



# 1st Follow-Up Report

# Mutual Evaluation of Tonga

March 2023





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## **TONGA**

### ***1<sup>ST</sup> ENHANCED (EXPEDITED) FOLLOW-UP REPORT 2022***

#### **I. PURPOSE**

1. In accordance with the APG Mutual Evaluation Procedures 2021, this report presents for members' consideration the APG Secretariat's analysis of Tonga's first follow-up report (FUR).

#### **Key findings**

Tonga has reported some further steps it has taken towards amending legislation that is expected to address deficiencies across a number of recommendations.

As Tonga has not requested any technical compliance re-ratings, it has not been assessed against the changes to Recommendation 15.

#### **Recommendations for members**

It is recommended that:

- Tonga remain on enhanced (expedited) follow-up;
- Tonga provide its next FUR by 1 October 2023; and
- The Co-Chairs write to relevant Minister(s) bringing their attention to the remaining deficiencies.

#### **II. INTRODUCTION**

2. The mutual evaluation report (MER) of Tonga was adopted in July 2021. This FUR presents the progress Tonga has reported in addressing the technical compliance deficiencies identified in its MER and a summary of some steps to address effectiveness. This report does not include detailed analysis of technical compliance or analysis of any progress the Tonga has made to improve its effectiveness.
3. As Tonga did not request re-ratings for any Recommendations, the preparation of this report was undertaken by the APG Secretariat. In keeping with the APG ME procedures 2021, this report presents a summary of the progress reported without analysing compliance.

### III. FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER rated<sup>1</sup> Tonga as follows:

| IO.1 | IO.2 | IO.3 | IO.4 | IO.5 | IO.6 | IO.7 | IO.8 | IO.9 | IO.10 | IO.11 |
|------|------|------|------|------|------|------|------|------|-------|-------|
| Low  | Mod  | Low  | Low  | Low  | Low  | Low  | Low  | Low  | Low   | Low   |

| R. | Rating |
|----|--------|
| 1  | PC     |
| 2  | LC     |
| 3  | PC     |
| 4  | LC     |
| 5  | PC     |
| 6  | PC     |
| 7  | NC     |
| 8  | PC     |
| 9  | C      |
| 10 | NC     |
| 11 | PC     |
| 12 | NC     |
| 13 | NC     |
| 14 | LC     |
| 15 | NC     |
| 16 | NC     |
| 17 | NC     |
| 18 | NC     |
| 19 | NC     |
| 20 | NC     |

| R. | Rating |
|----|--------|
| 21 | LC     |
| 22 | NC     |
| 23 | NC     |
| 24 | PC     |
| 25 | NC     |
| 26 | PC     |
| 27 | PC     |
| 28 | PC     |
| 29 | PC     |
| 30 | LC     |
| 31 | PC     |
| 32 | PC     |
| 33 | LC     |
| 34 | PC     |
| 35 | PC     |
| 36 | PC     |
| 37 | PC     |
| 38 | PC     |
| 39 | LC     |
| 40 | PC     |

### IV. OVERVIEW OF PROGRESS

#### 4.1. Technical compliance update

5. Tonga did not request re-ratings with any Recommendations. This section outlines a Secretariat summary of the progress reported.

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<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).



6. Tonga intends to address a wide range of TC deficiencies identified in the 2021 MER due to the unenforceability of its Money Laundering and Proceeds of Crime Regulations (MLPCR), which lacks sanctions and penalties for non-compliance.
7. The MLPCR's unenforceable requirements are to be addressed through amendments to the Money Laundering and Proceeds of Crime Act (MLPCA) and MLPCR. Cabinet approval to proceed with the drafting of these amendments was received in September 2022, with a view to tabling the amendments before Parliament by June 2023. Tonga has received technical assistance from the IMF as part of the MLPCA and MLPCR amendment process, with draft amendments currently under review by Tongan authorities.

*Recommendation 1 (rated PC in the 2021 MER)*

8. Tonga's 2018 National Risk Assessment (NRA) has been revised in consideration of updated information and statistics up to 2021, with its National AML Policy subsequently amended to address the risks highlighted in its revised NRA.
9. Deficiencies relating to a lack of risk-based supervision and reporting entity risk assessment are to be addressed through the MLPCA amendments, which include requirements for risk-based supervision, and for reporting entities to conduct risk assessments.

*Recommendation 6 (rated PC in the 2021 MER)*

10. The MLPCA and MLPCR amendments are to address deficiencies relating to implementation of TFS without delay (c.6.4)), reporting by FIs and DNFBPs regarding asset freezing and actions taken in relation to relevant UNSCRs (c.6.5(e)), and delisting and unfreezing mechanisms (c.6.6).

*Recommendation 8 (rated PC in the 2021 MER)*

11. A policy paper regarding the amendment (or repeal and replacement) of the Incorporated Societies Act is being developed, with a review of the Charitable Trust Act also being considered. These proposed legislative amendments and review are to address deficiencies relating to the identification of high risk NPOs (c.8.1), NPO outreach (c.8.2) and supervision (c.8.3), and proportionate and dissuasive sanctions (c.8.4).

*Recommendations 10 – 13 and 15 – 18*

12. Several TC deficiencies arose in Tonga's 2021 MER due to the unenforceability of its MLPCR, which lacks sanctions and penalties for non-compliance.
13. The following unenforceable requirements contained in the MLPCR (and relevant Recommendations) are to be addressed through the MLPCA and MLPCR amendments:
  - a. CDD measures (Recommendation 10 – rated NC in the 2021 MER).
  - b. Measures related to record keeping (Recommendation 11 – rated PC).
  - c. PEP measures, in addition to there being no requirements for FIs to take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy are PEPs (Recommendation 12 – rated NC).
  - d. Correspondent banking measures (Recommendation 13 – rated NC).
  - e. Measures relating to new technologies (Recommendation 15 – rated NC).

- f. Wire transfer requirements (Recommendation 16 – rated NC).
- g. Third party reliance measures (Recommendation 17 – rated NC).
- h. Internal controls, and foreign branches and subsidiaries requirements (Recommendation 18 – rated NC).

*Recommendation 19 (rated NC in the 2021 MER)*

- 14. A lack of enforceable measures regarding enhanced due diligence (c.19.1), countermeasures (c.19.2) and FI understanding of AML/CFT risks relating to higher risk countries (c.19.3) are also to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 20 (rated NC in the 2021 MER)*

- 15. Deficiencies related to STR reporting (including the requirement for reporting entities to form an evidentiary value judgment after forming a suspicion, but before disseminating STRs, and that the full range of predicate offences is not included in the ML offence) are to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 22 (rated NC in the 2021 MER)*

- 16. A limited number of enforceable measures contained in the MLPCA and available in relation to DNFBP CDD requirements is to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 23 (rated NC in the 2021 MER)*

- 17. Deficiencies in relation to DNFBP STR reporting, a lack of enforceable obligations relating to R.18 (Internal Controls and Foreign Branches and Subsidiaries) and R.19 (Higher Risk Countries), and moderate shortcomings in relation to R.21 (Tipping-off and Confidentiality) are to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 24 (rated PC in the 2021 MER)*

- 18. The Ministry of Trade and Economic Development is considering amendments to the Companies Act. These are aimed at addressing deficiencies regarding the obtaining and holding of beneficial ownership information (c.24.1), public availability of basic information on overseas companies (c.24.3), an absence of record keeping requirements for dissolved companies (c.24.9), and no ML/TF risk mitigation measures for nominee shareholders and directors (c.24.12).

*Recommendation 26 (rated PC in the 2021 MER)*

- 19. Deficiencies regarding a lack of a shell bank prohibition (c.26.2), and shortcomings related to measures against criminal and criminal associate interest in FIs (c.26.3) and the Transaction Reporting Agency's (TRA) risk based supervision approach (c.26.4-26.6) are to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 27 (rated PC in the 2021 MER)*

20. Deficiencies regarding limitations on the power to compel document production (c.27.3) and a limited range of sanctions for failing to comply with AML/CTF requirements (c.27.4) are to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 28 (rated PC in the 2021 MER)*

21. A lack of a supervision framework for DNFBPs to ensure compliance with AML/CTF requirements (c.28.5) is to be addressed through the MLPCA and MLPCR amendments.

*Recommendation 29 (rated PC in the 2021 MER)*

22. Deficiencies relating to the information security aspects of the TRA's operational framework (c.29.6) and a lack of budgetary autonomy for the TRA's FIU functions (c.29.7) are to be addressed through the MLPCA and MLPCR amendments.
23. The Revenue Services Administration Act 2021, enacted in July 2021, enables the sharing of tax information between the Ministry of Revenue and Customs (MRC) and the TRA, addressing deficiencies identified in c.29.3(b) regarding an inability for the TRA to access tax information held by the MRC.

*Recommendation 31 (rated PC in the 2021 MER)*

24. Deficiencies related to Customs' inability to conduct controlled operations (c.31.2(d)) are proposed to be addressed through a new Customs Bill, which will enable the Comptroller to authorise controlled delivery.

*Recommendation 34 (rated PC in the 2021 MER)*

25. The TRA is preparing outreach programs for DNFBPs to be delivered in the 2022/2023 financial year. These programs would address the outreach deficiencies (including outdated guidance) identified in c.34.1.

*Recommendation 35 (rated PC in the 2021 MER)*

26. A new Incorporated Societies Act, and Charitable Trusts Act, are to address deficiencies in the application of sanctions to directors and senior management (c.35.2).

*Recommendation 40 (rated PC in the 2021 MER)*

27. Deficiencies regarding the following are to be addressed through the MLPCA and MLPCR amendments:
  - a. no requirements for the rapid provision of international cooperation (c.40.1);
  - b. no clear legal basis for bilateral or multilateral police agreements or arrangements (c.40.3);
  - c. no clear legal basis for information exchange with foreign counterparts for the purposes of an investigation, inquiry or proceeding that is underway (c.40.5(c));
  - d. a lack of controls and safeguards for information provided to competent authorities (c.40.6);

- e. information exchange limited to information that the TRA has reasonable grounds would suspect would be relevant to an investigation (c.40.11);
- f. no formal legal basis for joint investigations with foreign agencies (c.40.19); and
- g. a lack of clear powers for competent authorities other than the TRA to share information with non-counterpart foreign agencies (c.40.20).

## 4.2 Effectiveness Update

28. Tonga provided a summary of actions taken to improve the effectiveness of AML/CFT measures, these are summarised below.
29. Tonga has revised its 2018 NRA to include information and statistics up to 2021, with the National AML Policy subsequently amended to address the risks highlighted in the revised NRA. Revised risk ratings were delivered for enforcement/supervisory authorities, DNFBPs and domestically operating companies, while drugs, fraud and other threats continue to be areas of high risk. Tongan authorities have sought assistance from the APG Secretariat to complete the assessment process underpinning the revised NRA, and to conduct consultations prior to the NRA's publication.
30. Since the 2021 ME, the Ministry of Revenue and Customs (MORC) has undergone major organisational restructuring to deliver efficiency gains and targeted efforts towards ensuring greater tax and customs compliance. The restructure of MORC introduces Large Taxpayer, Tax Compliance and Improvement Divisions for the Revenue Department, and the Trade Services Division of the Customs Department. The Legal Services Division provides dedicated key services to both the Revenue and Customs Departments enhancing its legal enforcement powers of the Ministry.
31. The TRA has established a Financial Analysis and Supervision Coordination Unit, comprised of AML/CFT supervisory and financial intelligence analysis departments, to assist the TRA's AML/CFT coordination, analytical and supervisory functions.
32. The TRA's ongoing project with AUSTRAC to develop an IT system focussed on enhanced financial intelligence analysis is scheduled for completion by the end of 2022.
33. The TRA is in the process of finalising an information sharing MOU with the Macao, China FIU, and is currently negotiating MOUs with the Timor-Leste and China FIUs. The TRA has also signed a bilateral information exchange agreement with AUSTRAC in early 2022, with negotiations for a MOU with AUSTRAC to commence.
34. Tonga Police has continued its cooperation through INTERPOL and the Pacific Transnational Crime Network, and via joint operations with foreign law enforcement agencies.
35. Regarding supervision, the National Reserve Bank of Tonga's regulatory supervision team has been engaged to undertake AML/CFT supervision roles in collaboration with the TRA, with a focus on priorities including banking supervision, non-bank financial institutions and cash dealers. The TRA is also conducting a recruitment process for staff responsible for cash dealer supervision, and has engaged the assistance of the New Zealand Department of Internal Affairs to assist with revising and enhancing its DNFBP supervisory framework.
36. Tonga has conducted successful financial intelligence investigations and delivered a prosecution outcome. In August 2021, Tonga Police formed a Drug Enforcement Team to acquire and share information relating to illicit drugs predicate offences with its Serious Organised Crime Unit for parallel financial investigations.



## **V. CONCLUSION**

37. Tonga did not request technical compliance re-ratings and as such this report presents a Secretariat summary of the progress reported. Some steps are noted towards addressing the technical compliance deficiencies identified in the MER.
38. Tonga has 32 Recommendations rated NC/PC.
39. Tonga will remain in enhanced (expedited) follow-up, and will continue to report to the APG on progress to strengthen its implementation of AML/CFT measures. Tonga's next progress report is due on 1 October 2023.