBP connected to the NRDE sector, while TCMI is required to be the registered office for all NRDE, no other corporate services are provided by TCMI.

359. There are no casinos, nor precious metal or stone dealers operating in the Marshall Islands. If any were to begin operating in the future, they would be captured by the definition of "cash dealer" under the Banking Act 1987 and would be required to be licensed the same as other FIs. Real estate agents are captured as a DNFBP under the revised AML/CFT Regulations 2002 but there is no real estate sector operating in the Marshall Islands.

VASPs

360. VASPs fall under the definition of "Financial Service Provider" under the Banking Act 1987 but the Banking Commission has yet to issue any VASP licence. The assessment team finds that in keeping with the FATF definition, some DAO may meet the definition of a VASP, because amongst other things, they administer instruments such as tokens enabling control over virtual assets on the blockchain. The assessment team were advised that the Banking Commission and FIU are still determining whether DAO meet the definition of VASPs under the Banking Act 1987 and if they should be licensed.

Supervisors' understanding and identification of ML/TF risks

361. The Banking Commission and FIU have a good overall understanding of ML/TF risks at a national level. Both agencies were leading and active participants in the development and completion of the NRA in 2020, but since 2020 both the Banking Commission and the FIU have had to rebuild their staffing levels.

362. The Banking Commission and FIU's understanding of ML/TF specific risks at a sectoral level is less developed. While the NRA does contain analysis of risk for each FI sector, it lacks details as to risks specific to each sector. Much of the analysis contained in the NRA is also based on anecdotal evidence and self-completed questionnaire. It lacks statistical analysis which may have some impact on its conclusions. Some of the higher risk areas (for example risks from corruption, misappropriation of public funds including procurement-related risks) are not well understood, which undermines supervisory focus on banking activities associated with these risk areas.

363. Neither the Banking Commission nor FIU has done any sector specific risk assessments with the exception of the NPO DAO sector. This is mitigated to an extent by the informed view of risks they have from their AML/CFT supervision on the banking sector, but not for the non-bank FI sectors as these sectors have yet to be subject to any substantive AML/CFT supervision.

DNFBP & VASPs

364. Most DNFBP have been assessed as medium and low risk in the NRA except for TCSPs and motor vehicle dealers. Furthermore, the Marshall Islands has included motor vehicle dealers as DNFBP and identified them as medium risk.

365. Other than what is described in the NRA, ML/TF risks for DNFBP emanating from the NRDE registry (operated by TCMI) have not been fully assessed or understood. Marshall Islands authorities

have commenced the assessment of the NRDE sector risks, noting that the sector is unregulated and unsupervised for AML/CFT.

366. The Banking Commission and FIU demonstrated a good level of the understanding of the ML/TF risk, the resulting reputational risk, and impact on the Marshall Islands banking sector presented by the NRDE sector. A more detailed assessment and shared understanding of these risk need to be established. Similarly, this includes the AG's Office for RDE (although this deficiency is given less weight as RDE (other than DAO) present less ML/TF risk than NDREs, MIDAO providing company services to DAO registered in the Marshall Islands.

367. Marshall Islands authorities have undertaken risk assessments into NPO DAO which gives the Banking Commission and FIU a good basis to understand the high risk relating to DAO but more detailed assessment is needed to be conducted for "for profit" DAO. Beyond DAO, the Marshall Islands authorities appear to share a general understanding that VASPs are high risk. For example, TCMI, in its capacity as Registrar for NRDE, has active programmes to enforce the Associations Law's prohibition on NRDE operating as VASPs by scanning for VASPs and, when identified, strike off NRDE suspected of operating as VASPs. Marshall Islands authorities have not looked at the risks relating to VASPs in more detail.

Risk-based supervision of compliance with AML/CFT requirements

FIs

368. Since 2020 the Banking Commission and FIU has adopted a risk-based approach in their AML/CFT supervision framework. Prior to this supervision was done on a random selection basis and was rules based. The Banking Commission and FIU uses its risk rating matrix to determine which FIs are prioritised for supervision.

369. During the same time, the Banking Commission (inclusive of FIU which took on the responsibility for AML/CFT supervision in late 2021) has faced significant issues with staff resourcing, but has recently been able to increase the numbers of staff after a period of high turnover. The high turnover of staff has impacted on the ability of the Banking Commission to carry out their AML/CFT supervision work. This was mitigated to some extent with the ability of the Banking Commission to use their prudential supervisors to assist with AML/CFT supervision work. Currently the supervision is carried out by two full time dedicated AML/CFT supervisors within the FIU.

370. At an institutional level the Banking Commission and FIU have developed a risk rating matrix for FIs, which forms a good foundation for conducting risk-based supervision but is limited in providing them with identifying and maintaining a detailed understanding of risk of each FI. For example, it does not cover all the criteria listed in Section 2B.2 of the AML Regulations 2002, which outlines what the Banking Commissioner should consider in assessing risks of FIs. The risk rating matrix does not capture customer, product categories, and delivery methods for the FIs' financial services.

371. The Banking Commission and FIU intend to review their risk rating matrix once they have completed further AML/CFT offsite reporting from FIs and DNFBP but it is still too early to assess whether this will be effective in maintaining their understanding of ML/TF risks of its reporting institutions.

372. Since 2020 AML/CFT onsite supervision has been conducted on two of the three licensed banks by the FIU. The two banks cover the greatest portion of all financial sector assets and transactions

(onshore risks). Prior to 2020 AML/CFT examinations were done on the two remitters and the two banks, although this was to a narrower set of AML/CFT obligations and primarily focused on CDD.

373. Onsite examinations have been the primary tool for supervising the extent to which banks are complying with their AML/CFT requirements. The AML/CFT onsite supervision has been 'full scope' supervision, an examination of the banks' full suite of AML/CFT requirements. However, this has not extended to implementation of targeted financial sanction (TFS) obligations (see IO.10 & IO.11).

374. The Marshall Islands demonstrated that its onsite AML/CFT supervision appear to be reasonable. The inspection manual and the examination reports of those visits prepared at the end of the onsite supervision show that onsite supervision has typically taken a week and include meeting and interviews with bank staff and review of customer files. It is evident that supervisors considered relevant materials to identify areas of compliance and a range of areas and items for improvement. Examination reports include actionable findings.

375. At the time of the onsite visit by the assessment team, the FIU was completing its second cycle of risk-based supervision for the two biggest banks, building on previous supervisory findings. This is a positive step in reviewing and understanding the risks and deficiencies in those institutions.

376. For non-bank FIs little risk-based AML/CFT supervision has been conducted in the last five years. Prior to that time the Banking Commission undertook AML/CFT supervision of the sectors on AML Regulations which found gaps with the appointment of a compliance officer for all reporting entities and as well as the categorisation of domestic PEPs.

377. The FIU is in the process of using desk-based reviews (questionnaires) to assess the level of compliance within non-bank FIs and whether further AML/CFT examination should be conducted. This is somewhat in keeping with a risk-based approach and reflects the major resourcing challenges faced by the Banking Commission and FIU prior to 2023. However, the overall effectiveness of AML/CFT supervision of the non-bank FIs is low given that little risk-based supervision has taken place.

DNFBP

378. DNFBP operating in the Marshall Islands have not been subject to AML/CFT supervision, risk-based or otherwise. While TCMI provides some oversight of entities (the QIs not operating in the Marshall Islands) providing companies formation services to NRDE, this is not to an effective supervisory standard. The lack of supervision of entities performing company services to DAO is a serious deficiency given the level of ML/TF risk. The amended law provides a clear basis to supervise MIDAO as a DNFBP and at the time of the onsite, the Banking Commission had provided written notification to MIDAO, but this had not been done at the time of the onsite visit.

379. In respect of other DNFBP sectors in the Marshall Islands (lawyers and one accounting firm), the FIU intends to apply with the same AML/CFT supervision framework to them and will be informed by the AML/CFT offsite reporting currently being done. Engagement with the DNFBP is new and has primarily focused on education and awareness based on the NRA findings and their AML/CFT requirements.

380. As previously stated, there are no casinos, real estate agents nor precious metal or stone dealer in the Marshall Islands.Remedial actions and effective, proportionate, and dissuasive sanctions

381. While risk-based AML/CFT supervision is still at an early stage and has been limited mostly to the banks. The Banking Commission demonstrated that is has taken remedial actions against banks

following their onsite examinations. The extent of remedial actions was reasonable for the banks, but the lack of remedial actions applied to other FIs reflects the lack of AML/CFT supervision of those sectors generally. As mentioned above, DNFBP operating in the Marshall Islands have not been subject to AML/CFT supervision and as a result there is an absence of such measures applying DNFBP.

382. Requirements for remedial actions by banks have covered areas such as appointing compliance officers, expanding internal controls (including enterprise risk assessments), including domestic PEPs, etc. The AML/CFT supervisors monitor the progress of remedial actions by requiring the bank to report on progress, which was further reviewed by the supervisor. The FIU is able to conduct follow up examinations to validate the progress between supervision cycles as needed. The second cycle of supervision that was being undertaken by the FIU at the time of the onsite visit was following up on some of the previous remedial actions that were required of the banks.

383. There are comprehensive sanctions available to enforce compliance on FIs and DNFBP. There is a lack of clarity about how authorities determine which penalty provision applies and is there a presumption or prosecutorial preference for the lower penalties over the higher penalties.

384. In addition to its remedial actions applying to banks, the Banking Commission has demonstrated a willingness to impose sanctions for non-compliance of AML Regulations. The Banking Commissioner is authorised to impose a range of penalties for non-compliance with the Banking Act 1987. This includes the ability to issue a formal warning, to vary, suspend or revoke a licence, and to give directions to a suspend licence. The Banking Commissioner may also make recommendations to the AG for the imposition of civil monetary penalties, of up to $10,000 each, for breach of AML Regulations.

385. In 2020 the Banking Commissioner made a recommendation to the AG to impose civil penalties (fines) in relation to a bank operating in the Marshall Islands for AML/CFT breaches, although the AG ultimately decided against the recommendation based on some evidentiary challenges associated with the supervision report. Following this the Banking Commission has taken steps to ensure that supervision reports capture deficiencies in a way that can best be used to support enforcement actions. That said, the number of sanctions applied in the Marshall Islands is low even taking into account the small number of reporting entities in the Marshall Islands and it also reflects the level of AML/CFT supervision currently being conducted outside of the banking sector.

Impact of supervisory actions on compliance

386. As reflected in the findings at IO.4 and according to the feedback from financial institutions received by the Banking Commission, the Banking Commission has generally had a positive impact on the level of awareness and compliance for those financial institutions. This is the strongest for the two biggest banks and has further supported the approaches those banks appear to have taken in response to home regulator rules or managing correspondent banking relationship expectations.

387. For non-bank financial institutions earlier supervision activities by the Banking Commission supported requirements under the revised AML Regulations being met, including the appointment of a Compliance Officer for all reporting entities and as well as the categorisation of domestic PEPs.

388. However, as the AML/CFT supervision framework has yet to be applied fully to most FIs, (other than banks, and to a limited extent money remitters) DNFBP, and VASPs the impact of supervisory actions can only be assessed as low. The low level of SAR reporting by non-bank financial institutions and DNFBP reflects the lack of AML/CFT supervision of those sectors.

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

389. Since 2020 the Banking Commission has devoted significant time and resources on promotion and outreach in respect of the findings of the NRA as well guidance for reporting entities on their AML/CFT obligations. This has been delivered in a number of forms, from stakeholder presentations, written guidance, and informal meetings with reporting entities. Reporting entities in interviews explained to the assessment team that these face-to-face presentations and meetings where particularly helpful for them to understand risks and AML/CFT obligations.

390. Written guidance has been issued by the Banking Commission and the AG's Office in respect of TFS, freezing and unfreezing assets in respect of TFS, specific guidance to DNFBP, PEPs and limited guidance on high risk jurisdictions.

391. However, there is a lack of information provided for sector specific guidance including typologies. In addition, there was general feedback from reporting entities that further guidance and training by the Banking Commission/FIU would be useful. There is strong need for more guidance on simplified measures, in order to support financial inclusion and free up resources for more targeted risk-based approach by FIs.

392. Interviews with reporting entities by the assessment team supported the view that actions taken by the Banking Commission were generally positive in terms of improving their understanding of their AML/CFT obligations and their compliance, although this is very recent. Most reporting entities acknowledged the engagement from the Banking Commission but did think more training and outreach could be done. In addition, there is no industry led initiatives, informal information sharing networks or groups that assist each sector with supporting those individuals who perform AML/CFT compliance within FIs of those sectors or in the private sector generally.

Overall conclusion on Immediate Outcome 3

393. The Banking Commission undertakes comprehensive licensing for banks. It applies the fit and proper testing requirements to licensed banks. Fit and proper regulations have been enacted for non-bank FIs but at the time of the onsite, application of the regulations to non-FIs was minimal. The Banking Commission has taken remedial actions against banks following their onsite examinations. The extent of remedial actions was reasonable for the banks, but the lack of remedial actions applied to other FIs reflects the lack of AML/CFT supervision of those sectors. In addition to its remedial actions, the Banking Commission is willing to impose sanctions for non-compliance of AML regulations.

394. As the AML/CFT supervision framework has yet to be applied fully to most FIs, (other than banks, and to a limited extent money remitters) DNFBP, and VASPs the overall effectiveness for supervision for non-bank FIs sectors are low. These deficiencies are medium weighted given the lower ML/TF risks these non-bank FIs present.

395. There has been no AML/CFT supervision of DNFBP although the DNFBP sector is low risk for ML/TF. The absence of AML/CFT supervision on Marshall Island entities that provide company services in some form, in particular MIDAO is a heavily weighted deficiency.

396. **Marshall Islands has a moderate level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

a) The Marshall Islands has not implemented effective measures to prevent the misuse of legal persons for ML/TF purposes, particularly in the offshore corporate sectors (NRDE) and recently the DAO sector.

b) The NRDE registry is operated by TCMI, a privately held Marshall Islands company owned by IRI. TCMI is well resourced. The Marshall Islands did not demonstrate effective government oversight and accountability of the privately held NRDE registry.

c) The onshore corporate Registrar for RDE (which includes DAO) is in the AG's Office, but lacks capacity to ensure compliance and obtain sufficient information to understand control of DAO.

d) Some of the risks of legal persons (domestic corporates and NPO DAO) have been assessed well and understood to some degree, but significant gaps remain in assessing and responding to the considerable risks of the NRDE sector.

e) There is insufficient filing and updating of basic information on RDE (including DAO) and NRDE with the registries to ensure that this information is available to competent authorities.

f) NRDE have an obligation to provide BO information to the Registrar for NRDE (TCMI) upon request, and TCMI holds BO information on bearer shareholdings, NRDE associated with Marshall Islands-flagged vessels, and certain other NRDE; however, there are no other mechanisms to ensure the beneficial ownership information is accurate and up to date.

g) There are no DNFBP involved in forming and managing NRDE that may collect, verify BO information of NRDE and provide it to competent authorities.

h) At the time of the onsite visit, MIDAO, the private entity involved in providing company services to DAO, was not obliged to collect and verify the accuracy of BO information.

i) While there are effective controls on bearer shares, there are no controls on nominee directors or shareholders or share warrants issued in bearer form.

j) Marshall Islands demonstrated that NRDE provide director, shareholder and BO information to TCMI, usually through the cooperation of a QI, in a timely manner when requested, however TCMI does not take sufficient steps to verify or check the accuracy of the reported information. The lack of basic information (directors) compounds the weaknesses with obligations to verify BO information.

k) Enforcement of obligations on legal persons for transparency was not well demonstrated. The Registrar for NRDE (TCMI) has struck off NRDE that have failed to provide basic or BO information upon request, but has reinstated them when information was provided and a penalty fee was paid. TCMI has undertaken limited enforcement action in relation to other requirements. Registrar for RDE (AG's Office) has not undertaken enforcement in relation to RDE (including DAO) that failed to meet transparency obligations.

l) Marshall Islands does not have an operating trust sector, and there are measures to support the transparency of trusts and capturing information on settlors or trustees.

m) LEAs and the FIU did not demonstrate examples of using investigative strategies to obtain information on the beneficial ownership and control of legal persons or arrangements in the course of developing financial intelligence or conducting financial investigations.

n) Authorities have provided international cooperation in response to many requests received for basic and BO information of legal persons, mostly for NRDE. Concerns remain that the accuracy of BO information provided by NRDE in response to requests cannot be established in some cases.

Recommended Actions

a) Complete risk assessments of the NRDE sector and for-profit DAO sector and form an action plan to ensure there is a shared understanding of the risks and to implement reforms to mitigate the risks.

b) Ensure effective government oversight and accountability of the privately held NRDE registry.

c) Establish comprehensive requirements on legal persons to file and update basic and BO information to the registry, obligations to identify and verify BO, and mechanisms to ensure BO information is accurate and available to competent authorities.

d) Ensure that the Registrar of NRDE (TCMI) maintains full and up to date basic information for NRDE.

e) Ensure that MIDAO, as the DNFBP providing company services to DAO, is supervised for AML/CFT and is able to provide BO information to competent authorities upon request.

f) Ensure registrars implement and maintain effective frameworks for monitoring and enforcement actions to ensure compliance with obligations to maintain and report accurate and up to date basic and BO information and related data sets that support verification of information being accurate.

g) Extend effective controls on nominee directors or shareholders and on share warrants in bearer form.

h) Support the AG's Office to have sufficient capacity to regulate DAO and to regulate and enforce compliance of all RDE (including DAO).

Immediate Outcome 5 (Legal Persons and Arrangements)

Non-resident Domestic Entities (NRDE)

397. Marshall Islands has a long running offshore corporate sector, or international business companies (IBCs), referred to as non-resident domestic entities (NRDE). NRDE are formed under Marshall Islands law but are not permitted to do business in Marshall Islands. There is a long standing practice across all banks in the Marshall Islands not to have NRDE as a customer, which helps to reduce risks in the Marshall Islands. There are approximately 41,200 NRDE as of 30 November 2023. The Registrar for NRDE (TCMI) estimates that the majority are linked to a Marshal Islands flagged vessels but was not able to fully account for this.

Table 7.1 – NRDE as of 30 November 2023

Entity Type	*Number*
Corporation	38,215
Limited Liability Company	2,924
Limited Partnership	61
General Partnership	1
TOTAL	41,201

398. The offshore corporate sector does not include any offshore banks.

399. Under statute the TCMI is the Registrar for NRDE. The Marshall Islands has a unique regulatory model for the NRDE sector, with the Registrar role conducted by a privately held registry service provider (TCMI), which is incorporated in the Marshall Islands, but is privately owned by a private US company, International Registries Inc (IRI). Under statute the TCMI is also the Marshall Islands Maritime Administrator (shipping registrar).

400. An intercompany agreement governs the terms and scope of IRI's services to the TCMI. IRI provides 'technical and administrative support' to TCMI. This technical and administrative support includes employees of IRI being appointed as Deputy Registrars by the Registrar (TCMI) with IRI's website the sole place to make applications and market the registry globally. IRI has been administering maritime and corporate programs and involved in flag State administration since 1948 and the Marshall Islands offshore sector since 1990.

401. None of TCMI staff are employed by the Marshall Islands government. The IRI has 456 employees. TCMI has 25 employees.

402. Under statute, TCMI is the registered agent for all NRDE, with the registered agent role limited solely to as the address for service of legal process, notice or demand for each NRDE. Statutory functions of the Registrar, including incorporation of NRDE are carried out by 65 Deputy Registrars holding statutory appointments through the Registrar in accordance with s4(3) of the BCA. Deputy Registrars exercise authorisation delegated from the Registrar under s4(3) of the BCA to file instruments and issue certificates and certified copies with respect to those filings.

403. The vast majority of Deputy Registrars are employed by IRI are located outside of the Marshall Islands (there are 28 IRI offices around the world). There are six Deputy Registrars located in the Marshall Islands.

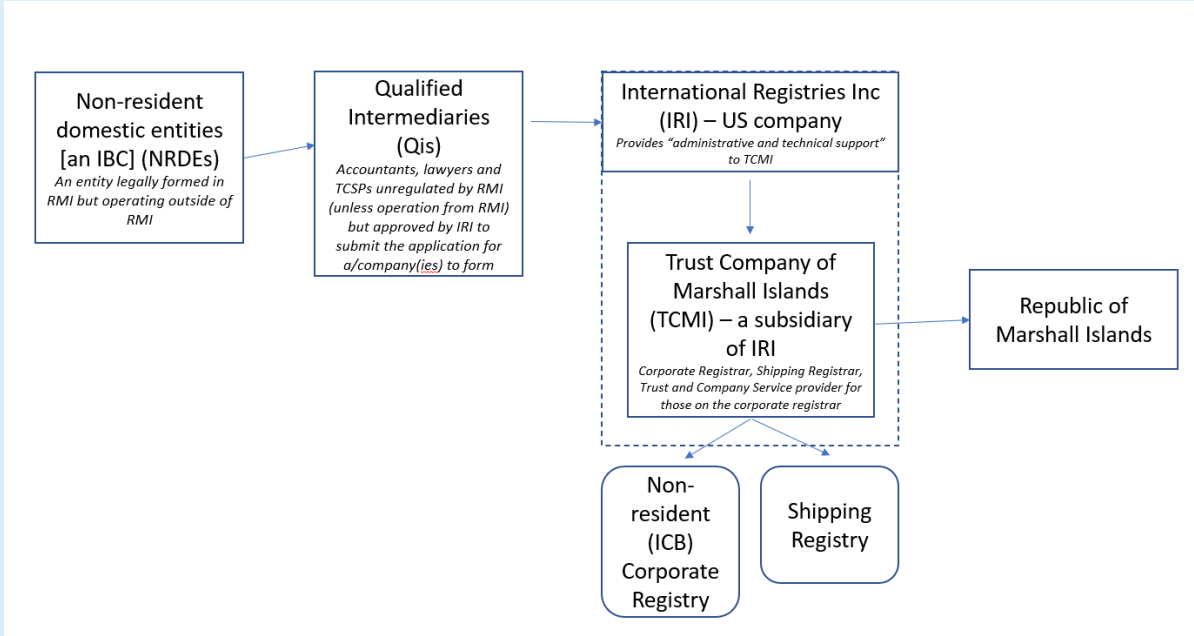
404. The privatised Corporate Registry for NRDE brings very particular risks. The functions of TCMI as the Registrar for NRDE are not subject to continuing formalised oversight by government or the parliament. A yearly audit must be provided directly to the Minister of Transport, but at the time of the onsite visit there are no processes to share this audit with other authorities or respond or take action to it. In addition, the audit covers the statutory functions of TCMI (both the maritime administration and corporate registry) and because the functions of TCMI regarding the corporate registry are high level (mostly granting permission as the registrar but without any requirements on how this role is to be carried out), many of the controls that are in place are through commercial contracts rather than statute. There are concerns that the audit process does not sufficiently examine whether the registrar for NRDE is effectively applying controls relevant to AML/CFT.

405. The IRI website, serves as the marketing portal for the registry as well as the sole website to receive applications. The IRI website also advertises the availability and advantages of shelf companies in Marshall Islands, and the confidentiality of NRDE.

406. While the regulations for NRDE require that BO information will be collected by the NRDE and made available to the Registrar for NRDE (TCMI) upon request, there are limited mechanisms to ensure that it is accurate when provided. NRDE almost always provide some information when asked for BO information, but there are limited channels to check or verify BO information provided. Marshall Islands authorities indicated that they have not received feedback from international partners that BO information provided in respect of NRDE has been incomplete or inaccurate.

407. Based on available data including information provided by Marshall Islands authorities, the assessment team's description of the offshore corporate sector is set out in the diagram below.

Relationships between actors in the offshore corporate sector



Qualified Intermediaries (QI) for NRDE

408. TCMI as the Registrar for offshore entities (NRDE) only accepts documents for filing if submitted by QIs. QIs are attorneys, accountants, or corporate services companies that have been vetted and approved by TCMI. QIs perform some company services for NRDE customers; principally in completing and filing the necessary instruments to create an NRDE. To be approved, TCMI requires QIs to either demonstrate that they are subject to FATF's CDD requirements in the jurisdiction where they are located or declare that they will meet FATF standards for CDD for all NRDE the QI represents. They must also satisfy the Registrar that they perform screening against UN, US, EU, and other sanctions lists and that they will provide identification data and other KYC documentation to TCMI without delay upon request.

409. DNFBP in the Marshall Islands do not generally provide company services to NRDE. Most QIs are not based in Marshall Islands and are therefore not regulated or supervised within the Marshall Islands; they may be regulated and supervised by their domestic jurisdiction.

410. Many QIs are in jurisdictions where DNFBP are not included in AML/CFT controls. However, under TCMI's auditing of QIs, if TCMI considers a QI has failed to meet these standards TCMI will impose heightened CDD requirements, such as requiring that up-to-date BO information be provided with every request for service (filing, copies, etc.), or revoke their approval to act as QIs.

Resident Domestic Entities (RDE) –Decentralized Autonomous Organisation (DAO)

411. The Marshall Islands passed the Non-Profit Entities (Amendment) Act 2021 in November 2021 and the Decentralized Autonomous Organization Act 2022 (DAO Act) in November 2022 to allow DAO to form as resident domestic LLCs (whether for profit or NPO). Regulations under the DAO Act were pending at the time of the onsite visit but were not provided to the assessment team. The assessment team finds that in keeping with the FATF definition DAO are also VASPs in certain situations, since they administer instruments enabling control over virtual assets such as tokens on the blockchain (see IO. 3 & 4).

412. DAO are required to be registered with the AG's Office, in its capacity as Registrar for RDE (as for all RDE). There are no resources or capability with the AG's Office to monitor the DAO after registration to understand how control of DAO changes over time with the operation of 'smart' contracts, and the DAO themselves are not physically resident in the Marshall Islands.

413. MIDAO is formed as an RDE and, by agreement with the Marshall Islands government, MIDAO is the sole registered agent for all DAO LLCs. While the activities it undertakes meets the definition of DNFBP in the Banking Act, MIDAO only came under AML/CFT Regulations as a TCSP at the time of the onsite visit and had not yet been supervised for AML/CFT purposes.

414. MIDAO's website acts as the sole place for registration of DAO LLCs. The majority of the website's purpose is business promotion, advertising the advantages of a Marshall Islands DAO LLC such as 'Tax optimisation' and 'avoids US jurisdiction'. The website does contain information about the registration process.

Resident Domestic Entities (RDE) – Other

415. As noted above, the AG Office is the Registrar for RDE. The Department of Tax and Revenue may also be involved in the formation of a resident domestic entity if any owner is not a citizen of the Marshall Islands, as a Foreign Investment Business Licence (FIBL) would then be required.

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

416. Information on the creation and types of legal persons and arrangements is mostly limited to the relevant statutes, which are publicly available on the Marshall Islands government website.

417. For offshore corporates (NRDE), information is included on IRI's website about the process to form an NRDE including obligations on NRDE, e.g. NRDE obligation to maintain BO information and provide it to a competent authority if requested. The IRI website also advertises the availability and advantages of shelf companies in the Marshall Islands, as it does advertise the confidentiality of NRDE.

418. For DAO, MIDAO, as the company service provider for all DAO formed in the Marshall Islands, does have some information on its website about the creation and types of DAO in the Marshall Islands.

419. For other (non-DAO) RDE further information would usually be available from the AG's Office, however the AG's Office website was not operational at the time of the onsite visit.

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

NRDE (offshore entities)

420. Competent authorities are generally aware of the level of risk posed by different types of legal persons and these are outlined in vol.3 of the NRA. However, competent authorities generally did not demonstrate a clear understanding of the features of legal persons that create vulnerabilities for ML, and the extent to which legal persons created in the Marshall Islands can be, or are being misused for ML/TF, including used to obscure BO identities in the offshore corporate sector.

421. There appears to be a lack of understanding of how NRDE (particularly those not involved in the shipping sector, or not linked to a Marshall Islands flagged vessel) can be misused for ML/TF, including being used to obscure identification of BO. Authorities recognised the risks of a lack of transparency, but the particular risks are not further considered in the absence of a comprehensive assessment of the risks posed by NRDE and the lack of a legal framework to ensure transparency of NRDE.

422. Risks associated with NRDE were considered in the NRA, which identified NRDE as a high risk and one of the Marshall Islands' five strategic priorities, noted basic and BO requirements for NRDE, and that ML/TF vulnerabilities in the Marshall Islands derive mainly from the offshore entities (NRDE) registration sector and could affect the Marshall Islands as a whole. A specific risk assessment on offshore entities (NRDE) sector and the arrangements concerning its registry and company service providers has been commenced. Findings had been considered by the National AML/CFT Council at the time of the onsite visit but an NRDE sector risk assessment was not finalised.

423. The risks posed by the unique regulatory model for NRDE (privatised registry) may not be well understood. The regulatory model on NRDE may result in little information being collected on parties to an NRDE in some cases and limited mechanisms or channels to be able to check or verify basic or BO information that might be provided by an NRDE when requested by the Registrar for NRDE (TCMI). The model relies heavily on QIs undertaking to apply AML/CFT controls and NRDE attesting that they can provide BO information when asked, with some limited auditing of QIs in this function. There are limited mechanisms and data holdings to allow any party in the Marshall Islands or the IRI or any QI involved with the NRDE to verify or check information provided to TCMI when requested. As the two

TCMI registries (maritime administration and the other for NRDE registry) are not automatically linked, manual cross checking would apply.

424. In some cases the Registrar for NRDE (TCMI) holds limited information on corporate directors or other stakeholders. For the more than 800 NRDE that have issued bearer shares, basic and BO information for the holder of each bearer share is recorded with TCMI. NRDE may record director, shareholder and BO information with TCMI by submitting a Declaration of Incumbency – on average, approximately 10,000 Declarations of Incumbency are recorded by NRDE each year. For NRDE associated with one of the more than 5,600 Marshall Islands flagged vessels, information collected by the Maritime Administrator (TCMI) as a part of vessel registration may be used for verification purposes. In addition, identification documents, proof of residence, police clearance certificates, and other documentation is collected as needed in the course of screening all known parties against UN, US, EU, and other national and international sanctions lists and lists of persons publicly accused, investigated, arrested, charged, indicted, detained, questioned, or put on trial related to any criminal activity.

425. A number of foreign ML cases involving NRDE indicate some of the vulnerabilities of NRDE as outlined in the case summary below.

Research on the use of Marshall Islands NRDE in Scottish Limited Partnerships & ML Risks

In June 2017, Bellingcat and Transparency International UK released "Offshore in the UK" which analysed the use of Scottish Limited Partnerships ("SLPs") as mechanisms for corruption and money laundering. The research showed a vast increase in the rate of incorporation of in the 10 years leading up to the study and that 71% of all SLPs registered in 2016 were controlled by companies based in secrecy jurisdictions, including a significant number of NRDE from the Marshall Islands.

In 2019 Bellingcat published Smash and Grab, the UK's Money Laundering Machine[64] which analysed data and cases relating to UK LLP and SLPs. Data analysis and case studies in the report (pages 17 & 18) show high numbers of Marshall Islands NRDE featuring in higher risk use of SLPs. The report includes a number of ML cases, including SLP partners that are NRDE. For example, the incorporators of some NRDE were connected to UK shell companies (Always Efficient LLP) that were connected to laundering proceeds of the Mt Gox Bitcoin hack in 2015.

426. As outlined in IO.1 and IO.11, TCMI (the Registrar for NRDE) demonstrated a good understanding of the risks of NRDE relating to sanctions evasion, especially in relation to DPRK.

RDE -DAO

427. Officials showed a high level of awareness of the significant risk that DAO pose, but less understanding of the risks stemming from DAO forming as LLCs (such as the strong possibility of being able to evade beneficial owners' identification and CEOs getting limited liability). There was not as much awareness of the vulnerabilities in LLC Act and how those vulnerabilities grow when a DAO

[64] https://www.bellingcat.com/app/uploads/2019/09/Smash-and-Grab-The-UKs-Money-Laundering-Machine.pdf

applies. As outlined in IO.1, a comprehensive risk assessment has been done of the NPO DAO sector but work had not commenced to assess the risks of for-profit DAO.

428. The DAO risk assessment recognises that when beneficial owners cannot be identified due to the availability of a DAO NPO member's Digital Ledger identifier (s.117 (1)(f) of the Non-Profit Entities Act), this would expose the Marshall Islands to the risk of DAO NPO being used anonymously for illicit activity such as ML and TF.[65]

RDE – Other that are not DAO

429. There was a good level of understanding of the ML/TF risks from non-DAO RDE, and how the FIBL process when required acts as a mitigation. The FIBL process does a relatively thorough check of information on RDE.

Mitigating measures to prevent the misuse of legal persons and arrangements

NRDE

430. The Marshall Islands has not sufficiently implemented measures to prevent the misuse of NRDE for ML purposes by ensuring up to date and accurate basic and beneficial ownership information is available to competent authorities in a timely manner. As outlined above, the current requirements see the Registrar for NRDE (TCMI) holding limited information on officers or other stakeholders in some cases. Whilst the Registrar has shown a good history or providing information on NRDE when requested by competent authorities, the Registrar does not hold up to date information on an NRDE's beneficial ownership in some cases and limited measures in some cases are in place to verify filed information or to ensure BO information is accurate and up to date.

431. The following table sets out NRDE for which the Registrar for NRDE (TCMI) holds basic/beneficial ownership information.

Table 7.2 - NRDE that may have filed information with TCMI relevant to BO

Source of Information	*# of NRDE*
1. NRDE linked to Marshall Islands-flagged vessels through ownership[66]	13,432+[67]
2. NRDE with bearer shares (net of 1)[68]	732
3. NRDE with Declarations of Incumbency (net of 1 & 2)[69]	21,667
TOTAL	***35,831+***

432. There is a public registry of NRDE that contains the limited required basic information for an NRDE. Importantly, however, no natural person may be identified on the registry as information on directors is not required to form an NRDE (in line with advertisement of confidentiality by IRI on their

[65] Risk Assessment DAO NPO dated May 2022

[66] The only direct searchable link between the NRDE registry database and the ship registry database is in respect of vessel ownership by NRDE.

[67] Beyond ownership, vessels typically have many NRDE associated for management, operations, manning, bunkering, chartering, etc., but the system does not currently capture or link to which of those are NRDE

[68] 818 NRDE, less 86 linked to RMI-flagged vessels by ownership.

[69] 24,879 NRDE, less 3,212 with bearer shares and/or linked to RMI-flagged vessels by ownership.

website which stresses that that a corporate search will only reveal publicly filed documents, thus protecting the names of corporate officers, directors, and stakeholders not listed in the public domain).

433. Existing information held by intermediaries involved in forming or administering an NRDE does not ensure that information on the BO of an NRDE is available and accurate in all cases. The creation of NRDE is facilitated by a QI who is not regulated or supervised for AML/CFT by Marshall Islands authorities. QIs commit to undertaking KYC on NRDE when forming, but as this is through a commercial arrangements with the Deputy Registrars it is not enforceable by Marshall Islands authorities.

434. TCMI has demonstrated that action has been taken against QIs that fail to meet their commitment to provide information, including BO information pursuant to commercial arrangement between QIs and Deputy Registrars (terms and conditions for approval to act as a QI). Actions have included suspending a firm's ability to act as a QI, or requiring up-to-date BO information to be provided with every request for service, when non-compliance with KYC has been identified.

435. The Registrar's gatekeeping mechanism to vet persons/firms before they become a QI has attempted to ensure QIs involved in company services apply CDD and sanctions screening in line with FATF standards into their policies and activities. Large vulnerabilities remain as many of these QIs are located in jurisdictions where they are unregulated by AML/CFT authorities at all, or in relation to their services for NRDE, limiting the ability of supervision to be effective.

436. The TCMI, in the role of resident agent for every NRDE, provides a service of process address and records any bearer shares. This arrangement is essentially unchanged since the last assessment.

437. TCMI has in recent years started to proactively audit NRDE for their record keeping obligations. Previously this had involved asking for all records kept NRDE, but more recently this audit has mostly involved checking record keeping policies. TCMI reported that it carried out more than 2,800 compliance actions related to recordkeeping in 2022 and more than 2,600 in 2023, including warning letters to NRDE that had failed to make a recordkeeping attestation as required under the Associations Law and audits. As of 2023, six Deputy Registrars (up from five in 2022) are assigned to identify non-compliance by NRDE. However, TCMI indicated that only one of these six Deputy Registrars does this in a full-time capacity; one more is in a consulting-type role, and the other four are able to assist in auditing when needed.

438. For the two-year period of 2022 to 2023, TCMI audited more than 1,350 NRDE. Selection for auditing takes risk into account, including any information that an NRDE is carrying out higher risk business activities. The Registrar collected $468,250 in monetary penalties related to recordkeeping violations in 2022 and $493,500 in 2023. Of the NRDE audited, 25 NRDE were forcibly dissolved for failure to maintain records in 2022 and 16 in 2023.

439. The Registrar for NRDE (TCMI) has a policy of not allowing the formation of an NRDE when the purpose of the entity is obviously against societal norms in the Marshall Islands (such as a business involved in pornography) and of using available means to dissolve those found to be carrying out such purposes or activities after formation. In instances where such activity against societal norms is detected, the business will be refused formation as an NRDE or, if already formed, struck off. In addition, the Registrar for NRDE does not allow any NRDE to engage in activities prohibited by the Associations Law, including VASP, insurance, trust services, or banking activity and TCMI monitors for and takes action in case of possible breaches of these prohibitions.

440. Transparency is somewhat improved for those NRDE that are connected to Marshall Islands registered vessels or related maritime services. While there are no additional requirements under the

Associations Law, the various overlapping maritime-related regulatory requirements results in TCMI, in its capacities as Registrar for NRDE and Maritime Administrator, holding considerably more information on parties to maritime-related NRDE. There are more than 5,600 Marshall Islands-flagged vessels, and TCMI indicates that a majority of registered NRDE are maritime related in some way, but TCMI cannot demonstrate the shipping-related sub-sectors that these measures apply to. For those NRDE, TCMI receives and screens a wider range of ownership information that is provided pursuant to the various shipping-related process administered by TCMI.

441. Measures have been implemented to mitigate any risks posed by bearer shares. The relevant statute requires that a full range of information be collected and kept with the registered agent TCMI in order for the shares to remain valid.

442. No measures, however, have been put in place to prevent misuse from nominee directors and shareholders, while both are being used by NRDE (offshore companies). Controls have not been put in place for share warrants held in bearer form (which may be facilitated by a company's article of incorporation).

RDE – DAO & Other

443. There is no public registry for RDE, including DAO. Information on directors is not required to form an RDE.

444. Whilst Marshall Islands authorities have a good understanding of some of the risks posed by DAO, measures have not been implemented to prevent the misuse of DAO. MIDAO is the sole registered agent for DAO, but it was not being supervised as a TCSP and did not conduct CDD or report STRs. However, at the time of the on-site visit MIDAO had just been notified by the FIU that they were considered to be a TCSP and as such needed to start meeting the legal requirements placed on TCSPs in Marshall Islands. The AG's Office, in its capacity as Registrar for RDE, does not check the BO information of a DAO before registering it, only asking for some basic information and do not verify this basic information. After formation, no checks are done by the AG's Office on the activities of the DAO as they lack the capability or resources to do so (e.g. having access to blockchain analysis, or having an understanding of how to use blockchain analysis to support their registrar role).

Trusts

445. There is a legal framework setting out the legal recognition and formation of trusts, including a Marshall Islands Trust (foreign trust). Importantly, the Registrar of Trusts (Majuro International Trust Company) has been inactive since it was formed. As a result, no trust (Marshall Islands trust or other domestic trust) has ever been registered. This is a deliberate policy choice that remains unchanged from the 2011 MER. Marshall Islands has indicated its continued commitment to keep the system inactive, as it has been since its inception in 1996.

446. Trustees of foreign trusts may hold accounts or operate corporate entities in the Marshall Islands if registered under the Trust Act, but none are registered. There are obligations on trustees of foreign trusts to obtain relevant information and to declare their status to an FI or DNFBP. Marshall Islands authorities have not identified any foreign trustees in the Marshall Islands or used available powers to seek records on trusts from such trustees. CDD obligations on FI and DNFBP in the Marshall Islands should see CDD information collected on trustees, which would be available upon request. See IO.4 for discussion of the quality of CDD performed by FI/DNFBP.

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

447. While both registrars (the AG's Office for RDE, including DAO, and TCMI for NRDE) will provide all information they hold on an entity when required, neither registry holds all of required basic information on legal persons, in all cases. No information on directors is required to be kept with the registry. NRDE must file bearer share details with TCMI (more than 800 NRDE have done so). Other NRDE may record director and shareholder and BO information with TCMI by submitting a Declaration of Incumbency – on average, approximately 10,000 Declarations of Incumbency are recorded by NRDE each year. For NRDE associated with one of the more than 5,600 Marshall Islands-flagged vessels, BO and other information is collected by the Maritime Administrator as a part of vessel registration. In addition, identification documents, proof of residence, police clearance certificates, and other documentation is collected as needed in the course of screening all known parties against sanctions and criminal lists. Entities are required under law to maintain up-to-date BO information and provide BO information if asked, but there is no verification by these registrars or any other competent party (such as MIDAO as the sole agent for DAO) of this information before it is passed on.

448. TCMI has requested information including BO information from NRDE as per requests from competent authorities (usually in response to international cooperation requests from foreign partners). BO information was successfully accessed and exchanged with partner jurisdictions in response to nearly 80% of requests by international partners (including MLA, tax EOI requests, etc.) in the period 1 January 2020 to 30 May 2023. The Marshall Islands received no feedback from partner jurisdictions that the information provided was incomplete or inaccurate. In some instances, requests for such information have not been responded to by NRDE. Out of 111 requests between 1 January 2020 to 30 May 2023 that sought BO information (all foreign requests), 25 requests failed to produce BO information. NRDE failing to produce information were forcibly dissolved by the Registrar for NRDE in accordance with the Associations Law. The AG's Office, as the Registrar for RDE, has not yet requested BO information from RDE.

449. There is a public registry for NRDE but information is limited to some basic information (no directors are recorded) and no natural person is identified on the registry in some cases. The public registry for RDE contained the same limitations and was only available in-person at the time of the onsite visit (no web interface).

450. LEA and the FIU did not demonstrate examples of using investigative strategies to obtain information on the beneficial ownership and control of legal persons in the course of developing financial intelligence or conducting financial investigations. LEA did not demonstrate instances of pursuing beneficial ownership of foreign corporates through INTERPOL or other channels.

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

451. There is no sector of trusts settled under Marshall Islands law and no clear indicators of foreign trusts operating in the Marshall Islands. There are measures to support the transparency of trusts and capturing information on basic and beneficial ownership and control. There are foreign trusts that hold assets or whose trustees or beneficiaries are in the Marshall Islands. Marshall Islands authorities indicated that they are not aware of any foreign trusts operating in the Marshall Islands (trustees investing in the Marshall Islands or forming RDE or NRDE. One foreign trust (US-based) operates in the Marshall Islands as a service provider to Government employees who wish to enrol in a retirement plan

(savings). This foreign trust is also authorised under the BCA and licensed under the FIBL, Companies Act and the Banking Act (as a financial services provider) to do business in the Marshall Islands. It is not known if, or how many, other foreign trusts are operating. However, based on the absence of foreign trust, trust company, and trustee applications for authorisation and licences to do business in the Marshall Islands and the limited market for foreign or domestic trust services in the Marshall Islands, Marshall Islands authorities suspect this number is low (if any).

Effectiveness, proportionality and dissuasiveness of sanctions

452. There is a legal framework providing for sanctions against both RDE and NRDE for non-compliance with information requirements, but sanctions (fine of up to $50,000, forcible dissolution, or both per violation) are quite low. No sanctions have been applied for non-compliance with information requirements by RDE.

453. The Registrar for NRDE (TCMI) has dissolved companies for not responding to information requests. To incentivise NRDE to provide the information requested, NRDE forcibly dissolved for failure to produce records may be reinstated upon both (i) production of the delinquent records, and (ii) payment of a monetary penalty. For 111 information requests received from partner jurisdictions between 1 January 2020 to 30 May 2023, a total of 25 NRDE were forcibly dissolved for failure to produce information upon demand. One of those 25 NRDE produced the requested records shortly after the forcible dissolution and paid the monetary penalty in order to be reinstated. In addition, the Registrar collected $468,250 in monetary penalties related to recordkeeping violations in 2022 and $493,500 in 2023 as part of their auditing of NRDE.

454. The Registrar for NRDE (TCMI) has also taken actions against QIs for failure to follow information requirements. If the Registrar determines a QI has failed to meet FATF standards for CDD, to perform adequate sanctions screening, or to provide records upon request, the Registrar will impose heightened CDD requirements, such as requiring that up-to-date BO information be provided with every request for service (filing, copies, etc.), or revoke its approval to act as a QI. Between 2020 and 2023, the Registrar imposed heightened requirements on three (3) QIs, which remain in place, and the Registrar permanently revoked the approval of 22 QIs. It is not clear what other action could be taken against QI.

Overall conclusion on Immediate Outcome 5

455. NRDE particularly in the global context and DAO present substantial ML/TF risks and are significant features of Marshall Islands economy, the absence of sufficient mitigation measures against these risks have therefore been highly weighted. Further, there are risks that NRDE, through their offshore nature, and risks that DAO, can and are being used to obscure beneficial ownership. There is a lack of comprehensive requirements on legal persons to file and update basic information of directors to the registries (operated by TCMI and the AG's Office). Mechanisms to identify and verify BO to ensure it is accurate when made available to competent authorities are not well supported. There are obligations for transparency of trusts in the Marshall Islands has ensured that is has not operationalised the domestic trust sector. Noting the context of the very low, if any, presence of foreign trusts in the Marshall Islands, there has been no use of powers to obtain information from trustees of foreign trusts. TCMI has applied sanctions against NRDE for non-compliance with information requirements, but no sanctions have been applied by the Registrar for RDE for non-compliance by RDE.

456. **The Marshall Islands has a low level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

a) The Marshall Islands has taken some steps to identify shared ML/TF risks with other jurisdictions, but there is a need for further work to guide priority international cooperation (proactive and reactive) with jurisdictions with shared risk, notably in relation to NRDE.

b) The Marshall Islands generally provides constructive and timely MLA requests. A lack of case management system and resourcing in the AG's Office has undermined the timeliness in responding to some received MLA requests.

c) Authorities do not utilise MLA as a policy objective and this does not align with their risk profile, particularly in respect of corruption related threats.

d) The legal framework is in place for extradition but practical challenges remain which affect Marshall Islands' ability to effectively utilise extradition for domestic ML and associated predicate offences.

e) The Marshall Islands provides and seeks informal international cooperation, but this could be improved for investigations into domestic ML and associated predicate offences. The Marshall Islands lacks a case management system for formal international cooperation requests and there are gaps with monitoring of FIU to FIU requests.

f) Marshall Islands generally provides basic and beneficial ownership information relating to RDE, including DAO, and NRDE (offshore entities) to the extent that information is recorded by the relevant Registries. However, the deficiencies in the oversight and verification of NRDE may affect the currency and accuracy of the information provided. No requests have been made in respect of RDE.

Recommended Actions

a) Ensure further risk assessments identify ML/TF risks shared with other jurisdictions to better target priority international cooperation (proactive and reactive) with jurisdictions with shared risk, notably in relation to the NRDE sector.

b) The Marshall Islands should ensure that contact details for competent authorities are easily accessible for MLA and extradition requests (AG's Office website to be completed)

c) Implement a case management system that ensures appropriate monitoring of receipt, processing and response for MLA and extradition requests

d) Implement additional processes for monitoring of FIU to FIU requests, including processing spontaneous ESW disseminations received.

e) Authorities should better target and use international cooperation as part of regulatory / supervisory / investigation / prosecutions, in line with the identified ML risks. This is particularly with US authorities where a greater number of investigation links are noted.

f) Authorities share data on international cooperation requests received, especially with the FIU, to support greater cooperation and future risk assessments.

457. 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)

MLA

458. The Marshall Islands has a legal framework that allows it to provide constructive mutual legal assistance (MLA). The Mutual Assistance in Criminal Matters Act 2002 designates the Attorney General (AG) as the competent authority responsible for receiving MLA requests. MLA requests may be made directly to the AG Office or any other person authorised by the AG to receive such requests. The MACMA regulations set out procedures and timing for responding to requests. Determinations of whether a request should be granted, refused or postponed must be made within the seven days and granted requests should be completed within 21 days.

459. Since 2017 the Marshall Islands has received a number of MLA requests from other jurisdictions and the majority of requests have been executed in a constructive and timely manner. The main type of MLA request received has been requests for production of information related to NRDE.

Table 8.1: MLA requests made and received

	2017	2018	2019	2020	2021	2022	2023
MLA requests received	11	30	12	7	1	10	6
Requests sent by the Marshall Islands	0	0	0	0	0	0	1

460. MLA requests are received by the Ministry of Foreign Affairs or sometimes directly by the AG's Office. Particular challenges are noted for requesting jurisdictions to obtain information about the processes and points of contact for MLA requests. While the AG's Office is the central authority for MLA, at the time of the onsite visit the AG's Office website was not operational and forms and information on MLA process were not available online.

461. The AG does not have a case management system in respect of MLA requests received and when received they are allocated by the AG to staff within the Office that have capacity to review the request. Information is then extracted from the request and then detailed in a memorandum which is then sent to the relevant LEA or other competent authority (including TCMI in many cases) for action. TCMI, in its capacity as Registrar for NRDE, maintains a tracking system to monitor its progress on MLA requests received from the AG's Office. Between 2020 and 2023, the median response time for information on NRDE requested by the AG's Office for MLA was 8 days.

462. Very few complex MLA requests have been received. None of the MLA requests received by the Marshall Islands in the period under review required the use of coercive powers or detailed investigative steps. Many of the requests received relate to company records or tax records of s administered by TCMI.

463. Once relevant information is received in response this is then transmitted back to the requesting jurisdiction typically within 1-2 weeks of receipt of the request. TCMI demonstrated experience with obtaining information from NRDE and providing it to Marshall Islands authorities pursuant to an MLA request for BO and other information on NRDE.

464. The overall number of MLA requests and types of requests aligns with the overall risk profile of the Marshall Islands. This is reflected in the large proportion of MLA requests that relate to NRDE and which were responded to in a short period of time.

465. The AG has not refused an MLA request to date. While feedback from foreign jurisdictions on Marshall Islands' international cooperation is limited, there was some evidence that a small number of MLA requests made were still pending completion. The AG has had challenges with staff turnover and retention in the last 5 years and this along with not having a case management system for MLA requests has likely led to MLA requests remaining un-actioned despite follow ups from requesting jurisdictions.

Extradition

466. The Criminal Extradition Act establishes the legal framework for extradition in Marshall Islands, however extradition requests to the Marshall Islands are rare. The only extradition case took place in April 2018.

467. In the 2018 extradition case, the United States requested extradition of a Marshall Islands citizen who was charged with two felonies in a Washington state court. Charges were related to his time served in the United States Army. The extradition request, which was received through diplomatic channels, was filed with the High Court by the AG following the Cabinet's approval to grant the request from the US authorities and to issue an arrest warrant. After a two-day hearing, the High Court approved and issued its order to extradite the suspect. The High Court released the suspect from jail to work while waiting to be escorted by US Marshals. The accused died on May 5, 2018, before his extradition to the United States.

468. The number of extradition requests received is in keeping with the Marshall Islands' risk profile.

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

469. Marshall Islands rarely seeks legal assistance in respect of pursuing domestic ML associated predicate offences. Most Marshall Islands law enforcement authorities do not consider seeking MLA as part of their investigations, instead relying on police-to-police channels.

470. In the case of the US, the AG's Office is able to go directly to the US Department of Justice to achieve aspects of MLA without making an MLA request. As an example, the Marshall Islands demonstrated informal requests from the AG's Office to the US Department of Justice to obtain the assistance of expert witnesses from the US Federal Bureau of Investigation to give expert evidence in respect of a double homicide trial.

471. The number of requests made is not consistent with a number of high risk threats identified in the NRA, in particular corruption related investigations. In addition, during the in-country visit Marshall Islands authorities detailed a number of cases in which it was likely there was evidence in foreign jurisdiction to support investigations in the Marshall Islands, but MLA was not considered or sufficiently pursued.

472. The majority of international cooperation sought by Marshall Islands authorities is to assist in investigative techniques and, resources such as forensic tools.

473. Marshall Islands authorities have yet to make an extradition request. Authorities in the Marshall Islands evidenced a willingness to do so in relation to domestic ML associated predicate offending but authorities face challenges in relation to meeting the real and perceived costs involved in making an extradition request and weighing those against the underlying predicate offending. Authorities do not have any policies or criteria to assist them in making this decision.

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

474. Marshall Islands authorities can seek and provide international cooperation through various means and informal regional and international networks to which they belong. While this is sought from time to time by Marshall Islands authorities, the level of international cooperation sought by Marshall Islands is not aligned with the level of ML/TF risks for Marshall Islands, particularly in respect of domestic bribery and corruption risks.

475. Marshall Islands authorities demonstrated that they provide constructive and timely international cooperation through their regional and international networks when requested. Although evidence was provided regarding the timeliness of Marshall Islands responses, given the rarity of such requests and from discussions with Marshall Islands authorities, the assessment team is satisfied that priority is given to these requests and that they are responded to in a timely manner.

476. The MIPD cooperates internationally via INTERPOL and the Pacific Transnational Crime Network (PTCN). The Transnational Crime Unit (TCU), within the MIPD deals with all international requests for information, including with INTERPOL. The Marshall Islands - TCU has two dedicated INTERPOL Officers that report to the Police Commissioner. The MIPD regularly makes requests to conduct for criminal background checks requested by the FIBL Unit, Cabinet, AG, Traffic Division MIPD, and the Banking Commission.

Case Study

The Attorney General has provided assistance to the United States Department of Justice on a number of cases. One such case involving illegal adoption of Marshallese babies, involved coordinated efforts by local law enforcement agencies who sought the location and production of witnesses. The AG's Office coordinated the efforts and served as a conduit between the relevant local law enforcement agencies and the United States Department of Justice.

Table 8.2: Police to Police International Cooperation

	2018	2019	2020	2021	2022	2023
Requests made by MIPD	0	0	1	1	1	0
Requests received by MIPD	0	0	0	0	0	0

477. The FIU has been a member of the Egmont Group since 2009 and is able to send and receive spontaneous disseminations and information requests via Egmont Secure Web (ESW). The FIU is also a member of the Pacific Financial Intelligence Centre (PFIC) and is able to participate directly in regional risk assessment and strategic intelligence projects on various threats. However, there is no system to monitor ESW disseminations received and this has been meant there has been some gaps in the FIU responding to or providing feedback on some ESW disseminations. The FIU has not made any disseminations in respect of TF however it has received 1 spontaneous dissemination relating to TF in which no further action from Marshall Islands was undertaken.

Table 8.3: FIU International cooperation requests - to/from

	2017[70]-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
ESW disseminations by FIU	0	-	32	41	25	12
ESW requests received	1	30	32	42	28	14

Case Study – Misappropriation of public funds

In 2017, the FIU made three (3) requests through Egmont Secure Web to FinCEN, Financial Intelligence Unit Malaysia and Bureau of Fraud Investigations - Ireland regarding a case where the Baking Commission-FIU was asked for assistance from the AG's Office in tracing of the funds that were transferred from a Marshall Islands Government Account maintained at the State Street Bank via the United States intermediary banks, namely Standard Chartered Bank and Deutsche Bank Trust Company Americas, both in New York.

In 2016, the Marshall Islands entered into a Custodian Agreement with the State Street Bank and Trust Company for the custody of Marshall Islands Government Trust Fund - D Account. In June 2017, a series of instructions purportedly from the Marshall Islands Ministry of Finance, were sent to State Street Bank and Trust Company for the withdrawal of payments of large sums of money to beneficiary banks and accounts outside of the United States and Marshall Islands. None of the payment instructions issued to the State Street Bank and Trust Company for processing of payment of invoices were legitimate Government instructions. A total sum of approximately $1.6 million USD was siphoned off. Information requested from FinCEN, FIU Malaysia, and Bureau of Fraud Investigations - Ireland were provided to the Marshall Islands FIU in a timely manner.

[70] October - September

478. The AG's Office primarily uses informal cooperation with its counterparts to obtain international cooperation. This is particularly with US authorities in respect of investigations and prosecutions for individuals in the US with Marshall Islands connections.

479. Tax and Revenue received two tax related information exchange requests in 2020, none in 2021, one in 2022, and three in 2023. Tax and Revenue is able to cooperate internationally with at least 147 countries pursuant to tax information exchange agreements and the multilateral Convention on Mutual Administrative Assistance in Tax Matters. Through this mechanism, the tax authority exchanges ownership, accounting, and banking information for tax purposes on request. It also exchanges information automatically in accordance with the Global Forum's Common Reporting Standard. The Marshall Islands tax authority is also a member of the All Islands Tax Administrations Association (AITAA) and the Pacific Islands Tax Administrations Association (PITAA).

480. Customs is a member of OCO and are able to use the network to obtain international cooperation, however Customs primarily use this to access training and regional coordination projects.

481. The OAG has sought international cooperation from time and time in respect of investigations it has conducted in respect of corruption and misappropriation. During an investigation into bribery in 2014 the OAG sought and obtained expert computer forensic assistance from the Pacific Ombudsman Alliance (the OAG is a member). A computer forensic expert from Australia was able to help the OAG's with their bribery investigation. In the same case mentioned, the OAG also shared intelligence with the public auditors in the Federated States of Micronesia on the bribery case they were working on. The OAG is a member of the Pacific Association of Supreme Audit Institutions (PASAI). PASAI is a network of Pacific Island government audit offices that cooperate to improve transparency and accountability in managing public resources.

482. The Banking Commission is a member of the Association of Financial Supervisors of Pacific Countries (AFSPC) and is also an active member of the Pacific AML/CFT Supervisor's Forum. The Banking Commission has utilised both of these forums to build capacity and access technical assistance for supervisory cooperation with other jurisdictions.

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

483. The Registrar for NRDE (TCMI) demonstrated experience of obtaining BO and other information from NRDE, however the available information may not be accurate or up to date as there is no legal obligation for NRDE to verify BO information and TCMI lacks mechanisms to ensure the accuracy of BO information provided. The Marshall Islands has received no feedback from partner jurisdictions that the information provided was incomplete or inaccurate.

484. Marshall Islands laws require NRDE to use all reasonable efforts to obtain and maintain up to date internal record of the entity's BO. These are required to be kept by NRDE for a minimum of five years, however little basic information and no beneficial information (other than for bearer shares, NRDE that have recorded Declarations of Incumbency, and NRDE associated with Marshall Islands-flagged vessels) is held with the Registrar, TCMI in some cases.

485. NRDE are required under law to provide BO information if asked, but there is no verification of this information before it is passed on to the Registrar for NRDE (TCMI).

486. Between 1 January 2020 and 30 May 2023 BO information for NRDE was sought in 111 requests (MLA, tax EOI, etc). Marshall Islands was able to provide beneficial ownership for 81 of the 111 requests (five (5) related to non-Marshall Islands entities).

Information reported pursuant to the Economic Substance Regulations 2018

Since 2020 NRDE that meet the threshold are required to file reports with the Registrar for NRDE (TCMI) under the requirement of the Economic Substance Regulations 2018 (as amended) (ESR). The regulations are in line with the OECD's and EU's initiative to promote and strengthen tax good governance mechanisms, fair taxation and global tax transparency in order to tackle tax fraud, evasion and avoidance.[71]

The ESR requires all NRDE to file a report annually on economic substance with TCMI, in its capacity as Registrar. NRDE report information on their tax residence (along with evidence if they claim tax residence outside the Marshall Islands) and, if relevant, information on their business activities (particularly whether they carry our relevant geographically mobile activities). Depending on business activity selected, further information may be required (e.g., income, assets, expenses, FTEs). Compliance actions/audits are carried out by TCMI as the Registrar for NRDE to ensure NRDE are satisfying their obligations.

487. Exchanges are made with jurisdictions that have opted-in to receive spontaneous exchange from the Marshall Islands under the ESR framework. If the Registrar for NRDE (TCMI) determines that a relevant entity fails to meet the economic substance test for a financial period, TCMI will apply penalties as prescribed under the ESR and forward information provided in respect of such financial period to the relevant EU members in which the parent company, ultimate parent company and ultimate beneficial owner of the relevant entity resides Since the ESR was enacted, the Registrar (TCMI) has completed 52 exchanges with EU members that included information reported under the framework.

488. The AG's Office is the Registrar for RDE, including DAO. However, no checks or verification are done on the BO of RDE and only some basic and BO information is collected on RDE, including DAO. The AG, as the Registrar for RDE and DAO, indicated that BO information has not been requested from foreign partners in relation to RDE.

489. While the Registrar for RDE (including DAO) and the Registrar for NRDE will provide the information available to them, none of the Registries hold all the required basic information or all of the BO information (except to the extent that the Registry TCMI holds information on bearer shares without verification, or Declarations of Incumbency recorded by NRDE containing such information, or information associated with a Marshall Islands -flagged vessel).

Overall conclusion on Immediate Outcome 2

490. The Marshall Islands generally provides constructive mutual legal assistance (MLA). The number of MLA and extradition requests received are broadly line with the risks and context of the Marshall Islands, particularly in respect of the risks emanating from the NRDE sector. The lack of a case management system for MLA requests has likely led to some MLA requests remaining un-actioned despite follow ups from requesting jurisdictions. The Marshall Islands has not made any MLA nor

[71] https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/

extraditions despite a number of cases where it was likely there was evidence in foreign jurisdiction to support investigations in the Marshall Islands. MLA and extradition are not pursued as a policy objective in domestic ML and associated predicated investigations. Marshall Island authorities do utilise other forms of cooperation with the majority of requests relating to obtaining assistance of expertise not available in the Marshall Islands. The Marshall Islands has provided beneficial ownership information in the majority of requests received but deficiencies remain in respect of the accuracy and currency of BO information being shared.

491. **The Marshall Islands has a moderate 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 of the Marshall Islands.

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

2. This is a new Recommendation that was not assessed in Marshall Islands' 2011 MER.

3. *Criterion 1.1*: The Marshall Islands completed its first National Risk Assessment (NRA) on ML/TF in August 2020. The NRA identifies threats, sectoral vulnerabilities (an overview of FI/DNFBP sectors exposed to ML/TF), functional vulnerabilities (vulnerabilities that impact functions to combat ML/TF) and overarching vulnerabilities (cross cutting vulnerabilities across the functional and sectoral vulnerability framework) as well as a substantial analytical version of the NRA (divided into four volumes), higher level public and government versions have been completed to communicate the key findings. The purpose, scope, and audience of each version of the NRA are clearly identified and the plan to undertake an NRA was approved by the Cabinet of the Marshall Islands.

4. The NRA is based primarily on surveying of key public and private sector representatives from reporting entities, complemented by limited factual evidence where available, to identify the ML/TF risks for the jurisdiction.

5. The NRA acknowledges the limited evidence base available and includes recommendations to improve collection of statistics.

6. In 2023 the Marshall Islands conducted additional sectoral risk assessments on DAO NPOs and domestic NPOs applying an assessment methodology was drawn from FATF and UNODC guidance. The DAO assessment reasonably concluded that the risk of TF through DAO NPOs is relatively high due to a lack of regulations providing supervision and monitoring of DAO NPOs, under-resourcing of the Marshall Islands Registrar for RDE (AG's Office), and the lack of a requirement for MIDAO, the DAO TCSP, to identify the BO of DAO. The assessment concluded that domestic NPOs represent a low TF risk, which is reasonable, given the small size and local focus of the sector.

7. TCSPs were rated high risk in the NRA (in practice this refers to TCMI), however the risk associated with NRDE was not analysed in detail. A risk assessment of the NRDE sector had been considered by the National AML/CFT Council at the time of the onsite but had not been adopted. Similarly, while the NRA considered and assessed various elements of corruption risk including bribery and misappropriation of public funds (including procurement) there are elements of corruption risk which had not been sufficiently assessed as of the time of the onsite visit.

8. TCMI, in its capacities as Registrar for NRDE and Maritime Administrator, plays a leading role within the government in assessing elements of risk, mostly in relation to sanctions evasion. Other agencies do not assess risk as a matter of routine practice.

9. *Criterion 1.2*: The Marshall Islands Cabinet established a public-private working group to coordinate the NRA in 2017. The Banking Commissioner and FIU Manager are responsible for coordinating the working group, which includes eight subgroups to conduct analysis of threats, national vulnerability, specific sector vulnerabilities, vulnerabilities of products and a TF risk assessment. The working group includes representation from the banking, credit, DNFBP and insurance sectors and a broad range of government agencies.

10. *Criterion 1.3*: The NRA was completed in August 2020 and includes a statement that it will be updated/amended on a regular basis, and that a subsequent assessment will be undertaken again in five years. The NRAWG released two sectoral risk assessments in 2023, one assessing the TF risk posed by NPO DAO and the other assessing the TF risk posed by resident domestic NPOs. A third risk assessment on NRDE was awaiting approval by the NRAWG at the time of the onsite.

11. Marshall Islands has identified a number of factors that may trigger a review/update of the NRA, including changes in relevant international standards, changes in national laws or regulations, changes in technology, intelligence received from domestic and international sources, concerns raised by private industry (if any), international developments, and typologies.

12. *Criterion 1.4*: A government version of the NRA was shared with competent authorities. The detailed analysis and findings of the NRA were made available to competent authorities, the financial sector, and DNFBP by virtue of their participation in the NRA working group.

13. *Criterion 1.5*: Marshall Islands has taken limited steps to apply the findings of the NRA to allocating resources and implementing measures based on the assessment.

14. Prior to completion of the NRA, Marshall Islands focused its efforts on addressing known vulnerabilities in its legislative and regulatory system, as identified in the 2011 MER and the initial stages of the NRA starting in 2017.

15. The NRA provides a basis for risk-based allocation of resources and implementation of measures through identifying priority mitigation strategies to address risks. The NRA identifies five strategies, which would each require resource allocation:

- review the FIU's resourcing and ensure adequate and effective AML/CFT supervision;
- develop and implement systems to collect and record ML/TF statistics and data;
- assess resourcing of law enforcement and other operational agencies in the Marshall Islands AML/CFT program;
- consider developing and implementing a law related to proliferation financing; and
- review, update and where necessary develop, the policies and procedures of TCMI and its corporate and shipping registries to ensure that the identified risks ML/TF/PF risks are mitigated.

16. The Marshall Islands has begun by using the Banking Commission Special Revenue Fund, from licensing fees and fines, to fund and hire four additional FIU staff for FIU in 2021 (two compliance officers, one compliance analyst, and one intelligence analyst) for FY20-21, with recruitment for three of the four positions completed. The FIU is also developing a case management system that would allow for the collection of statistics relevant to AML/CFT regime. Marshall Islands has also made legislative changes to address the NRA's recommendations, including amendments to the Associations Law and legislation to implement TFS. In addition, the National AML/CFT Council approved a document before the onsite which lists the threats and vulnerabilities identified in the NRA and provides a status of actions taken to mitigate the threats and vulnerabilities.

17. Increased resourcing for the Banking Commission reflects an understanding of risk, and it has enabled to Commission to begin to use a risk-based approach for onsite FI supervision. The OAG has also received resources, which may reflect an understanding of corruption-related risks. The Banking Commission Special Revenue Fund, from licensing fees and fines, was used to fund and hire four additional FIU staff for FIU in 2021 (two compliance officers, one compliance analyst, and one intelligence analyst) for FY20-21, with recruitment for three of the four positions completed.

18. The Marshall Islands has developed a Strategies, Action Plan, and Status document (approved by the National AML/CFT Council) which provides rough timelines and some prioritisation of activities against strategies identified in the NRA.

19. *Criterion 1.6*: There are provisions in the AML Regulations for the Banking Commissioner to grant exemptions in limited circumstances if there is a proven low risk of ML/TF (AML Regulations, s.8), using objective criteria to assess low risk. Marshall Islands has not made any exemptions or exceptions to AML/CFT requirements pursuant to this section.

20. *Criterion 1.7*: Marshall Islands requires banks and FSPs to conduct enhanced CDD and ongoing monitoring for higher risk customers and PEPs (AML Regulations, s.3A and 3K). Banks and FSPs must put in place risk management systems to determine whether a potential customer or beneficial owner is high risk (s.3K) and Appendix 1 of the AML Regulations provides examples of relevant factors to determine if a customer is high risk. The AML Regulations (s.10) describe the cases and monetary thresholds in which DNFBP are required to take enhanced measures to manage and mitigate risk.

21. AML Regulations, s.2D & 10 require banks, FSPs and DNFBP to maintain a risk assessment and incorporate information from the NRA, as well as any guidance, Sectoral or Thematic Risk Assessments provided by authorities or the Banking Commission.

22. The AML Regulations also require FIs and DNFBP to incorporate national risks into entity level assessments. However, because Marshall Islands' risk understanding focuses on resourcing and functional vulnerabilities it is difficult for Marshall Islands to translate this into specific risk sensitive obligations or guidance.

23. *Criterion 1.8*: The AML Regulations include provisions for banks and financial services providers (FSPs) to apply to the Banking Commissioner for authorisation to apply simplified CDD on a case-by-case basis (s.3L). Permission will only be granted where the risk of ML/TF is lower, and the Commissioner may in practice draw on the NRA or generic lower risk scenarios detailed in the appendix to the regulations to make the determination.

24. *Criterion 1.9*: Full scope supervision of banks extended to enterprise risk assessments, including their carrying out of enhanced CDD and ongoing monitoring for higher risk customers and PEPs (AML Regulations, s.3A and 3K). However, there has not been any supervision of implementation of enterprise risk assessment and risk mitigation by DNFBP. See analysis of R.26 and R.28 for more information.

25. *Criterion 1.10*: Under the AML Regulations, FIs and DNFBP are required to assess and understand their ML/TF risks, including documenting (c.1.10(a)) and updating their risk understanding regularly (c.1.10(c)), and (c.1.10(d)) provide risk assessments to the Banking Commissioner on request (s.2C.4 and 10(a)(2) of the AML Regulations).

Criterion 1.11

26. *Criterion 1.11(a)*: The AML Regulations (s.2B.1) require adoption of internal policies, procedures and controls to ensure compliance with the regulations by banks, FSPs and DNFBP. Policies, procedures and controls are required to include enhanced due diligence measures for high risk customers, having regard to ML/TF risks. The AML/CFT Program must be approved by senior management, and regularly monitored and updated.

27. *Criterion 1.11(b)*: Sections 2B.4 and 10 of the AML Regulations require banks, FSPs and DNFBP to maintain an adequately resourced and independent audit function to test compliance.

Sections 2 and 10 of the AML Regulations stipulate that the AML/CFT Program must be regularly monitored, updated regularly, and enhanced to mitigate risks as and when they are identified.

28. *Criterion 1.11(c)*: Sections 2 and 10 of the AML Regulations require banks, FSPs, and DNFBP to take enhanced measures to mitigate higher risk scenarios, and includes geographical risks. The 2023 AML/CFT onsite inspection manual formally incorporates the NRA, including high risk sectors.

29. *Criterion 1.12*: Banks, FSPs and DNFBP may apply to the Banking Commissioner to implement procedures to conduct simplified CDD (AML Regulations, s.3L.1). Simplified CDD is only permitted where the ML TF risk is lower (AML Regulations, s.3L.2) and not where there is a suspicion of ML, TF or specific higher risk scenarios (AML Regulations, s.3L.4).

Weighting and Conclusion

30. The 2020 NRA and additional sectoral risk assessments provide a useful starting place for Marshall Islands authorities and the private sector, but they do not differentiate among areas of "higher" risk sufficiently which limits the ability to use the NRA to apply a risk-based approach. The NRA also lacks quantitative analysis. The absence of a sectoral risk assessment of NRDE and for profit DAO sectors and the incomplete risk understanding among stakeholders of the risks associated with DAO were weighted heavily. While there is a good mechanism in place to coordinate the NRA, only limited risk-based resource allocation and implementation of measures have occurred.

31. **Recommendation 1 is rated largely compliant.**

Recommendation 2 - National Cooperation and Coordination

32. The Marshall Islands was rated PC on the former Recommendation 31 in the 2011 MER. The MER noted there was a lack of structured approach to AML/CFT coordination and that policy level coordination mechanisms were not being used to effectively achieve key AML/CFT outcomes. Since then, the National AML/CFT Council was established in 2019.

33. *Criterion 2.1*: The NRA identified five priority strategies to address overarching functional vulnerabilities within the Marshall Islands AML/CFT system. These strategies, which have been approved at Cabinet level, form the initial basis for policy, but lack sufficient breadth and depth required to articulate national AML/CFT policy. The Marshall Islands has however, demonstrated commitment to using the strategies found in the NRA by acting on one of the strategies to increase FIU resources, and by implementing a PF law and developing policies and procedures of TCMI to address identified ML/TF/PF risks. In addition, through regular meetings of the National AML/CFT Council, the Marshall Islands has continued to develop and implement a work plan to address the identified AML/CFT risks. The NRA Strategies, Action Plan, and Status document has been issued. The National AML/CFT Council approved a document before the onsite which lists the threats and vulnerabilities identified in the NRA and provides a status of actions taken to mitigate the threats and vulnerabilities. However, more work is required to sufficiently incorporate the key findings of the NRA in national AML/policy in a systematic manner.

34. *Criterion 2.2*: The National AML/CFT Council was established in 2019 by way of amendment to the Banking Act. According to s183, the Council is designated responsibility for formulating national AML/CFT strategy and policies in coordination with the FIU, the Minister of Finance and Cabinet. The Council consists of the Attorney General or designee, the Banking Commissioner, the FIU, the Police Commissioner, the Division of Customs and Revenue, the OAG or designee, the Registrars of Corporations, and the Registrar of Foreign Investments.

35. *Criterion 2.3*: The National AML/CFT Council provides the mechanism for coordination on AML/CFT policy and strategy. A separate body, the Counter Terrorism Committee is responsible for CT strategy pursuant to the CTA, which includes AML/CFT Council members. There is some overlap in functions as the CTA provides for the suppression of the financing of terrorism, giving the CTC a mandate to coordinate on CFT policy and strategy in collaboration with the National AML/CFT Council.

36. Pursuant to the NRA, the Marshall Islands established a work plan to track progress towards mitigating the threats and vulnerabilities identified in the NRA. The document identifies strategies for each threat and vulnerability, the associated required actions, the agencies responsible, and the current status implementation. NRAWG plans to continue to meet quarterly to review updates on implementation.

37. Operational exchange of ML/TF related information may be conducted through the National AML/CFT Council; however, this is not established practice. The mechanisms used to exchange ML/TF related information include MOUs between law enforcement agencies and Government and through legal powers granted under the Banking Act, the CTA, MACMA, and the Associations Law and Corporate Regulations to compel entities to produce information as required under the relevant statute.

38. *Criterion 2.4*: The National AML/CFT Council is assigned responsibility for CPF coordination corresponding to its ML/TF responsibilities by virtue of the United Nations Sanctions (Implementation) Act 2020 (s.205). The agencies involved are the same as for ML/TF, although the Attorney General has the supervisory function.

39. *Criterion 2.5*: There are no data protection and privacy rules in Marshall Islands that might conflict with AML/CFT requirements and no agency responsible for data protection and privacy within the Marshall Islands.

Weighting and Conclusion

40. The absence of a unifying strategy to articulate national AML/CFT policy informed by the risks identified in the NRA was weighted heavily. This is mitigated somewhat by the broad strategies identified in the NRA; however, it is nonetheless a minor shortcoming. The National AML/CFT Council serves as a national level coordination mechanism to provide a mechanism for strategic level and operational level coordination.

41. **Recommendation 2 is rated largely compliant.**

Recommendation 3 - Money laundering offence

42. Marshall Islands was rated PC on the former R.1. The report noted the ML offence was not fulling in accord with the Vienna and Palermo Conventions. Not all designated predicate offences were included and there were questions as to whether self-laundering was allowed.

43. The former R.2 was also rated LC, with a gap identified in relation to liability for legal persons other than bodies corporate.

44. *Criterion 3.1*: ML is criminalised by an offence at s.166 of the Banking Act 1987.

45. Amendments to the Banking Act 1987 were made in 2011 and 2020 based on the language of the Vienna Convention Article 3(1) (b) and (c) and the Palermo Convention Article 6(1), which address the deficiencies identified in the last MER. The offence stipulates that a person who converts or transfers proceeds of crime is subject to an ML offence, subject to

conditions relating to the purpose being concealment of the illicit origin; or aiding and abetting a person involved in a predicate offence to evade legal consequences. The Act also stipulates at s.166(4) that ancillary offences to the offence of ML, such as attempt, conspiracy, and aiding and abetting to commit ML also commits an offence under the Act.

46. *Criterion 3.2*: The Marshall Islands has adopted a threshold approach to designating predicate offences. According to s.166 (1) of the Banking Act 1987, the ML offence applies where property is the "proceeds of crime," which includes "any property derived from or obtained, directly or indirectly through the commission of a serious offense". The definition of 'serious offence' was broadened in 2020 by an amendment to the Banking Act 1987 to include all offences punishable by a maximum penalty of 12 months' imprisonment or a fine of $5,000 or more.

47. The 2011 MER identified several FATF designated predicate offence categories not covered by the Marshall Islands' definition of predicate offence which have been addressed by the following amendments:

(i) Human trafficking/migrant smuggling have been addressed by the introduction of the Prohibition of Trafficking in Persons Act 2017;

(ii) Fine only predicates, specifically smuggling under the Import Duties Act of 1989 and environmental crimes (including all offenses under the Marine Mammal Protection of 1990, the Coast Conservation Act of 1988 and Fisheries Act) were addressed by introducing the $5,000 fine threshold to the definition of serious offence.

48. The predicate offences of counterfeiting/piracy of products, insider trading, market manipulation and market rigging were criminalised by way of an Amendment to the Criminal Code in October 2023. Piracy of products is limited to counterfeiting trademarks and offences related to piracy of software are not a predicate offence.

49. *Criterion 3.3*: The Marshall Islands applies a threshold approach to predicate offences comprising all offences which meet the definition of a "serious offence", which is defined in the Banking Act 1987 (s.102(dd)) as offences which carry (i) a maximum penalty of imprisonment for a period not less than 12 months, or(ii) a maximum fine of $5,000 or more.

50. *Criterion 3.4*: The ML offence applies to "proceeds of crime" which is defined in s102(x) of the Banking Act 1987 as any property "derived from or obtained, directly or indirectly through the commission of a serious offense". This applies to any type of property, being specifically defined in s.102(y) of the Banking Act 1987 as "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets." The Banking Act 1987 does not institute a minimum value threshold.

51. *Criterion 3.5*: Section 166(5) of the Banking Act 1987 was amended in October 2011 to clarify that "when proving that property is the proceeds of crime, it is not necessary that a person is convicted of the serious offense that generated the proceeds of crime".

52. *Criterion 3.6*: The definition of serious offence, as contained within s.102(dd) (ii) of the Banking Act 1987 includes any acts or omissions committed overseas that, had they occurred within the Marshall Islands, would correspond to a Marshall Islands offence with a maximum penalty over the serious offence threshold.

53. The money laundering offence additionally explicitly states that the serious offence that generated the proceeds of crime need not have occurred within the Marshall Islands (s.166(6) of the Banking Act).

54. *Criterion 3.7*: Section 166(c) of the Banking Act provides for a person that committed a predicate offence that generated proceeds of crime to be convicted of laundering those proceeds of crime.

55. *Criterion 3.8*: The Banking Act includes explicit provisions to specific that intent and knowledge required to prove the offense of money laundering may be inferred from objective factual circumstances (Banking Act, s.166(2)). These provisions supplement the principle in law that the *mens rea* may be inferred from objective factual circumstances (codified in s.2.02 of the Criminal Code).

56. *Criterion 3.9*: The maximum penalty for ML by a natural person is a term not exceeding 20 years imprisonment and/or a fine not exceeding $2 million (s.166(7) Banking Act). These penalties significantly exceed the penalties for economic crimes in the Criminal Code. The Criminal Code grades public sector corruption offences as second degree felonies with maximum penalties of 10 years imprisonment and/or a fine not exceeding $20,000; while fraud and theft offences are graded as second degree felonies (or misdemeanour in the case of some frauds) with penalties not exceeding 35 month imprisonment and/or a fine of $5,000 (or one year and/or $1,000 in the case of misdemeanours).

57. *Criterion 3.10*: Criminal sanctions for ML apply to legal persons. The ML offence (s.166 Banking Act) applies to all persons. Person is defined in the Criminal Code (s.1.13(8)) as including any a corporation or an unincorporated association and the Partnerships Act (s.1(15)) as including any association, corporation, or any other individual or entity in its own or any representative capacity.

58. A body corporate is liable to a fine of the greater of up to $10 million or double the proceeds of crime (s.166(7) Banking Act). Although other forms of legal persons would only be subject to the same maximum fine as a natural person, the penalty of $2 million is significantly more than the penalty for other serious crimes (the maximum fine for a first degree felony by a corporation or unincorporated association being $100,000 (s.6.03(2) of the Criminal Code). Banks and financial services providers (FSP) are also liable to having their licence revoked or suspended (Banking Act, s.113(1)(m) & 128(1)(k)).

59. The Banking Act and the AML Regulations provide for civil penalties "in addition to" criminal penalties (Banking Act, s181; AML Regulations, s.7(a)), and the Criminal Code states that the criminal sentences "do not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a licence, or impose any other civil penalty" (Criminal Code, s.6.02(4)).

60. Regarding criminal liability of both natural and legal persons, s.2.07(6)(a) of the Criminal Code provides that an individual "is legally accountable for any conduct the person performs or causes to be performed in the name of the corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his or her own name or behalf.

61. The ML offence does not preclude proceedings with respect to legal persons in countries in which more than one form of liability is available. Such measures are without prejudice to the criminal liability of natural persons

62. *Criterion 3.11*: The Banking Act was amended in 2011 to explicitly clarify that a "(a) person who attempts, facilitates, conspires, or aids and abets any other person to commit an offense of money laundering commits an offense and is liable on conviction to the penalties specified under this section" (s.166 Banking Act). The Criminal Code (s.2.06 & 5.01-5.05)

further extends liability for all offences to include parties involved in inchoate crimes including conspiracy to commit; attempt; aiding and abetting; facilitating offences.

63. Other ancillary offences are not explicitly provided for, although participation in; and association with are adequately encompassed by provisions of the Criminal Code, that assign liability for all offences to accomplices (s.2.06(2)(c)). It is not clear, however, that counselling is provided for as an ancillary offence.

Weighting and Conclusion

64. There is a minor gap with the full coverage of piracy of products (that is, beyond the counterfeiting of trademarks/piracy of products) as a predicate to ML and a minor shortcoming relating to provisions criminalising this ancillary offence.

65. **Recommendation 3 is rated largely compliant.**

Recommendation 4 - Confiscation and provisional measures

66. Marshall Islands was rated largely compliant on the former R.3 in its 2011 MER. The reported noted that the term "tainted property" does not cover instrumentalities intended for use in the commission of any ML, FT or other predicate offences, and property of corresponding value and the lack of effective implementation.

Criterion 4.1

67. The Marshall Islands has measures enabling it to confiscate property whether held by criminal defendants or by third parties, but there is a minor gap in the scope of predicate offence relating to piracy (beyond the counterfeiting of trademarks/privacy of products).

68. *Criterion 4.1(a):* The Proceeds of Crime Act, 2002 (POCA) provides for the forfeiture and confiscation of the proceeds of crime, property used or intended to be used in the commission of a serious offense, or property of corresponding value. Where a defendant is convicted of a serious offence the POCA provides the Attorney General with broad powers to apply to the High Court for a confiscation order against any tainted property and/or for a pecuniary penalty in respect of benefits derived by the defendant from the commission of the offense (POCA, s.216(1)). The application must be made within two years of the date the defendant was convicted of the serious offense. The POCA also provides for in rem confiscation orders "in respect of any tainted property" in the absence of conviction for defendants who have died or absconded (POCA, s.220).

69. *Criterion 4.1(b):* The High Court can grant a confiscation order against any "tainted property" (POCA, s.216(1)). Amendments to POCA in 2011 extended the definition of tainted property to instrumentalities for use in ML and associated predicate offenses. Tainted property includes: property used, or intended to be used, in the commission for a serious offense, or in connection with the commission of a serious offense; proceeds of crime; or property of corresponding value (POCA, s.205(p)). A serious offense includes ML and predicate offences where the penalty is 12 months imprisonment or more, or a fine of $5000 or more (POCA, s.205(o)). Proceeds of crime is defined as "fruits of a crime, or any property derived or realised directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realised directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offense" (POCA, s.205(k)). The Marshall Islands has not comprehensively criminalised piracy (beyond the counterfeiting of

trademarks/piracy of products), and as such there are no provisions to confiscate proceeds or instruments of this offence.

70. *Criterion 4.1(c):* There are similar confiscation provisions included under s108 and s113(5) of the CTA for proceeds and instrumentalities associated with TF offences. Where a person is convicted of a terrorism offence, the Attorney General has the power to apply for a confiscation order against any property involved in the offense (s.113(5)). This includes; property used by a person involved in the offense; property derived from, and the proceeds obtained, indirectly or directly as a result of the offence; and any property used in any manner or in part to commit or facilitate the commission of the offense (s108). Financing of terrorism, terrorist acts, or terrorist organisations are punishable by up to life imprisonment, so are serious offenses under the POCA (CTA, s.107 and s.120; and POCA, s.205(o)). Property that is the proceeds of, or used in, or intended or allocated for use in TF, terrorist acts or terrorist organisations is tainted property and can be subject to confiscation (POCA, s.205(p) and s.216(1)).

71. *Criterion 4.1(d):* The 2011 POCA amendments inserted provisions that specified that provisional measures and confiscation applies to property of corresponding value (POCA, s.205(1)(p) and s227). Similar provisions are contained in s.176 of the Banking Act.

Criterion 4.2

72. *Criterion 4.2(a):* The Marshall Islands has legislative measures that provide police officers, the Attorney General, and the Banking Commissioner/FIU with powers to identify, trace, and evaluate property subject to confiscation. Police have broad powers to search for tainted property with consent or under a warrant and apply for production and monitoring orders (POCA, s.251, s.258, s.262 and s.265). The Attorney General is broadly empowered under s.609 of the Office of the Attorney-General Act, 2002 to issues summons to individuals and entities to appear, testify and/or produce for examination any item deemed relevant to an investigation.

73. The Banking Commissioner and FIU may apply for a warrant to search and seize for the purposes of preventing ML or TF or tracing the proceeds of crime. (Banking Act, s.167(1)(l)).

74. *Criterion 4.2(b):* The competent authorities can carry out provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation. Police officers have appropriate seizure powers under s.251, s.254 and s.262 of POCA.

75. The Attorney General may apply to the High Court, including on an *ex parte* basis, for a restraining order against any covered property (POCA, s.237 and s.242). The application may be made ex parte (POCA, s237(2)). "Covered property" includes any property held by a third person" (POCA, s.205(c)). Violation of a restraining order is punishable by up to five years imprisonment, a fine of up to $50,000, or both; the maximum fine is increased to $250,000 for legal persons (POCA, s.242(1)).

76. The Banking Commissioner and Attorney General have powers to seize and detain currency (Banking Act, s.171).

77. The CTA provides for broad criminal forfeiture applicable to property used in a terrorism offense, the proceeds of a terrorism offense, and other property (CTA, s.108 and s.122).

78. There is a deficiency with the POCA in relation to the timing of obtaining a restraining order. Section 237 of the POCA unduly limits the AG's Office in only being able to apply for a

restraining order when a person has been convicted, charged or is 'about to be charged' with a serious offence. This is in contrast to the grounds on which the courts can grant a restraining order (s.238 of the POCA), which can occur much earlier in the investigation. This does not allow restraining orders to be obtained within a timeframe to prevent any dealing, transfer of disposal of property subject to confiscation.

79. *Criterion 4.2(c):* The POCA permits competent authorities to take steps that will prevent or void actions that prejudice the Marshall Islands' ability to freeze or seize or recover property that is subject to confiscation (POCA, s.224). This includes provisions that allow the High Court to set aside dispositions of or dealings with property that violate a restraining order (POCA, s.242).

80. *Criterion 4.2(d):* Competent authorities have powers to take a broad range of investigative measures, including search and seizure powers (POCA, Parts IV-V; Banking Act, s.167 & s.184; Office of the Attorney-General Act, 2002, s609; CTA, s.113). To the extent circumstances necessitate swift action, ex parte applications or other expedited investigative measures are available (POCA, s.253, s.254, s.258, s.263, & s.265). However, there are no powers for undercover operations, intercepting communications and accessing computer systems.

81. *Criterion 4.3*: Rights of *bona fide* third parties are protected under the confiscation measures. Any person who may have interest in the property is to receive notice of the impending confiscation order, and appear and adduce evidence at the hearing on the application (POCA, s.217). A person claiming an interest in the property may apply to the High Court for relief (POCA, s.225(1)). Similar protections exist with respect to restraining orders (POCA, s.239).

82. *Criterion 4.4*: There are procedures and powers that provide for retaining and, when necessary, disposing of seized property. Seized property must be delivered promptly to the appropriate official and retained pending trial in accordance with the orders of the court (Criminal Procedures Act, s.123; Rules of Criminal Procedures, Rule 32.2(a)). If the property is perishable, the court may order that it be sold and the proceeds held until the trial is completed. Once the judicial process is completed, the property may be disposed of, and the proceeds applied or otherwise dealt with in accordance with the Attorney General's direction (POCA, s.223(3)(b)) or the court may orders for the disposal of the property, including that the property, or the funds resulting from the sale of the property, be restored to the owner (Rules of Criminal Procedures, Rule 32.2(b)). There are similar provisions under s.175 of the Banking Act.

83. Procedures for managing and disposing of seized property are generally determined by the court ruling made following an application by the Attorney General for a restraining order under (s.237 POCA) a confiscation order (s.216(1) POCA), or as part of orders for the restitution of restrained property under s.214 of the POCA. The High Court has powers to appoint a receiver or fiduciary to take possession of, and manage, the property subject to a pecuniary penalty order or a restraining order, and to impose directions and conditions relating to the management and preservation of the property (POCA, s.238(4), s.246(2), s.246(4) and s.248). The High Court may empower any such receiver to liquidate and convert into cash and/or obtain payment of the value of defendant's interest in any covered property in such manner as the High Court may direct (POCA, s.246(4)).

84. While there are broad legislative powers that allow the court or the Attorney General to determine how seized property is to be retained and disposed of on a case-by-case basis, there does not appear to be any standard processes or procedures that provide for managing

and disposing of seized property. Rule 32.2 of the Rules of Criminal Procedure provides for the retention and disposal of property but do not explicitly provide for the preservation and sale of property. The lack of an explicit provision regarding the preservation of property is a moderate gap given the need to maintain the value of seized property.

Weighting and Conclusion

85. Marshall Islands has legislative measures for the confiscation, seizure and freezing of property, which provide protection to *bona fide* third parties. There is a deficiency with the POCA in relation to the timing of obtaining a restraining order, which unduly limits the AG's ability to prevent any dealing, transfer or disposal of property subject to confiscation. There is a small gap with the range of predicate offences criminalised in the Marshall Islands which undermines the operation of the POCA. There is a lack of standard processes and procedures for managing and disposing of property, coupled with the absence of specific requirements relating to the preservation of property.

86. **Recommendation 4 is rated largely compliant.**

Recommendation 5 - Terrorist financing offence

87. The Marshall Islands was rated largely compliant with the requirement under the former SR.II in the 2011 MER. The report found that the definition of "attempts" was not in line with the TF Convention.

88. *Criterion 5.1*: The CTA establishes the TF offence, which largely covers the conduct criminalised under Article 2 of the UN TF Convention. Where a person knowingly, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part for terrorism or for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism, or acting on their behalf they commit an offence (CTA, s.120(1)). The provision or collection of funds to be used by an individual terrorist or terrorist organisation for any purpose by funds is criminalised by the inclusion of circumstances where the funds are provided for the "benefit" of persons or entities who engage in terrorism, or persons acting on their behalf. An attempt to commit the TF offence is also criminalised (CTA, s.107(3)). Sections 107(1) and 107(1)(a) of the CTA are modified by these words "unless otherwise provided" and "unless other punishment is prescribed. According to Marshall Islands' interpretation, s107 provides the default criminal penalties under the CTA. The CTA applies specific penalties for some offenses, such as WMD offenses (s.125(1)(a) & (b)), terrorist bombing (s.128), plastic explosive offenses (s.129(2) & (4)), etc. For the rest of the offenses in the CTA (i.e., those where no specific penalty is stated), the default penalties in s.107 apply."

89. The definition of "terrorism" covers the activities covered by the Conventions and Protocols in the Annex to the TF Convention (CTA, s.125-130).

90. *Criterion 5.2*: The TF offence extends to any person who knowingly, by any means, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part for: (a) terrorism; (b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or (c) for the benefit of persons and entities acting on behalf of, or at the direction of, a person referred to in (b) (CTA, s.120(1)).

Persons who engage in terrorism include those acting in an individual capacity or as a member of an organisation (CTA, s.105(9)).

91. "Terrorism" includes both "terrorism" offences and "terrorist acts" (CTA, s.105(35)). "Terrorism offence" is defined as: any crime established by the CTA; any crime established by the laws of the Marshall Islands and declared to be a terrorism offence by the Nitijela; any crime established by an international terrorism convention; any crime recognised under international humanitarian law as a terrorism offence; and any crime established under the law of a foreign State, where such crime, if committed in the Marshall Islands, would constitute a terrorism offence under the laws of the Marshall Islands (CTA, s.105(36)).

92. "Terrorist act" is broadly defined to include any act that is intended, or by its nature or context can be reasonably regarded as intended, to intimidate the public or any portion of the public, or to compel government or an international or regional organisation to do or refrain from doing any act (CTA, s.105(38)). These acts fall into a category of behaviours such as causing serious harm to a person or property, endangering another person's life, taking hostages, endangering national security, creating a serious risk to public health or safety, disrupting or destroying an electronic system, or disrupting the provision of essential emergency services (CTA, s.105(38)).

93. The CTA does not require that funds or other assets need to be linked to a specific terrorist act or acts to constitute the TF offence (CTA, s.120(1)). The TF offence covers funds solicited, provided or collected for: (a) the benefit of persons who engage in terrorism, (b) for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or (c) for the benefit of persons and entities acting on behalf of or at the direction of any person referred in (b). The TF offence does not require that the funds were actually used to commit or carry out a terrorism offence, or terrorist act (CTA, s.120(2)).

94. *Criterion 5.2bis*: The Marshall Islands criminalises the provision of funds to be used for the benefit of "persons who engage in terrorism" (CTA, s.120(1)). Terrorism means and includes terrorism offences and terrorist acts (CTA, s.105(35)). The term "engage(s)" with respect to terrorist acts, terrorism offences, and terrorism includes "prepare or plan" (CTA, s.105(9)). The Attorney General issued a legal advice in December 2023 which advised that the financing of the travel of individuals who travel to another jurisdiction for the purpose of perpetrating, planning, preparing, or participating in terrorist acts or terrorist training constitutes an offence under CTA, s.120. In the absence any prosecution, the court's acceptance of this advice has not been confirmed.

95. *Criterion 5.3*: The Marshall Islands' TF offence applies to funds, which is broadly defined in line with Article 1(1) of the Terrorist Financing Convention as "property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers checks, bank checks, money orders, shares, securities, bonds, debt instruments, drafts, letters of credit, and currency" (CTA, s.105(13)). The use of the words "however acquired" would appear to cover any funds or other assets whether from a legitimate or illegitimate source.

96. *Criterion 5.4*: The Marshall Islands TF offence specifically states that it is not necessary that the funds or other assets were actually used to carry out or attempt a terrorist act (CTA, s.120(2)). The CTA does not require that funds or other assets need to be linked to a specific terrorist act or acts to constitute the TF offence.

97. *Criterion 5.5*: Legislation and case law provide that the intentional element of any crime may be inferred from objective factual circumstances. The Criminal Code provides that intent and knowledge may be inferred from attendant circumstances (Criminal Code, s.1.13(9)). Attendant circumstances can be used as evidence to prove the offence with or without evidence of a direct or eyewitness account of the crime (Marshall Islands v. Kijiner (Aug 2, 2010) s.Ct. Case No. 07-08 (High Ct. Crim. No. 2005-046)).

98. *Criterion 5.6*: Natural persons convicted of the TF offence are punishable by criminal sanctions of a term of not less than 30 years and not more than life imprisonment, or a fine of not more than $100,000,000 (CTA, s.107(1)(a)). The assessment team has concern that a minimum term of 30 years may be disproportionate and may lead to prosecutors avoiding use of the TF offence.

99. *Criterion 5.7*: Criminal liability and proportionate, dissuasive sanctions apply to legal persons convicted of a TF offence. For the purpose of the TF offence, a "person" is defined as both natural and legal persons (CTA, s.105(23)). Legal persons are liable in the same manner and to the same extent as any natural person for any terrorism offence (CTA, s.109(1)). However, the maximum assessable fine for a legal person is increased by ten times the amount accessible in the case of a natural person, so the maximum fine is up to $1,000,000,000 (CTA, s.109(2)). To the extent it is necessary to show a legal person's mental state for the TF offence, "it is sufficient to show that a director, officer or agent who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind" (CTA, s.109(3)). The conduct of a director, officer, or agent (or another person acting at their direction or with their consent) may, under specified circumstances, be imputed to the legal person (CTA, s.109(4)). Section 110 of the CTA provides for imposition of civil penalties. Section 110(2) states that the imposition of civil penalties "shall not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the Marshall Islands or any other person." Also, s.111 of the CTA provides for private causes of action for terrorism, and subsections (2) and (3) of that section expressly contemplate civil proceedings occurring after criminal proceedings.

100. *Criterion 5.8*: The TF offence specifically covers where a person knowingly attempts, conspires, or threatens to commit; participates as an accomplice in; organises or directs others to commit; (or) contributes to the commission of" the TF offence (CTA, s.107(3)).

101. *Criterion 5.9*: TF is designated as a predicate to ML. ML predicate offences include all offences "for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months or imposition of a fine of $5,000 or more" (Banking Act, s.102(dd)). The TF offence is punishable by a maximum of life imprisonment so meets this threshold for a predicate offence for ML.

102. *Criterion 5.10*: Where a person is suspected to have engaged in terrorism and is present in the Marshall Islands, and the person is not extradited, the Attorney General has authority to prosecute the person in accordance with the law whether or not the offence was committed in the Marshall Islands (CTA, s.104(4)). The definition of terrorism includes TF (CTA, s.105(35)).

103. The TF offence applies when the offence is committed by a citizen of the Marshall Islands, on board an aircraft or ship with adequate connection to the Marshall Islands, or against or on board a fixed platform located on the Marshall Islands' continental shelf (CTA, s.104(2)). The TF offence also applies when the offence was directed toward or resulted in a crime against a Marshall Islands citizen or the Marshall Islands government or its facilities, whether domestically or abroad (CTA, s.104(3)(a) & (b)).

Weighting and Conclusion

104. The Marshall Islands has a strong legal framework to combat TF, which largely follows the TF Convention. There are minor shortcomings. Criminalisation of the financing of the travel of individuals who travel to another jurisdiction for the purpose of perpetrating, planning, preparing, or participating in terrorist acts or terrorist training appears to be criminalised, but in the absence of a case the AG's advice on this is yet to be tested by the courts. The minimum custodial sentence of 30 years for the TF offence may be disproportionate in any given case to the extent it may dissuade competent authorities from prosecuting the offence.

105. **Recommendation 5 is largely compliant.**

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

106. Marshall Islands was rated non-compliant with SR III in its 2011 MER. Marshall Islands did not have procedures in place to implement UNSCR 1373 nor procedures to demonstrate the ability to freeze without delay in relation to UNSCR 1267. Deficiencies were also noted in the communications systems, guidelines and monitoring of compliance by Marshall Islands authorities.

Criterion 6.1

107. The United Nations Sanctions (Implementation) Act 2020, and UN Targeted Financial Sanctions (Terrorism and Proliferation) Regulations, 2020 outline the mechanisms for targeted financial sanctions related to terrorism.

108. *Criterion 6.1(a):* Under the UN Sanctions (Implementation) Act, 2020, the Minister of Justice (Immigration and Labor) is the competent authority to designate entities and persons to the 1267/1989 and 1988 Committee or, by the Minister's delegation of authority, to the Attorney General (s.212).

109. *Criterion 6.1(b):* The UN Sanctions Act and TFS Regulations establish the framework and procedures to identify entities for designation, which includes identifying entities. The Minister may submit a proposal for designation for TFS whether or not the Minister has previously designated the individual or entity under s.208 (Sanctions Act s.212 (2)). The Minister may propose a designation to the UNSC or its Committees if the Minister has reasonable grounds to believe criteria for designation set out in the relevant UNSCRs has been met (s.5 (1) of the TFS Regulations). The National AML/CFT Council is the mechanism for coordinating the effective implementation of the Act and associated regulations (Section 205 of the UN Sanctions Act). The National AML/CFT Council adopted formal Procedures for Referring Targets for Targeted Financial Sanctions in early 2023.

110. *Criterion 6.1(c):* The Minister (of Justice, Immigration and Labor) can designate a person or entity if the criteria exists and/or the Minister has reasonable grounds to believe the criteria has been met for designation as established by the country's regulations—without the necessity of a criminal investigation or other proceeding (UN Sanctions Act, s.208 and s.3(2) of the TFS Regulations).

111. *Criterion 6.1(d):* The Minister must follow the procedures and standard forms for listing, as specified by the 1267/1989 Committee or the 1988 Committee (TFS Regulations (s.5, 2(a)).

112. *Criterion 6.1(e):* The criteria for designation by the Minister is defined as 1) providing a statement of the case, 2) providing as much identifying and supporting information as possible, 3) establishing any connection with a person or entity already designated, and 4) UNSC or its Committees specifying the Marshall Islands' status as a designating country (s.5(2) of the TFS Regulations).

Criterion 6.2

113. *Criterion 6.2(a):* The Minister of Justice is the competent authority responsible for designation (of entities and individuals) pursuant of UNSCR 1373. The Minister must designate persons or entities if the designation criteria 1373 have been met (s.208). The Minister may also designate a person or entity after considering a request from another country (s.4(1) of the TFS Regulations).

114. *Criterion 6.2(b):* The UN Sanctions Act and TFS Regulations establish how a person could be identified for designation. Section 3 (1) of the TFS Regulations stipulates the Minister may designate a person or entity if the Minister has reasonable grounds to believe criteria for designation set out in the UNSCR 1373 has been met.

115. Section 205 of the UN Sanctions Act identifies the National AML/CFT Council as the mechanism for coordinating the effective implementation of the Act and associated regulations. The Procedures for Referring Targets for Targeted Financial Sanctions adopted by the National AML/CFT Council include procedures specific to UNSCR 1373.

116. *Criterion 6.2(c):* Section 4(2) of the TFS Regulations requires the Minister to "expediently consider a request for designation from a foreign country" in order to designate a person or entity under s.208(1) of the UN Sanctions Act.

117. *Criterion 6.2(d):* Under the UN Sanctions Act, s208 (1) the Minister must designate a person or entity for TFS if the Minister has "reasonable grounds" to believe that the criteria for designation has been met by Marshall Islands regulations, irrespective of the existence of a criminal investigation or proceedings. In addition, UN Sanctions Act, s208 states the Minister (of Justice, Immigration and Labor) can designate a person or entity if the criteria exists and/or the Minister has reasonable grounds to believe the criteria has been met for designation as established by the country's regulations—without the necessity of a criminal investigation or other proceeding (s.3(2) of the TFS Regulations).

118. *Criterion 6.2(e):* The Minister may disclose information to a foreign government agency and the UNSC or its Committees for the purposes of enforcing or administering the UN Sanctions Act (s.230 c., e., and f.). The Minister must provide "identifying information and information supporting the designation" to another country when requesting action in relation to designated persons or entities, or persons or entities acting on their behalf, or any assets owned or controlled by those persons or entities, within their jurisdiction (s.4(3) of the TFS Regulations).

Criterion 6.3

119. *Criterion 6.3(a):* According to the UN Sanctions Act, s.213(1) the Minister of Justice may consider relevant information from all relevant sources (domestic and foreign), including law enforcement and other internal government agencies when proposing UNSC designations. Under the Sanctions Act s.213(2), law enforcement and government authorities can share and disseminate secret/confidential information to inform the Minister of Justice's decision to designate. SOPs exist for referring targets for targeted financial sanctions.

120. *Criterion 6.3(b):* Under s.214 (1 and 2) of the UN Sanctions Act, the Minister must strive to provide within a "reasonable time after designation" written notice to a designated person or entity after sufficient time has been allowed for the TFS to be applied. This mechanism operates *ex parte* —without a requirement for the designated person or entity to weigh in.

121. *Criterion 6.4* is **met**. UN Sanctions Act s207(1) establishes that UNSC designations (TFS) have immediate effect in the country, without the need for a domestic action. s.208(2) of the UN Sanctions Act also provides that designations made under UNSCR 1373 also have immediate effect within the Marshall Islands.

Criterion 6.5

122. The requirement to freeze assets without delay and without prior notice is implemented under UN Sanctions Act s.215 (1 and 2) and TFS Regulations 2020 Part IV, s.11.

123. *Criterion 6.5 (a) and (b):* TFS Regulations and the UN Sanctions Act provide Marshall Islands authorities the ability to freeze, seize and detain funds without delay.

124. Section 11 of the TFS Regulations implement a *de facto* freezing regime, which prohibits all natural and legal persons from knowingly or recklessly dealing with any of the following assets:

(a) assets that are wholly or jointly, directly or indirectly, owned or controlled by a designated person or entity, or by a person or entity acting on their behalf or at their direction (s.11(1)(a)); and

(b) assets derived or generated from the assets listed in paragraph (a) (s.11(1)(b).

125. The definition of 'asset' in the UN Sanctions Act, which applies to the TFS Regulations, is broad and covers the full range of 'funds and other assets' as defined in the FATF Glossary (s.203(a). Section 11(2) specifies that the asset does not need to be tied to a particular terrorist act, plot, or threat in order to be a freezable asset.

126. The nature of the *de facto* regime means there is no requirement to provide prior notice before freezing assets. Section 10 of the TFS Regulations sets forth the sequence of communication and provides that notification to a designated person or entity must occur after (a) notification to financial institutions and DNFBP and (b) publication of communicable information and that it must be made "after sufficient time has been allowed for targeted financial sanctions to be applied" (TFS Regulations, s.10(c)).

127. *Criterion 6.5(c):* Section 12 of the TFS Regulations lays out prohibitions against making assets available to, or for the benefit of, designated persons or entities; persons or entities owned or controlled by designated persons or entities; persons or entities acting on behalf or at the direction of a designated person or entity.

128. The definition of 'assets' in the UN Sanctions Act includes economic resources (section 203(a).

129. Section 13 of the TFS Regulations prohibits making financial or other related services available to designated persons or entities; persons or entities owned or controlled by designated persons or entities; persons or entities acting on behalf or at the direction of a designated person or entity.

130. *Criterion 6.5(d):* In the TFS Regulations, Section 8, stipulates that the competent authority (the Minister) must provide notification of designation to FIs, DNFBP, and those in possession (or suspected to be in possession) of freezable assets within a matter of hours. The

information is to be communicated by any means determined by the Minister. Section 9 expands on the means of communication and notes that notification and publication of the information must be publicly available within hours. The AG's Office and FIU are working together to develop an email-based notification system. Guidance on Targeted Financial Sanctions for banks, FSPs, & DNFBP under the UN Sanctions Act and the TFS Regulations was finalised in 2023, disseminated to FIs and DNFBP, and made publicly available.

131. *Criterion 6.5(e):* The obligation to report possession or control of freezable assets is under TFS Regulations, Section 15. The regulation stipulates that a person or entity that has possession or control of a freezable asset must report the asset, or and any attempted transactions related to the asset, within two working days after the reportable event. Similarly, a person or entity that is requested to provide a financial or related service in contravention of section 13 must make a report of that request. The agency responsible for receiving the report is cited as the FIU in the TFS Regulations.

132. *Criterion 6.5(f):* Rights of third parties are protected under the TFS Regulations, Section 17. The regulations require the Minister (of Justice, Immigration, and Labor) to expediently provide relief to bona fide third parties applying for the release of a confiscated asset if the Minister is satisfied that the asset will not be made available to, or benefit, the designated party.

Criterion 6.6

133. The UN Sanctions Act and TFS Regulations are available to the public via the Marshall Islands Parliament website, and Marshall Islands Judiciary website, respectively. Guidance on the implementation of TFS was issued in 2023, disseminated to Fis and DNFBP, and made publicly available, also on the Marshall Islands Judiciary website.

134. *Criterion 6.6(a):* Section 6(1) of the TFS Regulations details procedures for the Minister to submit de-listing requests to the UNSC or its Committees if the Minister is of the view that the person or entity does not meet the designation criteria. These requests must be submitted in accordance with the procedures adopted by the relevant Committee (s.6(2) of the TFS Regulations).

135. *Criterion 6.6 (b):* s.209-211 of the UN Sanctions Act detail the procedures for de-listing requests, and reviews of designations and de-listing by the Minister in relation to designations pursuant to UNSCR 13773.

136. *Criterion 6.6(c):* A person or entity who has submitted a de-listing request may request a review of the Minister's decision in the High Court (s.209(4) of the UN Sanctions Act).

137. *Criterion 6.6(d):* In addition to the procedures detailed in *Criterion* 6.6(a) above, the Minister may submit requests to Committees, including a Focal Point, in accordance with the procedures adopted by the 1988 Committee (S.6(2) of the TFS Regulations).

138. *Criterion 6.6(e):* Guidance on Requests for De-listing and Unfreezing, which provides comprehensive procedures for submitting de-listing requests (including to the UN Office of the Ombudsperson for persons and entities on the Al-Qaida Sanctions List), was finalised in early 2023, and is publicly available on Marshall Islands Judiciary's website.

139. *Criterion 6.6(f):* A person or entity may apply to the Minister for the release of an asset on the basis that the asset was inadvertently frozen due to a false match of identifying information (S.18(1) of the TFS Regulations).

140. *Criterion 6.6(g):* In the TFS Regulations, Section 8, the competent authority (the Minister) must provide notification of de-listing to FIs, DNFBP, and those in possession (or suspected to be in possession) of freezable assets within a matter of hours. A person or entity may request the Minister verify whether an asset is a freezable asset (TFS Sanctions, S.14). In practice, this would be accomplished via email communication,

141. *Criterion 6.7*: A request for access to frozen funds is provided for in Section 19 of the TFS Regulations. A person may petition the Minister for access to an asset, financial or related service, frozen funds to covers basic expenses, contractual obligations, legal obligations, and for extraordinary expenses, in accordance with the requirements of paragraph 1of UNSCR 1452.

Weighting and Conclusion

142. The UN Sanctions Act, and UN Targeted Financial Sanctions (Terrorism and Proliferation) Regulations, 2020 outline the mechanisms and implementation for targeted financial sanctions in the Marshall Islands. There are procedures in place to implement UNSCR 1373 and procedures to demonstrate the ability to freeze without delay for UNSCR 1267. Guidance on Requests for De-listing and Unfreezing, which provides comprehensive procedures for submitting de-listing requests (including to the UN Office of the Ombudsperson for persons and entities on the Al-Qaida Sanctions List), was finalised in early 2023, and is publicly available.

143. **Recommendation 6 is rated compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

The financing of proliferation is a new Recommendation added in 2012.

144. The financing of proliferation is a new Recommendation added in 2012.

145. *Criterion 7.1*: The UN Sanctions Act and UN Targeted Financial Sanctions (Terrorism and Proliferation) Regulations, 2020 outline the guidelines for TFS related to proliferation of WMD. The Marshall Islands implements TFS without delay to comply with UNSCRs related to the prevention, disruption, and suppression of proliferation of WMD and its financing.

146. Under the UN Sanctions Act 2020, s.207(1) the designation of a person or entity by the UNSC or its Committees has immediate enforcement and effect in the Marshall Islands. In s.208 (2), the UN Sanctions Act notes that the designation of a person or entity by the Minister has immediate effect.

Criterion 7.2

147. *Criteria 7.2(a) and (b):* TFS Regulations and the UN Sanctions Act provide authorities the ability to freeze, seize and detain funds without delay. The UN Sanctions Act s215 (1) notes that the High Court of the Marshall Islands may grant a warrant to law enforcement or other authorised authorities to "search for and seize a frozen asset if there is a reasonable risk that the asset will dissipate."

148. Section 11 of the TFS Regulations implement a *de facto* freezing regime, which prohibits all natural and legal persons from knowingly or recklessly dealing any of the following assets:

> (a) assets that are wholly or jointly, directly or indirectly, owned or controlled by a designated person or entity, or by a person or entity acting on their behalf or at their direction (s.11(1)(a));

(b) assets derived or generated from the assets listed in paragraph (a) (s. 11(1)(b); and

(c) vessels designated as freezable assets by the UNSC or its Committees under resolution 2270, resolution 2321, or successor resolutions on the basis that the vessels are owned and controlled by a designated person or entity.

149. The definition of 'asset' in the UN Sanctions Act, which applies to the TFS Regulations, is broad and covers the full range of 'funds and other assets' as defined in the FATF Glossary (s.203(a)). As with TF TFS, the nature of the *de facto* regime means there is no requirement to provide prior notice before freezing assets. Section 10 of the TFS Regulations sets forth the sequence of communication. It stipulates that notification to a designated person or entity must occur after (a) notification to financial institutions and DNFBP and (b) publication of communicable information, and that it must be made "after sufficient time has been allowed for targeted financial sanctions to be applied" (TFS Regulations, S.10(c)).

150. *Criterion 7.2(c)*: Section 12 of the TFS Regulations lay out prohibitions against making assets available to, or for the benefit of, designated persons or entities; persons or entities owned or controlled by designated persons or entities; persons or entities acting on behalf or at the direction of a designated person or entity. The definition of 'assets' in the UN Sanctions Act includes economic resources (s.203(a)).

151. Section 13 of the TFS Regulations prohibits making financial or other related services available to designated persons or entities; persons or entities owned or controlled by designated persons or entities; persons or entities acting on behalf or at the direction of a designated person or entity.

152. *Criterion 7.2(d):* TFS Regulations, Section 8 stipulates that the competent authority (the Minister) must provide notification of designation to FIs, DNFBP, and those in possession (or suspected to be in possession) of freezable assets within a matter of hours. The information is to be communicated by any means determined by the Minister. Section 9 expands on the means of communication and notes that the information must be publicly available within hours. Written notification of designation must be relayed "within a reasonable time after the date of designation and after sufficient time has been allowed for TFS to be applied."

153. The FIU has an email-based notification system. The Marshall Islands notes that it is expected that the Minister will also publish information on a government website to disseminate designations to FIs within hours. In addition, some financial institutions in the Marshall Islands already have subscriptions to commercial databases that include United Nations sanctions, as well as the United States' and other countries' sanctions lists. In addition, Marshall Islands has issued Guidance on Targeted Financial Sanctions for banks, FSPs, & DNFBP, which provides comprehensive guidance on targeted financial sanctions obligations, and has been finalized, disseminated to FIs and DNFBP, and made publicly available on the Marshall Islands Judiciary website.

154. *Criterion 7.2(e):* The obligation to report possession or control of freezable assets is under TFS Regulations Section 15. It stipulates that a person or entity in possession or control of a freezable asset must report the asset, or and any attempted transactions related to the asset, within two working days after the reportable event. Similarly, a person or entity that is requested to provide a financial or related service in contravention of section 13 must make a report of that request. The agency responsible for receiving the report is cited as the FIU in the TFS Regulations.

155. *Criterion 7.2(f):* Rights of third parties are protected under the TFS regulations Section 17. The regulations require the Minister (of Justice, Immigration, and Labor) to expediently

provide relief to bona fide third parties applying for the release of a confiscated asset if the Minister is satisfied that the asset will not be made available to, or benefit, the designated party. s.231(1) of the UN Sanctions Act also protects those acting in good faith from liability in relation to the Act and TFS Regulations.

156. *Criterion 7.3*: The AG's Office is the supervisory authority that monitors, enforces compliance, and coordinates with other agencies for TFS related to PF (UN Sanctions (Implementation) Act s.218). The AG's Office can conduct onsite inspections without prior notice and require information or documents be surrendered at any time. Persons failing to comply are subject to a fine not exceeding $100,000 or imprisonment up to 3 years, or both. For corporate entities, the fine is up to $700,000. Attempts to circumvent regulations are subject to imprisonment up to 15 years, and/or $300,000 for an individual and $2,000,000 for a corporate entity (UN Sanctions (Implementation) Act s.224 Offense).

Criterion 7.4

157. *Criterion 7.4(a):* The Marshall Islands has mechanisms for appeal to the UN Security Council under its TFS Regulations (Section 6). Under the guidelines, the Minister may request the UNSC de-list a person or entity if the Minister believes the designated individual or entity no longer meets the criteria for designation (S. 6(1)). The request may be started with a petition by the designated party to the Minister or the Minister may make the request to the UNSC independently. If a designated entity is involved, the request of the entity may be made to the Minister if the entity is incorporated under a Marshall Islands law. When making the request, the Minister must take into consideration any relevant or credible information (foreign or domestic) and consult with other UN entities and relevant countries.

158. Procedures for designations made by the UNSC or its Committees is under the Marshall Island's TFS Regulations. Guidelines and procedures for periodic review by the Minister of designated entities or individuals is provided by the UN Sanctions Act.

159. *Criterion 7.4(b):* The Marshall Islands has legal authorities and procedures under the TFS Regulations to de-list and unfreeze the assets of persons and entities with the same or similar name of a designated person who is advertently affected by a freezing mechanism. Under S.18, a person or entity may apply to the Minister for the release of an asset that was inadvertently frozen. The Minister may issue a notice of a false match if the Minister can verify the applicant is not the intended designated entity or individual. The Minister is required to act expeditiously once a request is made.

160. *Criterion 7.4(c):* A request for access to frozen funds is provided for in s.19 of the TFS Regulations. A person may petition the Minister for access to an asset or financial or related service. The Minister may authorise the use of the frozen funds to cover basic expenses, contractual obligations, legal obligations, for extraordinary expenses. Prior to granting such authorisation, the Minister 1) must notify the relevant UNSC or other UN Sanctions Committees; 2) must obtain approvals from the UNSC or other Sanctions Committees; 3) must conduct any verifications as required by the UNSC or other Sanctions Committees; and 4) has the ability to revoke authorisation granted under this section. The Guidance on TFS for banks, FSPs and DNFBP provides further clarification on what constitutes a valid basis for a request to access funds.

161. *Criterion 7.4(d):* Section 8 of the TFS Regulations specify a mechanism to receive and circulate new or updated designations or de-listings to financial institutions/DNFBP. The regulation stipulates that the Minister must provide notification within hours to FIs and DNFBP and provide information regarding de-listing actions and those in possession (or suspected to

be in possession) of freezable assets. The information is to be communicated by any means determined by the Minister. Section 10 notes that written notification of designation must be relayed "within a reasonable time after the date of designation and after sufficient time has been allowed for TFS to be applied."

162. Guidance on Requests for De-listing and Unfreezing was issued in 2023, and provides comprehensive procedures for submitting de-listing requests.

Criterion 7.5

163. *Criterion 7.5(a)*: Section 12 of the TFS Regulations permits the addition of interest payments to frozen accounts, and/or other earnings; payments due under contracts, agreements or obligations that arose prior to the date of designation—provided that any such interest, other earnings and payments continue to be subject to the provisions and are frozen. In addition, the UN Sanctions Act, s.216 (1)-(3) lays out the management of seized assets.

164. *Criterion 7.5(b)*: The Minister may grant authorisation of an asset or make available a financial or related service if the asset is due under a contract entered into prior to the listing, or the authorisation would be consistent with another exception (s.19 of the TFS Regulations). Contractual obligation is defined as an obligation where a payment is required under contract or agreement that was made prior to the date of the person or entity's designation, and where the payment does not violate the provisions of an applicable UNSCR (S.2(d) of the TFS Regulations). Prior to granting such authorisation, the Minister 1) must notify the relevant UNSC or other UN Sanctions Committees; 2) must obtain approvals from the UNSC or other Sanctions Committees; 3) must conduct any verifications as required by the UNSC or other Sanctions Committees; and 4) has the ability to revoke authorisation granted under this section.

Weighting and Conclusion

165. The UN Sanctions Act and UN Targeted Financial Sanctions (Terrorism and Proliferation) Regulations, 2020 outline the mechanisms for the enactment of TFS related to proliferation. The UN TFS Regulations give effect to 13 different UNSC resolutions and their successor resolutions. Marshall Islands has issued guidance on the implementation of TFS to reporting entities. and made it publicly available.

166. **Recommendation 7 is rated compliant.**

Recommendation 8 – Non-profit organisations

167. In its 2011 MER, Marshall Islands was rated non-compliant with SR VIII. The assessment team noted Marshall Islands had not completed a review of the NPO sector, nor were registration, transparency and record-keeping requirements sufficient. Marshall Islands authorities had also failed to undertake outreach on TF risks and there was a lack of sanctions available to address non-compliance.

Criterion 8.1

168. *Criterion 8.1 (a):* The Marshall Islands completed a ML/TF NRA in 2020 that assesses NPOs and two subsequent sectoral risk assessments examining domestic NPOs and DAO NPOs concluded that domestic NPOs present a low risk and DAO NPOs present a high risk for TF. The DAO NPO risk assessment identifies the characteristics of DAO NPOs which makes them more likely to be at risk for TF abuse.

169. *Criterion 8.1(b)*: The DAO NPO risk assessment concludes the potential risk of TF through DAO is high due to the Marshall Islands Registrar for RDE (AG's Office) being understaffed and not conducting effective risk-based supervision, the lack of regulations to provide requirements for supervision and monitoring, the ability of DAO to conduct transactions using virtual currencies which may or may not be regulated, and the absence of requirements and processes in place to positively identify DAO beneficial owners.

170. *Criterion 8.1(c)*: While the adequacy of laws and regulations pertaining to domestic NPOs was conducted, there has not been a comprehensive review of the adequacy of laws and regulations pertaining to NPO DAO since the publication of the NPO DAO risk assessment. Given the high risk identified, this represents a significant gap. The Non-Profit Entities Act 2020 (NPE Act) was enacted a "good works" requirement (s.206) and fit and proper requirements for directors and officers (S.216). In addition, the name and addresses of directors and officers must be filed with the Registrar whenever changes occur per s208(3)(m).

171. The Non-Profit Entities Act 2020 ("NPE Act") (P.L. 2021-29) was passed and entered into force in May 2021. It was amended in November 2021 (P.L. 2021-39) to allow non-profit entities to choose to structure as an LLC and to choose blockchain-based governance in the form of a DAO LLC by smart contract on a distributed ledger.

172. *Criterion 8.1(d)*: The NPO DAO sectoral risk assessment represents a significant effort to reassess the NPO sector, which resulted in findings which significantly carried from the NRA. Given the rapidly evolving nature of technology and the lagging regulatory environment, reassessments will need to be conducted regularly.

Criterion 8.2

173. *Criterion 8.2(a)*: A number of laws and regulations provide a framework for accountability and integrity for the NPO sector; the Non-Profit Entities Act, Cooperatives Act and Counter Terrorism Act, and the Associations Law.

174. The CTA, Associations Law, and the AG's Office require that a reporting entity must be registered with MICNGOs prior to providing business.

175. In the Cooperatives Act, s.273 requires every association to undergo yearly auditing and to keep a set of books. s.274 notes that every association is required to annually report the amount of capital, and submit receipts for expenditures, assets, and liabilities of the association.

176. NPOs are regulated by the Registrar for RDE (housed within the AG's Office). Record keeping and reporting requirements are subject to the requirements applied to other registered entities under the Guidance on Beneficial Ownership Requirements of the Republic of the Marshall Islands Associations Law, NPE Act, and the Cooperatives Act. Every association shall keep a set of books, which is audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director, and which shall be subject to audit by the OAG. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with non-members, the balance sheet, and the income and expenses, is to be submitted to the annual meeting of the association.

177. In addition, Corporate Regulations 1995 (S.5) stipulates that each resident corporation must maintain reliable and complete accounting records and beneficial ownership information for at least five years and can be provided to the Registrar upon demand. Failure to supply such records will result in a penalty of a fine between $50 and $1,000 if the corporation is unable to demonstrate the maintenance and retention of records (Schedule 1, Corporate Regulations 1995).

178. *Criterion 8.2(b)*: Marshall Islands engaged in some outreach during the development of the NRA and conducted outreach to several large NGOs in November 2023. However, the high risk DAO NPO sector was not included in this outreach. The event focused on high-level findings from the NRA as well as NPO requirements under the NPE Act including information relating to the creation, registration, governance and dissolution of non-profit entities operating or wishing to operate in Marshall Islands. The domestic NPO sector is marshalled under the umbrella organisation called the Marshall Islands Council of NGOs (MICNGOs) that is also a member of the Pacific Islands Association of Non-Governmental Organisations (PIANGO). The organisation acts as a liaison between the NGO/NPO community and government.

179. *Criterion 8.2(c)*: The Marshall Islands has not worked with NPOs to refine best practices to protect NPOs from TF abuse.

180. *Criterion 8.2(d)*: The NPE Act includes a provision requiring registered NPOs to open a bank account. Marshall Islands authorities note the access to unregulated financial channels is more limited in the Marshall Islands than in other countries.

181. The Registrar of Corporations and MICNGOs undertook an outreach program in 2023 on the accountability and transparency aspect of the Code of Minimum Standards, which included introducing an audit policy that will complement the government's reporting requirements. NPO DAO were not included in the outreach.

182. *Criterion 8.3*: Marshall Islands has not implemented risk-based supervision or monitoring programme for high risk NPOs (DAO NPOs) that are vulnerable to the threat of terrorist abuse.

Criterion 8.4

183. *Criterion 8.4(a):* The Office of the Registrar of Corporations in the AG's Office is responsible for the registration, monitoring and supervision of NPOs. This does not specifically include monitoring for TF risk and entails random spot checks to verify compliance with record keeping requirements. There is no demonstration that risk-based measures apply to NPOs at risk of TF and therefore the monitoring of compliance of NPOs with this provision does not occur.

184. *Criterion 8.4(b):* The Business Corporations Act and Corporate Regulations establish recordkeeping requirements and penalties for violations by NPOs or persons acting on behalf of the NPOs. However, the penalties are broadly not dissuasive nor proportionate. Under the Business Corporations Act, failure to comply with record-keeping requirements or production of false or misleading records, is punishable by a fine not exceeding $50,000, revocation of articles of incorporation and dissolution, or both (s.80(6)). Under Corporate Regulations Schedule I – Penalty Fees, failure to file an annual report is punishable by a fine of $50. Whereas failure to maintain ownership/beneficial ownership information is subject to a $500 fine. NPE Act penalties may also be applied to violations.

Criterion 8.5

185. *Criterion 8.5(a):* Marshall Islands has a broad framework for the implementation of effective information gathering and investigation to ensure authorities can assess relevant information on NPOs. Under the Banking Act (s183) the National AML/CFT Council has been established and is the designated authority responsible for the formulation of national AML/CFT strategy and policies in coordination with the Banking Commissioner (Head of the FIU), Minister of Finance, and the Cabinet. The AML/CFT Council is comprised of the Attorney General (or his/her designee), the Banking Commissioner, the FIU, the Police Commissioner,

Customs and Revenue, the OAG (or a designee), the Registrar of Corporations, and the Registrar of Foreign Investments, according to the Banking Act s183. The abovementioned authorities hold information concerning NPOs. The Registrar for RDE (within the AG's Office) is permitted, as a member of the National AML/CFT Council to disclose information to the Council for the detection, investigation, or prosecution of serious offenses (Banking Act s183).

186. *Criteria 8.5(b), (c) and (d):* The Office of the Registrar of Corporations responsible for the registration and ongoing regulation of NPOs. As referenced above, the Registrar has access to information concerning management and supervision of NPOs. In addition to conducting investigations, the Marshall Islands' FIU has an MOU with the Registrar's Office to permit access to information held by the Registrar. The AG's Office has access to information held by the Registrar and the FIU.

187. The Marshall Islands has mechanisms in place to share information across agencies when an NPO is suspected of being involved in illicit activity (broad TF activity and concealing the diversion of funds), however there is no codified timeframe. Under the Banking Act (s167 1.a), the Banking Commissioner and the FIU can receive, analyse, and disseminate reports of transactions issued by banks, DNFBP, and other financial services providers. Moreover, the National AML/CFT Council is the primary conduit to share information regarding suspicious activity by an NPO to enact preventative and/or investigative action/s. As noted above, the Registrar and members of the Council are permitted to share and disclose information for the detection, investigation, or prosecution of serious offenses (ML, TF, or enforcement of the Proceeds of Crime Act).

188. Section 183(3) of the Banking Act expressly authorises members of the National AML/CFT Council to disclose information "for the detection, investigation or prosecution of a serious offense, a money laundering offense or an offense of financing of terrorism" or for enforcement of the POCA.

189. Marshall Islands authorities disclosed that the country relies on its law enforcement agencies to assist in investigating NPO financial crimes or other suspected improper activities. However, specific guidance is lacking for reporting entities with indicators for TF abuse. In addition, authorities have not demonstrated investigative expertise and capability to examine NPOs suspected of being exploited by or supporting terrorist activity.

190. The AG may also launch an investigation into an NPO's financial activities with assistance from the Banking Commissioner, the OAG and other relevant LEAs.

191. *Criterion 8.6*: Under guidelines associated with Mutual Assistance in Criminal Matters Act, 2002 (MACMA) the Attorney General is the competent body that responds to international requests for information. Though MACMA establishes procedures for responding to international requests for information, it does not make the stipulation specifically that this information applies to NPOs. The Banking Act s.167 (1,a-e), additionally gives broad authorities to the Commissioner to compile and disseminate information when addressing ML activity. However, authorities do not specifically mention NPOs nor do the information-sharing mechanisms specifically focus on TF. Requests are broadly defined and can encapsulate a range of information. (MACMA Section 4. General procedure for responding to requests). In addition to the AG and Commissioner, the Office of the Registrar of Corporations also holds responsibility for disclosing information to the National AML/CFT Council concerning ML/TF when performing the duties and functions under the Act. By extension, the Registrar's Office is part of governmental efforts respond to international requests for information (Banking Act 1987, s.187, 3). As referenced earlier, the Registrar has access to information concerning management and supervision of NPOs (Banking Act 1987, s.187, 1(g)).

Weighting and Conclusion

192. The Marshall Islands has identified domestic NPOs as low risk and DAO NPOs as presenting a high risk for ML/TF abuse. Marshall Islands has not demonstrated a risk-based approach or sustained outreach. Marshall Islands has not implemented a targeted risk-based supervision or monitoring in dealing with the subset of NGOs/NPOs (DAO NPOs) that are vulnerable to the threat of terrorist abuse. There are mechanisms in place to enable authorities to respond to international requests for information and for domestic information-sharing.

193. **Recommendation 8 is partially compliant.**

Recommendation 9 – Financial institution secrecy laws

194. Marshall Islands was rated compliant on the former R.4 in its 2011 MER.

195. *Criterion 9.1*: According to s.154 of the Banking Act 1987, every officer and employee of every licensed bank and every officer or employee working under the Banking Commissioner, shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any licensed bank, or of any of its clients in the course of business.

196. However, the secrecy provisions are not absolute and the Banking Act 1987 (s.154) carves out exceptions. Those exceptions concern: 1) information directly related to a customer's request regarding his/or her account; 2) when a request is made by a Marshall Islands' court; and 3) in order to comply with the Banking Act or any other written law. In addition, s.154 stipulates that secrecy provisions are outweighed by the performance of duties for the Banking Commissioner. Further, s.167(1)(m) of the Banking Act notes that the Commissioner has the authority to obtain information notwithstanding any secrecy or other restrictions on disclosure of information imposed by the Act.

197. Thus, the Marshall Islands authorities' legal power to override secrecy provisions, where necessary for regulatory or investigative purposes, are codified and extensive and identification of unlawful activity shall have effect regardless of secrecy obligations. Banks are not impeded by secrecy provisions from complying with the obligations imposed on them pursuant to FATF Recommendations. There are no secrecy provisions in Marshall Islands law that apply to financial institutions other than licensed banks.

Weighting and Conclusion

198. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer due diligence

199. In the 2011 MER, Marshall Islands was rated partially compliant with the former R.5. The factors underlying the rating included: CDD obligations under the revised AML Regulations had not yet been implemented by a number of FIs and cash dealers; effectiveness of arrangements to comply with detailed CDD obligations had not yet been verified through compliance monitoring; FIs and cash dealers did not have adequate policies and procedures to determine beneficial owners; and the definition of beneficial owner was not consistent with the FATF Recommendations. Since the MER, Marshall Islands has amended the definition of beneficial owner.

Detailed CDD requirements

200. All financial institutions that are present in the Marshall Islands fall within the FATF definition of 'financial institutions' for the purposes of AML/CFT preventive measures. Enforceable preventive measure obligations on financial institutions are set out in the banking Act and the AML Regulations (2002, as updated in August 2023) through interconnected definitions of banks, cash dealers, financial service providers and financial institutions. The obligations cover a number of financial services that are not yet present in the Marshall Islands. All of the mandatory obligations on FIs as set out in the AML Regulations are enforceable through persuasive civil monetary penalties set out in the Banking Act (s.181).

201. *Criterion 10.1:* FIs are not permitted to open, operate or maintain any anonymous account or accounts that are in fictitious or incorrect names (S.168(1), Banking Act and S.3B.1 & 3B.4, AML Regulations).

When CDD is required

Criterion 10.2: FIs are required to undertake CDD when:

(a) a person applies for a business relationship (Banking Act, s.168; AML Regulations, s.3B.3(a));

(b) a person seeks to engage in one or more occasional transactions where the total value of the transactions exceeds $10,000 (Banking Act, s.168; AML Regulations, s.3B.3(b));

(c) a person seeks to carry out a wire transfer (AML Regulations, s.3B.3(c));

(d) a person engages in suspicious activity (AML Regulations, s.3B.3(d));

(e) any time where doubts have arisen as to the veracity or adequacy of previously obtained identification data on the person (AML Regulations, s.3B.3(e)).

Required CDD measures for all customers

202. *Criterion 10.3*: FIs are required to identify and verify the identity of customers under s.168 of the Banking Act and s.3B.2-3B.5 of the AML Regulations. This includes customers whether permanent or undertaking occasional transactions and includes customers who are natural and legal persons, as well as legal arrangements.

203. FIs are required to record and verify identity through the "use of documents providing convincing evidence of their legal existence, powers of legal representative or other official or private documents" (s.168(2) of the Banking Act).

204. Section 3B.4 of the AML Regulations requires reliable, independent source documents, data, or information (as provided for in Schedule 1 of the Regulations) to be used for identification of natural persons. Part A of the Schedule sets out comprehensive CDD procedures for verification of identity of natural persons.

205. For legal persons or arrangement, FIs (S.3B.5) are required to obtain and verify:

(a) the customer's name and legal form, including by obtaining proof of incorporation or similar evidence of establishment or existence (such as a trust instrument);

(b) the identification of members of the customer's controlling body (such as directors or trustees) as per the identification process for natural persons;

(c) legal provisions that set out the power to bind the customer;

(d) legal provisions that authorise persons to act on behalf of the customer;

(e) the identity of the natural person purporting to act on behalf of the customer, using source documents as provided in S.3B.4;

(f) the address of the registered office and, if different, a principal place of business; and

(g) such other reliable, independent source documents, data, or information as provided for in Schedule 1 of these Regulations.

206. Schedule 1 of the AML Regulations set out a comprehensive list of identification data for legal persons which can be considered reliable, independent source documents, data or information for legal persons and arrangements.

207. *Criterion 10.4* : FIs must take reasonable measures to determine if a customer is acting on behalf of any other person or persons, and to establish the true identity of any person on whose behalf or for whose ultimate benefit the customer may be acting (s.168(3), Banking Act). Where customers are legal persons or legal arrangements, FIs must verify their customers' identify (s.3B.2 of the AML Regulations) and verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person using reliable, independent source document (s.3B.6). FIs are required to record and verify the representative capacity and legal capacity of persons through the use of documents providing convincing evidence of the powers of their legal representative (s.168(2) of the Banking Act).

208. *Criterion 10.5*: FIs are required to identify the beneficial owner and take reasonable steps to verify the identity of the beneficial owner by using relevant information or data obtained from a reliable source (s.3C.1, AML Regulations).

209. The definition of 'Beneficial Owner' is set out in Section 1(6) of the AML Regulations, extends to the natural person(s) who ultimately owns or controls and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate effective control over a legal person or arrangement. Reference to ultimate ownership or control and ultimate effective control refer to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.

210. *Criterion 10.6*: FIs are required, among other things, to record and verify persons' 'business purpose' (s.168(2) of the Banking Act). Section 3B.7 of the AML Regulations requires FIs to obtain information on the purpose and intended nature of the business relationship when identifying customers.

211. In the case of a corporate, partnership, unincorporated businesses, trusts and legal arrangements, the procedures set out in Schedule 1, Parts B, C and D must be applied by FIs where they are required to verify the identity of the business, trust or legal arrangement. The procedures include requiring information on purpose of the account and potential parameters of the account such as size, balance ranges and expected transaction volumes which may assist in FIs in understanding the purpose and intended nature of the relationship with the FI.

Criterion 10.7

212. *Criterion 10.7(a):* FIs are required to create and maintain a customer profile (Section 3E.1, AML Regulations) for each customer of sufficient detail to enable the FI to implement CDD requirements, including transaction monitoring. They are also required to monitor transactions

on an ongoing basis, which must include scrutiny of customer transactions conducted according to the FIs knowledge of customer, its business and its risk profile, and where necessary, the source of funds including predetermined limits on transaction amounts and types of transactions (S.3I.1, AML Regulations).

213. *Criterion 10.7(b):* FIs are required to gather and maintain customer information on an ongoing basis. Documents, data or information collected under the CDD process must be kept up to date and relevant by reviewing existing records at appropriate times, particularly for higher risk categories of customers and business relationships. (S. 3H.1, AML Regulations).

214. Procedures set out in Schedule 1, Parts B, C and D that require FIs to obtain information on purpose of account, potential parameters such as size, balance ranges and expected transactions may assist in FIs in establishing a customer profile and monitoring transactions.

Specific CDD measures required for legal persons and legal arrangements

215. *Criterion 10.8*: Section 168(2) of the Banking Act require FIs to record and verify the "business purpose" of customers. Section 3C.4 of the AML Regulations states that for customers that are legal persons or legal arrangements, banks and FSPs must understand the ownership and control structure of the customer, including the ultimate natural person(s) who owns or control a legal person. The procedures set out in Schedule 1, Parts B, C, and D must be applied by FIs where they are required to verify the identity of the corporate entity or a partnership or unincorporated business or trusts or other legal arrangement which includes requiring information on description and nature of the business.

216. *Criterion 10.9* : For legal persons or legal arrangements, FIs are required to obtain and verify, among other things, (a) "the customer's name and legal form, including proof of incorporation or similar evidence of establishment or existence (such as a trust instrument)"; (b) the "legal provisions that set out the power to bind the customer", "identification of members of the customer's controlling body"; and (c) "the names and addresses of members of the customer's controlling body (such as directors or trustees)" (Section 3B.5, AML Regulations).

217. Parts B, C and D of Schedule 1 of the AML Regulations also require, for legal persons and legal arrangements, that FIs must obtain the name, legal form, incorporation documentation, location of registered office or registered agent, the identification information on the beneficial owner(s), names and addresses of all officers and directors, and any notional person acting on behalf of the legal person, description and nature of the business, any other official document and other information reasonably capable of establishing the structural information of the corporate entity and legal arrangement.

218. *Criterion 10.10*: Section 3C.1 of the AML Regulations requires that FIs identify and take reasonable measures to verify the identity of the beneficial owner by using relevant information or data obtained from a reliable source such that the FI is satisfied that it knows the identity of the beneficial owner. For customers who are legal persons, Section 3C of the AML Regulations requires FIs to take reasonable measures to understand and document elements of beneficial ownership.

Criterion 10.10

219. *Criterion 10.10(a):* FIs are required to take reasonable measures to understand and document the ownership and control structure of the customer that includes identifying the natural person who ultimately owns or controls a legal person, including natural persons with

a controlling interest (S.3C.4 of the AML Regulations). This does not include public companies listed on an exchange regulated by the Banking Commissioner or on a foreign exchange subject to adequate regulatory disclosure requirements and in a jurisdiction that effectively implements the FATF Standards (S.3C.3). Identification must be made of each natural person that owns, directly or indirectly, 25% or more of the vote or value of an equity interest in the entity (S.3C.5a, AML Regulations). To determine beneficial ownership, indirect control may extend beyond formal (direct) ownership or could be through a chain of corporate vehicles and through formal or informal nominee arrangements (s.3C.7, AML Regulations).

220. *Criterion 10.10(b):* Section 3C.4 requires FIs to identify the ultimate natural person(s) who owns or controls a legal person. Section 3C.5b also requires banks and FSPs to identify the natural person(s) (if any) exercising control through other means.

221. *Criterion 10.10(c):* Banks and FSPs must also identify the relevant natural person who holds the position of senior managing official when unable to identify a natural person under 10.10(a) or (b) (s.3C.5c, AML Regulations).

222. The obligations to verify BO information using data obtained from reliable sources is set out at s.3C.1 of the AML Regulation and extends to the specific requirements on legal persons and arrangements at S. 3C.4 and 3C.5.

Criterion 10.11

223. Section 3C.1 of the AML Regulations requires that FIs identify and take reasonable measures to verify the identity of the beneficial owner by using relevant information or data obtained from a reliable source such that the bank or FSP is satisfied that it knows the identity of the beneficial owner.

224. *Criterion 10.11(a):* Section 3C.4 of the AML Regulations requires banks and FSPs to understand the ownership and control structure of the customer and s.3C.6 goes on to provide that "identification must be made of the settlor(s), trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust" in order for FIs to determine the beneficial owner of the customer where a chain of ownership or control is involved. The definition of "beneficial owner" in S.1(6) of the AML Regulations includes situations in which ownership/control is exercised by a natural person through a chain of ownership or by means of control other than direct control.

225. *Criterion 10.11(b):* Section 3C.6 of the AML Regulations requires FIs to identify persons in equivalent or similar positions for other types of legal arrangements.

CDD for Beneficiaries of Life Insurance Policies

Criterion 10.12

226. *Criterion 10.12(a):* Section 3C.2 of the AML Regulations requires FIs to identify and verify the identity of a beneficiary of life insurance and other investment related insurance policies.

227. *Criterion 10.12(b):* Section 3C.2 b of the AML Regulations requires that sufficient information concerning beneficiaries that are designated by characteristics or class or by other means be obtained. The information must be sufficient to establish the beneficiary's identity at the time of the payout.

228. *Criterion 10.12(c):* While section 3D.2 allow FIs to delay conducting CDD if the delay is essential to not interrupt normal course of business and the AML/CFT risks are effectively managed, in all cases identification and verification of identity of a beneficiary of a life insurance

policy should be conducted before or at the time of payout (Appendix 1 Part A(c), AML Regulations).

229. *Criterion 10.13*: If an FI determines that a beneficiary who is a legal person or a legal arrangement presents a high risk, enhanced CDD must include reasonable measures to identify and verify the identity of the beneficiary's BO, at the time of payout. (s. 3K.8, AML Regulations). If higher risks are identified, FIs should inform senior management before the payout of the policy proceeds and conduct enhanced scrutiny of the whole business relationship with the policy holder and consider raising a suspicious transaction report (S. 3K.9 AML Regulations).

Timing of verification

230. *Criterion 10.14*: FIs are required to verify the identity of the customer and when establishing a business relationship or conducting transactions for occasional customers (S.3B.3 of the AML Regulations). There are circumstances in which FIs may delay completion of the customer and beneficial owner verification (s.3D.1). FIs must first apply to the Banking Commission for authorisation to delay completion of the customer identification process. FIs may only delay verification where (a) verification occurs as soon afterwards as reasonably practical; (b) the delay is essential to not interrupt the normal course of business; and (c) the ML/TF risks are effectively managed (s. 3D.3). Appendix 1, Part A of the Regulations provides examples of situations where it may be essential not to interrupt the course of the normal conduct of business**.**

231. *Criterion 10.15*: Section 3D.3 of the AML Regulations requires FIs to have procedures to manage the risk concerning delayed customer identification which should include measures such as: (a) limiting the number, type and/or amount of transactions that can be performed; and (b) enhanced monitoring of large and complex transactions.

Existing customers

232. *Criterion 10.16*: Banks and FSP FIs are required to apply CDD to existing customers on the basis of materiality and risk, and CDD must be conducted on such existing relationships at appropriate times (S.3A.3, AML Regulations). Banks and FSPs must also take into account whether and when CDD measures have previously been undertaken and adequacy of data obtained (s.3A.3, AML Regulations).

Risk-based approach

233. *Criterion 10.17*: Section 3A.2 of the AML Regulations states that CDD must be applied on a risk basis, which must include enhanced CDD for higher risk customers. Section 3K of the AML Regulations reiterates that FIs must apply enhanced CDD to customers that are likely to pose a higher risk of ML or TF and outlines the requisite enhanced CDD for higher risk customers, which includes reasonable measures to establish sources of wealth and funds, senior management approval of the business relationship, and enhanced monitoring. Banks and financial services providers (FSPs) are required to implement appropriate risk management systems to determine whether a potential customer or beneficial owner is a higher risk (S.3K.5, AML Regulations). Part B of Appendix 1 of the Regulations includes relevant factors in determining if a customer is higher risk.

234. *Criterion 10.18*: Section 3A.2 of the AML Regulations also provides that risk-based CDD may include simplified CDD for lower risk customers. According to s.3L.1, FIs may apply to the Banking Commission for authorisation to apply reduced or simplified CDD procedures. Permission may only be granted if the FI presents a procedure that demonstrates the ML/TF risk is lower and information on the identity of the customer and the beneficial ownership

information is publicly available, or where there are adequate checks and controls in national systems (S.3L.2). Section 3L.3 also provides that simplified CDD may be applied to customers that are resident in other countries only if the countries are in compliance with and have effectively implemented the FATF Recommendations. A list of examples of lower risk customers are found in Appendix 1 - Part C. Section 3L.4 expressly state that simplified measures are not permissible where there is a suspicion of ML/TF or higher risk scenarios.

Failure to satisfactorily complete CDD

235. *Criterion 10.19*: Section 3G.1 of the AML Regulations provides that FIs should not accept as customers those persons whose identity and beneficial ownership cannot be assured and for whom sufficient information to form a customer profile cannot be gathered, and in such cases, should determine if they should file a STR. Where the bank or FSP is unable to apply CDD measures required by the Regulations in relation to a customer, or where CDD identifies that the customer presents a level of risk that cannot be effectively mitigated, the bank of FSP must not open any account, commence business relations, perform any transaction for or on behalf of the customer, terminate any existing business relationship with the customer, and consider report a suspicious transaction report (s.3A.4).

236. *Criterion 10.20*: Section 3A.5 of the AML Regulations permits FI to stop the CDD process if they form a suspicion of ML, TF or PF activity and reasonably believes that performing the CDD process will tip-off the customer. They may choose not to apply CDD and file a suspicious transaction report instead. There is an obligation to report an STR when there is reasonable ground to suspect ML or TF (s.170 & 170A, Banking Act).

Weighting and Conclusion

237. **Recommendation 10 is rated compliant.**

Recommendation 11 – Record-keeping

238. In the 2011 MER, the Marshall Islands was rated largely compliant with the former R.10. The lack of recent compliance monitoring limited the ability to assess compliance with record keeping requirements.

239. *Criterion 11.1*: FIs are required to keep records for all transactions for a minimum of six years from the date the relevant transaction or business was completed (Banking Act, s.169(1) & (4)). Section 4 of the AML Regulations also states that FIs are required to retain records regarding all transactions to the extent required by that section, for a period of six years. The term "transaction" is defined adequately in section 4(b). Non-compliance with s.169 of the Banking Act is punishable by a fine of up to $2,000,000, imprisonment for up to 20 years, or both (Banking Act, s.169(5)) and civil monetary penalties can be imposed under the AML Regulations for non-compliance (s.7 of the AML Regulations).

240. *Criterion 11.2*: A FI is required under s.169(2) of the Banking Act to maintain records on customer identification, account files, and business correspondence for six years after the termination of an account. Sections 3B.8 and 3C.8 of the AML Regulations require FIs to retain relevant identification data, account files and business correspondence for at least 6 years.

241. FIs are required to retain records of suspicious activity reports for at least 15 years (Banking Act, s.170(3) and AML Regulations, section 5(c)). Section 3B.8 of the AML Regulations requires FIs to make and retain legible file copies of relevant identification data, account files, and business correspondence, and results of any analysis undertaken, for at least six (6) years following the termination of an account or business relationship (or longer if requested by the

Banking Commissioner). Non-compliance with s.169 of the Banking Act is punishable by a fine of up to $2,000,000, imprisonment for up to 20 years, or both (Banking Act, s.169(5)) and civil monetary penalties can be imposed under the AML Regulations for non-compliance (s.7 of the AML Regulations).

242. *Criterion 11.3*: FIs are required to maintain all records necessary to reconstruct financial transactions for 6 years after the conclusion of transactions (s.169(2) of the Banking Act). Section 4(b) of the AML Regulations sets out the records that FIs must maintain as reasonably necessary to enable transactions to be reconstructed. These records must be maintained for a period of 6 years since the date of the completion of transaction.

243. *Criterion 11.4*: Sections 3B.9, 3C.9 AML Regulations provide that FIs must ensure that all customer and transaction records are available on a timely basis and no later than five (5) working days to the Banking Commissioner or other domestic competent authority upon appropriate authority.

Weighting and Conclusion

244. **Recommendation 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

245. The Marshall Islands was rated largely compliant with the former R.6 in its 2011 MER. PEP obligations under the revised AML Regulations had not yet been implemented by a number of FIs and cash dealers and effectiveness had not yet been verified through compliance monitoring.

246. The Marshall Islands has defined politically exposed persons (PEPs) in the AML Regulations (s. 1(15)(i)) as 'any person who is or has been entrusted a prominent public function domestically (a "domestic PEP") or by a foreign country (a "foreign PEP"), including Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned companies, and important political party officials, or by an international organisation (an "international organisation PEP"), including directors, deputy directors and members of the board or equivalent functions.

247. *Criterion 12.1:* Foreign EPs are to be treated as high risk customers by FIs (S.3K.1 & Appendix 1 Part B of the AML Regulations). FIs are required to:

(a) put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP (s.3K.5, AML Regulations);

(b) obtain approval from senior management before entering into a business relationship with a PEP, or continuing a relationship if an existing customer or beneficial owner has already been accepted (s.3K.2 and section 3K.3, AML Regulations);

(c) take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as a PEP (s.3K.1, AMLT Regulations);

(d) undertake enhanced ongoing monitoring of the relationship (s.3K.4, AML Regulations).

248. *Criterion 12.2*: The revised definition of PEPs in section 1(15)(i) of the AML Regulations covers domestic PEPs and international organisation PEPs. Such PEPs are subject to the additional measures set out in s.3K.6 of the AML Regulations which adopt the wording of this criterion.

249. *Criterion 12.3*: The definition of a PEP in the AML Regulations includes family members or close associates of a PEP (s.1(15)(ii) and (iii)). Thus, the measures (set out in S.3K.1 to 3K.6 of the AML Regulations) that apply to domestic PEPs, international organisation PEPs and foreign PEPs also apply to their family members and close associates.

250. *Criterion 12.4*: There is a requirement for FIs to identify and verify each beneficiary of a life insurance policy (s.3C.2, AML Regulations) and take reasonable measures to determine whether the beneficiaries (and/or the beneficial owner of the beneficiary) are PEPs (s.3K.9, AML Regulations) at the time of the payout. Where beneficiary of the life insurance policy is identified as a foreign PEP, s.3K (enhanced CDD) of the AML Regulations applies, meaning enhanced ongoing monitoring of the relationship must be conducted (s.3K.4). While verification of beneficiaries is provided as one of the listed situations in Appendix 1 that can be delayed under s.3D of the AML Regulations, identification and verification still needs to take place prior to any payout.

Weighting and Conclusion

251. **Recommendation 12 is rated compliant.**

Recommendation 13 – Correspondent banking

252. In the 2011 MER, the Marshall Islands was rated partially compliant with the former R.7. There were no requirements for senior management authorisation of correspondent bank accounts and no requirements for both the correspondent and respondent banks to document their respective AML/CFT responsibilities.

Criterion 13.1

253. Section 3N of the AML Regulations outlines the policies and procedures on cross border correspondent banking and similar arrangements for banks and other FIs. Section 3N.1provides that s.3N also applies to correspondent banking and other similar relationships, including MVTS acting as intermediaries for the transfer of funds or value.

254. *Criterion 13.1(a):* Section 3N.2 requires banks, FSPs to gather sufficient information on the respondent bank to understand their business and determine from publicly available information the reputation of the institution, quality of the supervision and whether it has been subject to a ML or TF investigation or regulatory action.

255. *Criterion 13.1(b):* Section 3N.2 also requires FIs to assess the respondent institution's AML/CFT controls and determine that they are adequate and effective.

256. *Criterion 13.1(c):* Section 3N.2 also requires FIs to obtain approval from senior management to enter into a new correspondent banking or other similar relationships.

257. *Criterion 13.1(d):* Section 3N.5 requires that FIs must clearly understand the respective AML/CFT responsibilities of each institution in the correspondent banking or other similar relationship.

258. *Criterion 13.2*: Section 3N.6 of the AML Regulations outline requirements for corresponding services involving a payable-through account. This includes that the FI must be satisfied that:

> *(a)* the respondent institution has taken measures that comply with CDD requirements contained in the AML Regulations with respect to every customer having direct access to the account; and

(b) the respondent institution will provide the bank with the relevant evidence upon request.

259. There are only two MVTS providers operating in Marshall Islands – MoneyGram and Western Union. The Bank of Marshall Islands is the agent for MoneyGram and Robert Reimer's Enterprises (RRE), a privately owned company in the Marshall Islands is the Western Union agent. These two MVTS account for the majority of remittance flows in the Marshall Islands.

260. *Criterion 13.3*: Sections 3N.2 and 3N.10 of the AML Regulations prohibit FIs from entering into a correspondent banking relationship with shell banks. Section 3N.11 further requires FI to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.

Weighting and Conclusion

261. **Recommendation 13 is rated compliant.**

Recommendation 14 – Money or value transfer services

262. The Marshall Islands was rated partially compliant for former SRVI. The 2011 MER found a lack of effective implementation of the licensing requirements for MVTS and the absence of informal MVTS in the existing AML/CFT obligations.

263. *Criterion 14.1*: Financial services providers, as defined in the Banking Act, including cash dealers, money transmission services, domestic financial institutions and any person who carries on a business of issuing and administering foreign exchange, are required to be licensed by the Commissioner of Banking (s.102 and 123, Banking Act). According to Section 121 of the Counter-Terrorism Act 2002, any person, that provides a service for the transmission of money or value, including transmission through an alternative remittance system or informal money or value transfer system or network, or the agent of such person, is required to be licensed by the competent authorities. Marshall Islands has identified the Banking Commissioner as the competent authority, as per the Banking Act.

264. *Criterion 14.2*: The Banking Commission monitors for possible cases of unregulated remittance, however to date Marshall Islands has not identified any unlicensed MVTS providers operating in the Marshall Islands. To ensure no unlicensed MVTS providers are operating in the Marshall Islands, the Banking Commission monitors information sources, including applications for licensing, including rejected applications, marketing sources where MVTS providers might advertise, including the local newspaper, SARs and reports from domestic LEAs and international partners. Licensed MVTS providers and banks may also provide information on unlicensed MVTS providers. Marshall Islands authorities noted instances where people have reported that some local businesses do provide domestic money value transfer services between islands, but this has not arisen to the level of enforcement action. The FIU has not yet received any SAR reports indicating MVTS activities of companies and stores. Section 123(4) of the Banking Act empowers the Commissioner of Banking to identify persons carrying out MVTS without a licence or registration, and apply proportionate and dissuasive sanctions to them. However, Marshall Islands has not yet applied sanctions in practice, which is largely in keeping with the Marshall Islands' risk and context.

265. *Criterion 14.3*: MVTS are subject to the AML/CFT requirements of the Banking Act and AML Regulations. Section 184 of the Banking Act and s.2C.1 of the AML Regulations authorise the Banking Commission to conduct AML/CFT supervision. AML/CFT onsite examinations of both MVTS providers were conducted in August 2016. The MVTS sector is considered low risk

by Marshall Islands in comparison to banks and other financial service providers. The Banking Commission indicated that examination of MVTS providers will be conducted in due course in accordance with their risk rating.

266. *Criterion 14.4:* A person is defined in s.102(v) of the Banking Act as an individual, company, corporation, partnership or any-body incorporated or unincorporated and includes every director, manager, agent or secretary of such person. Section 123 of the Banking Act, requires any "person" who carries on a business of money transmission services, to be licensed by the Commissioner of Banking.

267. According to s.121 of the Counter-Terrorism Act 2002, any person, that provides a service for the transmission of money or value, including transmission through an alternative remittance system or informal money or value transfer system or network, or the agent of such person, is required to be licensed by the competent authorities. The Counter Terrorism Act and the Banking Act have overlapping legal provisions. The competent authorities stated in the CTA is identified as the Banking Commissioner as per the Banking Act.

268. *Criterion 14.5*: While there are currently no MVTS providers organised or headquartered in the Marshall Islands that use agents, a MVTS provider that uses agents to provide MVTS on its behalf must include them in its AML/CFT Program and monitor them for compliance with these programs (s.2B.8 AML Regulations).

Weighting and Conclusion

269. The Marshall Islands has taken some steps to monitor for persons carrying out MVTS without a licence, however the Marshall Islands has not yet had any instances of taking action in such cases, which is largely in keeping with the Marshall Islands' risk and context, onsite supervision of MVTS has not been conducted since the regulations were updated.

270. **Recommendation 14 is rated largely compliant.**

Recommendation 15 – New technologies

271. Marshall Islands was rated largely compliant for R.8. The 2011 MER recommended that the Banking Commission provide guidance on, and review the implementation of arrangements established for mobile banking facilities and other technology innovations to ensure the associated AML/CFT risks are mitigated effectively.

272. *Criterion 15.1*: There is a lack of mechanisms (either through the NRA or otherwise) to consider risks relating to new or developing technologies in a consistent manner. The Marshall Islands has assessed elements of new or developing technologies through the 2020 NRA (aspects of crypto currency and virtual currency), and through papers assessing risks associated with the SOV and DAO. These risk assessments have taken place after the technologies have been put in place. The NRA did not cover an assessment on other new or developing technologies and the risk assessment specific to DAO only covered non-profit DAO, but for profit DAO are permitted to be registered. The NRA has considered many of the risks associated with Marshall Islands' plan to issue its own virtual asset, which is a virtual representation of a fiat currency, 'the Sovereign' (SOV), reasonably concluded that such assets were high risk but it lacked details as to the features of the SOV which generates this risk and vulnerability and so is limited in its utility to Marshall Islands authorities and FIs and DNFBP.

273. FIs are obliged to implement measures to prevent the misuse of technological developments and are required to undertake risk assessments prior to the launch of new

products, practices and technologies. Banks and financial services providers (FSP) must have policies in place and take such measures to manage and mitigate the risks (s.3N.7 of the AML Regulations).

Criterion 15.2

274. *Criterion 15.2(a):* FIs are required conduct the risk assessment prior to the launch or use of such products, practices and technologies (s.3N. 7 of the AML Regulations).

275. *Criterion 15.2(b):* FIs are required to take appropriate steps to manage and mitigate the risks (s.3N. 7 of the AML Regulations).

Criterion 15.3

276. *Criterion 15.3(a):* The vulnerabilities from virtual assets and VASPs, including virtual currencies and dealers in cryptocurrencies, are briefly assessed in s.4.1.3.3 of the ML/TF NRA and the NRA rates VA and dealers in virtual currencies as high vulnerability to ML/TF. Although there being no evidence of cryptocurrency usage in the Marshall Islands, largely due to telecommunications availability, Marshall Islands authorities have not actively undertaken a review to identify whether there are any VASPs operating in the Marshall Islands. In addition, some activities of DAO meet the definition of a VASP. While the Marshall Islands has undertaken a risk assessment of NPO DAO it has not assessed the full scope of their VASP activities. The Marshall Islands has not undertaken any other risk assessments relating to other VA or digital currency initiatives such as DEZRA.[72]

277. *Criterion 15.3(b):* Although there is currently no evidence of VA usage in Marshall Islands, the NRA acknowledges the importance of developing policies and procedures to address the threats and vulnerabilities of VAs. The Banking Act includes "virtual asset provider" in its definition of financial services provider in line with the FATF definition of VASP (s.102) FSPs are subject to licensing and certain AML/CFT requirements under the Banking Act and AML Regulations. However, those DAO whose operations see them meet the definition of VASPs but are not yet regulated as VASPs in the Marshall Islands.

278. *Criterion 15.3(c):* Section 11 of the AML Regulations requires regulated VASPs to comply with the requirements under the Banking Act and AML Regulations applicable to banks and financial services providers. This includes the requirement under s.2D.1 to identify, assess and understand their ML/TF risk.

Criterion 15.4

279. *Criterion 15.4(a)(i):* VASPs are financial service providers under the Banking Act s.123(1) of the Banking Act prohibits financial service providers from operating in Marshall Islands without a valid licence issued by the Banking Commissioner. Only RDE can apply for a licence under this section. NRDE are prohibited from carrying on business as VASPs via the Associations Law.

280. *Criterion 15.4(a)(ii):* Section 123(1) excludes natural persons from being VASPs by only permitting corporations and entities to apply for a licence under this section and only permitting licensed providers to operate in the Marshall Islands. Natural persons operating

[72] The Digital Economic Zone of Rongelap Atoll (DEZRA) proposal sought to create an autonomous digital economic zone/virtual domicile focused on blockchain technology and virtual assets, while exempting the zone from certain tax, securities, and other laws. A bill to create the DEZRA was introduced in 2021 but failed to pass.

VASPs are subject to penalties under s.123 (which apply broadly to "(a)ny person" transacting VASP business without a licence).

281. *Criterion 15.4(b):* Section 139(3) of the Banking Act prohibits the appointment or election of a person as director of a licensed financial services provider if convicted of any act or thing which is of a fraudulent or illegal character and states that a director shall cease to be a director if convicted of such an offence. Section 141(3) further states that a person shall be disqualified for employment or appointment as manager or other official in a licensed financial services provider if he is convicted of any offense involving dishonesty or fraud but no other criminal activity. The Banking Commissioner may also issue fit and proper requirements for financial service providers from time to time as necessary (S.141A).

282. However, there are some deficiencies in fit and proper requirements, as noted in Recommendation 26.3. These include no measures to prevent criminals holding significant or controlling interests and no measures in relation to criminal associates. There is also no provision which allows the Banking Commissioner to remove the shareholder or ownership interest (found 'not fit and proper'). However, the Banking Commissioner may revoke a licence on the grounds it is detrimental to the public interest (s. 128(i) of the Banking Act).

283. *Criterion 15.5*: Under the Associations Law, all NRDE are prohibited from carrying on business as VASPs. The Registrar for NRDE (TCMI) is responsible for enforcing this prohibition and does so using all available public and non-public information and has taken action to identify and sanction NRDE that were suspected to operate as a VASP. At the time of the onsite visit more than 20 NRDE had been identified as carrying out VASP activities in violation of the Associations Law—all were forcibly dissolved by TCMI as the Registrar for NRDE.

284. It is unclear how Marshall Islands is able to identify unlicensed RDE that may be operating as a VASP, however it is expected that as a VASP operating without a licence may be detected through similar means as discussed with respect to unlicensed MVTS providers under Criterion 14.2. The Banking Commissioner (s.123(4) of the Banking Act) is empowered to identify any person (both natural and legal) that carry out VASP activities without a licence with a fine not exceeding $10,000 upon conviction (s.124(3) & (5) of the Banking Act). As previously discussed, some DAO appear to meet the definition of VASPs but are yet to be regulated as VASPs or sanctioned for operating a VASP without a licence.

Criterion 15.6

285. *Criterion 15.6(a)*: There are currently no licensed VASPs in the Marshall Islands, however it appears that a number of DAO conduct activities which meet the definition of a VASP. The Banking Commissioner is empowered to conduct AML/CFT supervision of any licensed VASP (s.184 of the Banking Act). Section 2C.2 of the AML Regulations states the frequency and intensity of financial services providers will be risk-based. At the time of the onsite visit DAO that meet the definition of VASPs have not been regulated or supervised for AML/CFT.

286. *Criterion 15.6(b)*: The Banking Commissioner has powers under s.167(1)(c) of the Banking Act to enter the premises of any bank or financial service provider to inspect any record and ask questions of such records. In addition, s.184 of the Banking Act authorises the Banking Commissioner to examine records and make inquiries into the business and affairs of the bank or financial service provider for the purposes of ensuring compliance with sections 168, 169, 170, 170A and 180. Section 167(1)(i) of the Banking Act which allows the Banking Commissioner authority to compel production of information only applies if the Banking Commissioner believes such information is essential in discovering ML, proceeds of crime, or TF. It does not apply if the violations are related to AML/CFT compliance.

287. The Banking Act provides for a range of penalties for failure to comply with AML/CFT requirements (see *Criterion* 15.8 below) and the Banking Commissioner may suspend, revoke or vary the licence of a financial service provider that violates any provision of the Banking Act (section 128(d)).

288. *Criterion 15.7*: Section 167(f) of the Banking Act states that the Banking Commissioner may issue guidelines to banks, DNFBP, and financial service providers, including VASPs, and advise the appropriate officials. The Banking Commission is empowered to issue guidelines to assist FIs, DNFBP and VASPs to implement and comply with their AML/CFT requirements (S.12 of the AML Regulations). There are some general advisories on AML/CFT requirements available on the Banking Commission website. The August 2023 AML Guidelines set out some VASP-specific guidance, including a detailed explanation of the "Travel Rule" (see S.6.3.5.2). There have been no guidelines issued relating to information concerning AML/CFT regime weaknesses of foreign jurisdictions in relation to VASPs.

Criterion 15.8

289. *Criterion 15.8(a):* There is a range of criminal, civil and administrative sanctions ranging from licence suspension/revocation, fines, to imprisonment for certain offences and breaches of the Banking Act and UN Sanctions Act, as referred to in Recommendation 35.

290. The Banking Act 1987, s.169(5), s170(4) and s.170A(4) include penalties of a fine up to $2,000,000 and/or 20 years imprisonment for banks, DNFBP or financial services providers that violate record keeping, STR and tipping off obligations. In addition, s181 provides for civil penalties of up to $10,000 per wilful violation of AML/CFT obligations. The Banking Commissioner may also suspend, revoke or vary the licence of a financial services provider that violates the Banking Act (s.128).

291. The UN Sanctions Act provides penalties including warnings, injunctions and fines of up to $10,000 for a natural person and $100,000 for a body corporate for conduct that contravenes a regulation issued under that Chapter (s.226-228), including reporting obligations.

292. *Criterion 15.8(b):* The range of sanctions for non-compliance within the Banking Act 1987 apply to financial services providers, and any director, officer, employee, or person participating in the entity (s.169, 170, 170A, 181). Section 181 additionally applies to partners and persons participating in the conduct of the affairs of the bank, DNFBP, or financial services provider. The penalties in the UN Sanctions Act apply to any natural person, which could include directors and senior management of VASPs.

293. *Criterion 15.9*: VASPs are financial service providers under the Banking Act and therefore the detailed obligations contained in the AML Regulations extend to VASPs.

294. Recommendation 10: Section 168 of the Banking Act requires VASPs, as financial service providers to verify customers' identity. This includes maintaining accounts in the name of the account holder and not keeping anonymous accounts or accounts which are in fictitious or incorrect names. Section 3A and 3B of the AML Regulations require VASPs are required to conduct CDD, it must be done for all occasional transactions of $1000 USD threshold.

295. Section 3B also requires VASPs to record and verify the identity, representative capacity, domicile, legal capacity, occupation, using official or private documents. VASPs are also required to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant maybe acting in the proposed transaction (Section 3C).

296. Recommendation 11 – Obligations on VASPs in relation to record keeping directly mirror the obligations on FIs as per the findings of R. 11.

297. Recommendation 12 – Obligations on VASPs in relation to PEPs directly mirror the obligations on FIs as per the findings of R. 12.

298. Recommendation 13 – – Obligations on VASPs in relation to correspondents directly mirror the obligations on FIs as per the findings of R. 12.

299. Recommendation 14 – Agents of VASPs that engage in MVTS activities are required to be licensed, as the licensing requirements for financial services providers apply to any "person", which includes agents (S.102(v) and 123, Banking Act). Licences can only be obtained by corporations or entities, natural persons are excluded (Section 123(1)).

300. Recommendation 16 – Section 11.c of the AML Regulations treats all VA transfers as cross border transfers and are subject to the requirements for wire transfers under Section 3M.

301. Recommendation 17 – Section 3F of the AML Regulations outlines requirements for VASPs in relation to reliance on third parties.

302. Recommendation 18 – Section 9 of the AML Regulations outlines requirements for VASPs in relation to internal controls and foreign branches and subsidiaries.

303. Recommendation 19 Obligations on VASPs in relation to higher risk countries directly mirror the obligations on FIs as per the findings of R. 19.

304. Recommendation 20 – Obligations on VASPs in relation to STR reporting directly mirror the obligations on FIs as per the findings of R. 20.

305. Recommendation 21 – Obligations on VASPs in relation to tipping off and safe harbour directly mirror the obligations on FIs as per the findings of R. 21.

Criterion 15.10

306. (*Criterion*.6.5 (d) & 6.6(g): 7.2 (d) & 7.4 (d)): Section 8 of the UN TFS Regulations requires the Minister to notify financial institutions, DNFBP and any other person or entity (including VASPs) that is in possession of, or is suspected to be in possession of, freezable assets of designations and de-listings by the Minister or the UNSC or its Committees.

307. (*Criterion*.6.5 (e): 7.2 (e)): Section 15 of the UN TFS Regulations requires any person or entity, including VASPs, that is in possession or control of a freezable asset to make a report of the freezable asset and any attempted transactions related to the freezable asset to the Financial Intelligence Unit. Similarly, a person or entity that is requested to provide a financial or related service in contravention of section 13 must make a report of that request.

308. (*Criterion*.7.3): Section 218 (1) of the UN Sanctions Act states that the Attorney General is responsible for supervising compliance with the Regulations.

309. *Criterion 15.11*: the Marshall Islands is able to use formal and informal international cooperation mechanisms, as described under R.37-40 to provide international cooperation in relation to ML, predicate offences and TF related to VAs. The definitions of "property" under the Banking Act, MACMA, and POCA are broad and extend to assets of every kind, including virtual assets (Banking Act, s.102(y); MACMA, s.404(o); & POCA, s.205(1)(l)). The Banking Commissioner has a broad power to exchange information with international administrative authorities (Banking Act, s.167(j)) and assist in investigations related to ML, TF and proceeds of crime (Banking Act, s.167(k)). However, this power does not extend to all predicate offence investigations or conducting supervisory inquiries.

Weighting and Conclusion

310. There are moderate deficiencies with R.15, in particular relating to Marshall Islands' risk assessment and understanding of the risks associated with VASPs. The Registrar for NRDE (TCMI) has taken strong action against NRDE operating a VASP. While Marshall Islands requires VASPs that are legal persons to be licensed by the Banking Commission, there are some gaps in fit and proper requirements. VASPs that are natural persons are unable to obtain a licence from the Banking Commission, however, it is unclear how the Banking Commission is able to identify and sanction VASPs operating without a licence. Given that some DAO are likely to meet the definition of VASPs but are not treated by such by Marshall Islands is an example of this. There have been no guidelines issued relating to information concerning AML/CFT regime weaknesses of foreign jurisdictions to VASPs.

311. **Recommendation 15 is rated partially compliant.**

Recommendation 16 – Wire transfers

312. The Marshall Islands was rated largely compliant with former SR.VII. The 2011 MER noted that the Banking Commissioner's power to authorise a *de-minimis* threshold of US$3,000 was not consistent with the requirements. The effectiveness of arrangements to comply with wire transfer obligations under the revised AML Regulations was also not verified as there was no compliance monitoring.

Criteria 16.1

313. *Criterion 16.1(a):* Sections 3M.1 of the AML Regulations require that all banks and FSPs must include full originator information which includes: (i) the name of the originator; (ii) the originator's account number (or a unique reference number that permits the transaction to be traced if there is no account); and (iii) the originator's address, national identity number , customer identification number or date and place of birth. Banks and FSP are required to verify that the information is accurate and meaningful.

314. There is also a general obligation under s.121(2) of the Counter-Terrorism Act, which requires that all credit and financial institutions and all persons, and their agents, that provide a service for the transmission of money or value by wire transfer, shall include accurate and meaningful originator information (including, name, address and account number) on funds transfers and related messages that are sent.

315. *Criterion 16.1(b):* Sections 3M.2 of the AML Regulations require that all ordering banks and FSPs include full beneficiary information which includes: (i) the name of the beneficiary; (ii) the beneficiary's account number or unique reference number that permits the transaction to be traced if there is no account.

316. *Criterion 16.2*: Under s.3M.3 of the AML Regulations, where there are several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch files must include the originator's account number and contains full and accurate originator information and full beneficiary information that is fully traceable with the beneficiary country.

317. Under S.3M.6 of the AML Regulations, banks and FSP may treat cross-border wire transfers within a batch transfer as a domestic wire transfer provided the requirements for domestic wire transfer are met. This includes the ordering bank and FSP including either the full originator information in the message or payment form accompanying the wire transfer or only the originator's account number or, where no account number exists, a unique identifier, within the message or payment form (S. 3M.6).

318. *Criterion 16.3*: The Marshall Islands does not apply a de minimis threshold for cross-order wire transfers. However, the Banking Commissioner may grant an exemption for wire transfers that are below US$1,000. This exemption is for the requirements in Sections 3M.1 and 3M.2 of the AML Regulations regarding the inclusion of full originator information in cross border wire transfers (S. 3M.9). If granted the exemption, banks and FSP's would still be required to include originator and beneficiary information in cross border wire transfers.

319. *Criterion 16.4*: The exemption granted by the Banking Commissioner under section 3M.6 requires ordering banks and FSPs to verify the information pertaining to its customer if there is a suspicion of money laundering or terrorist financing.

320. *Criterion 16.5*: For domestic wire transfers, banks and FSPFSP are required to include full originator information in the message or payment form accompanying the wire transfer. Banks and FSP need only include the originator's account number or, where no account number exists, a unique identifier, within the message or payment form if they are able to provide full originator information to the Banking Commission within 3 working days of receiving a request.

321. *Criterion 16.6*: Banks and FSP need only include the originators account number or, where no account number exists, a unique identifier, within the message or payment form if they are able to provide full originator information to the Banking Commission within 3 working days of receiving a request. They are also required to provide this information to law enforcement agencies immediately upon request.

322. *Criterion 16.7*: Record keeping requirements under Section 4 of the AML Regulations are generally applicable to all banks and FSP.

323. *Criterion 16.8*: Section 3M.8 of the AML Regulations prohibits a bank or FSP from executing wire transfers in the case of non-compliance with the requirements specified above at criteria 16.1-16.7.

324. *Criterion 16.9*: Section 3M.11 of the AML Regulations requires each intermediary in the payment chain to maintain all the required originator and beneficiary information with the accompanying transfer.

325. *Criterion 16.10*: Section 3M.12 of the AML Regulations requires that when 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 bank or FSP shall keep a record for at least six (6) years of all the information received from the ordering bank or FSP or another intermediary bank or FSP.

326. *Criterion 16.11*: Section 3M.13 of the AML Regulations requires intermediary banks and FSPs to take reasonable measures in regard to straight-through processing, to identify cross-border transfers that lack the required originator or beneficiary information.

327. *Criterion 16.12*: Section 3M.14 of the AML Regulations requires intermediary banks and FSPs 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.

328. *Criterion 16.13*: Section 3M.9 of the AML Regulations requires beneficiary banks and FSPs to take reasonable measures, which may include post-event monitoring or real-time monitoring to identify cross-border transfers that lack required originator information or required beneficiary information.

329. *Criterion 16.14*: Section 3M.9 of the AML Regulations states that for cross-border wire transfers of $1,000 or more, a beneficiary bank and FSP shall verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with the recordkeeping requirements in Section 4 of the AML Regulations.

330. *Criterion 16.15*: Section 3M.10 of the AML Regulations requires beneficiary institutions to identify and handle wire transfers that are not accompanied by complete information on the basis of perceived risk of ML and TF. The section also outlines the procedures banks and FSP must take to address such cases, including requesting originator information, raising a suspicious transaction report if the transfer is deemed suspicious, refusing the wire transfer, and restricting or terminating business relationships with banks and FSP that do not comply with section 3M.

331. *Criterion 16.16*: Section 3M.15 of the AML Regulations requires MVTS providers and their agents operating in the Marshall Islands are to comply with the requirements on wire transfers in the countries in which they operate, directly or through their agents.

332. *Criterion 16.17*: Section 3M.16 of the AML Regulations requires MVTS providers that control both the ordering and the beneficiary side of a wire transfer to (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious activity report has to be filed and (b) file a suspicious activity report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Banking Commission, auditors, and any other competent authorities.

333. *Criterion 16.18*: Under Section 8 of the UN TFS Regulations, the Minister must provide notification of communicable information by any means it determines necessary to financial institutions and DNFBP and any other person or entity that is in possession of or is suspected to be in possession of, freezable assets. Section 11 of the UN TFS Regulations also prohibits any person or entity from dealing with assets of a designated person or entity, assets generated from assets of a designated person, and designated vessels. Section 12 also prohibits a person or entity from making an asset available to a designated person or entity and associated persons. Section 13 of the UN TFS Regulations further prohibits the provision of financial or related service, directly or indirectly, wholly or jointly, to or for a designated person or entity. This prohibition is quite broad and can be interpreted as including wire transfers in the definition of financial or related services. Section 3M.17 of the AML Regulations further states that banks and FSPs shall take freezing action and comply with prohibitions from conducting transactions with designated persons and entities as per obligations set out in applicable Marshall Islands laws and regulations.

Weighting and Conclusion

334. **Recommendation 16 is rated compliant.**

Recommendation 17 – Reliance on third parties

335. The Marshall Islands was rated compliant with the former R.9. The 2010 MER noted that third party intermediaries were not used by financial institutions in the Marshall Islands and robust regulatory requirements had been established to cover any future use of third party intermediaries or introducers.

336. *Criterion 17.1*: FIs are allowed to apply to the Banking Commission for authorisation to rely on intermediaries such as trust and company service providers to conduct CDD (Section

3F.1 of the AML Regulations). FIs may also rely on other banks and FSPs to conduct CDD, but are ultimately responsible for the implementation of CDD requirements (s.3F.2 & 3F.6).

337. *Criterion 17.1(a):* FIs must immediately obtain CDD information from the third party (Section 3F.4).

338. *Criterion 17.1(b):* FIs must take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the information obtained by the third party will be made available without delay (S.3F.4).

339. *Criterion 17.1(c):* FIs must be satisfied that the third party is adequately regulated and supervised and has measures in place to comply with the CDD requirements in AML Regulation (S.3F.3). The Section also makes reference to the third party complying with the FATF standards.

340. *Criterion 17.2*: FIs may not rely on upon intermediaries/third parties identified by the Banking Commission as non-complying with the FATF Standards (Section 3F.5 of the AML Regulations). FIs may not rely on a non-resident third party established in a country identified by the Banking Commissioner as a higher risk country (S.3F.3).

341. *Criterion 17.3*: The AML Regulations do not contain requirements for a third party that is from the same financial group. The same legal provisions that govern third party reliance would be applicable. Currently the Marshall Islands has no financial groups in operation.

Weighting and Conclusion

342. **Recommendation 17 is rated compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

343. In the 2011 MER, the Marshall Islands was rated largely compliant with former R.15 and compliant with former R.22. The only deficiency noted was regarding implementation by some NBFIs and cash dealers.

344. *Criterion 18.1*: Section 2B.1 of the AML Regulations requires banks and FSPs to adopt and implement internal policies, procedures and controls against ML/TF. The AML/CFT Program must be informed by the ML/TF Risk Assessment and have regards to matters such as the size of the business, the products and services it offers and the jurisdiction in which it operates or provides services. Section 2D.2 of the AML Regulations further states that banks and FSPs risk assessments must consider all relevant risk including the products and services it provides, the transactions it undertakes, the industries in which its customers operate, the use the customers make of the products and services, delivery channels it uses, reliance on third parties, and new products, practices and technologies. Banks and FSPs are required to:

> a) designate a compliance officer at the management level, that has the authority to act independently, and to report to senior management above the compliance officer's reporting level, or to the board of directors or equivalent body (AML Regulations, S.2B.2);
>
> (b) establish adequate screening procedures to ensure high standards when hiring employees (AML Regulations, S.2B.6). This includes the identification of past convictions for offences involving dishonesty, financially-motivated crime or money laundering. Section 5.7 of the Anti-Money Laundering and Countering Financing of Terrorism Guidelines for Banks and FSPs also provides guidance to banks and FSPs on

screening employees by obtaining appropriate references, checks whether any regulatory action has been taken against them, criminal records checks, and potential conflicts of interest;

(c) establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods, and trends, as well as ML/TF laws and obligations (AML Regulations, S.2B.5); and

(d) maintain an adequately resourced and independent audit function to test compliance (including sample testing) with relevant policies, procedures, and controls (AML Regulations, S.2B.4). Section 2C.3 of the AML Regulations requires an annual independent audit of banks and FSPs to verify the adequacy of, and compliance with, the AML/CFT Program and carried out under any guidance provided by the Banking Commission. The banks and FSPs are also required to submit the report from the annual independent audit to the Banking Commissioner.

345. The provisions in the AML Regulations are further supported by the Anti-Money Laundering and Countering Financing of Terrorism Guidelines for Banks and FSPs.

346. *Criterion 18.2*: Section 9 (b) of the AML Regulations requires financial groups to implement group-wide AML/CFT programmes encompassing all branches and majority-owned subsidiaries within the financial group. The Marshall Islands has advised that there are no financial groups with more than one member currently operating in the Marshall Islands.

347. *Criterion 18.3*: Section 9 of the AML Regulations requires FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF standards and the requirements in the Marshall Islands and pay particular attention to this principle for branches or subsidiaries in countries that insufficiently apply FATF standards. Where the minimum requirements of the host country differ from those in the Marshall Islands, branches and subsidiaries must apply the higher standard to the extent that the host country's laws and regulations permit and advise the Banking Commissioner if this cannot be met. Currently there are no FIs in the Marshall Islands that have a branch or subsidiary outside of the Marshall Islands.

Weighting and Conclusion

348. **Recommendation 18 is rated compliant.**

Recommendation 19 – Higher-risk countries

349. In the 2011 MER, the Marshall Islands was rated non-compliant with former R.21. There were no regulations in place to require special attention to business relations and transactions with high risk countries; no regulations to require FIs to examine and document the background of transactions which have no apparent economic or visible lawful purpose; and no specific statute or regulation to allow for issuance or implementation of countermeasures.

350. *Criterion 19.1*: Section 3A.2 of the AML Regulations stipulates that CDD must be applied on a risk basis, including enhanced CDD for higher risk customers. Section 3I.3 requires FIs to "pay special attention" to all business relationships and transactions of legal persons, natural persons, and FIs from countries not sufficiently applying FATF standards and recommendations and apply enhanced due diligence measures commensurate to the risks, per the procedures

outlined in s.3K. Countries/jurisdictions not adhering to FATF standards are identified by referencing mutual evaluation reports and other detailed assessment reports by FATF-style regional bodies, such as the APG.

351. The AML Regulations further stipulate that enhanced due diligence is "generally required" for correspondent banking relationships with jurisdictions not adhering to FATF standards (AML Regulations 2002, section 3N.4). Section 12(a) of the AML Regulations empowers the Banking Commissioner to issue guidelines to assist banks, FSPs and DNFBP to implement and comply with their AML/CFT requirements, including lists of higher risk countries for which enhanced CDD is required under Section 3I.3. The AML/CFT Guidelines for Banks and FSPs covers enhanced CDD measures for high risk customers or transactions.

352. Section 3I.3 does explicitly require FIs to apply enhanced due diligence when this is called for by the FATF. It requires banks and FSPs to pay special attention to cases referred to in paragraph 501 above. FATF's list of jurisdictions under increased monitoring, and high risk jurisdictions was recently issued to FIs and DNFBP by the Banking Commission by letter dated November 27, 2023.

353. *Criterion 19.2*: Section 12(b) of the AML Regulations empowers the Banking Commissioner to provide guidelines for the application of countermeasures by banks, FSPs and DNFBP when called upon to do so by the FATF, The Asia/Pacific Group on Money Laundering, or the Marshall Islands. However, no guidelines regarding the countermeasures have been issued by the Banking Commissioner to the FIs and DNFBP.

354. *Criterion 19.3*: Measures have not been enacted in the AML Regulations to address the dissemination to financial institutions of AML/CFT regime weaknesses of foreign jurisdictions. Section 12(c) of the AML Regulations requires banks, FSPs, and DNFBP to regularly access and review the Banking Commission's website, where the FATF Public Statement on weaknesses in other countries' AML/CFT systems will be posted. The Anti-Money Laundering and Countering Financing of Terrorism Guidelines for Banks and FSPs covers enhanced CDD measures for high risk customers or transactions. FATF's list of jurisdictions under increased monitoring, and high risk jurisdictions was recently issued to banks, FSPS and DNFBP by letter from the Banking Commission dated November 27, 2023.

355. Marshall Islands advised that the Banking Commission currently disseminates information on the weaknesses of jurisdictions' AML/CFT systems through email or hard copy delivery (see the Letter dated 27 November 2023 referred to above).

Weighting and Conclusion

356. No guidelines have been issued to FIs and DNFBP regarding the countermeasures to take when dealing with higher risk countries.

357. **Recommendation 19 is rated largely compliant.**

Recommendation 20 – Reporting of suspicious transaction

358. Marshall Islands was rated PC with former R.13 and LC with former SRIV. The 2010 MER noted that not all predicate offences were covered and there was a lack of reporting from non-banking entities.

359. *Criterion 20.1*: FIs are required to report suspicious transactions under Sections 170(1) and 170A of the Banking Act and s.5(b) of the AML Regulations within three days of the transaction. The AML Regulations (s.5 (a)(2) &(b)) set out enforceable details of the scope of

the suspicious transactions reporting obligation by requiring suspicious activity reports (SAR) that cover the elements required by the FATF standards as well as transactions related to illegal activities and transactions conducted as part of a plan to violate any Marshall Island law or regulation. Finally, the AML Regulations extends SARs to transactions that have no apparent economic or lawful purpose.

360. In relation to the scope of 'illegal activities' section 404 of the General Interpretation Act provides that words and phrases within the Marshall Islands Revised Code "shall be read with their context and shall be construed according to the common and approved usage of the English language." Illegal activities are understood to be defined as activities that are not legal and includes all criminal activity. For illegal activities, Marshall Islands has criminalised false and misleading statement, counterfeiting, market rigging, insider trading and market manipulation in the Amendments to the Criminal Code. Piracy (beyond the counterfeiting of trademarks/piracy of products) is not clearly criminalised, which remains a minor gap with the suspicious transaction and activities reporting obligation.

361. *Criterion 20.2*: Suspicious transactions and activities reporting obligations (SAR) in the Banking Act (s.170(1) and s.170A(2)) and the AML Regulations (s.5 (a)&(b)) do not set a threshold for SAR reporting and extend the obligation to attempted transactions. The AML Regulations (s.5 (a)(2)(ii)(A) & (B)) go further and cover suspicion in cases where transactions are intended to be undertaken, conducted or attempted to be conducted to hide or disguise funds or assets that are the proceeds of illegal activities or as part of a plan to evade or violate any Marshall Islands law or to avoid any reporting requirement under Marshall Islands law or Regulations.

Weighting and Conclusion

362. While most obligations are set out in law and regulation, there is a minor shortcoming in the proceeds of crime subject to the SAR obligation as the predicate offence categories of piracy (beyond counterfeiting of trademarks/piracy of products) is not criminalised in the Marshall Islands.

363. **Recommendation 20 is rated largely compliant.**

Recommendation 21 – Tipping-off and confidentiality

364. The Marshall Islands was rated LC with former R.14. The 2010 MER noted that there was a minor deficiency in Section 170 (4) of the Banking Act as it did not prohibit tipping off in the period after a suspicion has been formed and before a STR has been prepared or submitted.

365. *Criterion 21.1*: Section 178 of the Banking Act protects FIs, any officer, employee or other representative of the institution from any action, suit, or other proceedings in relation to any action taken in good faith. While directors are not explicitly mentioned they are covered by the phrase "…other representative of the institution…" in Section 178 of the Banking Act. Section 5 (e) of the AML Regulations protects the identity of any FI, its employees, officers, directors and agents who submit a SAR to the Banking Commissioner.

366. *Criterion 21.2*: Section 170(4) of the Banking Act prohibits FIs and their employees, officers and directors from disclosing that a suspicion has been formed, or that a suspicious transaction report or related information is being or has been reported. Any person, bank, DNFBP, and FSP that discloses this information commits an offence, punishable by a fine of not more than US$2,000,000 or imprisonment for not more than 20 years or both. Section 5 (d) of the AML Regulations further prohibits FIs, their employees, officers, directors and agents from

notifying any person or entity other than those authorised by law that a suspicion has been formed or that a SAR or related information is being or has been filed.

Weighting and Conclusion

367. **Recommendation 21 is rated compliant.**

Recommendation 22 – DNFBP: Customer due diligence

368. The Marshall Islands was rated non-compliant with former Recommendation 12 in its 2011 MER. The key factors underlying the rating were that no AML/CFT requirements were in place for lawyers and accountants who conduct financial transactions on behalf of customers or TCSPs. AML Regulations were enacted to bring DNFBP requirements in line with the FATF standards (section 10).

Criterion 22.1

369. *Criterion 22.1(a):* Casinos are captured as a cash dealer, a DNFBP and a financial service provider under section 102 of the Banking Act. The CDD requirements under section 168 of the Banking Act and s.3A to L of the AML Regulations apply to casinos, however there are no casinos operating in the Marshall Islands as they are prohibited.

370. *Criterion 22.1(b):* Section 102(j) of the Banking Act includes real estate agents as a DNFBP, s.10(b)(1)(ii) requires that the CDD requirements set out in s.3A to 3L of the Regulations apply to real estate agents when they are involved in transactions for a client concerning the buying and selling of real estate.

371. *Criterion 22.1(c):* Cash dealers under section 102 of the Banking Act include those who carry on business dealing in bullion. The CDD requirements as per s.168 of the Banking Act and s.3 of the AML Regulations apply to cash dealers. The AML Regulations (Section 10(b)(1)(iii)) apply CDD obligations to dealers in precious metals and dealers in precious stones when they engage in any cash transaction with a customer of $15,000 or more. There were no dealers in precious metals or stones present in the Marshall Islands at the time of the onsite visit.

372. *Criterion 22.1(d):* Lawyers, notaries (and other independent legal professionals) and accountants come under the definition of DNFBP in section 102(j) of the Banking Act, and CDD obligations are applied to them under the AML Regulations. In particular. Section 10(b)(1)(iv) requires that the CDD requirements set out in s.3A to 3L of the Regulations apply to lawyers, notaries, other independent legal professionals and accountants when they carry out the relevant designated activities outlined in the criterion.

373. *Criterion 22.1(e):* The AML Regulations (Section 10(b)(1)(v)) apply CDD obligations to trust and company service providers when they carry out the relevant designated activities outlined in the criterion.

374. *Criterion 22.2*: Obligations on DNFBP in relation to record keeping directly mirror the obligations on FIs as per the findings of R. 11.

375. *Criterion 22.3*: Obligations on DNFBP in relation to PEPs directly mirror the obligations on FIs as per the findings of R. 12.

376. *Criterion 22.4*: Obligations on DNFBP mirror those on FIs relating to managing ML/TF risks that may arise in relation to the development of new products and new business practices (s.3N.7 and 3N.8 of the AML regulations).

377. *Criterion 22.5*: DNFBP are required to comply with the reliance on third-parties requirements set out in Recommendation 17.

Weighting and Conclusion

378. Obligations on DNFBP mirror those on FIs under the Banking Act and AML Regulations.

379. **Recommendation 22 is rated compliant.**

Recommendation 23 – DNFBP: Other measures

380. Marshall Islands was rated non-compliant with former Recommendation 16 in its 2011 MER due to the DNFBP sector having no obligations for STR reporting.

381. *Criterion 23.1*: Obligations on DNFBP in relation to SARs mirror the obligations on FIs as per the findings of R. 20 (subject to certain qualifications for dealers in precious metals or stones, lawyers, notaries and other independent legal professionals and accountants and trust and company service providers). The minor gap with predicates to ML applies to SAR obligations for DNFBP.

382. *Criterion 23.2*: Obligations on DNFBP in relation to internal policies, procedures, controls, and training requirements mirror the obligations on FIs as per the findings of R. 18 (s.2B.1 to 2B.6 and with the monitoring requirements in s.2C.3 of the AML Regulations.

383. *Criterion 23.3*: Obligations on DNFBP in relation to high risk countries mirror the obligations on FIs as per the findings of R. 19 (s.3I.3 in the AML Regulations).

384. *Criterion 23.4*: Obligations on DNFBP in relation to tipping off and safe harbour mirror the obligations on FIs as per the findings of R. 21 (s.170(4) of the Banking Act and s.5 of the AML Regulations).

Weighting and Conclusion

385. There is a minor shortcoming relating to the scope of the STR reporting obligations as set out in R.20.

386. **Recommendation 23 is rated largely compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

387. The Marshall Islands was rated as non-compliant with requirements on transparency of legal persons under the former R.33 in the 2011 MER. There were no measures or mechanisms to verify, inquire and determine beneficial ownership apart from some requirements that applied to non-citizens wishing to establish a resident business in the Marshall Islands. The 2011 MER also found that there was a lack of timely access to accurate information on beneficial ownership and no measures to prevent the misuse of bearer shares.

Legal persons in the Marshall Islands

388. Laws providing for the formation of legal persons in the Marshall Islands include the Business Corporations Act (BCA), Revised Partnership Act (RPA), the Limited Partnership Act (LPA), and the Limited Liability Company Act (LLCA). These are collectively known as the Associations Law and are supplemented by the Corporate Regulations 1995, Amended. They have been amended progressively since the 2011 MER to address identified deficiencies. The Associations Law provides for the formation of various types of domestic legal persons,

including corporations, general partnerships, limited partnerships, and limited liability companies (LLC).

389. Domestic entities may be classed as "resident" (those doing business in the Marshall Islands) or "non-resident" (those not doing business in the Marshall Islands). For the purposes of the BCA (s.2(q)) a non-resident corporation shall not be deemed to be doing business in the Marshall Islands merely because it engages in activities such as maintaining a bank account from a licensed FI in the Marshall Islands and having officers or directors who are residents or citizens of the Marshall Islands.

390. Section 4 of the BCA establishes two Registrars of Corporations, one responsible for RDE, including decentralised autonomous organisations (DAO), and authorised foreign entities (the AG's Office) and another responsible for NRDE and foreign maritime entities (TCMI).

391. TCMI is the Registrar for NRDE and foreign maritime entities (FMEs). TCMI is a privately owned Marshall Islands company which has been granted the function of registrar through statute - (s. 4(1) and 4(2) of the BCA).

392. The Associations Law and the Foreign Investment Business License Act (FIBLA) set out processes for authorising foreign legal persons established under the laws of foreign jurisdictions, to do business in the Marshall Islands and for foreign entities which have power to own or operate vessels and the capacity to sue or be sued in their state of creation can apply to be registered as an FME. The registrar under the FIBLA is the Secretary of Finance, and the relevant registrar under the Associations Law is the Registrar for RDE (AG's Office).

393. Foreign entities which have power to own or operate vessels and the capacity to sue or be sued in their state of creation can apply to the Registrar for NRDE (TCMI) to be registered as an FME. This registration solely grants the FME the power to own and operate vessels with the Marshall Islands' flag.

394. NPOs can operate in the Marshall Islands in a range of forms, including as "non-profit entities" formed under the Non- Profit Entities (NPE) Act, subject to the requirements of the BCA or LLC Act, and cooperatives, subject to the requirements of the Associations Law.

395. While there is no stock exchange in the Marshall Islands, there are 38 NRDE formed in the Marshall Islands that are shipping companies listed in either the NYSE or the NASDAQ. These entities are subject to the United States' registration and disclosure requirements for publicly traded companies.

Table: numbers of legal persons formed in the Marshall Islands

Entity Type	***Number***
NRDE	
Corporation	38,215
Limited Liability Company	2,924
Limited Partnership	61
TOTAL	41,200
Resident Domestic Entities (RDE) including DAO	
Corporation	346
Limited Liability Company	85
Limited Partnership	3
NPO	255
TOTAL	**689**

Criterion 24.1

396. *Criterion 24.1(a)*: The different types of legal persons that exist in Marshall Islands are identified in the relevant, publicly available statute. General descriptions of the types and forms of legal person are available from the relevant government agency websites. For NRDE, the IRI as TCMI's parent company and a promoter of the Marshall Islands offshore corporate centre, has information on its website about the process to form an NRDE. For DAO, MIDAO, as the company service provider for all DAO formed in the Marshall Islands, does have some information on its website about the creation and types of DAO in the Marshall Islands.

397. *Criterion 24.1(b)*: The processes for creation of legal persons and for obtaining and recording basic and beneficial ownership information are made publicly available through the publication of the Associations Law, the Corporate Regulations, the NRDE Regulations and FIBL online portal. Guidance regarding beneficial ownership information is also available through the Guidance on Beneficial Ownership Requirements published by the Registrar for NRDE and is available online through the website of the IRI (TCMI's parent company).

398. The Associations Law has been progressively amended since 2011 to provide for obtaining and recording basic and beneficial ownership information for resident and non-resident domestic legal persons (BCA, s.80; RPA, s.37(1); LPA, s.32(1); LLCA, s.22(1); and the Corporate Regulations and the NRDE Regulations). The FIBLA requires non-citizens licensed to do business in the Marshall Islands to provide the registrar with the names, addresses, and citizenship of the initial "owners" (FIBLA, s.205(2). The FIBLA and FIBL Regulations require non-citizens owners licensed to do business in the Marshall Islands to obtain and record certain information regarding owners, and legal and beneficial shareholders.

399. *Criterion 24.2*: The NRA of 2020 considers some aspects of risks of legal persons but does not assess the ML/TF risks associated with all types of legal persons. The NRA considered limited issues with legal persons, the Shipping Register and beneficial ownership. The NRA and Marshall Islands authorities acknowledge that the Marshall Islands' Shipping Register and offshore company sector generate transnational threats and risks, with the Shipping Register generating PF risks, but does not fully assess the threat or evaluate the vulnerability.

400. There does not appear to be any other assessments outside the NRA on the risks posed by all types of legal persons for ML and TF. However, the Marshall Islands authorities consider that the main ML/TF risks for resident domestic corporations are associated with tax avoidance, fraud, corruption and embezzlement. While there is no data on the level of funds involved in this predicate offending, the amounts are likely to be small.

401. The ML/TF/PF vulnerabilities associated with RDE are addressed in various sections of the NRA. Marshall Islands considers that the main vulnerability with respect to NRDE is the level of anonymity permitted. The adoption of the offshore corporate sector model involving NRDE and related vulnerabilities associated with NRDE are almost exclusively external to the Marshall Islands.

402. *Criterion 24.3*: The Associations Law establishes two Registrars of Corporations.

- The Registrar for Resident Domestic Entities is responsible for RDE (including DAO) and authorised foreign corporations, and is located in the AG's Office (BCA, s.4).
- The Registrar for NRDE (TCMI) is responsible for NRDE, partnerships, limited partnerships, limited liability companies, unincorporated associations, FME and other entities (BCA, s.4). TCMI is the Registrar for NRDE (BCA, s.4(3)).

403. Each Registrar is responsible for the filing and maintenance of all instruments, and the issuance of certificates and certified copies, for their respective entities (BCA s.4(2)).

404. Corporations*:* For RDE and NRDE, the articles of incorporation must be filed (BCA, s.30) and include, among other things, the name of the corporation, the purpose(s) for which it is organised, its registered address, the name and address of its registered agent, the name and address of each incorporator. A list of directors is not required to be filed with the registrar although they are required to be kept with the company and provided to competent authorities upon request (BCA s.83). The BCA mandates that the articles of incorporation must include basic regulating powers (BCA, s.28 33, s.35 and s.48 to 63).

405. Limited Partnerships*:* to be formed, a Certificate of Limited Partnership must be filed with the appropriate Registrar, which must state the name of the limited partnership, the name and address of the registered agent, and the name and address of each general partner (LPA, s 10(1)). The LPA does not require limited partnerships to file their partnership agreements with the Registrar.

406. Limited Liability Companies*:* a certificate of formation must be filed with appropriate Registrar, which must include the name of the limited liability company and the name and address of the registered agent (LLCA, s.3 and s.9). There is no requirement to provide the details of managers or for the LLC company agreement to be filed, which sets out basic regulating powers.

407. Decentralized Autonomous Organisations (DAO)*:* DAO are resident domestic LLCs and for a DAO LLC to be formed, a certificate of formation and LLC agreement must be filed with the Registrar for RDE (AG's Office) (DAO Act, s.105(1)). The certificate of formation or LLC agreement must contain statements specified in s104 and s106 such as that the company is a DAO as provided for under the DAO Act.

408. A resident domestic LLC may convert to a DAO LLC by amending its certificate of formation or LLC agreement to include the statements required by DAO Act, s.104(1) & (3) and s.106. Non-resident domestic LLCs are not permitted to convert to DAO LLCs.

409. Information held by the Registrar for RDE (AG's Office) is maintained in a physical register and electronically stored but is not available online. The Registrar can issue certificates and certified copies relating to any filings and records for the entities for which they are responsible upon request for a nominal fee (BCA, s.4(2)).

410. Information held by the Registrar for NRDE (TCMI) is maintained in an electronic database, and certain information from this register is available to the public via a website. This includes the number, name, type, status, existence date, dissolved/annulment date (if any), and registered agent of each NRDE. The TCMI is the sole registered agent for all NRDE (BCA, s.20(2)). The Registrar can issue certificates and certified copies relating to any filings and records for the entities for which they are responsible upon request for a nominal fee (BCA, s.4(2)).

411. Any non-citizen applying for a foreign investment business licence must provide the Registrar of Foreign Investment with a range of information (FIBLA, s.205). The Registrar must maintain a register of foreign investments, which includes the name, address, contact details, and citizenship of the business owner of each foreign investment business licence holder (FIBLA, s.207; Foreign Investment Business License Regulations, Regulation 510 & Schedule 3). The register is a publicly available document.

412. "Non-citizen" is defined broadly in the FIBLA. It includes any entity "in which a person or persons who are not citizens of the Republic own an equity interest" (FIBLA, s.202(b)(ii)). As such, even some RDE (i.e., those with one or more foreign owners) must obtain a foreign investment business licence.

413. *Criterion 24.4*: RDE and NRDE do not have a direct obligation to maintain records relating to directors and executive officers, but implicitly must in order to meet their obligations to provide a current list of their directors and executive officers, and their business or residence addresses (BCA, s.83) to shareholders, creditors, registrars and government officials. Non-resident corporations must also make an annual attestation to the Registrar for NRDE of whether these records are being maintained.

414. RDE and NRDE (formed as an entity or corporation) must maintain an up-to-date record containing the names and addresses of all registered shareholders, the number and class of shares held by each and the dates when they respectively became the owners (BCA, s.80(3)(a)). To the extent voting rights are to differ among shareholders, the designations, preferences, limitations, and relative rights of shares (including voting rights) for each category of shares must be set forth in the corporation's articles of incorporation (BCA, s.28(f) & (i)). The BCA requires a full statement of the designation, relative rights, preferences, and limitations of shares to be set forth on each share certificate or to be furnished by the corporation to any shareholder upon request and without charge (BCA, s.42(3)), therefore implicitly needing to be maintained.

415. RDE and NRDE are not expressly required to notify the relevant Registrar of the location where the records related to shareholders are held (BCA, s.80(3)(a)).

416. Any amendments to the articles of incorporation must be filed with the appropriate Registrar to be effective (BCA, s.91(1)). The BCA does not specifically require corporations to maintain a copy of their articles of incorporation, but corporations (or anyone else) may request a certified copy from the appropriate Registrar at any time (BCA, s.4(2)).

417. Domestic partnerships and LLCs must keep an up-to-date record of the names and addresses of all partners and members (RPA, s.37(c)(i); LPA, s.32(c)(i); LLCA, s.22(1)(c)(i)). Partnerships and LLCs also have agreements providing the basic regulating powers of each as well as the nature of voting rights (RPA, s.3; LPA, s 1(12); LLCA, s.2(8)). DAO LLCs must file their LLC agreements with the Registrar for Resident Domestic Entities (DAO Act, s.105(1)). However, there do not appear to be requirements for these agreements to be maintained within the country at a location notified to the registry.

418. Annual reporting requirements for RDE, domestic partnerships and LLCs ensure these entities maintain the information that is generally required as part of their registration requirements, as well as some additional information.

419. RDE and NRDE (and authorised foreign corporations) are also required to file with the Registrar an annual report providing up-to-date information about the name of the corporation, registered office, nature and type of business and names and addresses of directors and officers (Corporate Regulations, Part II, s.3).

420. Resident domestic partnerships and resident domestic limited partnerships are also required to provide the Registrar with an annual report which must include information, amongst other details on: the name of the partnership; names, addresses and citizenship of all partners; a description of business activities; and location of principal place of business (Corporate Regulation, Part III, s.2). Resident domestic LLCs must also file an annual with information on: the name of the LLC and, if foreign, the country where incorporated; the

address of the registered office; name and address of registered agent; nature and type of business and the names and addresses of managers or managing members (Corporate Regulation, Part IV, s.2).

421. *Criterion 24.5*: The Associations Law and Corporate Regulations include some provisions to ensure that the information held by companies is accurate and updated.

422. As outlined in *Criterion*.24.4 the BCA requires domestic corporations provide a current list of their directors and executive officers, and their business or residence addresses (BCA, s 83) to shareholders, creditors, registrars and government officials The BCA requires domestic (resident and non-resident) corporations to keep shareholder information up-to-date (s.80(3)(a)). There is no mechanism to ensure that some of the basic information is accurate or up-to-date. However, where amendments are proposed to a corporation's articles of incorporation, these amendments are not effective until filed with the appropriate Registrar (BCA, s.91(1)). In addition, NRDE cannot legally change their registered office, as TCMI is the registered agent for all NRDE (BCA, s.4(2)).

423. The information collected by the Registrar of Corporations for RDE (AG's Office) and authorised foreign entities is updated on an annual basis through the filing of an annual report unless an amendment to the articles of incorporation is filed (Corporate Regulations; Part II, s.4; Part III, s.3 and Part IV, s.3). For RDE and authorised foreign corporations, the annual report must include, among other things: the name of the corporation and, if an authorised foreign corporation, the country under the laws of which it was incorporated; the address of the registered office of the corporation, the name and address of the corporation's registered agent in the Marshall Islands, and in the case of an authorised foreign corporation, the address of its principal office in the country under the laws of which it was incorporated; the names and respective addresses of the directors and officers of the resident domestic or authorised foreign corporation; and the original date of the articles of incorporation and the date of any changes (Corporate Regulations, Part II, s.3).

424. Similar provisions apply to Partnerships, Limited Partnerships, LLCs and Foreign Limited Liability Companies (Corporate Regulations: Part III, s.2 and Part IV, s.2). The information required in the annual reports covers all members and some of the gaps identified under criterion 24.3, including gaps relating to maintaining information the names and authority of partners. Annual reports are maintained by the Registrar for RDE (AG's Office) as part of entities' permanent records and can be made available to the public upon request.

425. NRDE do not have an obligation to file annual reports with the Registrar for NRDE (TCMI). However, they must make an annual attestation to TCMI that ownership information is being maintained as required or, if applicable, that it is not being maintained (wholly or partially) (e.g., BCA, s.80(3)(g)). The attestation requirement covers accounting records, basic and beneficial ownership records, and records of directors and executive officers (BCA, s.80 & 83; RPA, s.37(1); LPA, s.22(1); LLCA, s.22(1)).

426. NRDE are also required to produce accounting records and basic (including directors and shareholders) and beneficial ownership records to TCMI, in its capacity as the Registered Agent, within 60 days upon demand (BCA, s.80 & 83; RPA, s.37(1); LPA, s.22(1); LLCA, s.22(1)). TCMI, in its capacity as Registrar for NRDE, has implemented procedural safeguards to ensure information it collects is accurate. Documents may only be filed for a NRDE by a "qualified intermediary", such as an attorney, accountant, or corporate services company that has been successfully vetted by the Registrar (TCMI). To be approved by the Registrar, the intermediary must satisfy the Registrar that it meets FATF standards for CDD, performs screening against UN, US, EU, and other sanctions lists, and will provide identification data and other KYC

documentation to the Registrar without delay upon request. In addition, NRDE may voluntarily record information, including director, shareholder and BO information, with TCMI and many do so. However, these procedures are not set out in legislation, rules or standard operating procedures, and at no point is the information verified as being accurate.

427. Execution of an instrument to be filed with the Registrar for RDE (AG's Office) or the Registrar for NRDE (TCMI) constitutes an oath or affirmation, under the penalties of perjury, that, to the best of the signer's knowledge and belief, the facts stated therein are true (BCA, s.5(4)(b); RPA, s.5(2); LPA, s.13(3); LLCA, s.12(3)). Perjury is a felony of the third degree (Criminal Code, s241.1). In addition, wilfully keeping or producing false or misleading records or making false or misleading attestations is punishable by a fine of up to $50,000, forcible dissolution, or both (BCA, s.80(6) & 83(2); RPA, s.37(1)(f); LPA, s.22(1)(f); LLCA, s.22(1)(f)).

Criterion 24.6

428. Marshall Islands authorities have a number of mechanisms to seek to obtain information on the beneficial ownership of legal persons formed in the Marshall Islands. However, weaknesses with the processes to verify and check information undermines the availability of BO information.

429. *Criterion 24.6(a)*: Under the Associations Law, a 'beneficial owner' is a natural person who ultimately owns or controls, or has ultimate effective control of a legal entity, directly or indirectly, or on whose behalf such interest in the entity. Controlling ownership interest is based on a threshold; natural persons directly or indirectly owning more than 25% of the ownership interests or voting rights in the entity. If no natural person exerts control through an ownership interest, the natural persons who exercise control through management or other means must be regarded as the beneficial owner (BCA, s.80(3)(b); RPA, s.37(1)(c)(ii); LPA, s.32(1)(c) and LLCA, s.22(1)(c)(v)). For the avoidance of doubt, this definition is clarified in line with the FATF definition by the Corporate Regulations and the NRDE Regulations. Resident domestic and authorised foreign entities must produce beneficial ownership information upon demand to the Registrar for RDE (AG's Office) (Corporation Regulations).

430. There is no obligation on either the Registrar of RDE (AG's Office) or the Registrar for NRDE (TCMI) to hold up-to-date BO information.

431. NRDE are not required to keep the information in the Marshall Islands, however, NRDE must submit a prescribed form annually to the Registrar for NRDE (TCMI) containing an attestation of whether records of shareholders and beneficial owners required to be maintained under the BCA, are being maintained (BCA, s.80(3)(b); RPA, s.37(1)(c)(ii); LPA, s.32(1)(c) and LLCA, s.22(1)(c)(v)). Pursuant to an audit by TCMI or a valid government request is made to TCMI, NRDE must make the required records available to TCMI (in its role as the Registrar for NRDE) within 60 days upon demand (BCA, s.80(3)(b); RPA, s.37(1)(c)(ii); LPA, s.32(1)(c) and LLCA, s22(1)(c)(v)). Such information includes records of shareholders and beneficial owners that is required to be maintained under the BCA.

432. DAO LLCs are required to file a report at the time of formation and annually thereafter with the Registrar for RDE (AG's Office) identifying the DAO LLC's beneficial owners (s.112 of the DAO Act). The definition of "beneficial owner" under the DAO Act, s.112(4) has the same meaning as under the LLCA (LLCA (s.22(1)(c)).

433. *Criterion 24.6(b):* The Associations Law was amended in 2017 to require resident (RDE) and non-resident domestic entities (NRDE), except for publicly traded companies, to take all reasonable efforts to obtain and maintain an up-to-date records of the names and addresses of all its beneficial owners. (BCA, s.80(3)(b); RPA, s.37(1)(c)(ii); LPA, s.32(1)(ii)).

434. Resident and authorised foreign LLCs are required to keep reliable and completed beneficial ownership information in accordance with the Associations Law Part IV (the LLCA) for a period of at least five years (Corporations Regulation, Part IV, s4(a) and (b)). Guidance published by the Registrar for NRDE (TCMI) provides additional details on how these requirements are to be applied in practice.

435. Resident corporations are required to keep information collected on BO in the Marshall Islands but are not required to specify the location (BCA, s.80(3)(a)). This is a minor deficiency.

436. *Criterion 24.6(c)*: Financial institutions and DNFBP are required to take reasonable measures to determine if a customer is acting on behalf of one or more beneficial owners, and if so, to take reasonable steps to verify the identity of the beneficial owner by using relevant information or data obtained from a reliable source (AML Regulations, s.3C.1). Financial institutions and cash dealers are required to ensure that this information is available to the Banking Commissioner on a timely basis (AML Regulations, s.3C.9, and, per the 2021 amendments to the AML Regulations, "in no event later than five (5) working days" (see s.3C.9)). The definition of beneficial owner under the AML Regulations is consistent with the FATF's requirements.

437. The Associations Law exempts publicly traded companies from requirements to obtain and provide information on beneficial ownership. It is expected that beneficial ownership of a publicly traded company could be determined by competent authorities in a timely manner, as the company must be "subject to disclosure requirements consistent with international standards which ensure adequate transparency of ownership information" to be considered a "publicly-traded company" under the Associations Law (BCA, s.2(k); RPA, s.1(16); LPA, s.1(16); LLCA, s.2(16)). However, Marshall Islands has not received a request for beneficial ownership of a publicly traded company to date.

438. NRDE may voluntarily record basic (including directors and shareholders) and BO information with TCMI by submitting a Declaration of Incumbency executed either before a notary or under penalties of perjury, and many do so. On average, approximately 10,000 Declarations of Incumbency are recorded by NRDE each year. QIs serve as another source of existing information for NRDE. To be approved to act as a QI by the Registrar for NRDE, a professional (attorney, accountant, or TCSP) must meet FATF standards for CDD and sanctions screening and must provide identification data and other KYC documentation to the Registrar without delay upon request. For NRDE associated with a Marshall Islands-flagged vessel, detailed information collected by the Maritime Administrator during the vessel registration process, including basic and beneficial ownership information, provides another source of existing information.

439. *Criterion 24.7*: There are significant challenges to ensuring that beneficial ownership information is accurate and as up-to-date. While both the onshore and offshore corporate registrars provide all information they hold on an entity when required, and NRDE are required by law to provide BO information, neither registry holds all of required basic information on legal persons or other data to cross check. There are basic information gaps such as no information on directors and limited BO information is kept with the registry except for NRDE bearer share details held by TCMI. Entities are required under law to provide BO information if asked, but there is no verification by these registrars or any other competent party (such as MIDAO as the sole agent for DAO) before it is passed on to registrars. In the absence of any verification of BO information or checking for accuracy, the mechanisms available have limits in their ability to ensure that BO is available.

440. In addition to the Association Laws outlined in 24.6 above, legal owners such as shareholders in the case of BCA and members in the case of a LLC and beneficial owners are obliged to provide the requisite BO details to the entity upon request, and entities have the power to request updated information at any time BCA, s.80(3)(e); RPA, s.37(1)(c)(iv); LPA, s.32(1)(c)(iv); and LLCA, s.22(1)(c)(iv). RDE or NRDE must also notify its legal owners and beneficial owners in writing at least annually of their obligation to provide beneficial ownership information to the entity (BCA, s.80(3)(d); RPA, s.37(1)(c)(iii); LPA, s.32(1)(c)(iii); and LLCA, s.22(1)(c)(iii)). RDE or NRDE are, however, entitled to rely on any response provided by the legal and beneficial owners without further enquiry unless the corporation have reason to believe the response is misleading or false (for example, see BCA, s 80(3)(d)). Similar requirements are applied to authorised foreign entities and RDE pursuant to Corporate Regulations 1995 (Corporate Regulations, S.5 of Part II, s.4 of Part III, & s.4 of Part IV).

441. Financial institutions and DNFBP are required to apply CDD measures to existing customers on the basis of materiality and risk and existing relationships at material times, and take steps to identify and verify beneficial owners (AML Regulations as amended, s.3A.3 and 3C.1). Any documents, data, or information collected under the CDD measures must be kept up-to-date and relevant by taking reviews of existing records at appropriate times, particularly for higher risk categories of customers or business relationships (AML Regulations, s3H.1).

Criterion 24.8

442. *Criterion.24.8(a) and (b)*: there are no provisions requiring that one or more natural person or a DNFBP be authorised by the company and accountable to competent authorities for providing basic information and available beneficial ownership information, and giving further assistance.

443. *Criterion 24.8(c)*: However, RDE and authorised foreign entities must keep BO records for a period of at least five years and produce this information on demand to the Registrar (the AG's Office) (Corporate Regulation, Part II, s.5). Failure to maintain and produce information on beneficial ownership as required is subject to a fine (Corporate Regulations, Part II, s.5 and Schedule I).

444. The Associations Law requires all BO records maintained by a non-resident domestic entity (NRDE) to be produced to the Registrar for NRDE (TCMI), upon demand pursuant to an audit by TCMI or a valid government request (BCA, s.80(3)(g)); RPA, s.37(1)(c)(vi); LPA, s.32(1)(vi); LLCA, s.22(1)(iv); and to the Registrar for RDE under the Corporate Regulations in the case of authorised foreign entities and RDE. There is no exception for publicly traded authorised foreign entities.

445. *Criterion 24.9*: The Associations Law requires BO records to be kept by resident domestic entities (RDE) and non-resident domestic entities (NRDE) for a minimum of five years, even in cases where the entity has been dissolved or annulled or has otherwise ceased to exist (BCA, s.80(3)(5)); RPA, s.37(1)(c)(e); LPA, s.32(1)(e); and LLCA, s.22(1)(e)). An amendment to the Associations Law in 2019 clarified that, where an entity has been dissolved or annulled, or has otherwise ceased to exist, this obligation falls on the directors, general partners, or managers (BCA, s.80(6); RPA, s.37(1)(f); LPA, s.22(1)(f); LLCA, s.22(1)(f)). It is not clear whether liquidators or administrators who are not directors, general partners, managers, etc. would inherit the obligation.

446. The same requirements apply to DAO LLCs by virtue of DAO Act, s.103.

447. BO information filed by DAO LLCs must be maintained by the Registrar for Resident Domestic Entities (RDE) for at least 5 years after the DAO LLC is dissolved (DAO Act, s.112(3)).

448. Authorised foreign entities must also maintain all required records for five years (Corporate Regulations, Parts II-IV).

449. Records on customer identification held by a bank, DNFBP, or financial services provider, including beneficial ownership information, must be maintained for six years after the account has been closed or the transaction concluded (Banking Act, s.169).

450. Corporate records must be kept for a minimum of five years (BCA, s.80(5); RPA, s.37(1)(e); LPA, s.22(1)(e); LLCA, s.22(1)(e)). Amendments to the Associations Law in 2019 clarify that this record-keeping obligation continues to apply even in cases where the entity has been dissolved or annulled or has otherwise ceased to exist, as penalties apply to natural and legal persons (BCA, s.80(6); RPA, s.37(1)(f); LPA, s.22(1)(f); LLCA, s.22(1)(f)). The same requirements apply to DAO LLCs by virtue of DAO Act, s103.

451. *Criterion 24.10*: Competent authorities may use their standard investigative powers, as discussed under Recommendation 31 and elsewhere, to gain access to the information held by companies. There are some minor shortcomings with these powers that cascade to R.24, including lack of a police power to order the production of information, although this is mitigated by the production and information sharing powers of the AG and Banking Commissioner.

452. The Registrar for NRDE (TCMI) and Registrar for RDE (AG's Office)) provide information to competent authorities, including law enforcement authorities, upon request. The Registrars are both also members of the National AML/CFT Council and can share information through that mechanism. Legislation authorisation is not needed as information held by these Registrars is publicly available (BCA, s.4(2)). There are no restrictions in the Associations Law that would preclude these Registrars from sharing information with competent authorities. The Registrars are also parties to the various information-sharing MOUs in the Marshall Islands.

453. FI and DNFBP are required to make all customer records, including basic and beneficial ownership information, available to the Banking Commission upon request (AML Regulation, s.3B.9 and 3C.9). The Banking Commissioner and FIU have investigative authority over banks, DNFBP, and financial services providers (FSPs) - Banking Act s.167 and s.184. Penalties for violations are stated above under criterion 24.8.

454. *Criterion 24.11*: Bearer shares in the Marshall Islands are generally associated with non-resident domestic corporations that are shipping companies.

455. The Marshall Islands introduced amendments to the Associations Law in 2017 to establish mechanisms to ensure that bearer shares are not misused for ML/TF. Resident domestic corporations are expressly prohibited from issuing shares in bearer form (BCA, s 42(2)). "Bearer shares" can still be issued by non-resident domestic corporations but these "bearer shares" are not transferrable by a change of possession between anonymous holders, and are subject to more stringent recordkeeping and reporting obligations than registered shares (BCA, ss.39(2), 42(2), & 80(3)(c)).

456. Every non-resident domestic corporation issuing bearer shares, and all those with bearer shares outstanding, must use all reasonable efforts to obtain and maintain an up-to-date record of the names, addresses, nationalities, and dates of birth of all holders and beneficial owners of each bearer share (BCA, s.80(3)(c)). They must also maintain a record of any subsequent transfer, including the date of transfer, and obtain and maintain an up-to-date record.

457. Details of the issuing of any bearer shares or any transfer of bearer shares must be recorded with TCMI as registered agent for all non-resident domestic entities to maintain the validity of the bearer share (BCA, s.80(3)(c)). Any issuance or transfer is not valid and the subscriber or transferee of the share has no rights or privileges until this occurs (BCA, s.39(2), s.42(2), & s.80(3)(c)).

458. While there is no express prohibition on bearer share warrants, the authorities are not aware of such instruments being used in the Marshall Islands and any person exercising an option to buy shares in the future would not validly own the shares until the transfer of ownership was registered with TCMI.

459. *Criterion 24.12*: There are no mechanisms in place to ensure nominee shareholder and director arrangements are not misused. Nominee shareholders and nominee directors are not expressly prohibited under the Associations Law.

460. The Guidance on Beneficial Ownership Requirements published by the Registrar for NRDE provides direction treatment of entities, including nominees, and requires that nominee arrangements must be looked through to identify the natural persons with a controlling interest. However, this guidance is not enforceable.

461. *Criterion 24.13*: There are some proportionate and dissuasive sanctions that apply to natural and legal persons that fail to comply with the requirements to keep and produce records of beneficial ownership.

462. A person that fails to comply with the requirements under the Associations Law to keep records relating to shareholders, members, partners and beneficial owners may receive a fine of up to $50,000, forcible dissolution or cancellation of the relevant entity, or both (BCA, s.80(6)); RPA, s.37(1) (f); LPA, s.32(1)(f); and LLCA, s.22(1)(f)). The exemption regarding beneficial ownership for publicly traded companies in these obligations applies here.

463. The same penalties apply to DAO LLCs by virtue of DAO Act, s.103. In addition, s.112(5) of the DAO Act specifies penalties for violations related to beneficial ownership information reports; these are a civil penalty of not more than $500 for each day that the violation continues, and a fine of $10,000, imprisonment of up to 2 years, or both.

464. While the BCA does not define "person", the BCA implies that a person can be a natural or legal person through a number of other provisions. For example, s 18 of the BCA states that a corporation "considered in law as a fictional person", s.80(6) of the BCA includes forcible dissolution as a potential penalty and a number of provisions distinguish "natural persons", as opposed to "legal persons" or "persons" (see for example s 15(b), s.20(1), and s.26(1)(a)).

465. Failing to produce records within 60 days upon demand by the Registrar producing false or misleading records is punishable by a fine of up to $50,000, forcible dissolution, or both (BCA, s.80(6); RPA, s.37(1)(c)(f); LPA, s.32(1)(f); LLCA, s.22(1)(f)). This also applies to a demand by other competent authorities pursuant to a valid governmental request (BCA, s.80(3)(g); RPA, s.37(1)(c)(vi); LPA, s.32(1)(c)(vi); and LLCA, s.22(1)(c)(vi)).

466. An RDE that fails to comply with the requirement to maintain and produce BO records to the Registrar for RDE (AG's Office) upon demand under the Corporate Regulations may be subject to a fine and de-registration may occur. These fines are US$1000 for failing to produce BO information and $500 for failing to maintain BO information. These fines are not proportionate and dissuasive.

467. There is a $50,000 penalty for non-citizens who fail to comply with the provisions of FILBA (S.208A) which therefore includes the record-keeping requirements under s.207A of the

FIBLA or where a foreign investment business licence holder fails to advise the Register of Foreign Investment within 39 days of any necessary updates to the information on the Register (FIBLA, s.207(2)).

468. Breaches of information gathering and record-keeping requirements by a bank, DNFBP, or financial services provider, or its employees, officers, or directors, is punishable by a fine of up to $2,000,000, imprisonment for up to 20 years, or both (Banking Act, s.169(5)). In addition, each bank, DNFBP, or financial services provider, and any partner, director, officer, employee, or person participating in the conduct of its affairs who violates any applicable provision of the Banking Act or the AML Regulations is liable for a civil money penalty of up to $10,000 per violation for wilful violations or up to $500 per violation for negligent violations (Banking Act, s.181 and AML Regulations, S.7).

469. *Criterion 24.14*: The Marshall Islands is allowed, following a request from a foreign counterpart, to rapidly share the basic and beneficial ownership information on legal entities through the MLA and informal international cooperation frameworks described in R.37 and R.40. This includes exchanging information held by the appropriate Registrar of Corporations and taking necessary action to obtain and exchange basic and beneficial ownership information.

470. The Banking Commissioner and FIU have broad authority and ability to facilitate and assist international administrative authorities in investigating the proceeds of crime, ML, and TF, and exchange information with them (Banking Act, s.167(1)(j) and s.167(1)(k)). Whilst the FIU, under AML Regulations, can provide international cooperation and exchange information on money laundering, associated predicate offences, and terrorist financing, this is only under instruction of the Banking Commissioner who does not have authority under the Banking Act to facilitate and assist international administrative authorities in investigating for predicate offences.

471. An international administrative authority includes foreign law enforcement authorities, FIUs, and bank regulators (Banking Act, s.102(p)). The AG can grant foreign countries' requests for assistance relating to a serious offense, which can include exchange of basic and beneficial ownership information on legal entities in relation to such an offense (MACMA, s.409).

472. The AG and designated LEAs and officers can also share intelligence information related to terrorism, terrorist organisations, transnational organised crime, illicit drugs, ML, illegal arms trafficking, and illegal movement of deadly materials to categories of foreign countries (CTA, s.116). This includes any foreign country that: is a party to an international terrorism convention in respect of which the Marshall Islands is also a party; any foreign country that is a member of the Pacific Islands Forum; the United States; and any other foreign country that is a member of the United Nations. The CTA further provides that the Marshall Islands will cooperate with foreign countries by taking all practicable measures to prevent and counter preparations for terrorism (CTA, s.118). This includes establishing and maintaining channels of communication to facilitate secure and rapid information exchange, and conducting inquiries on persons and funds.

473. Basic and beneficial ownership information relating to tax matters may is shared pursuant to the Tax Information Exchange Agreement (Implementation) Act of 1989 or the Tax Information Exchange Agreement (Execution and Implementation) Act, 2010. The Marshall Islands is a party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol.

474. *Criterion 24.15*: While the FIU may seek information or assistance from foreign competent authorities as necessary and may provide feedback to its foreign counterparts regarding information provided (AML Regulations, s.13(a)) the Marshall Islands has never made a request to another country for basic or beneficial ownership information or for assistance in locating beneficial owners residing abroad. There is also no process or mechanism in place to monitor the quality of assistance received in the event that a request is made. The Marshall Islands is in the process of setting up a case management system to deal with monitoring the quality of assistance they provide to and receive from other countries.

Weighting and Conclusion

475. The Marshall Islands has introduced some measures to improve the transparency of legal persons, but some moderate shortcomings remain. The ML/TF risks associated with all types of legal persons have not been fully assessed and there are minor gaps in the collection of basic information on legal persons. There are no requirements for directors to be included in an application to form a legal person, and no requirement partnership and LLC agreements to be maintained within the country at a location notified to the registry. Resident corporations are not required to specify the location of where beneficial ownership information is kept in the Marshall Islands. There are no provisions that ensure adequate cooperation by resident domestic corporations and authorised foreign corporations with competent authorities, and some sanctions are not proportionate and dissuasive. There are no measures in place to monitor the quality of any assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. There are some deficiencies relating to the collection of BO information by the Registrar for NRDE (TCMI) and the accuracy of information provided by QIs to that TCMI. TCMI, for the most part, does not verify such information and relies on the QI's declaration that the FATF standards have been met.

476. **Recommendation 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

477. The Marshall Islands was rated non-compliant with the former R.34 in the 2011 MER on the basis that there were no measures in place to prevent unlawful use of legal arrangements and no provisions allowing access to information on beneficial ownership. The Trust Act was amended in 2020 with regulations issued in 2023.

478. The creation of trusts, obligations on trustees (whether natural persons or trust companies) and recognition of foreign trusts is set out in the Trust Act of 1994. The licensing of trust companies and trustees is governed by, the Trust Companies Act 1994, and the Trustee Licensing Act 1994.

479. Three categories of trust are recognised under the Marshall Islands legal framework: (1) domestic trusts (e.g. employer trusts – section 109, Trust Act 1994); (2) Marshall Islands trusts, which are offshore trusts with at least one trustee licensed in Marshall Islands and non-resident beneficiaries, and whose proper law is the law of the Marshall Islands (Trust Act 1994, s.101A(i)); and (3) foreign trusts (Trust Act 1994, s.101A(e)) whose proper law is that of a jurisdiction other than the Marshall Islands.

Trusts settled under Marshall Islands law

480. There are a number of registration and licencing obligations on some types of trusts and trustees, but these relate to a sector where no trusts have been settled or registered. The Majuro International Trust Company ("MITC") is allocated as the Registrar for the purposes of registering trusts that fall within the scope of the Trust Act 1994, but has been inactive since it was formed 1996.

481. Pursuant to the Trust Act, Marshall Islands trusts (having non-resident beneficiaries) must be registered under terms set out in the act. Marshall Islands authorities hold that the registration requirement under the Trust Act covers all trusts that may be present in the Marshall Islands (those governed under Marshall Islands law and other foreign laws). However, the assessment team concludes that registration under the Trust Act is optional for foreign trusts (those governed under laws others than the laws of the Marshall Islands).

482. Marshall Islands authorities confirmed that in keeping with the situation in the 2011 MER, no trust (Marshall Islands trust or other domestic trust) has ever been registered, and no application to form a Marshall Islands trust has ever been made or accepted. The formation of Marshall Islands Trusts is not advertised or promoted. The inactive status of the trust sector reflects a deliberate policy choice that remains unchanged from the 2011 MER.

483. Marshall Islands law requires trustees of all trust types, including foreign trusts with assets or trustees in the Marshall Islands, to be licensed under the Trust Companies Act 1994 (s.205) for incorporated trustees; and under the Trustee Licensing Act 1994 (s.302) for trustees who are unincorporated. This requirement also applies to any person performing an equivalent function for another form of legal arrangement. No trust company or trustee has ever been licensed under the Trust Companies Act 1994 or the Trustee Licensing Act 1994 by the Commissioner of Trust Companies. To that end, the registration under the Trust Act does not carry any weight in these circumstances.

Foreign trusts

484. Marshall Islands law recognises foreign trusts as those whose proper law is that of a jurisdiction other than the Marshall Islands (Trust Act 1994, s.101A(e)). Foreign trusts are defined as foreign "entities" under the BCA and, like any other foreign entity, must apply for and obtain authorisation from the Registrar for RDE (AG) to do business in the Marshall Islands (BCA, s.107). Foreign trusts (and non-resident trusts) are prohibited from (i) retailing, wholesaling, trading or importing goods or services for or with residents of the Marshall Islands ; or (ii) any extractive industry in the Marshall Islands ; or (iii) any regulated professional service activity in the Republic; or (iv) the export of any commodity or goods manufactured, processed, mined or made in the Republic; or (v) the ownership of real property located in the Marshall Islands (s.2(q)(i),(ii),(iii), (iv) and (v) of the BCA)) . In addition, a foreign or domestic trustee that is a "non-citizen" as defined in s.202(b) of the FLBLA would require a foreign investment business licence (s.203) to do any business, including trust business in the Marshall Islands. Further, as with any other entity wishing to do business in the Marshall Islands, a foreign trust company or foreign trust would require a Marshall Islands employer identification number (EIN) from the Marshall Islands Social Security Administration (MISSA) and a business licence from the Marshall Islands locality where it will do business.

485. Marshall Islands authorities indicated that they are not aware of any foreign trusts operating in the Marshall Islands - trustees investing in the Marshall Islands or forming RDE or NRDE. It is not known if, or how many, foreign trusts are operating. However, based on the absence of foreign trust, trust company, and trustee applications for authorisation and licenses to do business in the Marshall Islands and the limited market for foreign or domestic trust services in the Marshall Islands, Marshall Islands authorities suspect this number is low (if any).

Criterion 25.1

486. *Criterion 25.1(a)*: Every trustee of a trust governed by the laws of the Marshall Islands, and every trustee operating in or from within the Marshall Islands, are required to 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 (s.114(7)(a) of the Trust Act and s 6 of the Trustee Regulations 2023). This information is required to be filed with the Registrar of Trusts (s.161(1)(b) and 162(2)(b) of the Trust Act). These obligations apply to professional and non-professional trustees.

487. Amongst other things, the Trust Act and the Trustee Regulations 2023 also require trustees to maintain accounting records, including records sufficient to correctly explain all transactions, enable the financial position of the trust to be determined with reasonable accuracy at any time, and allow financial statements to be prepared (s.114(5) of the Trust Act and s.4(1) of the Trustee Regulations). The Trust Act and the Trustee Regulations also require trustees to maintain the trust deed (or equivalent) and purposes of the trust. Where parties to the trust are legal persons, adequate, accurate, and up-to-date basic information about those legal persons must be maintained (s.114(5) of the Trust Act and s.4(2) of the Trustee Regulations).

488. *Criterion 25.1(b)*: Every trustee of a trust governed by the laws of the Marshall Islands, and every trustee operating in or from within the Marshall Islands are required to obtain and hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors (s.114(7)(b) of the Trust Act),

489. *Criterion* 25.1(c): These trustees (whether or not professional licensed trustees) are required to maintain the above-mentioned information for at least six (6) years after the trustee's involvement with the trust ceases" (s.114(8) of the Trust Act).

490. The Trustee Regulations 2023 contain the definitions of "accurate", "adequate" and "current" in relation to beneficial ownership information (section 6). The Trustee Regulations 2023 also contain the definition of 'basic information' in relation to other regulated agents of, and service providers that must be obtained by a trustee.

491. *Criterion 25.2*: Trustees are required to keep this information accurate, and as up to date as possible (s.114(7)(B) of the Trust Act). They are also required to update this information on a timely basis. The Trustee Regulations 2023 contain the definition of "accurate" in relation to beneficial ownership information.

492. *Criterion 25.3*: Every trustee of a trust governed by the laws of the Marshall Islands, and every trustee operating in or from within the Marshall Islands are required to disclose their status to a third party, including. FIs and DNFBP, when forming a business relationship or carrying out a transaction affecting the trust (s.125(1) of the Trust Act). These obligations apply to professional and non-professional trustees. A trustee who fails to do so would be subject to imprisonment for up to one year, a fine of $10,000, or both (s.171).

493. *Criterion 25.4*: The Registrar or the Commissioner of Trust Companies has the express authority to require a very wide range of information on a trust from trustees, whether or not they are professional and non-professional trustees. Information to be provided when required includes all the information that they are required to retain on the basic and beneficial ownership and control of a trust (Trust Act, s.166). A trustee may refuse to disclose certain information relating to the deliberations and decision-making processes of the trustee (Trust

Act, s.122), but these do not interfere with the powers of the Registrar or Commissioner of Trust Companies to require information.

494. Officers and employees of licensed trust companies are required to maintain confidentiality in relationships with customers, but there are appropriate exceptions for accessing and sharing information or data for purposes of complying with laws and regulations (Trust Companies Act 1994, s.230).

495. *Criterion 25.5*: The Registrar of Trusts and the Commissioner of Trust Companies have broad authority to require information from trustees (s.166). As noted in 25.1 the Trust Act requires trustees of Marshall Islands trusts to obtain information on the beneficial ownership of a trust regulated by that legislation and provide this to the Registrar of Trusts and annually as part of a registration renewal.

496. The Commissioner of Trust Companies will have information on the residence of professional and non-professional trustees who have obtained a licence under the Trust Companies Act 1994.

497. The Banking Commissioner has broad powers to compel the timely production of documents and records, and obtain information from, FI and DNFBP regulated under the AML Regulations. This may include information relating to trustees, beneficiaries, trustee residence and assets managed under a trust, where the trust is a customer of an FI or DNFBP.

498. The Banking Commissioner also has a general authority to obtain information from FIs and DNFBP (including professional trustees) in line with his or her duties notwithstanding any secrecy or other restrictions on disclosure of information imposed by the Banking Act (s.167). Other competent authorities, including law enforcement, have the necessary powers to obtain access to all necessary documents and information relating to legal arrangements (see R.31).

499. *Criterion 25.6*: The Registrar (the Majuro International Trust Company) and the Commissioner of Trust Companies are expressly authorised to co-operate internationally with respect to documents and information on trusts (s.166(4) of the Trust Act).

500. Marshall Islands is able to provide international cooperation in relation to trust-related information, including beneficial ownership information, through MLA requests and informal channels as described under R.37 and R.40. This includes exercising domestically-available investigative powers to obtain information from trusts, including beneficial ownership information, on behalf of foreign countries. The FIU exchanges information with foreign FIUs through its membership in the Egmont Group.

501. Some information on foreign trusts operating in the Marshall Islands can be held by the Registrar for RDE and authorised foreign entities as part of licensing procedures.

502. *Criterion 25.7*: Trustees, whether natural or legal persons, professional or non-professional trustees, that breach any obligations in the Trust Act 1994, including those outlined in *Criterion* 25.1 and *Criterion* 25.3, are subject to imprisonment for up to one year, a fine of $10,000, or both (Trust Act, s.171). These sanctions are proportionate and dissuasive.

503. *Criterion 25.8*: The Trust Act includes enforcement provisions on natural or legal persons who are trustees for all the relevant obligations under the Act. The Act establishes offences for providing false or misleading information or documents, destroying/altering records, or obstructing the Registrar of Trusts or Commissioner of Trust Companies in exercising their powers to require information. The sanction is imprisonment for up to one year, a fine of $10,000, or both (s.171 of the Trust Act), which is proportionate and dissuasive.

Weighting and Conclusion

504. **Recommendation 25 is rated compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

505. In the 2011 MER, Marshall Islands was rated partially compliant with former R.23. Factors underlying the rating included: no legislation to prevent criminals or their associates from holding or being the beneficial owners of a controlling interest in, or being a senior manager or director of, a NBFI or cash dealer; no registration or licensing requirements in place for MVTS providers, or other NBFIs and cash dealers; some NBFIs covered by AML/CFT requirements were not supervised; inadequate offsite monitoring and a lack of onsite examinations.

506. *Criterion 26.1*: The Banking Commissioner is responsible for supervising FIs compliance with s.168-170A of the Banking Act (s.167 and 184, Banking Act), as well as compliance with the AML Regulations by the financial institutions (S. 2C.1, AML Regulations). Section 2C.1 of the AML Regulations states that the Banking Commissioner must evaluate the policies and procedures of banks and financial services providers (FSPs) to ensure compliance with the Regulations. The Banking Commissioner also has powers to examine the records and inquire into the business and affairs of any bank or financial services provider for the purposes of ensuring compliance with the AML/CFT requirements contained in the Banking Act (Banking Act, s.184).

507. *Criterion 26.2*: The Banking Act requires all financial institutions to be licensed and regulated by the Banking Commission. Persons or entities who wish to conduct banking, insurance and securities are required to be licensed by the Banking Commissioner (s. 107 & 123, Banking Act). This also applies to money value transfer services and foreign exchange, as per definition of financial service providers in section 102(t) of the Banking Act. The Counter Terrorism Act 2002 (s.121) also requires that money or value service providers, including alternative or informal remittance providers be licensed. The AML Regulations state that it is "not permissible to establish or accept the operation of a shell bank in the Marshall Islands" (S.3N.9).

508. *Criterion 26.3*: The Banking Act includes elements of fit and proper obligations (S. 139-141). In addition, the Banking Commissioner has issued binding fit and proper regulations (December 2023) for banks and financial service providers (s.141A, Banking Act). Regulations issued under the Banking Act are enforceable (s. 156 and 164). Fit and proper regulations cover fit and proper criteria, the role of the Board, Senior Management and External Auditors in implementing fit and proper controls and responsibilities of the Bank or FSP to report any cases of breaches of fit and proper.

509. Section 139(1)(c) of the Banking Act does prohibit the appointment of any person as director of a bank if they have been convicted of any offence involving dishonesty or fraud but no other criminal activity. Similarly, any appointed directors cease to be a director if they are convicted of any act or thing which is of a fraudulent or illegal character or manifestly opposed to the interests of the bank.

510. Section 139(3) prohibits the appointment of any person as director of a financial services provider if they have been convicted of any act or thing that is fraudulent or illegal in character and also provides that any director of a financial services provider will cease to be a director if convicted of such an offence.

511. Section 141 of the Banking Act also prohibits the employment or appointment of any officer or manager of the bank or financial services provider (and they cease their employment or appointment) if such person is convicted of a dishonesty or fraud offence but no other criminal activity. There are no requirements in the Banking Act during licensing for persons that have significant or controlling interests in a financial institution, nor does it address criminal associates.

512. The licensing process for banks does require shareholder information be provided as part of the application process (Banking Act, s.108) and prior approval by the Banking Commissioner is required for acquisitions of a substantial interest in a domestic licensed bank (Banking Act, s.112(e)) or financial service provider (Banking Act, s.127), and any changes in directors or principal officers for domestic licensed banks from the Banking Commissioner (Banking Act, s140).

513. In addition, Section 2A.3 of the AML Regulations requires all FIs to identify all persons who owned or controlled it in the prior calendar year and to ascertain whether any party affiliated with it has been convicted of any offense involving dishonesty, breach of trust, or ML. This information must be collected and recorded and certified by the compliance officer. FIs must also by 1 February each calendar year report ownership and control information to the Banking Commissioner (S. 2A.5 AML Regulations).

514. The Fit and Proper Regulations set out fit and proper criteria in keeping with the FATF standards that FIs must implement to screen staff, directors and beneficial owners to ensure they are fit and proper. The mechanisms go further than screening procedures to ensure high standards when hiring employees as required under R.18. The Fit and Proper Regulations set standards that FIs are required to conduct both prior to initial appointments and at regular intervals of at least annually or whenever the FI becomes aware of information that may materially compromise a person's fitness and propriety (s.5 & 32, Fit and Proper Regulations).

515. The Fit and Proper Regulations require FIs, as part of their responsibility to ensure ongoing suitability of directors, senior managers, and substantial interest-holders and their ultimate beneficial owners, to provide the Banking Commission with all the information necessary for conducting fit and proper assessment in all cases, including for new appointment and change of role. The Regulations indicate that this should include the identities of beneficial owners of shares being held by nominees, custodians, and through any other (corporate) vehicles (s.13 Fit and Proper Regulations). FIs are required to notify the Banking Commission within 5 business days if it becomes aware of reliable information that a director, senior manager, or person holding a substantial interest in the FI is not a fit and proper person. If the person is not removed from the position, the notification must state the reason(s) for this and the action(s) being taken to mitigate any risk the person presents to the FI (s.32, Fit and Proper Regulations). These requirements would have some effect to prevent criminals or their associates from owning a significant interest or controlling a licensed FI, however there is no provision which allows the Banking Commissioner to remove the shareholder or ownership interest, although the Banking Commissioner has broad powers to revoke licenses for businesses "detrimental to the public interest" (s.113(k) and 128(i)) and as outlined above there are enforceable regulations that push FIs towards removing persons who are not fit and proper. In addition, the prohibitions on officers and directors only apply once they are already appointed to their positions.

Risk-based approach to supervision and monitoring

Criterion 26.4

516. The Banking Commission is mandated under Banking Act and the AML Regulations to perform prudential and AML/CFT supervision of licensed FIs. The supervision framework provides for ongoing offsite supervision and monitor and onsite examination of financial performance and compliance with all provisions of the Banking Act including regulations, directives, instructions and other by laws.

517. Section 184 gives the Banking Commissioner powers to examine all FIs compliance for their AML requirements under the Banking Act (s.168, 169, 170, 170A and 180) and AML Regulations. Section 2C of the AML Regulations, further details the Banking Commissioner responsibility and powers to supervise banks to ensure compliance with the Regulations.

518. *Criterion 26.4(a):* The Marshall Islands had commenced risk-based AML supervision of banks in line with the core principles. The Banking Act 1987 provides for the adoption and implementation of the core principles of the Basel Committee on Banking Supervision (BCBS). Under the Act, the Banking Commissioner has the responsibilities and powers to supervise banking in the Marshall Islands. The Act also implements a number of core principles to enable effective supervision including licensing, supervisory tools, corrective and sanctioning powers of supervisors and abuse of financial services.

519. Section 156 of the Banking Act provides for the Banking Commissioner to issue regulations for the adoption and implementation of all core principles of the Basel Committee on Banking Supervision (BCBS) and although not all such regulations are yet to be issued, review of the annual reports by the Banking Commission highlights a supervision approach based on the core principles being undertaken.

520. The Banking Commission conducts AML/CFT supervision of banks in accordance with the Banking Act and AML/CFT Examination Procedures Manual, which establish a risk-based supervisory framework largely in line with the BCBS Principles. However, the implementation of this framework is still at an early stage.

521. The Banking Commissioner is the appointed supervisor for the insurance and securities sectors and the Banking Act imposes some relevant legal obligations on those sectors in line with the IAIS and IOSCO Core Principles. However, there is currently no risk-based supervisory framework in place relating to the supervision of the very small insurance sector and there is securities sector in the Marshall Islands. In addition, there is no consolidated group supervision, as there are no financial groups with more than one FI currently operating in Marshall Islands.

522. *Criterion 26.4(b):* MVTS providers are subject to AML/CFT supervision by the Banking Commission. This supervision is to be done in accordance with the AML/CFT Onsite Examination Manual dated 26 May 2023, which sets out a risk-based approach. However, this is yet to be implemented. There are currently no money exchange service providers operating in Marshall Islands.

523. *Criterion 26.5*: Section 2C.2 sets out the risk-based approach to AML/CFT supervision for banks. The AML/CFT Onsite Examination Manual incorporates a risk-based approach for offsite and onsite examinations. Marshall Islands advised that with more examiners and additional co-examiners from the FIU they are able to fully use the manuals and conduct examinations of entities based on risk-rating of such entities using information the Volume 4 of the NRA and other information required to be assessed in accordance with procedures in manuals. Risk rating of all banks and FSPs has been completed and the matrix is used to determine the frequency and intensity of its examinations yet to be undertaken. Marshall

Islands also advised that AML/CFT Onsite Examination Manual dated 26 May 2023 will be used as a way forward.

524. *Criterion 26.6*: The AML Regulations states the Banking Commission is to review the ML/TF risk of FIs when periodically through its offsite and onsite supervision. The AML/CFT Examinations Manual states that the primary objective of off-site supervision is to support the overall assessment of the adequacy of banks' systems to manage risks and that off-site supervision activities are ongoing. Section 2C.2 of the AML Regulations also require review of the FIs risk profile in response to major events or developments in the management or operations of the FI. At the time of the onsite the risk-based supervision outlined above had yet to be extended to non-bank FIs, however this is a very small sector and the gap is given little weight.

Weighting and Conclusion

525. There are some measures to prevent criminals or their associates from holding a significant or controlling interest in an FI. The Banking Commissioner for the most part, supervises banks in accordance with core principles and the Banking Commission has in place a framework for risk-based supervision of FIs. However, implementation of this framework has only occurred to a limited extent.

526. **Recommendation 26 is largely compliant.**

Recommendation 27 – Powers of supervisors

527. Marshall Islands was rated largely compliant with former Recommendation 29 in its 2011 MER. The deficiencies related to a lack of effectiveness of powers due to inadequate human resources in the Banking Commission.

528. *Criterion 27.1*: The Banking Commissioner has powers under s.167(1)(c) of the Banking Act to enter the premises of any bank or financial service provider to inspect any record and ask questions of such records. In addition, s.184 of the Banking Act authorises the Banking Commissioner to examine records and make inquiries into the business and affairs of the bank or financial service provider for the purposes of ensuring compliance with sections 168, 169, 170, 170A and 180. Section 2C.1 of the AML regulations also provide that the Banking Commissioner shall evaluate the policies and procedures of the banks and financial services providers (FSPs) to ensure compliance with the AML Regulations.

529. *Criterion 27.2*: Section 184 of the Banking Act provides the Banking Commissioner the power to examine the records and inquire into the business and affairs of any FIs for the purpose of ensuring compliance with s.168(CDD), 169(Recordkeeping), 170(Suspicious transactions), 170A (Suspicious activity for TF) and 180 (Currency transaction reports) of the Banking Act. Further Section 167(1)(c) of the Banking Act provides powers to the Banking Commissioner to, on notice, enter the premises of any FIs for inspection of records, make questions and take copies of records.

530. *Criterion 27.3*: Section 184 of the Banking Act 1987 provide powers for the Banking Commissioner or any person authorised in writing by the Banking Commissioner, to examine the records and inquire into the business and affairs of any FI and Section 2C.1 of the AML Regulations also provides power to the Banking Commissioner to evaluate policies and procedures of FIs to ensure compliance with the AML Regulations, includes explicit powers to compel production of information relevant to monitoring compliance with AML/CFT compliance.

531. Section 2C.1 of the AML Regulations gives the Banking Commissioner the power to compel the production of any information relevant to monitoring compliance with the Banking Act and the AML Regulations. Sections 3B.9 and 3C.9 of the AML Regulations also provide that records must be available within five working days to the Banking Commissioner upon request including monitoring compliance with the Banking Act and AML Regulations.

532. *Criterion 27.4*: The Banking Act provides for penalties for failure to comply with AML/CFT requirements. In addition to the criminal penalties set out in s.169, 170 and 170A of the Banking Act, s.181(1) provides for civil penalties of up to $10,000 USD per wilful violation of provisions in the act or any regulations issued under the act and up to $500 per negligent violation (s.7.(c) of the AML Regulations). The framing of sanctions to a per violation basis allows the supervisor to levy larger sanctions for repeated or multi-faceted violations. This should allow the proportionate sanctioning by fines, but they may not be persuasive in every instance.

533. Section 113(f) and 128(d) of the Banking Act provides that the Commissioner may suspend, revoke, or vary the licence of a bank that violates any provision of the Banking Act or AML Regulations. Section 114 of the Act provides additional powers to the Banking Commissioner to give directions to banks where a notice of suspension has been issued, including prohibitions on transactions and requiring certain steps or courses of action. The Banking Act, (s.142) allows the Banking Commissioner to issue cease and desist orders to licensed banks where there has been a failure to comply with the provisions of the Banking Act.

Weighting and Conclusion

534. The available penalties may not be wholly persuasive.

535. **Recommendation 27 is rated largely compliant.**

Recommendation 28 – Regulation and supervision of DNFBP

536. Marshall Islands was rated non-compliant with former Recommendation 24 in its 2011 MER. This was due to the absence of supervision and regulation of DNFBP.

537. At the time of the onsite visit there were no casinos in the Marshall Islands. The largest DNFBP sector is the legal sector. There was a very small accounting sector. One company service provider was notified of its inclusion in the regime as a DNFBP in December 2023.

538. *Criterion 28.1*: The Gaming and Recreation Prohibition Act 1998 prohibits gambling activities and use, possession, and sale of gambling devices in the Marshall Islands, therefore there are no casinos operating in the Marshall Islands. The prohibition also extends to online gambling and gambling on cruise ships within the territorial waters of Marshall Islands. Despite this, casinos are however captured as cash dealers under the Banking Act and AML Regulations and are therefore technically subject to supervision by the Banking Commission.

539. *Criterion 28.2*: The Banking Commissioner is designated under the sections 104 and 184 of the Banking Act as to supervise compliance with AML/CFT requirements by DNFBP.

540. *Criterion 28.3*: The Banking Commission power has powers to examine the records and inquire into the business and affairs of any DNFBP for the purpose of ensuring AML/CFT compliance (s.184 of the Banking Act). Section 10 of the AML Regulations apply requirements for DNFBP and the Banking Commissioner has powers to ensure compliance under the Regulations. The Banking Commission has also issued Guidelines to DNFBP regarding their requirements under the AML Regulations.

Criterion 28.4

541. *Criterion 28.4(a):* s.167(1)(c) and s184 of the Banking Act provide the Banking Commissioner with powers to inspect and monitor compliance by DNFBP with the AML/CFT requirements of s.168, 169, 170 and 170A of the Banking Act. Section 10(f) and 10(g) of the AML Regulations gives the power to the Banking Commissioner to examine records and inquire into the business and all necessary powers to carry out the functions under the section.

542. *Criterion 28.4(b):* Dealers in bullion are required to be licensed under the Banking Act (as financial service providers) and while fit and proper testing is not required, the Banking Act prohibits any person convicted of any act or thing which is of a fraudulent or illegal character from being a director. Admission of attorneys (largest group of DNFBP in the Marshall Islands) and standards of professional responsibility and conduct in the practice of law is governed by the Marshall Islands judiciary pursuant to s.219 of the Judiciary Act 1983, however no other measures are in place for other DNFBP.

543. *Criterion 28.4(c):* Sanctions applicable to DNFBP for failure to comply with AML/CFT requirements under the Banking Act are the same as for the FIs (see analysis in Recommendation 27) including civil penalties under s. 7 of the AML Regulations.

544. *Criterion 28.5*: Section 10 of AML Regulations states that examinations will be conducted on a risk sensitive basis. The frequency and intensity of examinations are to be determined on the basis of the Banking Commissioner's understanding of the ML/TF risks, taking into consideration the characteristics of DNFBP. Marshall Islands had issued a single AML/CFT Onsite Examination Manual applicable to all DNFBP which indicated that examination priority will be focused in due course on high and medium-high risk sectors which do not include DNFBP. Offsite AML/CFT supervision of accountants and lawyers commenced in 2023 prior to the onsite using an AML/CFT Compliance Assessment Questionnaire developed by the Marshall Islands. Onsite AML/CFT supervision had not commenced for lawyers, accountants of the one company service provider at the time of the onsite visit. A deficiency remains relating to the lack of measures preventing criminals or associates from being owners, managers in DNFBP other than lawyers.

Weighting and Conclusion

545. There is a designated competent authority for supervision and the AML Regulations apply requirements to DNFBP. Fit and proper controls are in place for lawyers, which are the largest DNFBP sector in the Marshall Islands, but there are limited measures in place to prevent criminals or their associates from holding a significant or controlling interest, or management function in other DNFBP. In addition, given the recent inclusion of DNFBP and the continuing development of the supervisory framework, AML/CFT monitoring of the DNFBP sectors had not commenced.

546. **Recommendation 28 is rated largely compliant.**

Recommendation 29 - Financial intelligence units

547. In the 2011 MER, Marshall Islands was rated partially compliant with former R. 26. The factors that underlined this rating were deficiencies in the STR analysis, screening and prioritisation process; lack of clear legal authority to obtain information from LEAs to assist in the analysis of STRs; lack of sector specific guidance; lack of publicly available FIU statistics; no back up data; and lack of dedicated resources and specialised financial intelligence expertise.

548. *Criterion 29.1*: The Marshall Islands' FIU was first established in 2000 by Cabinet Minute 236 and established in legislation by s.182(1) of the Banking Act. Section 182(2) states that the Financial Intelligence Unit shall be responsible for prohibiting money laundering with the instruction of the Commissioner of Banking as outlined under s.167. Section 167(1) of the Banking Act outlines the Commissioner's authority and powers, including the receipt and analysis of suspicious transaction reports from FIs and DNFBP and the dissemination of the reports of the analysis. The FIU is housed within the Banking Commission. Section 106 of the Banking Act allows the Banking Commissioner to delegate any of his powers and duties to any other officer of his staff, who shall exercise or perform the powers or duties delegated to him subject to the general or special directions of the Commissioner. The Banking Commissioner delegated specific duties to the FIU Manager on 23 February 2017.

Criterion 29.2

549. *Criterion 29.2(a):* Section 167(1) of the Banking Act outlines the Banking Commissioner's authority and powers, including the receipt, analysis, and dissemination of suspicious transaction reports from FIs and DNFBP. Marshall Islands Banking Commission SOP No.1 sets out the procedures for Marshall Islands FIU staff in relation to the receipt, analysis, and dissemination of suspicious transaction reports. Section 5 of the AML Regulations also requires every FI and DNFBP to file a suspicious transaction with the Banking Commission.

550. *Criterion 29.2(b):* Section 180 of the Banking Act requires FIs and DNFBP to report currency transaction reports more than $10,000 to the Banking Commissioner's Office. Section 6 (a) of the AML Regulations requires FIs to report any currency transaction report to the Banking Commissioner.

Criterion 29.3

551. *Criterion 29.3(a):* Section 167(1)(i) of the Banking Act allows the Banking Commissioner to request information from FIs and DNFBP for more information if the Commissioner has reasonable grounds to believe that such information is essential to discover money laundering activity, proceeds of crime, and or financing of terrorism. Section 170(2) requires banks, DNFBP and financial service providers that have reported a suspicious transaction to provide further information to the Commissioner or AG upon request.

552. *Criterion 29.3(b)*: Section 167(1)(m) of the Banking Act, allows the Banking Commissioner the authority and ability to obtain information notwithstanding any secrecy or other restrictions on disclosures of information imposed by the Banking Act. Section 167(1)(j) also states that the Banking Commissioner has the authority and ability to exchange information between international administrative authorities. The Banking Commission SOP 1 – s.1.6 includes a process for the FIU Manager to obtain information from external sources. While there are no legal provisions in the Banking Act that provide the FIU with authority to access information from other agencies, the FIU is able to obtain information from other law enforcement agencies, the tax authority, immigration and local governments through confidential letter and/or email correspondences. The FIU also has access to the World Check database.

Criterion 29.4

553. *Criterion 29.4(a):* The FIU conducts operational analysis as required under Section 167(1)(a) of the Banking Act. SOP No. 1 outlines the receipt, analysis and dissemination of suspicious activity reports by the FIU. The SARs are required to be prioritised, cleansed and

analysed. The analysis procedures include the FIU internal database, queries to external agencies, and queries to financial institutions. Section 1.11 of the Banking Commission SOP 1 outlines the procedures for tactical analysis of SARs and information. When a SAR is identified as a case for dissemination, the tactical analysis should include background enquiries, criminal history, Police/Customs/Immigration intelligence, registration details of companies, transaction history, transaction tracing, and FIU information to identify links, associations, patterns and trends to confirm a hypothesis about likely offenses and offenders.

554. *Criterion 29.4(b):* The Banking Commission SOP No. 2 briefly outlines the process for undertaking strategic analysis and suggests a framework for conducting strategic analysis. While the FIU has not published a strategic analysis product, it has included annual statistics of suspicious activity reports and currency transaction reports in the Banking Commission annual report.

555. *Criterion 29.5*: The FIU is able to disseminate information spontaneously under s.167(1)(b) of the Banking Act to law enforcement authorities. The FIU is also able to disseminate information to law enforcement authorities upon request under s.167 (1) (p). The modes of dissemination are outlined in s.2.4 of SOP 1 and include hand delivery or secure faxes.

Criterion 29.6

556. *Criterion 29.6(a):* The Banking Commission SOP 1 makes a reference to treating all suspicious activity reports received by the Banking Commission as confidential. The Banking Commission SOP 4 on Confidentiality and Data Protection documents procedures regarding the handling, storage, dissemination, and protection of, and access to, information. An SOP on confidentiality and data protection has been issued in August 2023.

557. *Criterion 29.6(b):* The secrecy clause in Section 154(2) of the Banking Act states that the Commissioner, and every officer or employee working under the Commissioner are required to preserve and aid in preserving secrecy with regards to all matters relating to the affairs of the licensed bank or any of its clients that may come to his knowledge in the course of his business. Section 154 (3) states that any person that contravenes s.154 (2) shall be guilty of an offence and liable to a fine not exceeding $5,000.00 upon conviction.

558. All FIU staff, as members of the Public Service Commission are required to undergo a criminal record check. Personal details, including past employment, education details and personal references are also checked during the appointment process. Criminal background checks are also carried out during the hiring process. All FIU staff are also required to sign a declaration of allegiance and secrecy.

559. *Criterion 29.6(c):* Access to the FIU Office is limited, with only the Banking Commissioner, FIU Manager, and FIU Analyst having keys to access the office. All hard-copy suspicious transaction reports and other confidential data are stored in locked security cabinets in the FIU Manager's office/file room. Visitors to the FIU offices or premises must be logged and accompanied at all times by the FIU staff. Electronic information is held in the FIU database which is password protected and only accessible to the Banking Commissioner/Head of FIU, FIU Manager, FIU Analyst, and FIU IT Technicians.

Criterion 29.7

560. *Criterion 29.7(a):* The FIU was legally established under Section 182(1) of the Banking Act. Under s.182(2) of the Banking Act, the Unit is responsible for the prohibition of ML with the instruction of the Commissioner of Banking as outlined in s.167 of the Banking Act. This

Section outlines the Banking Commissioner's powers and authority to prohibit money laundering activity. The Banking Commissioner, as head of the FIU, has the authority to carry out functions freely, including the autonomous decision to analyse, request and disseminate specific information.

561. *Criterion 29.7(b):* Under s.167(j) of the Banking Act the Banking Commissioner shall have the authority and ability to exchange information between international administrative authorities. While the Banking Commission SOP 1 – 1.6 allows the FIU Manager to obtain additional information from external sources, there are no explicit provisions in the law that provide the FIU with authority to access information from other agencies. The Banking Commissioner must seek endorsement from the AG's Office before entering into agreements with domestic and foreign agencies. This is due to the size of the FIU and limited availability of legal expertise across Government and is consistent with the procedures other departments use to obtain legal advice before entering into agreements.

562. *Criterion 29.7(c):* The functions of the FIU as provided through the Banking Commissioner in s.167 of the Banking Act has a distinct core function from the Banking Commission.

563. *Criterion 29.7(d):* Section 104(1) of the Banking Act states that the Commissioner shall be appointed by the President with the concurrence of the Cabinet. The Commissioner is prohibited from holding any other position unless assigned by the Cabinet. Section 104(3) states that the Commissioner may be assigned the functions and duties of the Registrar of Companies. The Commissioner is able to deploy resources to the FIU and other areas of the Banking Commission as the Banking Commission budget allows.

564. The Banking Act does not directly address the FIU's authority to access information from other agencies. However, the Banking Commission has not encountered any problems accessing information from other agencies (LEAs, tax authority, MISSA, immigration and local governments). Information provided by agencies are usually identification documents, criminal history or national and local CID intelligence on individual or entity, travel information, visa information, employer identifier number (EIN) numbers, owners of businesses registered with tax authorities.

565. *Criterion 29.8*: The FIU has been a member of the Egmont Group since 2002.

Weighting and Conclusion

566. There are minor deficiencies which include no explicit provisions in the law that provide the FIU with authority to access information from other agencies. The FIU has not conducted any strategic analysis.

567. **Recommendation 29 is rated largely compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

568. The 2011 MER rated Marshall Islands as PC on the former R.27. This rating was primarily based on effectiveness deficiencies relating to predicate offence investigations being pursued at the expense of ML investigations and lack of implementation of available ML investigation powers.

569. *Criterion 30.1*: The Marshall Islands Police Force is established under the Public Safety Act and is designated to be deployed in and throughout the Marshall Islands for the

maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of laws and regulation (s.505). This broad law enforcement function includes investigation of ML and predicate offences. Within the Police Force, the Criminal Investigations Division (CID) is designated to carry out investigations of ML and predicate offences. Police (specifically, the CID) is the lead agency for ML investigations in the Marshall Islands, and in doing so, it may consult with the Attorney General's Office and FIU.

570. The CTA requires the AG's Office to investigate terrorism and to identify and detect any funds used or allocated for the purposes of committing any terrorism offense as well as the proceeds derived from such an offense (s.113). The AG may request investigation by CID. However, the Attorney General does not have the explicit authority to direct the CID to undertake TF investigations; although it is expected that CID would comply with an informal request. CID may also initiate investigations independently as with any other offence.

571. Agencies investigating predicate offences may work with Police. Potential tax crimes are investigated by the tax authority, potential customs offenses are investigated by Customs, potential marine related environmental crimes are investigated by MIMRA, potential environmental crimes outside of Marshall Islands fishery waters are investigated by EPA, and the OAG investigates cases of corruption and misuse of public funds.

572. *Criterion 30.2*: The MIPD is the general LEA mandated to investigate all crimes. As such it is authorised to pursue parallel investigation of ML/TF. There is no limitation placed on the MIPD's mandate to limit investigation of ML/TF predicated offshore.

573. OAG is also classified as an LEA in Marshall Islands. OAG is authorised to conduct investigation of predicate corruption offences (s.904 of the Auditor-General (Definition of Duties, Functions and Powers) Act 1986. However, the Auditor-General is not designated to investigate related ML. This mandate remains with the Police Force, which is authorised to use its powers as per any other form of ML. Section 920 of the Auditor-General Act provides that the Auditor-General must report to the Attorney-General whenever there are reasonable grounds to believe that there has been any violation of criminal law, including ML.

574. Other competent authorities (Tax or the Marshall Islands Marine Resources Authority (MIMRA)) may refer potential ML associated with predicate offenses to the Police for investigation. They have the powers specified in their respective laws to investigate potential violations of those laws including the CTA (e.g., the tax authority can collect information on the accuracy of tax returns, Customs can search persons and seize currency at the border, etc.). They do not investigate ML/TF offenses. If ML, TF, or other crime was suspected, it would be referred to Police and the Attorney General's Office for investigation and prosecution.

575. *Criterion 30.3*: The Marshall Islands has legislative measures that provide police officers, the Attorney General, and the Banking Commissioner/FIU with powers to identify, trace, and evaluate property subject to confiscation (see analysis in R.4). Police have broad powers to search for tainted property with consent or under a warrant and apply for production and monitoring orders (POCA s.251, 254, 258, 262 and 265, POCA), the Attorney General may issue summons or production orders (s.609 Office of the Attorney-General Act) while the Banking Commissioner (as Head of FIU) is empowered to apply for search warrants for the purpose of tracing proceeds of crime (Banking Act, s.167(1)(l)).

576. POCA provides measures for identifying, tracing, freezing, and seizure and confiscation of proceeds of serious crime and property used in the commission of a serious offense and, for other purposes. However, POCA is not clearly regulated as to what

authorities and measures LEAs and competent authorities have regarding freezing of property.

577. The OAG also has the powers to identify, trace, and initiate freezing and seizing of assets as indicated in this criterion, through the AG's Office as long as it involves public funds However, due to the current freezing and seizing of assets law (Proceeds of Crime Act), the court is required to determine first if a crime has been committed. The OAG acknowledges the AT's views and has indicated that it will work with the National AML/CFT Council and other relevant authorities on several law reforms that would enable OAG and other LEAs to initiate freezing and/or seizing assets during an investigation (on probable cause as the standard of evidence).

578. The Banking Commissioner and Attorney General have powers to seize and detain imported or exported currency (Banking Act, s.171). Police officers have seizure powers under s.s.251, 254 and 262 of POCA relating to property believed to be proceeds of crime, although there is not a power to seize suspected proceeds of crime.

579. POCA includes provisions to allow use of these powers though *ex parte* applications or other expedited investigative processes (relating to search warrants (s.253), warrantless searches in emergencies (s.254), production orders (s.258), and monitoring orders (s.258)).

580. *Criterion 30.4*: The Banking Act stipulates that the Commissioner's duties include to conduct, in association with LEAs, investigations into the proceeds of crime, money laundering, and or the financing of terrorism (Banking Act s.167(1)(n)). This duty is only subject to the Commissioner having reasonable grounds to suspect that ML/TF and/or the proceeds of crime are occurring. To support this duty, the Commissioner has powers to enter premises of Fis upon notice to inspect and copy any record (Banking Act s.167(1)(c)) or to obtain a warrant to search premises of any bank, DNFBP or financial service providers (or their employees) for prevent ML/TF or trace proceeds of crime. Responsibility for pursuing financial investigations (including ML) and prosecutions of predicate offences is with the OAG which acts as an LEA. The OAG reports directly to the AG's Office without Police involvement. The Marshall Islands does not classify agencies such as the tax authority, Customs, MIMRA, etc. as LEAs. These agencies do not investigate ML/TF offences. If ML, TF, or other crime was suspected, it would be referred to Police and the AG's Office for investigation and prosecution.

581. Potential tax crimes are investigated by the tax authority (Income Tax Act 1989, s.129), potential social security-related offenses are investigated by MISSA, Marshall Islands Social Security Administration (Social Security Act 1990, s.119(2)(e)), potential customs offenses are investigated by Customs (CDA, Part III), potential marine related environmental crimes are investigated by MIMRA (Fisheries Enforcement Act, s.512), and the Auditor-General investigates potential misuse of public funds (Auditor-General (Definition of Duties, Functions and Powers) Act 1986, s.904 & 915-919).

582. Marshall Islands treats Customs, Tax and MIMRA as administrative authorities rather than LEAs. These authorities may refer potential ML associated with predicate offenses to the Police for investigation. They have the powers specified in their respective laws to investigate potential violations of those laws including the CTA (e.g., the tax authority can collect information on the accuracy of tax returns, Customs can search persons and seize currency at the border, etc.). They do not investigate ML/TF offenses. If ML, TF, or other crime was suspected, it would be referred to Police and the Attorney General's Office for investigation and prosecution.

583. *Criterion 30.5*: The Auditor-General Office (OAG)is authorised to conduct investigation of predicate corruption offences (S. 904 of the Auditor-General (Definition of Duties, Functions and Powers) Act 1986). However, the OAG is not designated to investigate related ML. This mandate remains with the Police Force, which is authorised to use its powers as per any other form of ML. Section 920 of the Auditor-General Act provides that the OAG must report to the Attorney-General whenever there are reasonable grounds to believe that there has been any violation of criminal law, including ML. The OAG has the powers to identify, trace, and initiate freezing and seizing of assets as indicated in this criterion, through the Attorney General's Office as long as it involves public funds. However, due to the current freezing and seizing of assets law (Proceeds of Crime Act), the court is required to determine first if a crime has been committed. The OAG acknowledges the AT's views and has indicated that it will work with the National AML/CFT Council and other relevant authorities on several law reforms that would enable OAG and other LEAs to initiate freezing and/or seizing assets during an investigation (on probable cause as the standard of evidence).

Weighting and Conclusion

584. Police and the Attorney General (AG) have broad general LEA responsibilities and authorisations in regard to ML and predicate investigations – however, it is not clear if specialist investigators (e.g. Customs/Tax/OAG) have similar responsibilities to identify trace, and initiate freezing and seizing of property in relation to ML predicate crimes within their area of responsibilities. The mechanisms for referral of cases between LEAs and from the AG to Police is also unclear. Moreover, the current freezing and seizing of assets law (Proceeds of Crime Act) does not enable OAG and other LEAs to initiate freezing and/or seizing assets during an investigation. It is not clear under POCA what authorities and measures LEAs and competent authorities have regarding freezing of property. Further there is no power to seize suspected proceeds of crime.

585. **Recommendation 30 is rated largely compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

586. The 2011 MER rated Marshall Islands PC on the former R.28. The report noted that certain powers were not explicitly provided for in legislation.

Criterion 31.1

587. *Criterion 31.1(a):* The Attorney General has powers to order production of documents held by financial institutions, DNFBP and other natural or legal persons (Attorney General Act s 609) when the Attorney-General deems it advisable or necessary in the public interest to conduct an investigation of alleged violations of law if he/she deems the documents relevant or material to the inquiry. Once the information is produced, the Attorney General may share it with CID as needed.

588. Monitoring orders may be issued by a High Court or District Court judge under s.265 POCA on probable cause to believe the subject person has committed, was involved in, or benefited from (or is about to) the commission of a serious offense. A Police officer may apply *ex parte* for the judge to direct financial institutions to disclose information obtained by the institution about transactions conducted through an account held at the institution. Monitoring orders cannot be used retrospectively and are therefore more a surveillance rather than production power. s.258 of the POCA provides for the issuance of production orders issued by the Court against "any person" (which would include FIs and DNFBP). This would be issued

where there is probable cause to believe the person in question has possession or control of a document relevant to identifying, locating, or quantifying property of the defendant or tainted property or of a document relevant to identifying or locating a document necessary for the transfer of property to a defendant or the transfer of tainted property in relation to a serious offense. In addition, s167(1)(n) of the Banking Act provides for joint investigations between LEAs and the Banking Commissioner/Head of FIU where there are reasonable grounds to suspect ML or TF. To the extent necessary, the Commissioner's/Head of FIU's broad information gathering powers could be used to obtain information for the investigation as necessary from FIs and DNFBP.

589. Although not a LEA, the Banking Commissioner has the power (s184 of the Banking Act) to examine FIs' documents for ML offences, and may also inspect and copy records found on the premise of a financial institution (s.167 of the Banking Act).

590. *Criterion 31.1(b):* Rule 41 of the Criminal Procedures provides for Police or Prosecutors to obtain warrants for a search of persons and premises. Rule 41(b) states High Court or District Court judge may issue a warrant to search for and seize a person or property within the Republic on application from the Police of Prosecutors. Rule 41(a)(2)(A) stipulates that the application must identify the person or property to be searched (in addition to the person or property to be searched for); which indicates that the scope of Rule 41(b) should be read to include search of both persons and property (including premises). Further Rule 41(l) provides for forced entry to buildings or vessels to undertake searches.

591. The Banking Commissioner has powers (s.167 Banking Act) to enter a FI during business hours to inspect or copy records and may also apply to the court for a search warrant to prevent ML/TF and trace assets.

592. *Criterion 31.1(c):* Police do not have explicit powers to take witness statements as part of ML/TF or predicate offence investigations. However, s.514(4) of the Public Safety Act provides broad investigative authority to police officers; which are reportedly relied on routinely in criminal investigation to take witness statements.

593. Other LEA and officials of competent authorities have relevant powers to examine witnesses. The Attorney General or other officer designated by the Attorney General has power to issue summons to individuals and entities to appear and testify as part of investigations into alleged violations of law (Attorney General Act, s.609). Sections 915 to 919 of the Auditor-General (Definition of Duties, Functions and Powers) Act 1986 authorises the Auditor-General to take voluntary testimony and to subpoena testimony if necessary. Customs Officers have relevant powers to take witness statements in Part III of the CDA. Pursuant to s.129 of the Income Tax Act, the tax authority may examine any records/data and take testimony for the purpose of ascertaining the correctness of any return or determining the liability of any person for any tax. Section 512 of the Fisheries Enforcement Act empowers "authorised officers" (including police officers and persons appointed by the Marshall Islands Marine Resources Authority (MIMRA)) examine vessels' masters and other persons on board.

594. *Criterion 31.1(d):* Rule 41 of the Criminal Procedures Rules governs seizure of evidence. Rule 41(c)(1) provides that a warrant may be issued for search and seizure of property that is evidence of a crime. For purposes of Rule 41, "property" includes documents, books, papers, any other tangible objects, and information (Rule 41(a)(2)(A)).

595. Evidence for criminal ML or predicate investigations may also be seized except where this is found incidental to searches for tainted property (POCA s.252(6)(b) and s.254(2)(b)).

Criterion 31.2

596. *Criterion 31.2(a):* Part VI of the Public Safety Act 1988 specifically provides for the establishment and governance of an Undercover Investigations Division to undertake undercover investigations of sensitive matters, which may include ML, associated predicate offenses, and TF. Although no such division has been created, the power to conduct an undercover (UC) investigation would be exercised by the CID.

597. *Criterion 31.2(b):* No specific powers of the Police exist relating to interception of communications.

598. *Criterion 31.2(c):* Rule 41 of the Criminal Procedures Rules provides for search and authorise the seizure of electronic storage media or the seizure or copying of electronically stored information (Rule 41c (2)(B)).

599. *Criterion 31.2(d):* No specific powers exist relating to controlled delivery although police identify the use of this practice in one previous case. Despite no provisions on controlled delivery to authorise LEAs' power to use controlled delivery, Marshall Islands Police have used controlled delivery in at least one drug case.

Criterion 31.3

600. *Criterion 31.3(a):* The Commissioner (as Head of the FIU) may request customer and BO information from any bank, DNFBP or financial services provider. Information must specifically be provided on a 'timely' basis (and in no event later than five (5) working days)' under 3B.9 and 3C.9 of the AML Regulations.

601. Section 167(1)(f) and (p) of the Banking Act provides for information sharing from the FIU to LEAs while s.167(1)(n) provides for the FIU to conduct joint investigations with LEAs. These provisions allow for LEAs to use the FIU mechanism to identify whether persons hold accounts.

602. *Criterion 31.3(b):* POCA Part V provides for Police and Attorney General powers relating to production of records relating to proceeds of crime investigations (see analysis in Recommendation 4). These powers provide for production of evidence relating to tainted property. Marshall Islands does not appear to have any 'clear process' in relation to these powers.

603. The Banking Commissioner is mandated to access information directly from financial institutions, without notice to the owner, allowing the identification of assets without prior notification.

604. *Criterion 31.4*: The Banking Act (s.167(1)(p)) requires the Commissioner to provide all relevant information held by the FIU "upon request of domestic competent authorities conducting investigations of money laundering, associated predicate offenses, and terrorist financing." Further, the Banking Act includes duty to send relevant STRs/CTRs (s.167(1)(b)) and relevant information derived from unwarranted entry to LEAs (s.167(1)(d)).

Weighting and Conclusion

605. Deficiencies are created by the absence of some LEA investigative powers such as powers to intercept communications. Police also lack powers to order information. However, this deficiency is partially mitigated by the Attorney General and the Banking Commissioner powers to obtain information and share that information with LEAs. There does not appear to be any 'clear process' in relation to powers for production of evidence relating to tainted property.

606. **Recommendation 31 is rated largely compliant.**

Recommendation 32 – Cash Couriers

607. The Marshall Islands was rated non-compliant with the cash courier requirements under SR.IX in the 2011 MER. While the CDA established a declaration system, there was no clear implementation. There were significant gaps in the legislative framework and limited evidence that information about cross border movements of currency and BNIs was shared among the relevant authorities. There were also no broad or proportionate sanctions available.

608. *Criterion 32.1*: The Currency Declaration Act 2009 (CDA) sets out a declaration system for travellers entering or leaving the Marshall Islands. A person who enters or leaves the Marshall Islands with currency equivalent to $10,000 or more must make a declaration to an authorised officer (CDA, s.203(1)). This requirement was amended in 2019 to cover the cross-border movement of currency by a person using postal services, courier services, or trans-shipment by any craft (CDA, s.203(2)). However, Marshall Islands did not demonstrate that the declaration system is in operation for outward cross-border transportation, whether by travellers or through mail and cargo.

609. The 2019 amendments also expanded the definition of "currency" to cover a broader range of monetary instruments, including currency, BNIs and currency in electronic form (CDA, s.202(c)), and the definition of "person" to include both natural and legal persons and their directors, managers, agents, or secretaries (CDA, s.202(j)).

610. *Criterion 32.2*: The declaration system implemented is a written declaration system for all persons carrying or transmitting currency equivalent to $10,000 or more out of or into the Marshall Islands (CDA, s.203). Persons are required to make a declaration to an authorised officer in the form prescribed in Schedule 1 of the CDA.

611. *Criterion 32.3*: The Marshall Islands has implemented a declaration system.

612. *Criterion 32.4*: Authorised officers have powers to question, search, seize and detain under Part III of the CDA.

613. Authorised officers are permitted to question persons on the source, ownership, acquisition, use, or intended destination of any currency in that person's possession or custody that is equivalent to $10,000 or more (CDA, s.204). Where there are reasonable grounds to suspect a person is carrying recoverable currency or currency intended for use in unlawful conduct that is equivalent to $10,000 or more, or that such currency is on the premises or a craft, an authorised officer may search the person, premises, or craft (CDA, s.205). The 2019 amendments to the CDA extended the definition of "craft" to "any vehicle or vessel that is used for transportation on land, the sea, or in the air" (CDA, s.205).

614. *Criterion 32.5:* There are sanctions for failing to declare currency of $10,000 or more or making a false declaration - a fine of up to $50,000 or forfeiture of the currency (CDA, s.203(3)). There are also sanctions for failing or refusing to answer any question by an authorised officer within reasonable excuse or knowingly making false or misleading statements to the authorised officer which attracts to a fine of up to $5,000 (CDA, s.204(2)). Customs has never been aware of any false declarations or misleading statements made in the Currency Declaration Form.

615. *Criterion 32.6*: Declarations can be made an authorised officer, which includes a customs officer, a police officer and an official from the Banking Commission (CDA, s.202(1)(a)). In practice, currency declaration forms are filed by authorised officers with the Division of

Customs and Revenue within the Ministry of Finance. There is an MOU signed by relevant competent authorities on 8 July 2020 (see criterion 32.7). The MOU sets out the roles and responsibilities of each competent authority, with Customs having the key responsibility of sharing currency declaration forms with, inter alia, the FIU. However, the MOU does not indicate how the Customs is to share the declaration information with the FIU. To date, there is no practical mechanism enabling the FIU to access the declaration information, and the FIU has not received any currency declaration forms from the Customs Office.

616. *Criterion 32.7*: An MOU for Inter-Agency Collaboration and Information Sharing on Matters Related to the Marshall Islands Arrival and Departure Declaration Forms was finalised in July 2020. The parties to the MOU include the FIU and government divisions with responsibility for customs, immigration and quarantine. Under the MOU parties agree to improve border security control and monitoring of all ports of entry and desire to share information and collaborate on the respective mandates through joint efforts on the movement of people, foreign entities, dangerous and prohibited merchandise, food and animal products, and all forms of currency amounting to a minimum of $10,000. The roles and responsibilities of the parties to the MOU are set out in the MOU. The Marshall Islands did not demonstrate that the MOU had been implemented or that the National AML/CFT Council or any other body supported operational level coordination. The Marshall Islands did not demonstrate that there is adequate co-ordination among customs, immigration and other related authorities on issues related to the implementation of Recommendation 32.

617. *Criterion 32.8*: Authorised officers with the authority to seize currency where there are reasonable grounds to suspect that the currency is, in whole or in part, recoverable currency, intended for use by a person in unlawful conduct, or undeclared currency intended for use in unlawful conduct (s.206(1), CDA). "Recoverable currency" is defined as "currency that is obtained through unlawful conduct" (CDA, s.202(e) and 215). Unlawful conduct covers conduct that unlawful under Marshall Islands criminal law or under another jurisdiction's criminal law, and if it occurred in the Marshall Islands, would be unlawful (CDA, s.s.202(g) and 214). This extends to cases where there is reasonable suspicion of ML, TF or predicate offences. The CDA provides powers for authorised officers to seize currency for a period of 72 hours where there is a false declaration or where there is a suspicion of the currency being used in unlawful (including ML/predicate offense/TF) conduct.

618. Currency seized may be detained for a period of 72 hours (CDA, s.207(1)). Detention may be extended for up to two years by order of the High Court (CDA, s.207(2)).

619. The Banking Commissioner and Attorney General also have powers to seize and detain any currency that is being imported into or exported from the Marshall Islands if there are reasonable grounds for suspecting that it is property derived from a serious offense or intended by any person for use in the commission of a serious offense (Banking Act, s.171) Any currency that is detained under s.171 can only be detained up to twenty four hours after seizure, unless a judge orders its continued detention for a period not exceeding three (3) months from the date of seizure. The judge may subsequently order continued detention of the currency if satisfied with reasons for detaining it but the total period of detention shall not exceed two (2) years from the date of the order made.

620. *Criterion 32.9*: The Chief of the Customs Division must retain, declarations of the cross border movement of currency made under s.203 of the CDA (s.217, CDA) for a period of at least five years. This would cover declarations above the prescribed threshold, declarations that are false, and declarations where there is a suspicion of ML/TF. Declaration forms include information on the identity of the bearer and the amount declared. This information is available

for international cooperation and assistance pursuant to the provisions (see Recommendations 36 to 40).

621. Currency declaration forms forwarded to the FIU are available for international cooperation and assistance pursuant to s.167 of the Banking Act. The Banking Commissioner is able to exchange information between international administrative authorities; and can facilitate and assist international administrative authorities in conducting proceeds of crime, money laundering, and or the financing of terrorism investigations (Banking Act, s.s.167(j) and 167(k)). An international administrative authority is broadly defined as "any foreign organisation national or multinational, whose responsibilities include, law enforcement, criminal investigation, financial monitoring and regulation, banking regulation or any associated tasks aimed at the prevention of international crime and prevention of money laundering" (Banking Act, s.102(p)).

622. The Marshall Islands works closely with the United States Immigration and Customs Enforcement given the Marshall Islands' international flight connections are through Guam or Hawaii, and under the Compact of Free Association, the United States is responsible for the Marshall Islands' national security. The Marshall Islands is also a member of the Oceania Customs Organisation, which often discusses ML, and regularly works with the World Customs Organisation and Customs from other Pacific jurisdictions.

623. *Criterion 32.10*: The MOU for Inter-Agency Collaboration & Information Sharing on Matters Related to the Marshall Islands Arrival and Departure Declaration Forms includes a confidentiality clause that requires parties to treat information shared under the MOU with strict confidentiality. The MOU also prohibits the use of the information for anything other than official government business. Breaches of these confidentiality requirements are dealt with as a disciplinary matter by the relevant agency head.

624. Similarly, authorised officers under the CDA are subject to the Public Service Regulations (PSR) which limits the use and disclosure of information obtained by the employee in the course of his or her official duties (PSR, s.47). This extends to the Banking Commission, FIU, and law enforcement personnel.

625. There is no evidence that the Marshall Islands declaration system unreasonably restricts legitimate trade payments and capital movements.

626. *Criterion 32.11*: Currency and BNI related to ML/TF would be subject to confiscation (See R.4) with the offender subject to sanction under R.3 and R.5, with the same limitations as set out above.

627. Property is broadly defined under the Banking Act, and would capture currency and BNIs (s.102, Banking Act). The ML offence applies where property is the "proceeds of crime," which includes "any property derived from or obtained, directly or indirectly through the commission of a serious offense." (s.166, Banking Act). Penalties applicable to ML would therefore extend to those laundering currency or BNIs. The broad definition of funds for the purpose of the TF offence under s.102(y) of the CTA would also cover the transportation of currency or BNIs related to TF.

628. Property is defined under POCA as "currency and all other real or personal property of every description, whether situated in the Marshall Islands or elsewhere and whether tangible or intangible and includes an interest in any such property" (s.205(l), POCA). This means that the cross border movement of currency related to ML/TF or predicate offences could be confiscated consistent with requirements under R.4. While currency is not defined

under POCA, the definition of "property" in s.205(1)(l) of the POCA extends to "all other real or personal property of every description" so includes cash and BNIs.

629. Customs has not encountered any cases of border transportation of currency or BNIs that are related to ML/TF or predicate crimes. Therefore, it is unclear whether the sanctions are proportionate and dissuasive.

Weighting and Conclusion

630. The Marshall Islands has made progress with addressing the deficiencies identified in the 2011 MER, but further work is required to operationalise the structures it has put in place. The Marshall Islands did not demonstrate that the declaration system is in operation for outward cross-border transportation, whether by travellers or through mail and cargo. Coordination to support implementation of R.32 measures is not well supported. These are moderate shortcomings given the length of time the structural arrangements have been in place. It is also unclear if the sanctions noted are proportionate and dissuasive for persons carrying out a physical cross-border transportation of currency or BNIs related to ML/TF or predicate offences.

631. **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

632. Marshall Islands was rated PC on the old R.32 in its 2011 MER. The 2011 MER noted that there was no structured approach to collecting and maintaining AML/CFT related statistics.

Criterion 33.1

633. *Criterion 33.1(a):* A report of the FIU's activities, including some statistics and trends, is submitted to Cabinet annually pursuant to s.167(1)(o) of the Banking Act within the Banking Commissioner's annual report. However, this report only includes basic FIU statistics, such as the number of reports received, number of disseminations, and which REs the reports were received from. It does not include other basic statistical information, such as the sector from which all CTRs and SARs were received, the values of transactions or the types of transactions reported. The FIU plans to implement an improved analysis and reporting system which will provide the capability to capture and report additional relevant data. There is a statistics and data in place to record previous related AML/CFT activities.

634. *Criterion 33.1(b) & (c):* Statistics for investigations, prosecutions and restrained or confiscated property were not currently maintained at the time of the onsite visit, however, the FIU was in the process of collecting and compiling additional statistics related to ML/TF investigations, prosecutions, convictions, property frozen, seized and confiscated. The Attorney General's Office had launched an electronic system to track investigations and prosecutions, beginning with human trafficking cases.

635. *Criterion 33.1(d):* Statistics for MLA were not well maintained although Marshall Islands is in the planning stage of procuring a case management system that is anticipated to assist in generating reports and other types of information or data for, amongst other things, MLA.

Weighting and Conclusion

636. Marshall Islands has identified the need to improve statistics as a vulnerability in the NRA and has plans to improve its collection and maintenance of data. However, that work is only at very early stages despite having been identified in 2020, and at present comprehensive statistics are not maintained. These constitute major shortcomings.

637. **Recommendation 33 is rated non-compliant.**

Recommendation 34 – Guidance and feedback

638. Marshall Islands was rated non-compliant with former Recommendation 25 in its 2011 MER. Deficiencies related to an absence of formalised processes and procedures to provide feedback on STRs, outdated guidelines and reporting entities not being provided feedback on a regular basis.

639. *Criterion 34.1*: Section 167(1)(f) of the Banking Act 1987 and Section 10 of the AML Regulations 2002 allow for the Banking Commissioner to issue guidelines to assist banks and financial services providers (FSPs) in complying with AML/CFT requirements broadly. The Marshall Islands has issued (i) comprehensive AML/CFT Guidelines for DNFBP in Sept. 2022; (ii) Guidelines on TFS for Banks, FSPs, and DNFBP in April 2023; and (iii) comprehensive AML/CFT Guidelines for Banks and FSPs in September 2023. The FIU has not provided sufficient feedback to reporting entities on the SARs submitted, although the involvement of banks in the NRA process has reflected a degree of feedback. There are FIU plans to review all reported SARs submitted within the last 6 years. It will then provide feedback to the reporting entities on those SARs that were of high quality and used for intelligence purposes for dissemination to LEAs for possible investigation and prosecution.

Weighting and Conclusion

640. Marshall Islands has established guidelines to assist FIs and DNFBP in applying AML/CFT measures, however sufficient feedback on reported SARs has not been provided. The SAR feedback element is given some weight as it is important to improving the detection and effective reporting of suspicious transactions.

641. **Recommendation 34 is rated largely compliant.**

Recommendation 35 – Sanctions

642. In the 2011 MER, Marshall Islands was rated partially compliant with former Recommendation 17. The assessment team noted sanctions available for breaches by NBFIs and cash dealers were not sufficiently proportionate nor dissuasive, and the Banking Commission had not effectively utilised sanctions to date.

643. *Criterion 35.1*: There is a broad framework in place to enact a range of proportionate and dissuasive sanctions to ensure natural and legal persons comply with AML/CFT requirements related to Recommendation 6.

644. In the UN Sanctions Act 224(1)(a) and(b), a natural person who works to contravene the enforcement of sanctions will be assessed a fine not exceeding $200,000 or imprisonment not to exceed 10 years (or both).

645. A corporate entity shall be assessed a fine not exceeding $1,500,000 or, an amount equivalent to the value of the transaction is the violation exceeds one or more transactions. If

there are wilful violations by a bank, DNFBP, its employees, officers or directors of AML/CFT requirements, violations can range from imprisonment of up to 20 years, and/or a fine up to $2,000,000 (Banking Act 1987, s.169 (5)).

646. For each FI or DNFBP and any partner, director, officer, employee, or person participating in the conduct of the affairs of the same a civil penalty will be assessed of no more than $100,000 for any violation of AML offences related to the Banking Act, s.181.

647. In addition, any person or bank, DNFBP, or financial services provider who improperly discloses information regarding reports is subject to not more than a $2,000,000 fine and/or 20 years imprisonment.

NPOs (R.8)

648. The Business Corporations Act and Corporate Regulations establish recordkeeping requirements and penalties for violations by NPOs or persons acting on behalf of the NPOs. Corporate Regulations 1995 (S.5) stipulates that each resident corporation must maintain reliable and complete accounting records and beneficial ownership information for at least five years and can be provided to the Registrar upon demand. Failure to supply such records will result in a penalty if the corporation is unable to demonstrate the maintenance and retention of records. The monetary penalty for failure to maintain records is $500 (Schedule 1, Fee Schedule, Corporate Regulations 1995). These penalties are broadly not dissuasive nor proportionate (see analysis in R.8). The Non-Profit Entities Act 2020 provides that (section 117 & section 127) violations of requirements for record keeping under this Act may include a fine of up to $50,000 per violation and the Registrar may take steps to suspend or dissolve the entity. Records to be keep include all accounting and financial records, legal and beneficial ownership information, these must be kept for a minimum of five years. The NPE Act does not replace the BCA or the Corporate Regulations, but expressly relies on the BCA (s.104(3) of the NPE Act, as amended in 2021).

Record-keeping (R.11)

649. The Banking Act 1987 includes sanctions for failing to meet record-keeping requirements. These include:

- suspension of the licence and require the bank to show cause why the licence should not be revoked or varied; or
- revoke the licence (s.113(1) of Banking Act 1987); or
- fine of not more than $2,000,000 or imprisonment for not more than twenty (20) years, or both (s.169(5) Banking Act 1987).

Money or Value Transfer Services (MVTS) (R.14)

650. The Banking Act 1987 provides for sanctions of MVTS providers for failing to meet AML/CFT requirements. These include sanctions for operating without a licence (fine not exceeding $10,000, s.123(5) of the Banking Act) and for a person who "knowingly or recklessly furnishes any material information which is false or misleading in connection with an application for licensing as a financial services provider" (a fine not exceeding $10,000 or to a term of imprisonment not exceeding six (6) months, or both" (s.124(3) of the Banking Act 1987).

651. These sanctions are viewed to be proportionate and dissuasive.

New technologies (R.15)

652. There are some sanctions including those directly related to financial service providers (as discussed above). These are proportionate and dissuasive in the Marshall Islands context.

Reporting of suspicious transactions (R.20)

653. FIs and DNFBP are required to report STRs, and the sanctions for failure to report include a fine of not more than $2,000,000 or imprisonment for not more than twenty (20) years, or both (s.170A(4) of the Banking Act) and Section 5 of the AML Regulations. Sections 7(a) and 7(b) of the AML Regulations 2002 also impose civil money penalties of no more than $10,000 and $500 for any wilful or negligent violations of reporting requirements respectively.

Tipping-off and confidentiality (R.21)

654. S.170(4) of the Banking Act provides sanctions of a "fine of not more than $2,000,000 or imprisonment for not more than 20 years, or both" for violations of prohibitions on disclosures related to STRs. These sanctions are considered proportionate and dissuasive.

Other Preventive Measures (R.10,12, 16-19)

655. The range of sanctions provided for non-compliance with the requirements of other preventive measures (R.10, 12, 16-19) are contained within the Banking Act 1987, AML Regulations 2002, and the UN Sanctions Act 2020, including fines and/or imprisonment for certain offences:

- suspend the licence and require the bank to show cause why the licence should not be revoked or varied; or revoke the licence (s.113(1) of Banking Act 1987};
- liable for a civil money penalty of not more than $10,000 per violation (s.181(1) of the Banking Act 1987).

DNFBP (R.22-23)

656. DNFBP have CDD requirements commensurate with those applicable to FIs in R.10, 12, 15, 17 and 19. DNFBP are required to comply with reporting of STRs, and tipping-off and confidentiality requirements.

657. Under S167, S169 and 170 of the Banking Act 1987 sanctions for violations by DNFBP are a fine of no more than $2,000,000 or no more than 20 years imprisonment.

658. Sanctions under the AML Regulations for DNFBP which impose civil money penalties of no more than $10,000 per violation for wilful violation and $500 for negligent violation.

659. *Criterion 35.2*: Sanctions are applicable senior directors and senior management of FIs and DNFBP. Under the Banking Act 1987, AML Regulations 2002, and the UN Sanctions Act 2020, sanctions are applicable to employees, DNFBP, senior managers and directors of subject entities, as well as to the entity itself.

Weighting and Conclusion

660. The Marshall Islands has a range of proportionate and dissuasive sanctions in place for violations of most AML/CFT requirements.

661. **Recommendation 35 is rated compliant**.

Recommendation 36 – International instruments

662. Marshall Islands was rated largely compliant with former Recommendation 35 and partially compliant with SR I in its 2011 MER. Deficiencies were noted in the scope of coverage of the ML offence and a lack of effective measures and procedures to fully implement UNSCR 1267 and 1373.

663. *Criterion 36.1*: The Marshall Islands is a party to the Vienna Convention since November 2010, Palermo Convention since November 2010, the UN Convention against Corruption (the Merida Convention) since November 2011, and the Terrorist Financing Convention since January 2003.

664. *Criterion 36.2*: The Marshall Islands implements the Terrorist Financing Convention through the Counter-Terrorism Act 2020, Part IV—Offenses against International Terrorism Conventions, Suppression of Financing of Terrorism.

665. The Vienna and Palermo Conventions are implemented through the Criminal Code 2011, Banking Act 1987 and the Proceeds of Crimes Act 2002 to material and physical elements of money laundering and applies to serious offenses for cases of ML.

666. Marshall Islands law provides criminal penalties for corruption by officials, and the government implements the UN Convention against Corruption (Merida Convention) through a number of regulations including the Banking Act 1987, the Criminal Code 2011, and the Proceeds of Crime Act 2002. The UNCAC report for the review cycle 1 dated 26 March 2015[73] and the report for the review cycle 2 dated 14 June 2022[74] are noted.

667. The Attorney General is the authority that receives identified corruption violations—violations are enforced by the High Court. If the offense occurs in the financial sector, the Banking Commissioner informs the AG's Office of violations (Banking Act 1987 Section 7c).

668. There are gaps in relation to the implementation of these conventions, namely:

- Article 19 (joint investigations) and Article 29 (training and technical assistance) of the Palermo Convention;
- Article 10 (international cooperation and assistance for transit States) of the Vienna Convention; and
- Article 50 (special investigative techniques) of the Merida Convention. There are no cases relating to controlled deliveries.

Weighting and Conclusion

669. The Marshall Islands has ratified all the relevant conventions, and has implemented most of its obligations, however minor gaps remain with respect to the use of and training for special investigative techniques.

670. **Recommendation 36 is rated largely compliant.**

[73] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1502057e.pdf

[74] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/8-9September2022/CAC-COSP-IRG-II-1-1-Add.21/2203875E.pdf

Recommendation 37 - Mutual legal assistance

671. In the 2011 MER, the Marshall Islands was rated partly compliant with former R.36 and SR.V. The report found that the mutual legal assistance (MLA) framework was undermined by the scope of the ML offence and only applied to cases where formal arrangements or agreements were in place with another jurisdiction. There were also no mechanisms to determine the best venue for ML prosecution, no legislated timeframes for dealing with requests, and no clear and efficient processes to execute requests without delay. Since the last evaluation, there have been some changes to the Marshall Islands legal framework for MLA and the scope of the ML offence. The requirements of the new FATF standard for MLA are also more detailed.

672. *Criterion 37.1*: MLA in the Marshall Islands is governed primarily by the Mutual Assistance in Criminal Matters Act 2002 (MACMA), which has been amended since 2011 to address deficiencies identified in the MER. The MACMA now allows the Marshall Islands to rapidly provide the widest range of MLA in relation to investigations, prosecutions, and related proceedings for 'serious offences' under the MACMA. This includes ML, TF and all FATF designated categories of offences. Piracy (beyond the counterfeiting of trademarks/piracy of products) is not specified in the Criminal Code, as amended which is not a 'serious offense'. The Counter-Terrorism Act 2002 (CTA) also explicitly provides that MLA is available for any investigation or proceeding relating to terrorism or a terrorist organisation (CTA, s.115). Terrorism includes the financing of terrorism (CTA, s.105(35)).

673. The POCA additionally provides for the search for, and seizure of, tainted property, and the issuing of production orders and search warrants in relation to foreign requests for assistance to locate or seize property suspected to be tainted property (POCA, sections 257, 261, & 264).

674. MLA can be provided to any foreign country on a reciprocal basis, and includes requests for assistance with: an evidence gathering order or a search warrant; consensual transfer of a detained person; a restraining order; enforcement of a foreign confiscation or restraining order; or the location of property suspected to be tainted property (MACMA, sections 410, 411 and 414-416).

675. *Criterion 37.2*: The Attorney General is the central authority in the Marshall Islands for the transmission and execution of requests (MACMA, s.405 & s.407). Regulations made under the MACMA in 2013 provide for the administrative aspects of the MLA processes and include forms for use by the Attorney General and courts in respect of any proceeding or matter under the MACMA, and general procedures and timelines for responding to requests (MACMA Regulations, s.3 and s.4). Determinations of whether a request should be granted, refused, or postponed must be made within seven days, and all requests that are granted should be completed within 21 days of receipt of the request (MACMA Regulations, S. 4). Marshall Islands does not have a case management system in place to monitor progress on requests and while Marshall Islands only receives a small number of requests, the resource and capacity issues within the Attorney General's Office has impacted on Marshall Islands' ability to provide MLA in a small number of MLA requests.

676. *Criterion 37.3*: The 2011 amendments to the MACMA extend MLA to "any foreign State which may request assistance in criminal matters on a reciprocal basis" (MACMA, s.403). Requests must be made in writing to the Attorney General and must include the name of the foreign authority, the nature of the criminal matter, the purpose of the request and nature of the assistance sought, and other relevant details (MACMA, s.407 & s.408). However, a request may be granted even if it does not satisfy these conditions (MACMA, s.407(2) & s.408(2)). The

Attorney General may grant, refuse, or postpone the request, in whole or in part (MACMA, s.409(1)). The grounds for refusing the request relate to where the granting the request would likely prejudice the sovereignty, security, or other essential or public interest of the Marshall Islands or would result in manifest unfairness or a denial of human rights, or is otherwise appropriate in all the circumstances of the case (MACMA, s.409(1)). An MLA request may be postponed after consulting with the requesting country if granting the request immediately would prejudice an investigation or proceeding in the Marshall Islands (MACMA, s.409(1)(c)).

677. While the discretion to refuse on the grounds that it is "otherwise appropriate in all the circumstances" may appear to give the Attorney General a more generalised discretion to refuse requests, the Marshall Islands advise that this ground for refusal must be determined based on the specific grounds that are listed and may include, for example, a request that would be unlawful to carry out. In addition, no request has ever been refused on this ground.

678. *Criterion 37.4*: The MACMA does not include specific provisions that allow for a request for MLA to be refused on the grounds that the offence involves a fiscal matter, or where there are secrecy or confidentiality requirements on financial institutions and DNFBP. There is no evidence that the discretion to refuse MLA requests on the grounds that it is "otherwise appropriate in all the circumstances" has or would be extended to requests where the offence involves a fiscal matter, or there are secrecy or confidentiality requirements at play (MACMA, s.409(1)(c)), although it is technically broad enough to do so.

679. *Criterion 37.5*: The Marshall Islands maintains the confidentiality of MLA requests received. Documents from foreign countries relating to an MLA request are subject to privilege and a person cannot be compelled to produce the document, a copy of the document or evidence relating to information in the documents for the purpose of legal proceedings (MACMA, s.418(1) and (2)). A person is prohibited from disclosing the content of a MLA request or the fact that a request has been made, except to the extent necessary to execute the request (MACMA, s.418(3)). This offence is punishable by imprisonment for a maximum of five years or a maximum fine of USD50,000, or both, with the maximum fine increased to USD250,000 for legal persons (MACMA, s.418(4)).

680. *Criterion 37.6*: The MACMA was amended in 2020 to expressly provide that a request for MLA may be granted notwithstanding the absence of dual criminality if the assistance does not involve coercive actions (MACMA, s.409(2)).

681. *Criterion 37.7*: Dual criminality is required for MLA in cases involving coercive actions (s.409(1)). The MACMA was amended in 2020 to take a conduct-based approach to assessing dual criminality. Dual criminality is deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence (MACMA, s.409(2)).

682. *Criterion 37.8*: The Marshall Islands can utilise the powers specified under R.31 in response to an MLA request provided they would also be available to domestic authorities and subject to the same conditions (e.g. judicial approval). Powers and investigative techniques under the Public Safety Act and Office of the Attorney-General Act, 2002 are available for use in response to requests for MLA (Public Safety Act, s.514, s.515 and s.516; Attorney-General Act, s609).

683. The POCA also expressly provides for the application of the powers and investigative techniques available under that Act to foreign offences pursuant to the MACMA (POCA, s.257, s.261, & s.264). The CTA authorises the Attorney General to grant requests of a foreign country

for legal assistance in any investigation relating to terrorism or a terrorist organisation, with the requests to be carried out in accordance with the MACMA (CTA, s.115).

684. However, there are some deficiencies with these powers (see R.31). Police do not have powers to order production of information. This is mitigated to some extent by general powers and investigative techniques under the Public Safety Act and powers of the AG to compel production under the Office of the Attorney-General Act, 2002. There is also a lack of investigations powers in Marshall Islands to intercept communications and conduct controlled deliveries, so these investigative techniques are not available in response to MLA requests.

685. There are some specific provisions in the MACMA that provide for powers and investigative techniques for use in MLA matters. This includes an evidence gathering order or a search warrant, a restraining order, enforcement of a foreign confiscation or restraining order, or the location of property suspected to be tainted property (MACMA, s.410, s.411, & s.414-416). An evidence gathering order includes an order for a person to attend court to give evidence under oath (MACMA, s.410(4)(a)(ii)). A search warrant issued pursuant to s.410 of the MACMA must be "in the usual form in which a search warrant is issued in the Marshall Islands" (MACMA, s.410(9)) and foreign restraining and confiscation orders are applied "as if the serious offense that is the subject of the order had been committed in the Marshall Islands, and the order had been made pursuant to the laws of the Marshall Islands " (MACMA, s.415(9)).

Weighting and Conclusion

686. The Marshall Islands has strengthened the MLA framework since 2011. Some deficiencies remain, with coverage of piracy (beyond the counterfeiting of trademarks/piracy of products) and the absence of a case management system to monitor progress on requests.

687. **Recommendation 37 is rated largely compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

688. The Marshall Islands was rated as largely compliant with the former R.38 in the 2011 MER. The report found that there was a lack of a clear and efficient processes to provide a timely response to requests and no clear provisions for property of corresponding value. Since 2011, the Marshall Islands has amended the legislative framework and introduced operational changes to address these deficiencies.

689. *Criterion 38.1*: Marshall Islands has the authority to take expeditious action in response to requests from foreign countries to identify, freeze, seize and confiscate criminal assets under the POCA, MACMA and CTA.

690. Under the POCA, tainted property can be identified, restrained and seized on behalf of a requesting state through the search and seizure powers of police officers (POCA, s.251, s.254 and s.262). Tainted property includes property used, or intended to be used, in the commission for a serious offense, or in connection with the commission of a serious offense; proceeds of crime; or property of corresponding value (POCA, s.205(p)). The powers under POCA can be used for tainted property where the relevant serious offense is a violation of a law of a foreign country, in relation to acts or omissions, which had they occurred in the Marshall Islands, would have constituted a serious offense. These powers cannot be used for piracy (beyond counterfeiting trademark/piracy of products s) as this act is not criminalised and therefore do not constitute 'serious offenses' in the Marshall Islands. Location or seizure of property or documents in relation to foreign offenses may also be carried out at the request of a foreign country upon approval by the Attorney General (POCA, s.257, s.261, and s.264).

691. Under the MACMA, the AG is authorised to assist a foreign country in locating property believed to be proceeds of a serious offense committed in the requesting country (s.416), but this does not include proceeds from piracy (beyond counterfeiting trademarks/piracy of products) offences.

692. The AG can obtain a restraining order from the High Court on behalf of a foreign country against property located in the Marshall Islands where criminal proceedings relating to a serious offense have begun in the foreign country and there is probable cause to believe that the property relating to the offense or belonging to the defendant/s is located in the Marshall Islands (MACMA, s.414). The MACMA was amended in 2020 to authorise the Attorney General to apply to the High Court for entry and enforcement of a foreign restraining order and foreign confiscation order against property located in the Marshall Islands for the purpose of preventing ML or realizing tainted property. Tainted property is broadly defined to include instrumentalities, proceeds of crime and property of corresponding value (MACMA, s.404(r)).

693. The CTA includes a broad authorisation for the Attorney General to grant requests of a foreign country for legal assistance in any investigation or proceeding related to terrorism or a terrorist organisation (CTA, s.115(1)). Such assistance must be carried out in accordance with the MACMA (CTA, s.115(2)).

694. Once a request for MLA is granted, the AG must respond to the request without delay and complete the request within 21 days of receiving the request (MACMA Regulations, s.4).

695. *Criterion 38.2*: The Marshall Islands can provide mutual legal assistance in the context of non-conviction based confiscation proceedings and related provisional measures, including where the person who is the subject of a foreign confiscation order had absconded or died (MACMA, s.415(3)(b)(ii)). Under the MACMA a foreign confiscation order is an order made by a court in a foreign country for the purpose of the confiscation or forfeiture of property in connection with a serious offense, or the recovery of the proceeds of a serious offense. There is no requirement for foreign restraining orders or foreign confiscation orders to be conviction based (MACMA, s.415(1)-(3)).

696. The AG may grant requests of a foreign country for legal assistance in any investigation or proceeding relating to terrorism or a terrorist organisation (CTA, s115(2)). Terrorism includes TF (CTA, s.105(36) and s.105(38)). Mutual legal assistance for these requests is carried out in accordance with the MACMA (CTA, s.115(2)).

Criterion 38.3

697. *Criterion 38.3(a):* The AG coordinates all incoming and outgoing mutual legal assistance requests, including coordinating seizing and confiscation actions with other countries (MACMA, s415, s416 and s417). The AG's Office receives all requests and acts as the conduit between the requesting country and local law enforcement agencies.

698. *Criterion 38.3(b):* While s10 of the MACMA Regulations provides procedures for the registration of foreign confiscation orders and foreign restraining orders, there does not appear to be any mechanisms for managing, and where necessary disposing of, property frozen, seized or confiscation. Section 415(9) of the MACMA states that where a foreign confiscation order has been entered in the Marshall Islands under that section, it applies "as if the order had been made under the laws of the Marshall Islands" and it is implied that section 223 of the POCA and the Rules of Criminal Procedure would apply for the managing and disposing of property. On general terms, section 223 of POCA provides that where a Court makes a confiscation order against any property, the property (except real property) vests in the Marshall Islands as the owner. However, this remains untested.

699. *Criterion 38.4*: The AG is authorised to enter into an arrangement with the competent authority of a foreign country to which it has provided assistance on the sharing of confiscated property (MACMA, s 417).

Weighting and Conclusion

700. There are minor deficiencies remaining as it is unclear how the courts are empowered to make orders about the management and disposal of property seized or restrained relating to foreign orders. The gap of piracy (beyond counterfeiting trademarks/piracy of products) as a serious offence in the Marshall Islands impacts on its ability to provide MLA in these matters.

701. **Recommendation 38 is rated largely compliant.**

Recommendation 39 – Extradition

702. The Marshall Islands was rated as partially compliant with these requirements under the former R.37, R.39 and SR.V in the 2011 MER. The report found it was unclear whether Marshall Islands nationals could be extradited or prosecuted domestically where they had not been extradited. There were also no procedures with clear timeframes for processing extradition. There have been no amendments to the legislative framework for extradition since 2011.

Criterion 39.1

703. *Criterion 39.1(a):* The Criminal Extradition Act (CEA) provides for the arrest and extradition of "any person charged with treason, felony, or other crime, who has fled from justice and is found in the Republic" (CEA, s203). Extradition is available for any crime, including ML and TF (CEA, s203). The CTA also specifically provides that all terrorism offences, including TF, are extraditable offences (s114). The Marshall Islands currently has extradition agreements with the US and Chinese Taipei.

704. *Criterion 39.1(b):* There are processes for extradition set out in the CEA (s203). Cabinet may ask the Attorney General or any prosecuting officer to investigate a request, report the circumstances, and report whether the person should be extradited, and authorised extradition (CEA, s205 and s209-211). There are no procedures that provide clear timeframes for processing extradition requests and no case management system. Extradition requests are rare and dealt with on a case by case basis, which appears reasonable given the extremely low number of matters.

705. *Criterion 39.1(c):* The CEA does not place unreasonable or unduly restrictive conditions on the execution of requests. Cabinet has broad authority under the CEA to grant extradition requests.

706. *Criterion 39.2*: Cabinet's authority to extradite extends to "any person" (CEA, s203), which appears broad enough to include a Marshall Islands national. The Marshall Islands can also extradite Marshall Islands nationals to the United States under Article I of the Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions between the Marshall Islands and the United States.

707. In the event that Marshall Islands will not extradite a national, the CTA provides that, where a person is suspected to have engaged in terrorism, the alleged offender is present in the Marshall Islands, the Marshall Islands has jurisdiction, and the alleged offender is not extradited, the Attorney General has authority to prosecute the person under Marshall Islands

law whether or not the offense was committed in the Marshall Islands (CTA, s4(4)). This applies in respect of offenses committed by a citizen of the Marshall Islands (CTA, s4(2)).

708. *Criterion 39.3*: There is no express requirement for dual criminality under the CEA. Cabinet has a broad power to authorise the extradition where the person is charged with treason, felony, or other crime (CEA, s203). This is supported by the requirements for the request for extradition, under which the indictment, information or affidavit made before the Marshall Islands magistrate must substantially charge the person requested with having committed "a crime" under the law of the requesting foreign country (CEA, s204).

709. *Criterion 39.4*: Cabinet can generally authorise an extradition based on evidence of an indictment, a warrant of arrest or a judgment of conviction or of a sentence (CEA, s204(1)).

710. Extradition proceedings may be waived where the requested person consents (CEA, s230). There are no other simplified extradition arrangements, such as arrangements that would allow for direct transmission of requests for provisional arrests between appropriate authorities or, in cases of urgency, for requests for provisional arrest before submitting a formal extradition request.

Weighting and Conclusion

711. There are shortcomings with the framework for extraditing for ML/TF offences, including no procedures that provide clear timeframes, no case management system for processing extradition requests and limited simplified extradition arrangements in place. These deficiencies are considered minor in the Marshall Islands context due to the low number of extradition requests.

712. **Recommendation 39 is largely compliant.**

Recommendation 40 – Other forms of international cooperation

713. In the 2011 MER, Marshall Islands was rated largely compliant with former R.40 and partially compliant with former SR.V. The MER noted that the effectiveness and efficiency of the legal and administrative framework was difficult to determine due to the lack of statistical data across all relevant competent authorities.

714. *Criterion 40.1*: Marshall Islands competent authorities, including the FIU, Banking Commission, Attorney General and Police, are specifically authorised to provide international cooperation by the Banking Act (s.167, in regards to the FIU and Banking Commissioner) and the CTA (s.s.116 & 118, in regards to the Attorney General and other LEAs).The multilateral Convention on Mutual Administrative Assistance in Tax Matters and Tax Information Exchange Agreement (Execution & Implementation) Act 2010 (TIEA) grant the tax authority broad power to share tax information (see s405) The Attorney General and other LEAs are granted power to share information on ML, TF, and related issues pursuant to s116 and s118 of the CTA. The use of official information by persons employed in the Marshall Islands Public Service (including the Attorney General, LEAs, tax authorities, and Customs) is governed by s47 of the Public Service Regulations. That section provides that Ministers or heads of departments may define what information may be divulged. Membership in international organisations, and accompanying information sharing, has been approved by Ministers and/or department heads.

715. The provisions in the Banking Act provide broad authority to the Banking Commissioner in relation to their role in prohibiting money laundering activity. Section 167(1)(j) authorises the Banking Commissioner to exchange information with international authorities while s.167(1)(k) authorises and enables the Commissioner to facilitate and assist

proceeds of crime, money laundering, and or the financing of terrorism investigations by international authorities. The AML Regulations (section 13(b)) permit information exchange for the purpose of international cooperation, as well as permitting the exchange of information relating to ML, predicate offences, and TF.

716. Section 116 of the CTA makes a general authorisation for the Attorney General and LEAs designated by the Attorney General to share intelligence information in relation to TF, ML and some specified predicate offences, including illicit drugs, arms trafficking, money laundering and transnational organised crime more broadly. Section 118 provides for international cooperation in relation to suppression of terrorism including TF and other illegal activities undertaken by known terrorists and terrorist organisations. In particular s.118(2) mandates information sharing, including conducting inquiries for information sharing, including in relation to TF.

717. Section 167(1)(j) of the Banking Act and section 116 of the CTA include are framed in broad terms and do not limit information sharing to either on request or spontaneously. The CTA also specifies that cooperation is to prevent terrorism and provide for early warning; which would require spontaneous information sharing (s.118(2)), although by request sharing is not explicitly provided for. By contrast the Banking Act provides for cooperation with ML/TF and proceeds of crime investigations (s.167(1)(k)), which would require responding to requests, although spontaneous information sharing is not explicitly provided for in that Act.

718. Both the Banking Act and the CTA allow for exchange of information with authorities from a broad spectrum of countries and with a broad spectrum of functions. Marshall Islands is unlikely to be constrained in this regard. The Banking Act (s.102(p)) defines international administrative authorities, whom the Commissioner is authorised to share information with, as including, law enforcement, criminal investigation, financial monitoring and regulation, banking regulation or any associated tasks aimed at the prevention of international crime and prevention of money laundering, and does not limit the jurisdiction that these authorities may be from. The CTA is somewhat more restrictive, which is appropriate given the law enforcement purpose of information sharing. Intelligence sharing pursuant to s.116 is limited to competent LEAs of a party state of a counter terrorism convention that Marshall Islands is a party to; the US, or another member of the UN or a member of the Pacific Island Forum. This is likely to include any law enforcement agency that Marshall Islands would need to share such information with.

719. Marshall Islands is also a member the Egmont Group, INTERPOL, OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, All Islands Tax Administration Association (AITAA), Pacific Islands Tax Administration Association (PITAA), Oceania Customs Organisation, Pacific Islands Chiefs of Police, Pacific Transnational Crime Network (PTCN), South Pacific Islands Criminal Intelligence Network (SPICIN), and United States National Crime Information Centre (NCIC) and is able to cooperate with foreign counterparts through these fora.

Criterion 40.2

720. *Criterion 40.2(a):* The Banking Act (s.167) and CTA provisions (s.116 and s.118) provide flexible legal bases for information sharing. The AML Regulations (section 13)) similarly permit information exchange by the FIU for a broad range of purposes. The FIU, Banking Commission, Attorney General and Police, are specifically authorised to provide international cooperation by the Banking Act (s.167, regarding the FIU and Banking Commissioner) and the Attorney General and other LEAs are similarly authorised under s.s.116 & 118 of the CTA (see R.40.1).

721. *Criterion 40.2(b):* These flexible provisions allow authorities to determine the most efficient means to cooperate.

722. *Criterion 40.2(c):* The Banking Commissioner, as the head of both the Banking Commission and FIU, is the gateway for the exchange of financial intelligence with international administrative authorities, including exchange of information through the Egmont Secure Web.

723. The broad definition of "international administrative authorities" permits other Marshall Islands competent authorities, including law enforcement, to cooperate with their foreign counterparts through the FIU.

724. The Marshall Islands Police Department has one dedicated INTERPOL Officer that reports to the Commissioner. The Transnational Crime Unit deals with all international requests for information, including with INTERPOL, Pacific Islands Chiefs of Police, PTCN, SPICIN, and NCIC.

725. Regarding tax information exchange, Marshall Islands is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, and the tax authority cooperates internationally pursuant to tax information exchange agreements and the multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Marshall Islands is also a member of the All Islands Tax Administrations Association (AITAA) and the Pacific Islands Tax Administrations Association (PITAA).

726. Customs is a member of the Oceania Customs Organisation and cooperates internationally through that network. Customs also uses IONIC (ION Incident Communication System), which allows them to access a secure online platform for real time communication with international counterparts. The platform provides information alerts and updates of activities under Project ION INTERPOL Officers use I247 communication system that links directly to NCB INTERPOL through secure IP portal and mailing gateway and TCU uses secure website through APAN.org. The Marshall Islands FIU has exchange requests through the Egmont Secure Web.

727. *Criterion 40.2(d):* there are some processes for the prioritisation and timely execution of most requests. Requests for international cooperation are rarely received, and do not typically overlap, so prioritisation is typically not required.

728. For tax information, the tax authority has implemented an SOP for exchange of information requests, including guidance on gathering information, responding to requests and maintaining confidentiality. This SOP is supported by a reference manual including clear timelines for all steps in the process.

729. *Criterion 40.2(e):* there are some processes for safeguarding the information received for example the FIU Standard of Procedures on Confidentiality and Data Protection and the tax authority's SOP and reference manual for exchange of information. The AML Regulations (section 13) provide for the confidentiality of information received through informal channels to the FIU. Specific provisions apply to tax information through the multilateral agreements to which Marshall Islands is a party, and under the Income Tax Act and TIEA Regulations. The provisions are buttressed by general provisions in the Public Service Regulations (section 47) which limit the use of information obtained by government employees in the course of their duties.

730. *Criterion 40.3*: Competent authorities do not need an MOU to cooperate with international counterparts. However, it is not demonstrated that Marshall Islands enters into MOUs in a timely way where they are required (for example due to counterparts'

requirements). Timeframes may in practice be compounded by requiring Cabinet level approval with uncertain timelines.

731. *Criterion 40.4*: The AML Regulations (section 13) permit the FIU to provide feedback to foreign counterparts on request. There are no legal restrictions preventing other competent authorities from providing feedback. However, there are no examples of feedback being provided that evidence the ability to provide such feedback in a timely manner or systems in place for the provision of feedback.

Criterion 40.5

732. Marshall Islands does not prohibit or place unduly restrictive conditions on the provision of exchange of information or assistance, but implements the grounds for refusal permitted under the Palermo Convention and the OECD standards on exchange of tax information.

733. *Criterion 40.5(a):* There is no provision prohibiting or restricting the provision of assistance because of possible involvement of fiscal matters. The Marshall Islands is a member of the OECD's Global Forum on Transparency and Exchange of Information. The 2011 MER noted that it was originally listed as uncooperative and was removed in 2007 after committing to a program to improve transparency. Since then, Marshall Islands was recently rated largely compliant against the Global Forum's 2016 Terms of Reference for exchange of information on request and the Marshall Islands has commenced automatic exchange of information under the Global Forum's Common Reporting Standard in 2018.

734. *Criterion 40.5(b):* Information sharing powers in the Banking Act (s.167(k)) and CTA (s.s.116 and 118) are not restricted by confidentiality. Combined with the Commissioner's access to information from FIs and DNFBP (s.167(1)(m)) overriding any secrecy or confidentiality, the Commissioner is able to access and share information unrestricted by FI and/or DNFBP secrecy or confidentiality.

735. s.403(2) of the Tax Information Exchange Agreement (Implementation) Act of 1989 and Section 5 of the Amended Tax Information Exchange Agreement (TIEA) Regulations, 2013 specifically provide for assistance notwithstanding any law relating to privilege or a contractual duty of confidentiality.

736. *Criterion 40.5(c) and (d):* The Banking Act, CTA and Tax Information Exchange Agreement (Implementation) Act do not include provisions prohibiting or restricting assistance where there is an inquiry, investigation, or proceeding underway in the requested country or where the nature or status of the requesting counterpart authority is different from that of its foreign counterpart.

737. *Criteria 40.6*: Government agency personnel are subject to the Public Service Regulations of the Republic of the Marshall Islands of September 2008. Section 47 of these regulations limits the use of information obtained through official duties to official purposes. The AML Regulations (Section 13(a)(1)) provides that information exchanged may be "used only for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. There are procedures providing for the use of information to the purpose for which it was shared (for example, see the FIU SOP on Confidentiality and Data Protection and the tax authority's SOP and reference manual for exchange of information).

738. *Criteria 40.7*: The AML Regulations require the FIU to maintain appropriate confidentiality for information exchanged, consistent with both parties' obligations concerning

privacy and data protection and, at a minimum, to protect exchanged information in the same manner as similar information received from domestic sources. The Regulations also require appropriate confidentiality for any request for cooperation and allow the FIU to refuse to provide information if the requesting competent authority cannot protect the information effectively. As noted above, however, the Regulations only apply to the FIU. As regards tax information, the Exchange of Information (Confidentiality) Act of 1989 requires confidentiality and provides for limited circumstances under which information shared under agreement with the United States may be used or disclosed. Confidentiality requirements for exchanged tax information are also included in Section 4 of the Amended Tax Information Exchange Agreement (TIEA) Regulations, 2013.

739. Section 154 of the Banking Act provides for the Commissioner to maintain secrecy of Marshall Islands licensed banks' information. However, there are no similar provisions to protect information received from counterparts. Section 154 also has not been interpreted as allowing the Commissioner to refuse requests where information will not be protected.

740. Public service regulations protect exchanged information from disclosure for personal purposes but do not otherwise protect confidentiality.

741. *Criterion 40.8*: The Banking Commissioner has broad powers to facilitate and assist overseas authorities in conducting ML, TF and proceeds of crime investigations (Banking Act s.167(1)(k)), including by conducting inquiries. Any information obtained could be exchanged pursuant to s.167(1)(j). The Banking Act authorises the Banking Commissioner to conduct inquiries on behalf of foreign counterparts and to exchange with foreign counterparts all information domestically available (see s.163). Also, the multilateral Convention on Mutual Administrative Assistance in Tax Matters requires the tax authority to use "all relevant measures" to provide information requested by foreign counterparts relating to the administration or enforcement of their domestic laws concerning taxes covered by the Convention (Art.5).

742. Police make inquiries on behalf of foreign police if such a request is received through Pacific Island Chiefs of Police, PTCN, INTERPOL, SPICIN, or NCIC. General powers to make enquiries are used for this purpose; specifically, Section 514(3) of the Public Safety Act provides police officers with the broad duty and authority "to collect and communicate information affecting the public peace", which includes investigative authority relating to any offense under any law, whether or not another authority has been appointed under that law.

743. Marshall Islands has an MOU with INTERPOL on the exchange of information. The MOU is related to accessing INTERPOL information through the MIDAS used by the Immigration for port of entry security measures. Information is shared that may assist INTERPOL and our own police force with preventing the entry of a known criminal through our borders and in turn, apprehend such person and turning him/her to the appropriate foreign police force through the exchange of information available through the MOU.

744. An explicit power is provided in the CTA for the Attorney General and other LEAs to conduct inquiries in regard to the movement of funds connected to people who engage in terrorism or are members of terrorist groups (CTA, s.118(2)(c)(ii)).

Exchange of Information Between FIUs

745. *Criterion 40.9*: The Banking Commissioner, including in their function as Head of FIU, has powers to exchange information and provide assistance, including conducting inquiries, to overseas authorities (Banking Act s.167(1)(j) and(k)), in relation to ML/TF, predicate offences,

and proceeds of crime investigations. Information may be shared without an MOU, although an MOU was signed with Fiji FIU in 2017.

746. *Criterion 40.10*: The AML Regulations expressly permit the FIU to provide feedback, upon request or whenever possible, but Marshall Islands has not provided any feedback in practice.

747. *Criterion 40.11*: The Banking Commissioner's powers to share information as Head of FIU (s.167(1)(j)) are very broad, enabling the Commissioner to share information without limitation. The AML Regulations provide that the FIU may exchange all information required to be accessible or obtainable directly or indirectly by the FIU under the FATF Recommendations, and any other information which the FIU has the power to obtain or access directly or indirectly at the domestic level, subject to the principle of reciprocity.

Exchange of Information Between Financial Supervisors

748. *Criterion 40.12*: The Banking Commissioner has powers to exchange information and cooperation with international administrative authorities (Banking Act s.163(1) and 167(1)(j)). This provision is broad and does not limit the purpose for information sharing and includes authorisation to share with foreign financial and banking regulators.

749. *Criterion 40.13*: As above, (*Criterion* 40.12) the Banking Commissioner's powers to share information (s167(1)(j)) are broad and do not limit the type of information that may be shared.

750. *Criterion 40.14*: As for *Criterion* 40.13, there is no restriction on the type of information that Commissioner may share, including regulatory, prudential and AML/CFT information.

751. *Criterion 40.15*: The broad provisions in s.167(1)(k) of the Banking Act empower the Commissioner to provide assistance to international administrative authorities in conducting investigations and specific provisions (s.163(3)) to conduct inquiries on behalf of foreign counterparts and facilitate foreign counterparts to conduct inquiries themselves in Marshall Islands, in order to facilitate effective group supervision.

752. *Criterion 40.16*: The Marshall Islands financial supervisors have not requested information from foreign supervisors. There are no restrictions in law on what the Banking Commission can do with information received from foreign counterparts. MOUs are not yet in place.

Exchange of Information Between Law Enforcement Authorities

753. *Criterion 40.17*: The CTA authorises the Attorney General and designated LEAs to share intelligence information related to terrorism, terrorist organisations, transnational organised crime, illicit drugs, ML, illegal arms trafficking, and illegal movement of deadly materials and to provide early warnings to foreign counterparts (CTA, s.116).

754. The OAG can cooperate with foreign counterparts, including with the U.S. through treaty (Compact of Free Association), and vice versa. The Association of Pacific Islands Public Auditors (APIPA) charter enables member countries to support one another through cooperation. Under this charter, OAG was able to assist the Federated States of Micronesia and Palau on two separate occasions.

755. Police are also empowered by the general provisions in the Public Safety Act (section 514) that provide for Police officers to collect and communicate information affecting the public peace. Customs cooperates and shares information through OCO and the IONIC secure online platform,

756. The Marshall Islands is a member of INTERPOL and other police-to-police networks, such as the South Pacific Islands Criminal Intelligence Network (SPICIN) and Pacific International Crime Unit (PTCU). Police has mechanisms in place to cooperate internationally via Pacific Island Chiefs of Police, PTCN, INTERPOL, SPICIN, and NCIC. The Police Transnational Crime Unit acts as the central point to manage all international requests for information, including with INTERPOL.

757. *Criterion 40.18*: Section 118(2)(c) of the CTA authorises the Attorney General and designated LEAs to conduct inquiries, including the movement of funds linked to terrorists or terrorist organisations, for the purposes of information exchange in relation to suppression of terrorism. This power does not however, extend to authorising enquires for ML or predicate offences, nor does it authorise exercise of investigative powers. Section 514 of the Public Safety Act provides police officers with the broad duty and authority "to collect and communicate information affecting the public peace" and "to prevent, detect and apprehend all persons who are attempting to commit or committing an offense under any law," which includes a broad range of investigative powers subject to the deficiencies identified in R.31 and R.36.

758. *Criterion 40.19*: Marshall Islands does not have provisions or arrangements that authorise the formation of joint investigative teams. However, there does not appear to be anything which would prevent the formation of such teams.

759. The Marshall Islands provided an example of a joint investigation with the US Department of Justice on an illegal adoption case in 2019. Although not in relation to a predicate offence, this example demonstrates that Marshall Islands is able to conduct joint investigations.

Exchange of Information Between Non-Counterparts

760. *Criterion 40.20*: The Banking Commissioner is empowered to share information with any administrative authority not just counterparts. (section 167(1)(l)). Information sharing for CFT purposes is broadly provided for in the CTA (section 116 and 118) and only stipulate that sharing must be with a state party. As such, they do not limit sharing to direct counterparts.

Weighting and Conclusion

761. Competent authorities have broad information sharing powers. There are no processes in place for prioritisation and timely execution of requests or safeguarding information. Marshall Islands authorities do not provide feedback to foreign counterparts and there are no limitations on the use of information received from foreign counterparts or framework to protect confidentiality of information.

762. **Recommendation 40 is rated largely 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	LC	• Gaps with further assessments of risks with the NRDE sector and with elements of corruption risk (c.1.1) • Limited steps to apply the findings of the NRA to allocating resources and implementing measures based on the assessment (c.1.5) • No supervision of implementation of enterprise risk assessment and risk mitigation by DNFBP (c.1.9)
2. National cooperation and coordination	LC	• Limited unifying strategy to communicate the national AML/CFT policy (c.2.1)
3. Money laundering offence	LC	• Minor shortcomings relating to provisions criminalising piracy offences (beyond counterfeiting trademarks/ piracy of products) – (c.3.2) • Counselling is not clearly provided for as an ancillary offence (c.3.11)
4. Confiscation and provisional measures	LC	• A gap with the range of predicate offences criminalised in the Marshall Islands, undermining the operation of the POCA (c.4.1) • A deficiency with the POCA in relation to the timing of obtaining a restraining order, limiting the AG's ability to prevent any dealing, transfer or disposal of property subject to confiscation (c.4.2) • Lack of standard processes and procedures for managing and disposing of property, coupled with the absence of specific requirements relating to the preservation of property (c.4.2)
5. Terrorist financing offence	LC	• Criminalisation of the financing of the travel of individuals who travel to another jurisdiction for the purpose of perpetrating, planning, preparing, or participating in terrorist acts or terrorist training, yet to be tested by courts (c.5.2bis) • The minimum custodial sentence of 30 years for the TF offence may be disproportionate to the extent it may dissuade competent authorities from prosecuting the offence (c.5.6 and c.5.7)
6. Targeted financial sanctions related to terrorism & TF	C	
7. Targeted financial sanctions related to proliferation	C	
8. Non-profit organisations	PC	• No comprehensive review of the adequacy of laws and regulations pertaining to NPO DAO since the publication of the NPO DAO risk assessment (c.8.1) • Sustained outreach was not demonstrated (c.8.2) • Targeted risk-based supervision or monitoring was not targeted to the subset of NPOs (DAO NPOs) that are vulnerable to the threat of terrorist abuse (c.8.3)

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		• Monitoring of compliance of the NPO sector does not occur and available sanctions are not proportionate or dissuasive (c.8.4) • Minor gaps in processes for interagency collaboration to investigate potential cases of misuse of NPOs for TF (c.8.5) • Minor gaps in relation to NPO-specific international cooperation (c.8.6)
9. Financial institution secrecy	C	
10. Customer due diligence	C	
11. Record keeping	C	
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	LC	• No demonstration of identifying and taking action in cases of persons carrying out MVTS without a licence (c.14.2) • Onsite supervision of MVTS has not been conducted since the regulations were updated (c.14.3)
15. New technologies	PC	• Some gaps in fit and proper requirements e.g. no measures to prevent criminals holding significant or controlling interests and no measures in relation to criminal associates (c.15.4) • Unclear how the Banking Commission is able to identify and sanction VASPs operating without a licence (c.15.5) • No guidelines issued relating to information concerning AML/CFT regime weaknesses of foreign jurisdictions to VASPs (c.15.7)
16. Wire transfers	C	
17. Reliance on third parties	C	
18. Internal controls and foreign branches and subsidiaries	C	
19. Higher-risk countries	LC	• No guidelines have been issued to FIs and DNFBP regarding the countermeasures to take when dealing with higher risk countries (c.19.2)
20. Reporting of suspicious transaction	LC	• SAR obligation does not extend to proceeds of piracy (beyond counterfeiting trademarks/piracy of products) (c.20.1)
21. Tipping-off and confidentiality	C	
22. DNFBP: Customer due diligence	C	

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
23. DNFBP: Other measures	LC	• Minor shortcomings relating to requirements for higher risk countries as outlined in R.9 (c23.3)
24. Transparency and beneficial ownership of legal persons	PC	• ML/TF risks associated with all types of legal persons have not been fully assessed (c.24.2) • No requirements for directors to be registered within basic information (c.24.3) • No requirement partnership and LLC agreements to be maintained within the country at a location notified to the registry (c.24.4) • TCMI does not verify BO information and relies on QI declarations that the FATF standards have been met (c.24.6) • Resident corporations are not required to specify the location of where beneficial ownership information is kept in the Marshall Islands (c24.6) • Some deficiencies relating to the collection of BO information by the registrar TCMI, and the accuracy of information provided by QI to TCMI (c.24.7) • No provisions to ensure adequate cooperation by resident domestic corporations and authorised foreign corporations with competent authorities (c.24.8) • Some sanctions are not proportionate and dissuasive (c.24.13) • No measures monitor the quality of any assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad (c.24.14 and c.24.15)
25. Transparency and beneficial ownership of legal arrangements	C	
26. Regulation and supervision of financial institutions	LC	• The framework for risk-based supervision of FIs by the Banking Commission has been put in place to a limited extent (c.26.6)
27. Powers of supervisors	LC	• The available penalties may not be wholly persuasive (c27.4)
28. Regulation and supervision of DNFBP	LC	• Limited measures in place to prevent criminals or their associates from holding a significant or controlling interest, or management function in DNFBP (c.28.5) • AML/CFT monitoring of the DNFBP sectors had not commenced (c.28.5)
29. Financial intelligence units	LC	• Minor deficiencies including lack of explicit provisions in the law that provide the FIU with authority to access information from other agencies (c.29.7)
30. Responsibilities of law	LC	• Unclear mechanisms for referral of cases between LEAs and from the AG to Police (c.30.1)

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
enforcement and investigative authorities		• Not clear if specialist investigators (e.g. Customs/Tax/OAG) have responsibilities and authorisations in regard to ML and predicate investigations (c.30.4)
31. Powers of law enforcement and investigative authorities	LC	• Police lacks powers to order information (c.31.1) • Absence of some LEA investigative powers such as powers to intercept communications (c.31.2)
32. Cash couriers	PC	• Additional work required to operationalise the structures in addressing deficiencies identified in 2011 MER (c.32.1) • Did not demonstrate that the declaration system is in operation for outward cross-border transportation, whether by travellers or through mail and cargo. (c.32.1) • Coordination to support implementation of R.32 measures is not well supported (c.32.7)
33. Statistics	NC	• Comprehensive statistics are not maintained at present - progress is to be made to improve statistics and its collection and maintenance of data (c.33.1)
34. Guidance and feedback	LC	• The SOP on SAR analysis does not provide information on feedback to be given to FIs and DNFBP in relation to SAR reporting and the Banking Commission does not have a systematic system of issuing guidelines to assist FIs and DNFBP in applying national AML/CFT measures (c.34.1)
35. Sanctions	C	
36. International instruments	LC	• Minor gaps remain with respect to the use of and training for special investigative techniques (c.36.2)
37. Mutual legal assistance	LC	• Some deficiencies remain relating to lack of piracy offences, investigative powers and techniques, and the absence of a case management system to monitor progress on requests (c.37.1, c.37.2 and c.37.8)
38. Mutual legal assistance: freezing and confiscation	LC	• The exclusion of piracy of products (beyond counterfeiting trademarks/piracy of products) as serious offenses which impacts on the Marshall Islands' ability to provide MLA in these matters (c.38.1) • Minor deficiencies remaining as it is unclear how the courts are empowered to make orders about the management and disposal of property seized or restrained relating to foreign orders (c.38.3)
39. Extradition	LC	• Shortcomings with the Marshall Islands' framework for extraditing for ML/TF offences, including (c.39.1) - no procedures that provide clear timeframes • no case management system for processing extradition requests • limited simplified extradition arrangements in place

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
40. Other forms of international cooperation	LC	• No processes in place for prioritisation and timely execution of requests (c.40.2) • No feedback provided by authorities to foreign counterparts and no limitations on the use of information received from foreign counterparts and no framework to protect confidentiality of information (c.40.4)

GLOSSARY

Abbreviation	Meaning
AG's Office	Attorney-General's Office
AML	Anti-Money Laundering
BCA	Business Corporation Act 1990
BNI	Bearer Negotiable Instrument
BO	Beneficial Ownership
CDD	Customer Due Diligence
CFT	Counter Financing of Terrorism
CTA	Counter Terrorism Act 2002
CTR	Cash Transaction Report
DAO	Decentralized autonomous organisation
DNFBP	Designated Non-Financial Businesses and Professions
FI	Financial institution
FIBL	Foreign Investment Business Licence
FSP	Financial services providers
IRI	International Registries Incorporated (TCMI's parent company)
LPA	Limited Partnership Act
MACMA	Mutual Assistance in Criminal Matters Act 2002
MIDAO	Marshall Islands Decentralised Autonomous Organisations
MIMRA	Marshall Islands Marine Resources Authority
MIPD	Marshall Islands Police Department
MISSA	Marshall Islands Social Security Administration
ML/TF	Money Laundering/Terrorism Financing
MOU	Memorandum of Understanding
NBFI	Non-Bank Financial Institutions
NRA	National Risk Assessment
NRDE	Non-resident domestic entity (offshore corporation)
OAG	Office of the Auditor General
PEP	Politically Exposed Person
POCA	Proceeds of Crime Act 2002 (as amended)
QI	Qualified intermediaries
RDE	Resident domestic entity
SAR/STR	Suspicious Activity Report/Suspicious Transaction Report

Abbreviation	Meaning
TC Act	Trust Companies Act
TCMI	The Trust Company of the Marshall Islands Inc.
TFS	Targeted Financial Sanctions
UNSCR	UN Security Council Resolution
VASP	Virtual Assets Service Provider

www.apgml.org

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Anti-money laundering and counter-terrorist financing measures – the Republic of the Marshall Islands

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 the Republic of the Marshall Islands as at December 2023. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Republic of the Marshall Islands' AML/CFT system, and provides recommendations on how the system could be strengthened.