
Asia/Pacific Group
on Money Laundering

# ASIA/PACIFIC GROUP ON MONEY LAUNDERING

and

# OFFSHORE GROUP OF BANKING SUPERVISORS

# VANUATU

## APG / OGBS 2ND JOINT MUTUAL EVALUATION REPORT

**Against 2003 FATF 40 Recommendations**
**and**
**9 Special Recommendations**

## March 2006

**As adopted by the APG on 16 November 2006**

# TABLE OF CONTENTS

## PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Vanuatu was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials, including the PMLA and the draft rules as they existed at the time of the mutual evaluation as supplied by Vanuatu, and information obtained by the Evaluation Team during its on-site visit to Vanuatu from 27 February to 10 March 2006, and subsequently. During the on-site the Evaluation Team met with officials and representatives of all relevant Vanuatu government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of APG and OGBS experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

a. *Legal Expert:* Ms Janet Maki, Solicitor-General, Crown Law Office, Cook Islands;

b. *Financial/regulatory Experts*: Mr Kazuhiro Sakamaki, Director, Japan Financial Intelligence Office, Ministry of Finance, Japan and Mr Abd. Rahman Abu Bakar, Manager, Financial Intelligence Unit, Bank Negara Malaysia, Malaysia (for the OGBS);

c. *Law Enforcement Expert*: Mr Thomas E. Blanchard, Section Chief, Department of Homeland Security, Office of Investigations, Financial and Trade Investigations Division, United States; and

d. *APG Secretariat*: Mr Arun Kendall, Executive Officer.

3. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

4. This report provides a summary of the AML/CFT measures in place in Vanuatu at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Vanuatu's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

# EXECUTIVE SUMMARY

## Background Information

1. This report provides a summary of the AML/CFT measures in place in Vanuatu at the date of the on-site visit or immediately thereafter March 2006). It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Vanuatu's levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).[1]

2. The Vanuatu Government has recognised the importance of introducing legislation to reflect the revised FATF 40 + 9 Recommendations and a number of legislative amendments were gazetted in Vanuatu immediately prior to the Team's visit. However, according to the authorities, there is no evidence of money laundering (ML) or the financing of terrorism (FT) activity detected in Vanuatu.

3. Previous assessments of Vanuatu's financial institutions undertaken by both the APG and the IMF have raised concern about the off-shore banking facilities provided by the Vanuatu Government and the vulnerability such institutions have to money laundering. The authorities have responded to these concerns by introducing greater regulatory control of the off-shore banking sector which has led to a dramatic reduction in the number of off-shore banks operating in Vanuatu, from more than sixty-three to seven at the time of the mutual evaluation. A limited number of financial institutions exist in Vanuatu. These include depository institutions (four domestic banks, seven off-shore banks and a credit union); five insurance providers (both life and general); eight foreign exchange instrument dealers, money remittance dealers and bureaux de change;

4. Designated non-financial business and professions in Vanuatu operating in Vanuatu include lawyers; accountants; trusts and company service providers; casinos; real estate agencies; car dealers. Under the newly introduced amendments to AML/CFT legislation, all are required to comply with financial reporting requirements.

5. Money laundering and terrorist financing compliance is dealt with by the Vanuatu Financial Intelligence Unit (VFIU), which is part of the State Law Office, and the Transnational Crime Unit (TCU) of the Vanuatu Police Department.

## 2 Legal System and Related Institutional Measures

6. The offence of Money Laundering (ML) was first criminalised in Vanuatu under section 19 of the *Serious Offences (Confiscation of Proceeds) Act 1989*. This Act was subsequently repealed with the passage of the *Proceeds of Crime Act 2002* (POCA), which included a revised provision criminalising money laundering in section 11.

7. On 24 February 2006, the Government of Vanuatu brought into force a further amendment to the POCA, namely the *Proceeds of Crime (Amendment) Act No.30 of 2005*. Terrorist financing was criminalised under Part 2A of the POCA until this Part was repealed by the *Counter Terrorism and Transnational Organised Crime Act No.29 of 2005* (CTTOCA) which criminalises terrorist financing under section 6.

8. Vanuatu ratified the Vienna Convention by way of the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001* which is stated to be

[1] Also see the attached table on the Ratings of Compliance with the FATF Recommendations for an explanation of the compliance ratings (C, LC, PC and NC).

"binding on the Republic of Vanuatu in accordance with its terms". Vanuatu has also ratified the Palermo Convention by way of the *United Nations Convention Against Transnational Organised Crime Act 2003*. Vanuatu has also ratified the International Convention for the Suppression of the Financing of Terrorism by way of the *International Convention for the Suppression of the Financing of Terrorism Act 2002*. The offence of ML under section 11 of the POCA covers the elements set out in Article 3(1) (b) (c) of the Vienna Convention and Article 6(1) of the Palermo Convention. Sections 28 to 35 of the Penal Code [135] provides for ancillary offences under which a person attempting, assisting or conspiring to commit a criminal offence could be charged however, there is no clear provision in either in the POCA or the Penal Code, which "links" these ancillary offences to the ML offence. The offence of ML applies to natural persons that knowingly engage in ML activity pursuant to section 11(3) of the POCA. The law, however, does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances.

9. As the terms "property" and "proceeds of crime" are defined in the POCA, these definitions are wide and general enough to encompass property of any type regardless of its value that directly or indirectly represents the proceeds of crime. However, it is unclear whether these definitions are adequate to apply to property situated in another jurisdiction outside Vanuatu. When proving that property is the proceeds of crime, the legislation stipulates that it is necessary for someone to be convicted of a predicate offence.

10. No ML/FT prosecutions have taken place in Vanuatu, making it difficult to assess the effectiveness of the legislation. It was also apparent from the interviews conducted with some of the law enforcement agencies, that there was little understanding of the relevant provisions or their application in practice. There are comprehensive ancillary offences in the Penal Code [135] which would be appropriate ancillary charges to the offence of ML however, it is not specified in the Penal Code that the "criminal law" includes offences committed under any other enactment in Vanuatu.

11. Powers of confiscation, freezing and forfeiture of the proceeds of crime are found in Section 15 of the POCA which provides for forfeiture orders to be made against tainted property, upon a person being convicted of a serious offence. This covers predicate offences including money laundering and terrorist financing, which fall within the definition of "serious offence". With the CTTOCA coming into force on 24 February 2006, although the provisions of the POCA may also be applied in respect of seizing or freezing terrorist property, section 12 of the CTTOCA authorises the Attorney-General to apply to the Court *ex parte* for a direction for the Administrator to take custody and control of property where he has reasonable grounds to believe the property is "terrorist property". Vanuatu has, however, no records or statistics of any proceeds having been seized or confiscated. There was a general lack of awareness and understanding of the proceeds legislation, particularly by the law enforcement agency responsible for administering the POCA. It was also evident that there was no coordination between the law enforcement agencies, whereby certain cases or investigations could have been identified as being appropriate for proceeds of crime applications to be made.

12. Vanuatu's legislation for freezing funds used for terrorist financing is adequately covered by the CTTOCA, POCA, *Suppression of Terrorism and Afghanistan Measures Order No. 17 of 2003*, the *Other Anti-Terrorist Regulations Order* (ATRO No.9) and the *FTRA Amendment Act 2005*. However, there needs to be a review of the legislation to ensure that there is no duplication or overlap of responsibilities or powers. Given the CTTOCA is the latest legislation in time, statutory interpretation laws would generally provide that where there is any conflict with earlier legislation, the CTTOCA would override the earlier legislation but it would simplify matters a great deal if legislation that is no longer required, is repealed or revoked.

13. The Vanuatu Financial Intelligence Unit (VFIU) was established in 2000 by *Financial Transactions Reporting Act 2000* (FTRA), which was substantially amended by the *Financial Transactions Reporting (Amendment) Act 2005*. The amendments, which came into effect on 24 February 2006, substantially increase the responsibilities of the VFIU. Other legislated responsibilities of the VFIU are established by the *Mutual Assistance in Criminal Matters Act*, the *Counter Terrorism and Transnational Organized Crime Act* and the *Proceeds of Crime Act*, all of which were also substantially amended at the same time as the FTRA. The VFIU operates within the State Law Office, headed by the Attorney General, and serves as Vanuatu's national centre for receiving and requesting Suspicious Transaction Reports (STRs) and other relevant matters related to money laundering and terrorist financing. While the relevant legislation under which the VFIU operates has been updated to reflect international standards, the level of implementation is ineffective due to poor resources and no implementation planning to promote the new legislation or provide guidance.

14. The Vanuatu Police Department and the VFIU are the primary agencies responsible for ensuring the money laundering and terrorist financing offences are properly investigated in Vanuatu. Prosecution of money laundering and terrorist financing offences is the responsibility of the Public Prosecutions Office (PPO). The seizure of criminal proceeds is the responsibility of the State Law Office, headed by the Attorney General. Legislation regarding money laundering, terrorist financing and the government's ability to track and seize criminal proceeds is addressed in the *Proceeds of Crime Act*, the *Financial Transactions Reporting Act*, the *Counter Terrorism and Transnational Crime Act*, and the *Criminal Procedure Code*. The Vanuatu Police Department has established a Transnational Crime Unit (TCU), which currently consists of four officers. The TCU is responsible for conducting investigations involving money laundering and terrorist financing offences, the identification and seizure of criminal proceeds, and conducting investigations in cooperation with foreign jurisdictions. There is no evidence that special investigative techniques such as controlled deliveries or undercover operations have ever been used in Vanuatu and awareness of the techniques and legislative provisions was lacking amongst police and prosecutors.

15. Vanuatu does not yet have a system to track cross border currency movement or to implement cross border currency legislation and therefore does not keep any statistics regarding those matters. The VFIU does have a system for keeping Suspicious Transaction and Cash Transaction reports in a safeguarded computer database however Vanuatu has not established if cross border currency transaction reports will be maintained by the VFIU or another authority. Currency seizures occurring at the border are, according to Vanuatu law, to be reported to the VFIU. The system to be used by the VFIU to capture that information has not yet been established.

## 3 Preventive Measures - Financial Institutions

16. Supervision of the financial services sector is divided between three main agencies: the Reserve Bank of Vanuatu (RBV), the Vanuatu Financial Services Commission (VFSC) and (to a lesser extent) the Customs and Revenue Branch of the Ministry of Finance. The RBV is responsible for supervising and regulating domestic and off-shore banks. The VFSC regulates and supervises insurance providers, credit unions, charities and trust and company service providers but is not empowered yet to issue comprehensive guidelines or to regulate the financial sectors it has responsibility for. The VFSC is also responsible for the registration of companies. The Customs and Revenue branch has responsibility for supervising money exchange and remittance services, but this role is essentially confined to issuing operating licences based on the businesses' financial viability.

17. The VFIU also has a role in ensuring compliance by the financial services sector with financial reporting obligations under the *Financial Transactions Reporting (Amendment) Act No.28 of 2005* (FTRAA).

18. Section 2 of the FTRA lists the financial institutions that are subject to the Act, including being required to adequately identify and verify their customers. These institutions includes:

a. domestic banks licensed under the *Financial Institutions Act No.2 of 1999* (FIA);
b. international banks licensed under the *International Banking Act No.4 of 2002* (IBA);
c. credit unions registered under the *Credit Union Act No.14 of 1999*;
d. cooperative societies registered under the *Cooperative Societies Act* [CAP152];
e. insurance companies and money changing/remittance service providers.

19. Under Section 9 of the FTRA, financial institutions are required to keep records of every transaction that is conducted through the financial institutions as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the VFIU. Financial institutions must keep the records for a period of six years after the completion of the transaction. Section 9E of the amended FTRA requires financial institutions to include accurate originator information on electronic funds transfer or on any other form of funds transfer. This information is required to be transmitted with the transfer that was conducted. The only exception, however, is for electronic funds transfer using a credit or debit card where the card number is included in the information accompanying such transfer and when the funds transfers are conducted between two financial institutions where the originator and beneficiary of the transfer are financial institutions acting on their own behalf.

20. Section 5 of the amended FTRA provides that financial institutions must report suspicious transactions if the financial institution suspect that a transaction or the attempted transaction is relevant to the detection, investigation or prosecution of a money laundering offence, a financing of terrorism offence or any other serious offences. Financial institutions must also report if there is a suspicion that the transaction involved the commission of a money laundering offence, a financing of terrorism offence or any other serious offence as well as if it is involved in the preparatory act to a financing of terrorism offence or relevant to the enforcement of the FTRA and the Proceeds *of Crime Act No. 13 of 2002*. The term “serious offences” is defined in the FTRA as an offence against the law of Vanuatu which carries the maximum penalty of imprisonment of at least 12 months or similar offence if it is occurred in another country.

21. The FTRA provides full legal protection to the financial institutions for submitting suspicious transaction reports. Section 7 of the amended FTRA protects the financial institutions, their officers, employees and agent from any civil and criminal liability for breach of confidentiality for reporting information under the FTRA in good faith to the VFIU. Section 7(A) of the FTRA also provides protection to the auditor or supervisory body of a financial institution as well as the officer, employee and agent of such body for reporting to the VFIU in good faith. Various secrecy provisions do not appear to inhibit the disclosure to and sharing of requisite information with the competent authorities as and when it is required for them to carry out their official duties. The new amended FTRA removes any legal doubts that the secrecy provision of the ICA is overridden with the disclosure requirement under the FTRA.

22. The FTRA provides limited power to the VFIU with regard to sanctions that may be imposed on financial institutions for non-compliance with AML/CFT requirements. The Act mostly lays down possible criminal sanctions on financial institutions for non-compliance with the legal obligations. When a bank or its manager/employee contravenes the legislative requirements, the case would have to be brought to a court for criminal sanction, and the financial institution could be subject to fines or imprisonment (if individuals) after conviction. In practice, the VFIU has not prosecuted any financial institution for non-compliance with the FTRA.

23. With respect to administrative sanctions, the FTRA provides the VFIU with limited power to direct a financial institution that has failed to comply with its obligations under the Act to implement the obligations within such time as specified in the direction, and produce a written action plan in relation to the implementation of the obligations.

24. The Reserve Bank, on the other hand, has extensive powers to impose administrative sanctions against banks which have contravened requirements set out under the FIA or the IBA. The Reserve Bank can revoke banking licenses (Section 17 of the FIA and Section 11 of the IBA) and issue a directive (Section 45 of the FIA and Section 25 of the IBA). License revocation may be imposed under limited circumstances where, for instance, a bank has violated any of the licensing conditions or any of the provisions of the acts such as capital adequacy requirement or other prudential standards

25. The VFIU, as the supervisory authority for AML / CFT matters, is resourced with two officers, one of whom has three years working experience in one of the banks and the other officer who has over 20 years experience as a Police Officer. The VFIU has conducted several on-site examinations on financial institutions in Vanuatu, including banks. The examinations of the banks were conducted jointly with the Reserve Bank's Supervision Department. The VFIU staff have attended a number of training seminars and workshops organised by international and regional agencies. The Reserve Bank is staffed by an experienced and qualified team. Staff appear to be technically proficient in the use of technology and computers. The Supervision Department currently consists of seven staff members including a director, a secretary and five bank supervisors, one of whom is currently on study leave. The overall supervisory function is under the responsibility of the Director, who also holds the position of Deputy Governor of the Reserve Bank.

## 4 Preventive Measures – Designated Non-Financial Businesses and Professions

26. The amended FTRA also defines financial institutions to include casinos licensed under the *Casino Control Act No.6 of 1993*, lawyers, notaries, accountants and trust and company service providers. These meet the definition provided by FATF of designated non-financial business and other professions (DNFBPs). The scope of the legislation is so wide that even car dealers and certain financial services that currently do not exist in Vanuatu (and are unlikely to in the future) are covered by the legislation. However, the regime of guidelines and training for the financial services regulated by the new legislation does not yet exist.

27. The Law Council is responsible for prescribing the necessary qualifications for legal practitioners, keeping a register of all legal practitioners in Vanuatu, carrying out disciplinary actions, regulating conduct of practitioners and provides for the legal education and training of legal practitioners. The Law Council also controls the registration of notaries public in Vanuatu. There is no requirement for lawyers to undertake any continuing legal education to maintain their right to practice. TCSPs [spell out], on the other hand, are licensed by the VFSC. The VFSC has drafted the new

*Company and Trust Services Providers Act* which is to be further reviewed with the assistance from the Asia Development Bank. Accountants operating in Vanuatu are required to have professional accounting qualifications recognised in any other Commonwealth jurisdictions before they can operate in Vanuatu. However, there is no mechanism in place to check the veracity of these qualifications, nor is there any requirement to prove maintenance of membership of any professional accounting body.

28. While the amended FTRA addresses most of the requirements under FATF Recommendation 5, there are serious deficiencies in the implementation of the legislative requirements. At the time of the on-site visit, the VFIU and other responsible regulatory authorities had not developed any plans to implement the amendments to the FTRA to ensure that DNFBPs were aware of their new responsibilities. The VFIU has indicated that the current guideline is being reviewed to reflect the changes made to the FTRA. However, there was little indication during the onsite visit that such revision had taken place and when it would be completed. There was insufficient information available for the evaluators to assess whether such revision has taken into consideration concerns raised by the financial institutions and the DNFBPs with regard of getting an industry specific guideline tailored to their business activities), although the authorities state that the industry has been given opportunity to make comments on the amended FTRA but this does not mean that their views will necessarily be incorporated in the draft.

29. All the DNFBPs are subject to the same CDD obligations as are banks and other financial institutions, although the level of understanding amongst the businesses and professions of these obligations is significantly lower. There are no specific guidelines issued to these entities. The only guidelines available are the generic ones issued by the VFIU which does not address KYC and CDD requirements for non-financial businesses and professions. Having not been covered by the FTRA prior to the amendments, some of these DNFBPs would not have been issued with the VFIU guidelines at the time.

30. The obligations for some of the DNFBPs to report suspicious transactions existed before the new amendment to the FTRA was brought into force. Casinos as licensed under the *Casino Control Act No. 6 of 1993*, Interactive gaming, trustees, lawyers, accountant, and anyone dealing in bullion are classified as financial institutions under the FTRA and have the obligation to report suspicious transactions to the VFIU. However, besides the internet casino which reported 73 STRs in 2000 and 2001, no other report has been submitted by any of the other category of DNFBPs. The internet casino has not been in operation since 2002. During the meeting with representatives from the DNFBP sectors, they indicated that there have been instances where attempted transactions which were suspicious in nature and were declined. However, these incidents were not reported to the VFIU on the basis that the transaction had not taken place. This is a breach of section 5 of the FTRA (both before and after it was amended) which requires financial institutions to report a person who conducts or seeks to conduct a transaction that is suspicious in nature. Thus, awareness of the reporting requirements needs to be improved.

## 5 Legal Persons and Arrangements & Non-Profit Organisations

31. The Registrar of Companies in Vanuatu sits within the FSC and maintains a central registry of businesses in Vanuatu. There are three types of limited liability companies in Vanuatu: local companies, exempted companies and international companies. Local companies have an unrestricted license to do business in Vanuatu. They must have a valid business license if the nature of their business requires it. They can conduct their business anywhere in the world. Local companies can either be public or private. Public companies are entitled to sell shares to the general public if they issue a prospectus, while private companies are not allowed to. Exempted companies have less

onerous requirements to receive a licence but they are severely restricted as to what they can do in Vanuatu. They cannot make contracts or agreements with local companies or persons except in regard to business carried on outside of Vanuatu. They can have bank accounts and agreements with Vanuatu based banks, accountants, Lawyers and business such as TCSPs. They can contract with other exempt companies and international companies. International companies cannot conduct business in Vanuatu except to further their business elsewhere. This category of company provides for more flexibility and simpler administration than an exempt company.

32. A Trust is not a legal entity in Vanuatu but an agreement that sets out the terms on which someone holds property on behalf of another. Only a local company, which holds a Trust Company License, can charge for this service.

33. Both the *Companies Act* and the *International Companies Act* allow for bearer share mechanisms for all three types of companies. In this situation, the possibility of misuse and concealment of a real beneficial owner of such companies is heightened. Although there is a requirement for companies to inform the Vanuatu Financial Services Commission (VFSC) of the issuance of new bearer shares, there is no requirement for the transfer of ownership of the bearer shares to be reported to the VFSC.

34. Although there is a very strict secrecy provision under Section 125 of the *International Companies Act*, meetings with the officials during the on-site visit indicated that in practice such provisions do not prohibit investigators from obtaining court orders to investigate such companies either for domestic investigations or to assist a foreign jurisdiction's investigation. Section 17 (3) of the FTRAA also clearly states that the new secrecy overriding provision in the *Financial Transactions Reporting Act* overrides section 125 of the *International Companies Act*.

35. In addition to the three types of companies mentioned above, Vanuatu also provides for what are termed overseas companies. Overseas companies are companies incorporated in a foreign jurisdiction which have to re-register in Vanuatu under the *Companies Act*. An overseas company registered in Vanuatu must nominate two Vanuatu residents who can accept notices on its behalf and are required to lodge an annual return along with audited accounts.

36. Trusts in Vanuatu are formed in accordance with the United Kingdom's *Trustee Act 1925*. Currently there is no requirement for trust to be registered with the central authorities because trusts are not required to be registered in Vanuatu. As such, the VFSC does not have the power to conduct due diligence on any trusts. However, trust companies which are registered legal entities and usually act as the trustees and service providers are required by the FTRA to apply customer due diligence towards their customers before such services can be rendered. The access to such information by the competent authorities at this stage is limited to trusts where trust companies act as the trustee only. Although the trust companies and service providers are also required to report suspicious transaction reports and keep records of their businesses, statistics shows that there is no such report being made.

37. Non-profit organisations in Vanuatu are governed by the *Charitable Organizations Act*. The POCA, the FTRA, the *Counter Terrorism and Transnational Crime Act*, and the *Criminal Procedure Code* do not specifically address NPOs; however there is no indication that an NPO is in any way exempt from any of the assets freezing or seizing measures contained in the legislation. Vanuatu, through registration requirements of the VFSC and legislative over site of the *Charitable Organisations Act*, has measures in place to insure that funds or assets collected by NPOs are not diverted to support the activities of terrorists or terrorist organizations. There is however no effective

implementation of these measures. While the FT risk posed by NPOs operating in Vanuatu is low, the oversight of these organisations is virtually non-existent. During the on site visit, the Evaluation Team learned that one NPO had not provided, nor been asked to provide, a financial statement to the VFSC, although required to do so on a yearly basis.

38. The Evaluation Team found no evidence that any NPO in Vanuatu has undergone any type of audit by an AML/CFT regulatory body. As far as the evaluation team was able to determine, no guidance regarding customer due diligence, suspicious transaction reporting, or other AML/CFT measures related to NPOs has been provided to financial institutions.

## 6 National and International Co-operation

39. Vanuatu has set up a Combined Law Agency Group (CLAG) which comprises representatives from the State Law Office, the Financial Intelligence Unit, the Police Department, Ministry of Internal Affairs, the Immigration Department, Airports Vanuatu Limited, and Customs and Inland Revenue. The last meeting of CLAG was in February 2005. The State Law Office is currently reviewing a CLAG Working Charter that is to be presented to the Council of Ministers for approval. Like other CLAGs in the region, this body is set up to facilitate information and intelligence sharing between local law enforcement agencies and to provide regular networking opportunities.

40. Vanuatu also has a committee called the Vanuatu Financial Sector Assessment Group (VFSAG) which comprises of the Director-General of the Prime Minister's Office, the Director-General of Finance, the Attorney-General, the Governor of RBV and his deputy, the Commissioner of the Vanuatu Financial Services Commission (VFSC), Department of Finance and the Financial Analyst of VFIU. The VFSAG has been set up to formulate or discuss government policy, laws or issues in respect of matters affecting Vanuatu's finance sector including the OECD Harmful Tax initiatives. The VFSAG is generally required to meet once a fortnight or when called upon by the Chairman. Since October 2005, the VFSAG has had one meeting.

41. The *Mutual Assistance in Criminal Matters Act 2002* (MACMA) sets out the circumstances in which mutual legal assistance can be provided upon request by a foreign country for international assistance in a "criminal matter". The term "criminal matter" is defined as follows:

> **criminal matter** includes a matter (whether arising under Vanuatu law or a law of another country) relating to:
> (a) the forfeiture or confiscation of property for an offence; or
> (b) the restraining of dealings in property that may be forfeited or confiscated for an offence.

42. It is noted that the MACMA does not contain any definition for the term "offence". However, other than the assistance that can be granted in terms of requesting evidence to be taken and documents to be produced under section 12, all other assistance available under the MACMA is only available for "criminal matters involving a serious offence".

43. Part 3 of the MACMA authorises the Attorney-General to provide assistance with taking of evidence and production of documents or other articles. Pursuant to section 12 if a foreign country asks that evidence be taken in Vanuatu for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise the taking of evidence and the transmission of the

evidence to the requesting country. Assistance can also be granted to a foreign country requesting that a document or other article in Vanuatu be produced for a proceeding or investigation. The Attorney-General can under section 12, authorise the production of the documents or articles and have the same transmitted to the requesting country.

44. All mutual legal assistance requests are received by the Attorney-General, which are actioned by the Solicitor-General's division within the State Law Office. If the request is refused under sections 8, 9 or 10, this refusal is communicated to the requesting country. Since 2003, no request has been refused. If the request is accepted, Counsel will prepare the relevant court documents, obtain assistance from the Police and file the papers with the Court Registry. On receiving sealed copies of the Court documents, the Police will execute the search warrants or serve the documents on the relevant financial institution.

45. There is no reference in sections 8, 9 or 10 to refusing a request on the sole ground that the offence is also considered to involve fiscal matters. However, requests concerning acts or omissions which constitute tax offences in the requesting country would not satisfy the dual criminality element as there are no tax laws in Vanuatu.

46. "Terrorist property" is defined in the CTTOCA and refers to property used to commit a terrorist act, or property used by a terrorist group or property owned or controlled by a specified entity or on behalf of that entity. The term "property" is defined in the CTTOCA and satisfies the definition of "funds" as term is defined in Article 1 of the Terrorist Financing Convention.

47. Vanuatu does not yet have formal arrangements in place for the coordination of seizure and confiscation actions with other countries but has indicated that it will enter into such arrangements if and when the need arises. Vanuatu has not established an asset forfeiture fund and is yet to give consideration to the need for such a fund.

48. Section 2 of the Extradition Act 2002 defines "extradition offence" as having the "meaning given by subsection (3) (1)." Section 3(1) provides as follows:

> *(1) An offence is an extradition offence if:*
> *(a) it is an offence against a law of the requesting country for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and*
> *(b) the conduct that constitutes the offence, if committed in Vanuatu, would constitute an offence in Vanuatu for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months.*

49. As the penalty for ML is for a natural person a fine of 10 million vatu or imprisonment for a term of 10 years or both, ML is an extradition offence in respect of natural persons.

50. Pursuant to section 17(2) (d) of the *Extradition Act*, the Attorney-General may refuse to order that the person be surrendered if the person is "a citizen of Vanuatu". Section 60 of the Act provides that a person may be prosecuted and punished in Vanuatu for an offence if under subsection (1) (b), "the Attorney-General refuses to order the surrender of the person because of a circumstance listed in subsection (2)". Subsection (2) (a) provides: "the person is a citizen of Vanuatu". Subsection (3) further provides that for the purposes of prosecution, the person must be taken to have engaged in the conduct in Vanuatu and it is for the Public Prosecutor to determine whether there is sufficient evidence in Vanuatu to justify the prosecution.

51. Pursuant to section 62, if Vanuatu refuses to surrender a citizen of Vanuatu, Vanuatu may surrender the person for the purpose of being tried in the requesting country if Vanuatu is satisfied that if the person is convicted the person will be returned to Vanuatu to serve the sentence imposed.

52. Sections 13A and 13C of the FTRA provide the legal authority under which the VFIU can provide information to its counterparts in other jurisdictions. There are no legal impediments to the VFIU providing this information in a rapid, constructive and effective manner. The Vanuatu Government signed its first Memorandum of Agreement for exchange of information between AUSTRAC and the VFIU on 28 September 2002, in order to facilitate the sharing and exchange of information on transnational crime including financial crimes.

53. In respect of other competent authorities, there are no legal or statutory gateways in place that facilitate cooperation or the exchange of information to their foreign counterparts. Australian Federal Police has a Liaison Officer in Vanuatu located within Australia's High Commission. This Officer provides a link between Australian and local law enforcement agencies and predominately performs a liaison role and facilitates capacity building in the region on transnational crime issues. Other than this arrangement, there are no bilateral or multilateral agreements or arrangements through which cooperation/information can be given. However, international and regional organisations are available as avenues through which law enforcement agencies can exchange information upon request, including Interpol, Oceania Customs Organisation and Transnational Organised Crime Office in Fiji and the Pacific Islands Legal Officers Meeting (PILOM).

54. FT, terrorist acts and terrorist organisation offences are extradition offences under section 3(1) of the *Extradition Act* as the penalties far exceed the 12 month imprisonment threshold. For example, section 6 of the CTTOCA which criminalises FT, provides a penalty upon conviction of imprisonment for not more than 25 years or a fine of not more than VT 125 million, or both. It should be noted that if a legal person receives the fine only, then an issue may arise as to whether in such a case FT is an extradition offence.

# MUTUAL EVALUATION REPORT

# 1 GENERAL

## 1.1 GENERAL INFORMATION ON VANUATU [2]

1. The Republic of Vanuatu is located in the South West of the Pacific region. Vanuatu is a small country with a land area of 12,200 square kilometres and comprises of 83 islands. Vanuatu's population is just over 206,000, of which the majority inhabits the four main larger islands of Espiritu Santo, Malekula, Tanna, and Efate. The two largest islands, Espiritu Santo (or Santo) and Malekula, account for nearly one-half of the total land area. Half of the islands of Vanuatu are volcanic, with sharp mountain peaks, plateaus, and lowlands. The larger islands of the remaining half also are volcanic but are overlaid with limestone formations; the smaller ones are coral and limestone. Volcanic activity is common with an ever-present danger of a major eruption, the last of which occurred in 2005 on the island of Ambae.

2. The population of Vanuatu is 94% indigenous Melanesian (called Ni-Vanuatu). About 30,000 people live in the capital, Port Vila on the island of Efate. Another 10,700 live in Luganville (or Santo Town) on Espiritu Santo and the remainder live in rural areas. Approximately 2,000 Ni-Vanuatu live and work in New Caledonia. Bislama, English and French are the official languages of Vanuatu. Indigenous Melanesians speak 105 local languages.

3. The major religion in Vanuatu is Christianity, practiced by approximately 90% of the population. The largest denominations are Presbyterian, Roman Catholic, Churches of Christ, Seventh Day Adventists and Anglican.

4. Vanuatu's economy is primarily agricultural; 80% of the population is engaged in agricultural activities that range from subsistence farming to smallholder farming of coconuts and other cash crops. Copra is by far the most important cash crop (making up more than 35% of the country's exports), followed by timber, beef, and cocoa. Kava root extract exports also have become important. In addition, the government has maintained Vanuatu's pre-independence status as a tax haven and international off-shore financial centre. About 4,705 registered institutions offer a wide range of offshore banking, investment, legal, accounting, and insurance and trust-company services. Vanuatu also maintains an international shipping registry in New York City. In 2002, following increasing international concern over the potential for money laundering, Vanuatu increased oversight and reporting requirements for its off-shore banking sector.

5. Copra, cocoa, kava and beef account for more than 60% of Vanuatu's total exports by value and agriculture accounts for approximately 20% of GDP. Tourism is Vanuatu's fastest-growing sector, comprising 40% of GDP in 2000. Industry's portion of GDP declined from 15% to 10% between 1990 and 2000. Government consumption accounted for about 27% of GDP. In 2000, imports exceeded exports by a ratio of nearly 4 to 1. However, this was offset by high services income from tourism, which kept the current account balance fairly even.

[2] Sources: US Department of State Background Notes: http://www.state.gov/r/pa/ei/bgn/2815.htm, Commonwealth Yearbook: http://www.thecommonwealth.org/Templates/YearbookHomeInternal.asp?NodeID=139623

6. Vanuatu claims an exclusive economic zone of 680,000 square kilometres and possesses substantial marine resources. Currently, only a limited number of Ni-Vanuatu are involved in fishing, while foreign fishing fleets exploit this potential.

7. In 1997 the government, with the aid of the Asian Development Bank, committed itself to a 3-year Comprehensive Reform Program (CRP). During the first year of the program the government adopted a value-added tax, consolidated and reformed government-owned banks, and started a 10% downsizing in the public service sector. An important part of the reform installed career civil servants as Director Generals in charge of each ministry, helping to ensure continuity of service despite the frequent changes in government.

8. The Vanuatu economy is based on agriculture, fishing, tourism and offshore financial services, with a GDP in 2003 of $US 281 million. Vanuatu is currently dependent on foreign aid for development projects due to its remote location, heavy transportation costs, and vulnerability to fluctuations in world commodity prices.

9. Vanuatu created an offshore tax haven in 1971 with a very liberal financial regime. By the late 1980s, the offshore financial sector contributed 12% of the GDP (according to some informal estimates).

10. However, from the late 1990s these banking practices came under pressure from the OECD's campaign to counter money-laundering and many of the more than 100 off-shore banks were closed by more restrictive legislation. By 2005 only seven banks from the sixty-three in operation during the 2000 APG Mutual Evaluation (March 2000) were able to comply with the tighter regulations the government introduced to meet OECD's requirements.

11. Vanuatu does not levy any income tax, capital gains tax, withholding tax or estate duties for companies, trusts, and/ or individuals. However indirect taxes are levied through various means including value added taxes and import levies. The RBV is responsible for regulating and supervising both domestic and off-shore banks.

12. Vanuatu is a Republic with a non-executive presidency and a parliamentary democracy. The president is elected by parliament together with six presidents of the provincial councils and serves a five-year term. The single-chamber parliament has 52 members, directly elected every four years by universal adult suffrage. Parliament appoints the prime minister from among its members, and the prime minister appoints a 12-member council of ministers from among the MPs.

13. The constitution provides for a certain amount of decentralisation, intended to promote regional autonomy and local participation. In 1994, the eleven local councils were replaced by six provincial governments. A National Council of Chiefs, whose members are elected by the council of Chiefs from each Province, works closely with the government on matters relative to custom, culture, and traditions of the country. The Courts system consists of the Island Court, Magistrates, Supreme Court, and the Court of Appeal, which presided over by the Chief Justice of Vanuatu, and three other Supreme Court Justices.

14. Vanuatu has had a degree of political instability and associated vulnerability to problems relating to poor governance. In its 2006 Global Corruption Report,

Transparency International noted that the 'sheer number of allegations of bribery of, or by, MPs in the past 12 months is of concern'.[3]

15. From 1995-2004 government leadership changed frequently due to unstable coalitions within the Parliament and within the major parties. In October 2004, parliament passed constitutional amendments designed to reduce political instability. These amendments included banning no-confidence votes in the first and last 12-month periods of a parliamentary term and, after the first 12 months of a term, required a by-election in any constituency where the member crossed the floor. These amendments were declared to be unconstitutional, however, because there was no referendum on them.

### 1.2 GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

16. The authorities in Vanuatu report that Vanuatu has not experienced any crime related to money laundering (ML) or the financing of terrorism (FT). However, it is unclear whether this is because there is little experience in detecting, investigating and prosecuting possible ML matters or because such crimes simply do not exist. The Evaluation Team were made aware of a number of proceeds generating criminal activities that have occurred in Vanuatu that would suggest the potential for ML. Two significant heroin seizures occurred in 2002 and 2004 indicating Vanuatu's vulnerability to international drug trafficking operations. Similarly, a financial services provider in Vanuatu has been linked with fraudulent activities overseas leading to a now former director and major shareholder being convicted in the Unites States.

17. Vanuatu introduced AML legislation in 2000 in the form of, *inter alia*, the *Financial Transactions Reporting Act* (FTRA) following recommendations made by the first APG Mutual Evaluation which took place in March 2000. This legislation was later amended in 2002. Further amendments to AML legislation were introduced and passed by Parliament in December 2005 and came into effect just prior to the visit by the Evaluation Team in February 2006.

18. The Vanuatu Financial Intelligence Unit (VFIU), the financial institutions (as defined by the FTRA) and the Transnational Crime Unit of the Vanuatu Police Force are the main bodies responsible for coordinating the reporting and investigation of suspicious transactions (STRs). The authorities stated that the VFIU had received at least 100 STRs over the past 4 years, none of which resulted in any prosecutions.

19. There has been little analysis undertaken by the authorities of the general money laundering or terrorist financing risks in Vanuatu due to a lack of resources.

20. Vanuatu has adopted and ratified the UN International Convention for the Suppression of the Financing of Terrorism by the introduction of the *International Convention for the Suppression of the Financing of Terrorism Act No. 3 of 2002*, which implemented the Country's obligation under the UN, and the relevant UN Security Council Resolution.

21. Vanuatu authorities indicated that they could not state with certainty that there are no terrorist organisations operating within the country, or that the likelihood of a terrorist network establishing itself in Vanuatu is too remote to be considered. Because of

[3] Global Corruption Report 2006, Transparency International at http://www.transparency.org/publications/gcr/download_gcr#download, Part 2 at page 278;

Vanuatu's close proximity to potential terrorist targets such as Australia, Vanuatu, with the assistance of Australian authorities is monitoring its vulnerability to the establishment of terrorism within the jurisdiction.

22. The law enforcement agencies, namely the VFIU, Customs, Immigration and the TCU, have a good working relationship not only domestically, but also with their international counterparts. The Australian Federal Police (AFP) has an office established in Port Vila and through their intelligence, the law enforcement agencies within the country are in a better position to be well informed, should a possible terrorist threat be identified in Vanuatu at some point.

## 1.3 OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

### *a) Overview of Vanuatu's financial sector*

23. The finance sector in Vanuatu, consisting of banks and insurance providers, contribute about 7% to Vanuatu's GDP. In 2004, this represented a growth of 9.3% over the previous year.

24. The financial sector in Vanuatu consists of Reserve Bank of Vanuatu (RBV), banks (both domestic and off-shore), credit unions, money exchanges and remitters and insurance companies.

25. The banking sector is relatively small, consisting of four domestic banks and seven off-shore banks all of which are regulated by the RBV. Greater regulation of the off-shore banks, conducted by the RBV enforcing local physical presence, led to a dramatic drop in the number of off-shore banks operating in Vanuatu.

26. Insurance companies are regulated by the VFSC and money exchanges and remitters are regulated by the Ministry of Finance through the Customs and Revenue Department.

27. Remittance businesses in Vanuatu are limited to a Western Union franchise operated by the Vanuatu Post Office and a MoneyGram operator. The remittance sector in Vanuatu is relatively small, servicing mainly the tourist industry. There is no indication of any underground banking system operating in Vanuatu.

### *b) Overview of Vanuatu's DNFBPs*

28. The designated non-financial businesses and professions (DNFBPs) that operate in Vanuatu consist of trust companies and service providers (TCSPs), law firms, accountants, gaming agencies, real estate agents and car dealers. These entities are all defined as financial institutions under recent amendments to the *Financial Transactions Reporting Act* (FTRA) and therefore fall within the AML/CFT regime in Vanuatu.

*Casinos*

29. One casino currently operates in Vanuatu, although there are a number of applications for licenses currently under consideration. Licenses for casinos are issued by the Department of Customs and Revenue. Foreign applicants for a casino license must first receive a clearance from the Vanuatu Investment Promotion Authority (VIPA) which will determine if the applicant is of a good character and that there is a viable business plan. Local applicants do not go through this process. There are no other background checks for a casino license and the licensing regime regulated by the Customs and Department is far from rigorous.

30. Casinos are subject to the FTRA and therefore subject to supervision by the VFIU.

*Trust Company and Service Providers (TCSPs)*

31. Vanuatu has approximately five TCSPs operating in Port Vila. These are licensed as companies through the Registrar of Companies within the VFSC and are also subject to their obligations under parts 2 and 3 of the FTRA.

*Lawyers*

32. Lawyers in Vanuatu must register with the Law Council in order to practice. Registration requires that an applicant:

(a) holds a law degree or similar qualification from a University or such other appropriate institution recognised by the law Council; and

(b) (i) is a Ni-Vanuatu citizen who is admitted as a barrister and/or solicitor in a Commonwealth jurisdiction; or

(ii) not being a Ni-Vanuatu citizen admitted in a Commonwealth jurisdiction, has at least two years post supervised practical, legal experience acceptable to the Law Council;

(c) is resident in Vanuatu.

33. There is no requirement to undertake any form of continuing education in order to maintain registration, and there is no professional body neither representing the interests of lawyers nor maintaining quality control over the profession. However, the Law Council has the general responsibility for the control and supervision of legal practitioners. The *Legal Profession Act* that was passed in 2005 requires lawyers to undertake continuing legal education but that Act has not yet been brought into force. Since 2003, the AusAID-funded Legal Sector Strengthening Programme has funded continuing legal education workshops for public sector lawyers.

34. Lawyers were brought under the FTRA through amendments introduced in 2000 but only to the extent that the lawyer “receives funds in the course of his or her business for the purpose of deposit or investment, or settling real estate transactions (whether or not the funds are deposited into a separate trust account)”. The 2006 amendments expanded the scope of activities that would subject lawyers to the requirements of the FTRA.

*Accountants*

35. There is no regulation or licensing of accountants in Vanuatu and no professional body representing accountants.

36. Accountants, like lawyers, were bought under the FTRA under amendments introduced in 2000 but only to the extent that the accountant “receives funds in the course of his or her business for the purposes of deposit or investment (whether or not the funds are deposited into a separate trust account)”. This scope was widened by the introduction of amendments in 2006.

*Non-Profit Organisations (NPOs)*

37. NPOs in Vanuatu are governed by the *Charitable Organizations Act*. AML/CFT legislation is found in the *Proceeds of Crime Act*, the *Financial Transactions Reporting Act*, the *Counter Terrorism and Transnational Crime Act*, and the *Criminal Procedure Code*. This legislation does not specifically address NPOs, however there is no indication that an NPO is in any way exempt from any of the asset freezing or seizing measures contained in the legislation. There are only a few charities operating in Vanuatu dealing with very small amounts of money.

*Others*

38. The amendments to the FTRA which came into effect in 2006 brought a number of other bodies under the definition of financial institutions. At the time of the on-site visit there was no provision to regulate or supervise these bodies, which include real estate agents and car hirers and dealers.

## 1.4 OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS

39. Legal persons in Vanuatu are created through the following legislation:

a. *Companies Act [CAP 191]*
b. *International Companies Act [No. 32 of 1992]*
c. *Charitable Associations Act;*
d. *Business Names Act;*

40. Under Vanuatu law a limited liability company can be limited by shares or by Guarantee, where the owners guarantee debts up to a certain sum. This is often used by social clubs such as sporting associations.

41. There are three types of limited liability companies in Vanuatu:

a. *Local companies:* Local companies have an unrestricted license to do business in Vanuatu. They must have a valid business license if the nature of their business requires it. They can conduct their business anywhere in the world. Local companies can either be public or private. Public companies are entitled to sell shares to the general public if they issue a prospectus, while private companies are not allowed to.
b. *Exempted companies:* Exempted companies have less onerous requirements to receive a licence but they are severely restricted as to what they can do in Vanuatu. They cannot make contracts or agreements with local companies or persons except in regard to business carried on outside of Vanuatu. They can have bank accounts and agreements with Vanuatu based banks, accountants, Lawyers and business such as TCSPs. They can contract with other exempt companies and international companies.
c. *International companies:* International companies cannot conduct business in Vanuatu except to further their business elsewhere. This category of company provides for more flexibility and simpler administration than an exempt company.

42. A Trust is not a legal entity in Vanuatu but an agreement that sets out the terms on which someone holds property on behalf of another. Only a local company, which holds a Trust Company License, can charge for this service.

**Requirements for filing with the Registrar of Companies**

43. Local companies must file with the Registrar of Companies the following:

a. Legal Documents: including Memorandum of Association (containing the constitution of the company and details of its objectives and activities) and Articles of Association.
b. Notification of any changes to the company's directors, shareholding and secretary, and of mortgages or charges on its property.
c. Certain Special Resolutions of the company.
d. An Annual Return. This must contain standard information about the company as at a specified annual date such as the number of authorised shares and issued shares. The Annual Return is due on the anniversary date of the Company's incorporation (see below) and must be filed within 28 days of that date.
e. If the Company's turnover exceeds VT 20 Million ($USD 175,300) in any year, it must submit audited accounts and must file the audited accounts with the Registrar of Companies. The Registrar will examine the "Audit Certificate" and if it is "Qualified" will demand the reasons surrounding the qualification. The requirements for auditor qualifications are that auditors must be a certified practicing accountant in another approved jurisdiction.

44. Company information is available for public inspection at the Registrar's Office, where a search fee is charged. The persons searching the records of a company cannot remove any of the records, but the Registrar's Office will provide photocopies on request for a nominal charge.

45. Exempted companies which carry on the businesses of banking, insurance, trustees or selling securities must file the same documents as local companies and must provide audited financial statements at the end of each financial year. Exempt companies are also required to file two types of annual returns under sections 127 and 377 of the *Companies Act*. There is no public file for exempted companies. The Registrar's Office cannot provide documents in respect of any exempted company except under a Court Order or at the written direction of the exempted company or its directors.

46. International companies have a public file but they do not have to file as many documents as the other categories of companies nor do they have to file an Annual Return. They have a "Constitution" instead of Memorandum and Articles of Association. They must file the details of their Incorporators, their Registered Office and their Registered Agent and of mortgages and charges on their property.

47. Before the Registrar signs the "Certificate of Incorporation" for a Company, all legal requirements must be fulfilled. For example the Memorandum and Articles of Association must be properly completed as well other information as required above.

a. A local company must have 2 or more shareholders if private and 7 if public. An exempted company needs 2 and an international company only needs 1.
b. A company must not carry out business before its Certificate of Incorporation has been signed and issued. The date of signing is its "Date of Incorporation".
c. A shareholder normally has a right to a share of the company profits, and a share of its dividends. Shareholders also most commonly have a right to vote in company matters and a share in the company's residual assets if it is liquidated.
d. Partially paid shares can be forfeited if not paid up when called.

e. Each company must have a Registered Office and (other than an international company) a Company Secretary. A single person holding both positions cannot sign certain documents.
f. In respect of the Registered Office address the Registrar will insist on obtaining and checking a Land Title where he thinks there may be some difficulty with the address.

48. Both local and exempted companies require at lease two directors and one must be a resident in Vanuatu. Upon incorporation background checks are carried out on all directors and shareholders. A company applying for a banking, insurance, trust companies or securities license must meet the 'fit and proper" requirements before can be appointed director.

49. Company Services Providers (consisting of both entities and individuals) assist investors with company trading and registration requirements for a fee. They range from local companies, Trust companies, lawyers, and accountants.

## 1.5 OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

### *a. AML/CFT Strategies and Priorities*

50. The Vanuatu authorities state that they have prioritised AML/CFT efforts in Vanuatu by recently strengthening its relevant legislation. In November of 2005 the Parliament passed the following acts and amendments to AML/CFT legislation:

*a. The Proceeds of Crime (Amendment) Act No. 30 of 2005*
*b. Mutual Assistance in Criminal Matters (Amendment) Act No. 31 of 2005*
*c. Financial Transactions Reporting (Amendment) Act No. 28 of 2005.*
*d. The Counter Terrorism and Transnational Crime Act No 29 of 2005*

51. These amendments came into force on 24 February 2006.

52. With the introduction of the *Financial Transactions Reporting (Amendment) Act* (FTRA Amendment Act), a wider range of agencies are now obliged to report to the VFIU all STRs and any transactions exceeding VT 1,000,000 ($USD 8,800). The list of agencies required to submit reports to the VFIU is exhaustive and includes many services not currently provided in Vanuatu. The amendments introduce many requirements found in the international standards relating to, *inter alia*, definitions of property, requirements to include reporting on the financing of terrorism, cross border cash declarations, protection of disclosure and prohibition against tipping off and detailed CDD and KYC requirements. The role of the VFIU is substantially expanded.

### *b. The institutional framework for combating money laundering and terrorist financing*

*i. Ministries*

53. *Ministry of Justice*: The Ministry of Justice is responsible for AML/CFT legislation in Vanuatu and has responsibility for the operations of the State Law Office which in turns administers the VFIU. The Ministry has responsibility for the *MACMA,* the *POCA*, the *FTRA*, and the *Counter-Terrorism Act*.

54. *Ministry of Finance*: The Ministry of Finance and Economic Management is responsible for the RBV which regulates domestic and off-shore banks in Vanuatu in

accordance with the *International Banking Act No. 4 of 2002* and *the Financial Institutions Act No. 2 of 1999*. The RBV issues guidelines to the commercial banks, and also it is responsible for the licensing and regulation of off-shore banks. The Ministry is also responsible for the Customs and Revenue Department, which licenses money exchange, money remitters and casinos.

55. *Ministry of Internal Affairs*: The Ministry of Internal Affairs is responsible for national security and is responsible for Vanuatu Police Force in which Vanuatu's Transnational Crime Unit is located, as well as a paramilitary wing that serves as Vanuatu's defence force. The Transitional Crime Unit investigates suspected money laundering cases which are submitted to it by the VFIU.

56. *Ministry of Foreign Affairs:* The MFA is responsible for adopting UN resolutions and signing of treaties and conventions. Vanuatu has ratified the International Convention for the Suppression of the Financing of Terrorism which was adopted by the General Assembly of the United Nations in resolution 54/109 of 9th of December 1999. The Hon. Minister for Foreign Affairs signed the Instrument of Accession on the 27th day of October 2005.

57. *Vanuatu Finance Sector Assessment Group*: VFSAG comprises of the Director General of the Prime Minister's Office, the Director General of Finance, the Attorney General, the Governor of the RBV and his deputy, the Commissioner of the VFSC, Director of Finance and the Manager of the VFIU. This group was formed to coordinate issues relating to financial matters in Vanuatu, including AML/CFT initiatives.

*ii. Criminal Justice and Operational Agencies*

58. *The Vanuatu Financial Intelligence Unit (VFIU):* The VFIU responsible for receipt, analysis and dissemination of STRs and is the AML regulator in Vanuatu. In its intelligence role, the VFIU plays a central role in the collection and development of financial intelligence, providing analytical support to the financial investigations of its partner agencies and providing financial intelligence to overseas counterparts.

59. *Public Prosecutor's Office (PPO):* The PPO is responsible for pursuing all criminal matters before the courts in Vanuatu.

60. *State Law Office (SLO):* The SLO has responsibility for pursuing the proceeds of crime under the relevant legislation.

61. *Vanuatu Police Force:* The Vanuatu Police is responsible for investigating ML and TF through the Transnational Crime Unit (TCU). The TCU is not occupied in this on a full-time basis, however, where there is a reported case on ML and TF, the authorities advised that the TCU deals with this as a priority and has no obligations to report to other units within the Police Force.

62. *Customs and Revenue Department:* The Customs Department is responsible for the monitoring of cross border transactions as well as regulating money exchange and remitters and casinos.

*iii. Financial Sector Bodies – government*

63. *Reserve Bank of Vanuatu (RBV):* The RBV regulates and supervises all banks, including domestic and off-shore banks in Vanuatu. The RBV issues guidelines for these banks and conducts on-site inspections. While not specifically required by legislation to do so, the RBV incorporates AML/CFT inspections, often in conjunction with the VFIU.

64. *The Vanuatu Financial Services Commission (VFSC):* The VFSC supervises and regulates insurance companies, businesses (both domestic and international) and trust companies, as well as having responsibility for overseeing company registration and the protection of trade marks through the regulation of business names.

### *c. Approach concerning risk*

65. Vanuatu has not undertaken a comprehensive risk assessment of money laundering or the financing of terrorism. Vanuatu has not taken a risk-based approach in the application of AML/CFT provisions, although this clearly may be beneficial given the limited resources available.

### *d. Progress since the last mutual evaluation or assessment*

66. Vanuatu was the first non-FATF member of the APG to undergo a Mutual Evaluation in March 2000. At this time, there was no standard methodology for the conduct of mutual evaluations in operation and no compliance ratings were assessed. The Mutual Evaluation Report for Vanuatu made 14 recommendations in relation to Vanuatu's AML/CFT regime.

67. The recommendations made were as follows:

1. Ratify the Vienna Convention (*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*).

2. Introduce laws or regulations to ensure that financial institutions cannot open or operate false name or anonymous accounts. Such laws or regulations should require institutions to identify customers and beneficial owners when establishing business relations or account facilities.

3. Introduce laws or regulations to require financial institutions to maintain, for at least five years, all transaction records in a manner that enables institutions to provide information to the competent authorities. Such laws or regulations should also require institutions to maintain customer identification records and business correspondence for at least five years after the account is closed.

4. Introduce laws to require mandatory reporting by financial institutions of suspicious transactions, with such reporting made to a single competent authority.

5. Introduce laws to prohibit financial institutions and their officers and employees from notifying customers when a suspect report is to be provided or has been provided to a competent authority.

6. Introduce laws to require financial institutions to comply with lawful instructions from the competent authority regarding suspicious transaction reports.

7. Ensure that financial institutions develop and implement programs to deter and detect money laundering, including internal policies and procedures, employee training and appropriate audit systems.

8. Develop an all-of-government anti-money laundering strategy that defines responsibilities of regulatory and law enforcement agencies.

9. Introduce effective, anti-money laundering supervisory programs within supervisory authorities, and ensure that supervisory personnel in the Reserve Bank, Financial Services Commission and Ministry of Finance and Economic Management are suitably trained.

10. Develop and issue guidelines to the financial sector relating to suspicious transaction reporting.

11. Upgrade training of law enforcement personnel to improve the capacity of police, customs and other relevant agencies to effectively investigate suspected money laundering and related offences.

12. Amend the *International Companies Act* to require the provision of the name and address of directors, office bearers and shareholders when seeking registration of an international company and the notification of any subsequent change.

13. Review the secrecy provisions in Vanuatu laws and amend laws where the secrecy provisions inhibit effective investigation of money laundering offences.

14. Ensure that anti-money laundering requirements in Vanuatu apply to non-bank financial institutions as well as the banking sector. This would include casinos, bookmakers, securities dealers, insurance companies, accountants, managers of unit trusts and the like.

68. It is a tribute to the commitment of the Vanuatu Government that thirteen of the above recommendations were implemented immediately through the introduction of the FTRA and other AML legislation in 2000 and 2002. The only recommendation that is yet to be implemented is Recommendation 12 requiring the amendment to the *International Companies Act* to require provision of the names and addresses of directors, office bearers and shareholders upon registration of an international company and notification of any subsequent changes.

# 2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

## ***Laws and Regulations***

### 2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 DESCRIPTION AND ANALYSIS

**Recommendation 1**

69. The offence of money laundering (ML) was first criminalised under section 19 of the *Serious Offences (Confiscation of Proceeds) Act 1989*. This Act was subsequently repealed with the passage of the *Proceeds of Crime Act 2002* (POCA), which included section 11, a revised provision criminalising money laundering.

70. On 24 February 2006, the Government of Vanuatu brought into force, a further amendment to the POCA, namely the *Proceeds of Crime (Amendment) Act No.30 of 2005*. This Act amended section 11 by repealing and substituting a new subsection (3). Section 11 provides as follows:

> *11* ***Money-laundering***
>
> *(1) In this section:*
>
> ***transaction*** *includes the receiving or making of a gift.*
>
> *(2) A person who, after the commencement of this Act, engages in money-laundering is guilty of an offence punishable on conviction by:*
>
> *(a) if the offender is a natural person – a fine of 10 million vatu or imprisonment for 10 years, or both; or*
>
> *(b) if the offender is a body corporate – a fine of 50 million vatu.*
>
> *(3) A person engages in money laundering only if the person:*
>
> *(a) acquires, possesses or uses property or engages directly or indirectly, in an arrangement that involves property that the person knows or ought reasonably to know to be proceeds of crime; or*
>
> *(b) converts or transfers property that the person knows or ought reasonably to know to be proceeds of crime; or*
>
> *(c) conceals or disguises the true nature, source location, disposition, movement, ownership of or rights with respect to property that the person knows or ought reasonably to know to be proceeds of crime.*

71. The term “property” is defined in section 2 of the POCA as follows:

> *…includes money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property.*

72. The term “proceeds of crime” is defined in section 5 of the POCA as:

> *…property derived or realised directly or indirectly from a serious offence, including:*

*(a) property into which any property derived or realised directly or indirectly from the offence is later successively converted or transformed; and*

*(b) income, capital or other economic gains derived or realised from that property since the offence.*

*(2) If property that is proceeds of crime (the original proceeds) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime.*

73. Vanuatu ratified the Vienna Convention by way of the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001* which is stated to be "binding on the Republic of Vanuatu in accordance with its terms". Vanuatu has also ratified the Palermo Convention by way of the *United Nations Convention Against Transnational Organised Crime Act 2003*.

74. The offence of ML under section 11 of the POCA covers the elements set out in Article 3(1) (b) (c) of the Vienna Convention and Article 6(1) of the Palermo Convention. Sections 28 to 35 of the Penal Code [135] provides for ancillary offences under which a person attempting, assisting or conspiring to commit a criminal offence could be charged however, there is no clear provision in either the POCA or the Penal Code, which "links" these ancillary offences to the ML offence.

75. As the terms "property" and "proceeds of crime" are defined in the POCA, these definitions are wide and general enough to encompass property of any type regardless of its value that directly or indirectly represents the proceeds of crime. However, it is unclear whether these definitions are adequate to apply to property situated in another jurisdiction outside Vanuatu.

76. When proving that property is the proceeds of crime, the legislation stipulates that it is necessary for someone to be convicted of a predicate offence.

77. In respect of the criteria that the predicate offences for money laundering should cover all serious offences, Vanuatu has adopted a threshold approach whereby the term, "serious offence" is defined in section 2 of the POCA as follows:

(a) *an offence against a law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months; or*

*(b) an offence against the law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months.*

78. It is noted that this definition does not cover offences punishable by pecuniary penalties only, which is the usual type of penalty applied to legal persons or a body corporate. A body corporate convicted of money-laundering under section 11 of the POCA for example, faces a pecuniary penalty of 50 million vatu ($USD 438,000).

79. Vanuatu is yet to criminalise the following designated categories of offences:

- illicit arms trafficking;
- piracy of products;
- insider trading and market manipulation.

80. Predicate offences for ML extends to conduct that occurred in another country where the maximum penalty is at least 12 months imprisonment and there is dual criminality.

81. The legislation does not specify that the offence of ML applies to the person who commits the predicate offence and neither does it exclude application of the ML offence to such persons.

82. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that country but would be a predicate offence in Vanuatu, this does not constitute a ML offence in Vanuatu. Section 4 of the Penal Code [Cap 135] which covers offences occurring overseas, also requires dual criminality in order for a person to be prosecuted of an offence.

**Recommendation 2**

83. The offence of ML applies to natural persons that knowingly engage in ML activity pursuant to section 11(3) of the POCA.

84. The law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances.

85. Although there is no legal definition in the POCA for the term "person", section 11(2) (b) does provide a penalty for a body corporate that is convicted of ML which indicates that criminal liability extends to legal persons. Section 18 of the Penal Code provides that a "corporation may be criminally liable to the same extent as a natural person, provided that the acts and intentions of its principals or responsible servants may be attributed to the corporation" however, as referred to earlier, it is unclear whether these general provisions of the Penal Code can apply to section 11 of the POCA. Furthermore, the *Interpretation Act [Cap. 132] 1981-82*, which "provides for the interpretation and construction of Acts of Parliament, subsidiary legislation, other laws and documents", defines the term "person" in section 2 as follows:

> *""person" includes any statutory body, company or association or body of persons corporate or unincorporated";*

86. The only other form of liability for legal persons that may be applied depending on, for example, the conditions of the license, relates to:

- banks registered under the *Financial Institutions Act No 2 of 1999* (FIA), whereby under section 17, a banking license may be revoked by the RBV where the holder contravenes any of the conditions of its licence or any of the provisions of the FIA; and

- international banks under sections 11 and 16 of the *International Banking Act No.4 of 2002* (IBA) whereby the RBV may revoke the license of a licensee where it is entitled to take enforcement action against the licensee under section 16 of this Act. Enforcement action may be taken against a licensee if in the opinion of the RBV the licensee carries on business "in a manner detrimental to the public interest or to the interest of any depositors or creditors".

87. The penalties provided for both natural and legal persons are substantial – for a natural person, the penalty on conviction is a fine of 10 million vatu ($USD 87,650) or

imprisonment for up to 10 years or both; and for a legal person, a fine of 50 million vatu ($USD 438,000).

**Recommendation 32**

88. Vanuatu has received assistance under the Pacific Islands Database project sponsored by Australia to assist the authorities in keeping statistics on suspicious transactions. Vanuatu has not yet had any FT investigations or prosecutions. The Criminal Records Office of the Vanuatu Police Force keeps statistics on all criminal offending reported which includes a category on "Offences against Property".

89. The Public Prosecutors Office also keeps statistics on cases prosecuted and convictions. However, to date, none of these related to ML or FT prosecutions. Apart from these, there are no statistics on the effectiveness and efficiency of systems combating ML and FT.

90. The legislation criminalising ML is comprehensive and has most of the necessary elements required under the recommendations. However, as no ML prosecutions have taken place, it is difficult to assess the effectiveness of the legislation. It was also apparent from the interviews conducted with some of the law enforcement agencies, that there was little understanding of the provision or its application in practice. There are comprehensive ancillary offences in the Penal Code [135] which would be appropriate ancillary charges to the offence of ML however, it is not specified in the Penal Code that the "criminal law" includes offences committed under any other enactment in Vanuatu. The Vanuatu authorities advise that these ancillary offences available under the Penal Code can be applied to offences outside the Code and "will be applied" but have not referred to nor provided the Team with any legislative or judicial support for this premise.

91. The legal definitions of "property" and "proceeds of crime" do not specifically provide or clarify that it includes property or proceeds that may be located outside of Vanuatu. The legislation is silent as to whether a person can still be convicted of a ML offence in the absence of a conviction in respect of the crime which generated the proceeds.

92. The definition of "serious offence" does not include offences for which the penalty is pecuniary only. There may be offences for which natural persons are subject to pecuniary penalties only either in Vanuatu or in other jurisdictions in addition to legal persons who are subject to pecuniary penalties only. Although it is not a specific requirement under Recommendation 1, the absence of a pecuniary penalty in the definition may raise an issue as to whether assistance can be given by Vanuatu to a requesting country whose mutual legal assistance request relates for example to a legal person.

93. The legislation is silent as to whether or not a person can be found guilty of both ML and the predicate offence. It was stated by the State Law Office that under the existing law, a person could not be convicted of both the predicate and the ML offence.

94. The legislation does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances.

2.1.2 RECOMMENDATIONS AND COMMENTS

95. It is recommended that the Vanuatu authorities:

- amend either section 11 of the POCA, or the Penal Code [135] to ensure that the ancillary offences under the Penal Code apply to the ML offence;

- amend both definitions of "property" and "proceeds of crime" to clarify that this includes property or proceeds situated in Vanuatu or elsewhere;

- amend section 11 of the POCA to ensure that a person may be convicted of the ML offence notwithstanding the absence of a conviction in respect of the predicate crime;

- consider amending the definition of "serious offence" to also include reference to a pecuniary penalty threshold;

- criminalise illicit arms trafficking and piracy of products and consider criminalising insider trading and market manipulation.

- In the absence of any provision in the Constitution of Vanuatu to the contrary, amend section 11 of the POCA by inserting a provision that allows for a person to be found guilty of the ML offence even if the property involved is derived from a serious offence committed by that same person.

- amend section 11 of the POCA by inserting a provision that specifies that knowledge, intent or purpose may be inferred from objective factual circumstances.

- review its legislation under which legal persons are licensed or regulated, in terms of identifying what additional civil or administrative penalties can be imposed, for example providing for de-registration or the revocation of licences.

96. In respect of civil or administrative sanctions or penalties, it is recommended that the RBV and other regulators of legal persons should ensure that a standard condition of banking licences is to comply with the AML/CFT legislation.

97. It is recommended that authorities in Vanuatu such as the State Law Office provide training or awareness-raising seminars on the legislative provisions of the POCA for law enforcement officers, prosecutors and the judiciary in order to ensure that they are familiar with the ML legislation and its practical application.

### 2.1.2 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.1** | **Partially Compliant** | • **It is not specified in the relevant legislation whether property or proceeds includes property or proceeds situated outside Vanuatu;**<br>• **Vanuatu has not criminalised all the designated categories of offences;**<br>• **The ML offence does not apply to persons who commit the predicate offence;**<br>• **It is not specified in the law that the ancillary offences available under the Penal Code are applicable to the ML offence** |

| | | |
|---|---|---|
| **R.2** | **Partially Compliant** | • **The law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances;**<br>• **Vanuatu does not have "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for ML;**<br>• **Given that no ML offences have been prosecuted, it is difficult to assess the effectiveness of the ML legislation. Furthermore, while interviewing the law enforcement agencies responsible for administering the ML legislation, it was evident that they were not familiar with the ML legislation.** |

## 2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)

### 2.2.1 DESCRIPTION AND ANALYSIS

98. Vanuatu ratified the International Convention for the Suppression of the Financing of Terrorism by way of the *International Convention for the Suppression of the Financing of Terrorism Act 2002*. Terrorist financing was criminalised under Part 2A of the POCA until this Part was repealed by the *Counter Terrorism and Transnational Organised Crime Act No.29 of 2005* ("the CTTOCA"). The CTTOCA was brought into force on 24 February 2006.

99. In addition to the CTTOCA, the following legislation also relates to the various UN Counter Terrorism Conventions and Resolutions, namely:

- section 73A of the *Penal Code (Amendment) Act 2003;*
- *United Nations Act No.1 2002;*
- *Financial Transactions Reporting (Terrorism Amendment) Act 2002;*
- *Financial Transactions Reporting Amendment Act 2005;*
- *Suppression of Terrorism and Afghanistan Measures Order No.17 of 2003 (made under the United Nations Act No.1 2002);*
- *Anti-Terrorism Regulations Order No.5 of 2002 (made under section 16 of the Charitable Organisations (Incorporation) Act [Cap. 140]);*
- *Anti-Terrorism Regulations Order No.6 of 2002 (made under section 4 of the Explosives Act [Cap. 6]);*
- *Anti-Terrorism Regulations Order No.7 of 2002 (made under section 23 of the Immigration Act [Cap. 66]);*
- *Anti-Terrorism Regulations Order No. 8 of 2002 (made under section 28 of the Vanuatu Foreign Investment Promotion Act No.15 of 1998);*
- *Anti-Terrorism Regulations Order No.9 of 2002 (made under section 63 of the Financial Institutions Act No.2 of 1999);*
- *Anti-Terrorism Regulations Order No.10 of 2002 (made under section 18 of the Financial Transactions Reporting Act 2000).*
- *Anti-Terrorism Regulations Order No.11 of 2002 (made under the Civil Aviation Act No.16 of 1999); and*
- *Anti-Terrorism Regulations Order No.12 of 2002 (made under the Shipping Act [CAP.53].*

100. FT is criminalised under section 6 of the CTTOC:

***6 Terrorism financing***

*(1) A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act.*

*(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.*

101. Section 7 of the CTTOCA makes it an offence to "directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a terrorist group." The penalty upon conviction is a term of imprisonment of not more than 25 years or a fine of not more than VT 125 million ($USD 1 million), or both.

102. Section 8 criminalises dealing with terrorist property. A person must not knowingly deal, directly or indirectly, in any terrorist property; collect or acquire or possess terrorist property; or enter into, or facilitate, directly or indirectly, any transaction in respect of terrorist property; or convert or disguise terrorist property. The penalty upon conviction is a term of imprisonment of not more than 20 years or a fine of not more than VT100 million ($USD 876,500), or both.

103. The term "terrorist property" is defined in section 2 of the CTTOCA as:

(a) *property that has been, is being, or is likely to be used to commit a terrorist act; or*

*(b) property that has been, is being, or is likely to be used by a terrorist group; or*

*(c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.*

104. The term "property" is defined in section 2 of the CTTOCA as:

***property** includes:*

*(a) currency; and*

*(b) assets of any kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible; and*

*(c) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.*

*(d) any legal or equitable interests in any such property.*

105. This definition is similar to the definition of "funds" as set out in the Counter Terrorism Convention.

106. There is no requirement under either section 6, 7 or 8 of the CTTOCA that property is actually used to carry out a terrorist act or be linked to a specific terrorist act.

107. The Penal Code [CAP 135] sets out various provisions under which a person could be charged for :

- Attempting to commit a criminal offence (sections 28, 32 and 33);
- Participating as an accomplice in any criminal offence (sections 29, 30 - 33);

- Organising or directing another to commit a criminal offence (sections 30, 32, 33 and 35)

108. However, it is not specified that the offences under the CTTOCA would be covered by these provisions of the Penal Code. The *United Nations Act No. 1 of 2002* also provides for ancillary offences but these only apply to orders made under this Act.

109. The penalties provided in respect of the FT offences fall within the definition of "serious offence" given in section 2 of the POCA and are therefore predicate offences for ML.

110. Vanuatu's FT offences apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist is located or the terrorist act occurred. The term "terrorist act" is defined in section 2 of the CTTOCA as follows -

> *any act or omission in or outside Vanuatu that:*
> *(a) constitutes an offence within the scope of a counter terrorism convention; or*
> *(b) is mentioned in section 3.*

111. The term "terrorist group" is defined as including an entity that has as one of its activities or purposes committing, or facilitating the commission of a *terrorist act* or a group that is a specified entity. Specified entities are prescribed under section 4 and include any decision of the UNSC under Chapter 7 of the UN, relating wholly or partly to terrorism. The term "terrorist property" also refers to property that has been, is being, or is likely to be used to commit a *terrorist act* or "to be used by a *terrorist group*".

112. The FT offence under section 6 of the CTTOCA does not specify that the Court can permit the intentional element of the offence of FT to be inferred from objective factual circumstances.

113. Unlike other anti-terrorism offences either past or present that are created under the other legislation, the penalties for persons found guilty of committing offences under the CTTOCA are not separated into the categories of "natural person" and "legal person": nor is the term "person" defined in the CTTOCA. However, the Interpretation Act [Cap. 132] 1981-82, which "provides for the interpretation and construction of Acts of Parliament, subsidiary legislation, other laws and documents", defines the term "person" in section 2 as follows:

> *""person" includes any statutory body, company or association or body of persons corporate or unincorporated";*

*The Penal Code (Amendment) Act 2003*

114. The *Penal Code (Amendment) Act 2003* introduces section 73A which defines and criminalises a "terrorist act". However, in light of the recent CTTOC Act, the provisions of that Act which also criminalises terrorist acts would prevail (being later in time). For the purposes of clarity however, the authorities should repeal section 73A.

*The United Nations Act No.1 of 2002*
*The Suppression of Terrorism and Afghanistan Measures Order 2003*

115. The *United Nations Act No.1 of 2002*, empowers the Prime Minister of Vanuatu to make such orders as are necessary to apply any measures that will give effect to any decision of the UN Security Council. This Act also provides for ancillary offences in respect of any breach of such orders:

> (1) *A person who:*
>
> *(a) commits or attempts to commit, or does any act with intent to commit, any offence against any orders made under this Act; or*
>
> *(b) counsels, procures, aids, abets, or incites any other person to commit, or conspires with any other person (whether in Vanuatu or elsewhere) to commit, any offence against any orders made under this Act;*
>
> *is punishable on conviction by the penalty set out in subsection (2).*
>
> *(2) The penalty is:*
>
> *(a) in the case of an individual, to imprisonment for not more than 5 years or to a fine not exceeding VT 20,000,000 ($USD 160,000 )*
>
> *(b) in the case of a body corporate, to a fine not exceeding VT 100,000,000($USD 800,000).*

116. To date, only the *Suppression of Terrorism and Afghanistan Measures Order 2003*, has been made under this Act. This Order prohibits the following –

- Collecting or providing funds for specified entities (listed in the Schedule to the Order as every Al-Qaeda entity; the Taliban; every Taliban entity and Osama bin Laden);
- Dealing with property of, or derived or generated from property of, specified entities;
- Making property, or financial or other related services available to specified entities; and
- Recruiting members of a specified entity.

117. The only other form of liability for legal persons that may be applied depending on, for example, the conditions of the license, relates to:

- banks registered under the FIA, whereby under section 17, a banking license may be revoked by the RBV where the holder contravenes any of the conditions of its licence or any of the provisions of the FIA; and

- international banks under sections 11 and 16 of the IBA of 2002 whereby the RBV may revoke the license of a licensee where it is entitled to take enforcement action against the licensee under section 16 of this Act. Enforcement action may be taken against a licensee if in the opinion of the RBV the licensee carries on business “in a manner detrimental to the public interest or to the interest of any depositors or creditors”.

118. In addition, the Anti-Terrorism Regulation Orders respectively made under the *Charitable Associations (Incorporation) Act [Cap.140]* and the *Vanuatu Foreign Investment Promotion Act No. 15 of 1998* (“VIPA”), provide for the revocation of:

- the certificate of incorporation of any charitable association;
- an investment approval certificate granted to an entity under the VIPA,

where the charitable association or entity are found to be in any way involved with a territory entity as that term is defined in the Orders.

119. The criminal sanctions for FT and other terrorist acts and offences are extensive but varied:

- under the CTTOCA, the offence of FT carries a fine of VT125 million ($USD 1 million) and up to 25 years imprisonment;
- under section 73A of the Penal Code Amendment, the offence of committing a terrorist act carries a term of imprisonment not exceeding 25 years or a fine of not more than VT 25 million ($USD 200,000);
- under the United Nations Act, the offence of FT carries a term of imprisonment of not more than 5 years or a fine not exceeding VT 20 million ($USD 160,000) in the case of a natural person and in the case of a body corporate a fine not exceeding VT 100 million ($USD 800,000).

120. In this regard, the criminal liabilities can be considered to be dissuasive but of course it is difficult to assess 'effectiveness' given there have been no FT or terrorism offence prosecutions or investigations.

*Other Anti-Terrorism Regulation Orders ("ATRO")*

121. The other ATROs referred to above define "terrorist entity" as

> *the Taliban, Al-Qaeda or any other entity designated from time to time:*
> *(a) by the Committee established by paragraph 6 of Resolution 1267(1999) of the [UNSC]; or*
> *(b) by or under one or more other resolutions of the [UNSC].*

122. The ATRO made under the *Charitable Associations (Incorporation) Act [Cap.140]* prohibits the incorporation of charities of a terrorist entity and any other entity incorporated under the Act that is in any way involved with the terrorist entity. Any certificate of incorporation granted to a terrorist entity is also revoked.

123. The ATRO made under the *Explosives Act [CAP 6]* prohibits a person from exporting from Vanuatu, any explosives or components of explosives to any terrorist entity.

124. The ATRO made under the *Immigration Act [CAP 66]* prohibits any person from entering Vanuatu or its territorial waters if he or she is reasonably suspected of being a terrorist entity or member of that entity. It also prohibits such a person from being granted asylum in Vanuatu including any person who has engaged in, or reasonably suspected of having engaged in, an act of terrorism; or has funded directly or indirectly or is reasonably suspected of having funded terrorism or acts of terrorism.

125. The ATRO made under the *Vanuatu Foreign Investment Promotion Act No.15 of 1998*, prohibits any terrorist entity from being granted approval to invest in Vanuatu including any entity that is in any way involved in or with a terrorist entity. Any approval certificate issued to a terrorist entity is also revoked.

**Recommendation 32**

126. Vanuatu has not had any prosecutions, convictions or investigations into FT or any of the other terrorism offences so there are no statistics on this.

**Conclusions**

127. The legislation criminalising FT is comprehensive and has most of the necessary elements required under SRII. However, since no FT prosecutions or investigations have taken place, it is difficult to assess the effectiveness of the legislation. It is also noted that given the piecemeal approach of the anti-terrorism legislation including the introduction of the new CTTOCA, there is a lack of clarify in terms of the legislation's practical application. Furthermore interviews with Vanuatu authorities highlight a lack of familiarity with the FT legislation and confusion over administering the obligations under the various pieces of legislation. For example, there was no clear indication as to which department was responsible for administering the *United Nations Act No.1 of 2002*.

128. There are appropriate ancillary offences available under the Penal Code [Cap 135] however, it is not clear that these ancillary offences are available for offences committed under the CTTOCA. For example, there is no definition of "criminal law" as that term is used in the Penal Code which specifies that it includes offences committed under other enactments. The Vanuatu authorities advise that these ancillary offences available under the Penal Code can be applied to offences outside the Code and "will be applied" but have not referred to nor provided the Team with any legislative or judicial support for this premise.

### 2.2.2 RECOMMENDATIONS AND COMMENTS

129. Given that the criminalisation of FT, terrorist acts and terrorism organisations is scattered over various enactments, it is recommended that the authorities in Vanuatu:

- undertake a review of all its counter terrorism legislation with the intention of harmonising the legislation so as to avoid duplication and inconsistencies; statutory interpretation issues and to clearly identify which Government departments or agencies are responsible for administering the legislation;

- ensure that there is clear cooperation and communication among the relevant Government department and agencies as to the administration of the legislation;

- ensure that the law enforcement agencies (i.e. those responsible within the department for counter-terrorism), are familiar with all counter-terrorism legislation.

130. In terms of meeting the requirements of SR II, the following recommendations are made:

- It is recommended that Vanuatu ensure that the ancillary offences available under the Penal Code [Cap 135] apply to offences committed under the CTTOCA.

- It is recommended that Vanuatu amend section 6 of the CTTOCA by inserting a provision that specifies that knowledge, intent or purpose may be inferred from objective factual circumstances.

- In respect of civil or administrative sanctions or penalties, the RBV and other regulators of legal persons should ensure that a standard condition of licences is to comply with the AML/CFT legislation. Vanuatu should also review its legislation under which legal persons are licensed or regulated, in

terms of identifying what additional civil or administrative penalties can be imposed – for example, de-registration or the revocation of licences.

2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.II** | **Partially Compliant** | • **The various Acts and Regulations cover the majority of requirements to criminalise terrorist financing however, the legislation is piecemeal which has led to duplication; inconsistencies; statutory interpretation issues; and a lack of clarity as to its practical application**<br>• **There is a lack of familiarity among Vanuatu Government agencies with the CFT legislation or who administers the legislation;**<br>• **There are no ancillary offences to the FT or other counter-terrorism offences under the CTTOCA**<br>• **Vanuatu does not have "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for FT;**<br>• **Given that no FT or other terrorism offences have been prosecuted or investigated, it is difficult to assess the effectiveness of the law.** |

## 2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)

2.3.1 DESCRIPTION AND ANALYSIS

131. Vanuatu has a very comprehensive legal framework for confiscating, freezing and seizing the proceeds of crime. However, the structural framework for implementing this legislative power is seriously compromised by a lack of coordination amongst responsible agencies as well as general unfamiliarity with the powers provided under the legislation.

132. Section 15 of the *Proceeds of Crime Act 2002* ("POCA") provides for forfeiture orders to be made against tainted property, upon a person being convicted of a serious offence. This covers predicate offences including ML and FT, which fall within the definition of "serious offence". The term "tainted property" is defined in section 2 of the POCA:

> *(a) property intended for use in or used in, or in connection with, the commission of the offence; or*
> *(b) proceeds of crime.*

133. The term "property" is defined as including

> *…money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property.*

134. The term "proceeds of crime" is defined in section 5 of the POCA as:

> *property derived or realised directly or indirectly from a serious offence, including:*

*:*

*(a) property into which any property derived or realised directly from the offence is later successively converted or transformed;*

*(b) income, capital or other economic gains derived or realised from that property since the offence.*

*(2) If property that is proceeds of crime (**the original proceeds**) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime.*

135. Part 3 of the POCA also provides for pecuniary penalty orders to be made against the person for *benefits* derived by the person from the commission of the offence. The term "benefit" is defined in section 3 of the POCA as meaning:

(a) *a person benefits from an offence if the person receives, at any time, any payment or other reward in connection with, or derives any pecuniary advantage from, the commission of the offence; and*

*(b) a reference to a benefit derived or obtained, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, another person at the first-mentioned person's request or direction.*

136. Pursuant to section 32 of the POCA, the amount that might be realised at the time a pecuniary penalty order is made is:

(a) the total of the values of all the realisable property held by the person less the total amounts payable under any obligation having priority at that time; and

(b) the total values of all gifts caught by the POCA.

137. "Realisable property" is defined in section 6 of the POCA and includes "any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act". The term "gift" is defined and includes a "transfer (directly or indirectly) of property by one person to another for a consideration that is significantly less than the value of the property".

138. Whether or not the property is held by the criminal defendant or a third party, this is not a barrier to either a forfeiture or pecuniary penalty order being made under the POCA, but the POCA does allow for any third party to be heard in respect of such applications.

139. Part 4 of the POCA sets out certain powers to facilitate the freezing and/or seizing of property or terrorist property to prevent any dealing, transfer or disposal of property subject to confiscation. In particular, section 37 of the POCA allows for the issuing of warrants authorising officers to search land or premises for tainted property or terrorist property, and to seize such property. Pursuant to section 50 of the POCA, the Attorney-General may apply *ex parte* to the court for a restraining order against any realisable property held by a defendant or a person other than the defendant.

140. Under section 52, such an order may prohibit the defendant or any other person from disposing of, or otherwise dealing with the property, or a part of it or any interest in it and at the request of the Attorney-General, the Court can direct the Administrator to take custody of the property.

141. An application for a search warrant under section 37 does not require any notice being given to any other person but a person who claims an interest in the property or terrorist property may apply to the Court for an order that the property be returned. Property is also returned to the person from whose possession it was seized if no information is laid within 48 hours of the property being seized. Pursuant to section 50(2), the initial application for a restraining order may be made *ex parte* but any order made without notice being given to any person who may have an interest in the property, ceases to have effect after 14 days or a lesser period as the Court may determine under section 51(2).

142. Pursuant to section 37 of the POCA, an authorised officer may apply to the court for the issue of a warrant to search land or premises for tainted property or terrorist property. The Court may issue the warrant authorising the officer, "with such assistance, and by such force, as is necessary and reasonable:

(a) to enter the land or premises; and
(b) to search the land or premises for the tainted property or terrorist property and to seize it."

143. Under section 38 of the POCA, if in executing a search warrant, an authorised officer finds another thing other than the thing specified in the warrant, the warrant is taken to authorise the officer to seize the other thing if there are reasonable grounds for believing it is tainted property or to afford evidence about the commission of a criminal offence in Vanuatu or it is necessary to seize it to prevent it from being concealed, lost or destroyed, or used to commit an offence or repeat an offence.

144. Pursuant to section 13D of the FTRA (as inserted by the FTRA Amendment 2005) the Financial Intelligence Unit (VFIU) has extensive powers to examine records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with the FTRA. The VFIU may also reproduce any record, or cause it to be reproduced for examination or copying. Pursuant to section 13D (4) the VFIU may transmit any information from or derived from such examination to an assisting entity if the VFIU has reasonable grounds to suspect such information may be relevant to detect, investigate or prosecute ML or FT or any other serious offence; commission of ML, FT or other serious offence; an act preparatory to FT; or the enforcement of the FTRA, the POCA or other Act prescribed by regulation.

145. The term "assisting entity" is defined in the FTRA and includes a law enforcement agency or supervisory body either within or outside Vanuatu.

146. Under section 14 of the FTRA, a member of the VFIU may apply for a warrant to enter premises belonging to or in the possession or control of a financial institution and to search such premises and to remove "any document, material or thing on the premises". Such a warrant can be granted where an officer or employee of the financial institution is committing, has committed or is about to commit a FT or ML offence.

147. The *Criminal Procedure Code [Cap 136]*, provides for the following:

- a police officer may stop, search and detain any vessel, boat, vehicle or aircraft in which there is reason to suspect anything stolen or unlawfully obtained or conveying in any manner, anything stolen or unlawfully obtained (section 9);

- search warrants, by which an authorised officer may seize, detain or use in evidence anything in any building, ship, aircraft, vehicle, box, receptacle or

other place, suspected as necessary for the conduct of an investigation into an offence (section 55).

148. The *Proceeds of Crime Amendment Act No.30 of 2005*, which came into force on the 24 February 2006, introduced further provisions authorising law enforcement to identify and trace property.

149. Production orders can now be sought under sections 82A - 82E. Section 82A(1) provides that where an authorised officer has reasonable grounds for believing that a person has been, is or will be involved in the commission of a serious offence, and that a person has possession or control of a document relevant to:

*(a) identifying, locating or quantifying property of the first-mentioned person; or*
*(b) identifying or locating any document necessary for the transfer of property of the first-mentioned person; or*
*(c) identifying, locating or quantifying tainted property in relation to the offence; or*
*(c) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;*

*the officer may apply to the court for a production order against the person having possession or control of the document.*

150. Section 82A (2) also provides similar powers in respect to terrorist property. If an authorised officer has reasonable grounds to believe that a person has possession or control of a document relevant to "identifying, locating or quantifying terrorist property; or identifying or locating any property relevant for the transfer of terrorist property" the officer can apply to the court for a production order.

151. Such applications may be made *ex parte*.

152. Section 82F allows an authorised officer to apply for a search warrant to enter upon land or premises to search for documents referred to above, and to seize such documents.

153. The new legislation also provides for monitoring orders under sections 82H – 82J, whereby an authorised officer can apply to the court for a monitoring order directing a financial institution to provide information to him or her if the officer has reasonable grounds for suspecting that:

*(a) the person in respect of whose account the order is sought has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or*
*(b) the person in respect of whose account the order is sought has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence; or*
*(c) an account is relevant to identifying, locating or quantifying terrorist property.*

154. Such applications may be made *ex parte*.

155. Part 3 of the POCA sets out various provisions that recognise the rights of bona fide third parties:

- *section 22* – allows for a person who claims an interest in the property to apply to the court before a forfeiture order is made, for an order declaring the nature, extent and value of the person's interest where the applicant was not involved in committing an offence in relation to which forfeiture of the property is sought. The applicant must also show that he or she acquired the interest for sufficient consideration without knowing or in circumstances so as not to arouse a reasonable suspicion, that the property was tainted property;

- *section 39* – where suspected tainted property or terrorist property is seized under a search warrant, the court can order the return of the property to a person claiming interest in it where the person is entitled to possession, the property is not tainted property or terrorist property and the person in relation to whose conviction, charging or proposed charging the property was seized, has no interest in the property;

- *section 46* – is similar to section 39 but relates to tainted property or terrorist property seized in relation to a *foreign* serious offence;

- *section 51* – before making a restraining order, the Court must require the Attorney-General to give 14 days written notice to any person who may have an interest in the property unless the Attorney-General requests the Court to consider the application without notice but any order given in such circumstances ceases to have effect after 14 days or lesser period;

- *section 55* – where the court makes a restraining order, with the leave of the court, any person may apply to the court for an ancillary order to vary the property or any condition to which the restraining order relates including applying for a variation to exclude the person's interest where the court is satisfied it is not tainted property or terrorist property and the applicant was not involved in the commission of the offence and the interest was acquired for sufficient consideration and without knowing and circumstances such as not to arouse a reasonable suspicion that the property was tainted property or terrorist property;

- *section 64* – before making an interim restraining order, the Court must require reasonable written notice to be given to and hear any person who may have an interest in the property unless the Attorney-General requests the Court to consider the application without notice but any order given in such circumstances ceases to have effect after 14 days or lesser period;

- *section 68* – allows any person, with leave of the court to apply for an ancillary order to vary the property or any condition to which an interim restraining order relates. If a person has an interest in the property, that person can apply for a variation to the order to exclude the person's interest if the court is satisfied that the applicant was not involved in the commission of the offence and that at the time the applicant acquired the interest, s/he did so for sufficient consideration and without knowing and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property;

- *section 73* – before making an order directing the Administrator to take custody and control of property subject to a registered foreign restraining order, the court must require reasonable notice to be given to and may hear any person who may have an interest in the property.

156. The new legislation also inserts section 21A which provides as follows:

> ***Voidable Transfers***
> *The court may:*
>
> *(a) before making a forfeiture order; or*
> *(b) in the case of property in respect of which a restraining order was made - when the order was served in accordance with section 54,*
>
> *set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.*

157. Section 28 of the CTTOCA criminalises the participation in an organised criminal group, "knowing that his or her participation contributes to the occurrence of transnational criminal activity; or reckless as to whether his or her participation contributes to the occurrence of transnational criminal activity". The term "transnational criminal activity" is not defined. The penalty for committing such an offence is a term of imprisonment of not more than 20 years or a fine of not more than VT100 million ($USD 876,500) or both. Given that it falls within the definition of "serious offence" under section 2 of the POCA, proceeds can be confiscated in respect of such an offence.

158. The CTTOCA provides for civil forfeiture under section 20 but only in respect of terrorist property:

> *(1) If the Court is satisfied, on the balance of probabilities that the property the subject of the application is terrorist property, the court must order that the property be forfeited to the State.*

159. The law does not provide for the confiscation of property subject to confiscation which requires an offender to demonstrate the lawful origin of the property.

**Recommendation 32**

160. Both the Vanuatu Police Force and the Public Prosecutors Office keep statistics on criminal cases prosecuted and convictions. However, there are no statistics on cases where the proceeds of crime have been restrained, seized or confiscated.

**Conclusions**

161. The legislation for the confiscation of proceeds of crime provides a robust legal framework under which Vanuatu can seize or confiscate proceeds of crime. Legislation enabling authorities to confiscate proceeds has been in place since 1989 with the *Serious Offences (Confiscation of Proceeds) Act*, followed by the POCA 2002. This Act was further strengthened and clarified with the introduction of the POCA Amendment 2005. However, Vanuatu has no records or statistics of any proceeds having been seized or confiscated.

162. After interviewing the relevant law enforcement agencies, the Evaluation Team concluded that there was a general lack of awareness and understanding of the proceeds legislation, particularly by the law enforcement agency responsible for administering the POCA. It was also evident that there was no coordination between the law enforcement agencies, whereby certain cases or investigations could have been identified as being appropriate for proceeds of crime applications to be made.

2.3.2 RECOMMENDATIONS AND COMMENTS

163. It is recommended that:

- The Vanuatu authorities review and improve AML/CFT coordination between the relevant law enforcement agencies, namely the Police, State Law Office, VFIU and the Public Prosecutors Office (PPO) either through reviving the CLAG or through some alternative process. These law enforcement agencies should identify why the legislation is not being implemented and produce an implementing plan or outline of implementing procedures aimed at resolving these problems, and if necessary have these measures endorsed as Government policy;

- Vanuatu consider placing the POCA under the administration of the Public Prosecutors Office (PPO) given that the PPO is responsible for prosecutions and in this role is working alongside the Police and is therefore in a better position to know when an investigation or case falls within the ambit of the POCA. This may be done by either amending the POCA to replace the references to "Attorney-General" with "Public Prosecutor" where appropriate;

- Vanuatu ensures that the law enforcement agencies are familiar with the POC legislation through for example, training or awareness-raising seminars/meetings.

164. Given the criminalisation of "organised criminal groups" in the CTTOCA, Vanuatu may consider inserting a definition of "transnational criminal activity".

2.3.3 COMPLIANCE WITH RECOMMENDATION 3

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.3** | **Partially Compliant** | • **The legislation is not being utilised despite some cases arising under which applications could have been made under the POCA;**<br>• **Lack of awareness and understanding of the POCA by the administering law enforcement agency;**<br>• **Lack of coordination between the law enforcement agencies in the administration or implementation of the POCA;**<br>• **As a result of the above, despite having robust confiscation of proceeds regime, it is not being effectively implemented** |

## 2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

2.4.1 DESCRIPTION AND ANALYSIS

165. With the CTTOCA coming into force on 24 February 2006, although the provisions of the POCA may also be applied in respect of seizing or freezing terrorist property, section 12 of the CTTOCA authorises the Attorney-General to apply to the Court *ex parte* for a direction for the Administrator to take custody and control of property where he has reasonable grounds to believe the property is "terrorist property".

166. The term “terrorist property” is defined in section 2 of the CTTOCA as:

> *(a) property that has been, is being, or is likely to be used to commit a terrorist act; or*
> *(b) property that has been, is being, or is likely to be used by a terrorist group; or*
> *(c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.*

167. A “terrorist group” is defined in section 2 of the CTTOCA as:

> *(a) an entity that has as 1 of its activities or purposes committing, or facilitating the commission of, a terrorist act; or*
> *(b) a specified entity.*

168. A “specified entity” is defined in section 2 of the CTTOCA as “a person or entity that is prescribed under section 4”. Section 4 provides as follows:

> *(1) The Minister may make regulations prescribing as a specified entity a person or group if:*
> *(a) the Security Council of the United Nations has made a decision under Chapter 7 of the Charter of the United Nations relating wholly or partly to terrorism; and*
> *(b) the entity is identified in the decision, or using a mechanism established under the decision, as an entity to which the decision relates.*
> *(2) The Minister may, after consultation with the Attorney-General, make regulations prescribing as a specified entity a person or group if the person or group:*
> *(a) has committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or*
> *(b) is knowingly acting on behalf of, at the direction of or in association with a person or group mentioned in paragraph (a).*

169. Vanuatu has not yet prescribed any regulations under this section.

170. Section 63 of the *Financial Institutions Act 1999* (FIA) provides for the Minister, on the advice of the RBV, to make regulations not inconsistent with the Act “for the better carrying out or to give effect to the provisions of this Act.” The *Anti-Terrorism Regulations Order No.9 of 2002* was made under section 63 and identifies “terrorist entity” as:

> *the Taliban, Al-Qaeda or any other entity that is:*
>
> *(a) designated from time to time by the Committee established by paragraph 6 of Resolution 1267 (1999) of the United Nations Security Council; or*
> *(b) designated from time to time by or under one or more other resolutions of the [UNSC]; or*
> *(c) declared by the Reserve Bank under regulation 3.*

171. Regulation 2 provides that a financial institution (which in this case means a body corporate that carries on banking business) must immediately freeze the account of a terrorist entity or not accept funds into the account; or must not remit funds from the account without the RBV’s prior written approval.

172. Regulation 3 provides that the RBV may from time to time declare, by notice in writing that an entity is, or is suspected of being, involved in or associated with financing terrorism or acts of terrorism.

173. The *Financial Transactions Reporting (Terrorism Amendment) Act 2002*, defines "terrorist organisation" as one that "includes an individual or organisation prescribed by the regulations to be a terrorist organisation." Prior to the FTRA Amendment 2005, section 5A provided that where a terrorist organization conducts or seeks to conduct a transaction through a financial institution, this is deemed to be a suspicious transaction. However, the FTRA Amendment 2005 deleted the term "terrorist organisation" and substituted the words "prescribed entity" without deleting the "terrorist organisation" definition. Furthermore, "prescribed entity" is defined in the FTRA Amendment 2005 as:

> *(a) a specified entity within the meaning of the Counter Terrorism and Transnational Organised Crime Act No.9 of 2005; or*
> *(b) a money laundering entity.*

174. Section 18 of the FTRA 2000 provides that the Minister may make regulations not inconsistent with the Act for or with respect to any matter that is required or permitted to be prescribed; or that is necessary or convenient to be prescribed for carrying out or giving effect to the Act.

175. The *Anti-Terrorism Regulations Order No.10 of 2002* was made pursuant to section 18 and defines "terrorist entity" (as opposed to "terrorist organization") as meaning:

> *the Taliban, Al-Qaeda or any other entity designated from time to time:*
> *(a) by the Committee established by paragraph 6 of Resolution 1267(1999) of the [UNSC]; or*
> *(b) by or under one or more other resolutions of the [UNSC].*

176. Regulation 2 provides as follows:

> *If a terrorist entity conducts or seeks to conduct a transaction through a financial institution (whether or not the transaction or proposed transaction involves cash), such transaction or proposed transaction is deemed to be a suspicious transaction.*

177. Section 13F of the FTRA Amendment 2005 authorises the VFIU to direct a financial institution (for a period of up to 5 days) not to proceed with a transaction or attempted transaction if the VFIU suspects on reasonable grounds that the aforesaid transaction may involve the proceeds of a ML offence, a FT offence or any other serious offence; or may be preparatory to a FT offence. It is an offence not to comply with such a direction and carries a penalty for a natural person, of a fine not exceeding VT25 million or imprisonment for a term not exceeding 2 years or both; and for a body corporate, a fine not exceeding VT 10 million.

178. The *United Nations Act No.1 of 2002* confers on the Prime Minister the power to make orders to give effect to any decisions of the Security Council made under Article 41 of the Charter of the United Nations. Section 1 of this Act provides that "the Prime Minister may make such orders as are necessary or expedient for enabling those measures to be effectively applied."

179. The only Order made under this Act is the *Suppression of Terrorism and Afghanistan Measures Order 2003*, which gives effect to UNSR 1267, 1333 and 1373 of the UN Security Council. In summary, the Order prohibits :

- collecting or providing funds for specified entities;
- dealing with property of, or derived or generated from property of specified entities;
- making property, or financial or other related services available to specified entities; and
- recruiting members of a specified entity.

180. "Specified entities" as listed in the Schedule to the Order are :

- Every Al-Qaeda entity;
- The Taliban;
- Every Taliban entity;
- Osama bin Laden.

181. These entities are further defined in clause 1 of the Order in accordance with the UNSCR.

182. It is noted however that all the clauses of the Order apply to every entity, with the exception of clauses 8 and 9 which do not apply to Osama bin Laden. Clause 8 prohibits any person in Vanuatu or any Vanuatu citizen in any place outside Vanuatu from recruiting another person as a member of a group or organisation that is a specified entity. Clause 9 provides "whistleblower" protection for those persons who comply with clause 4 of the Order (not to deal with any property of a specified entity) and clause 6 (not to make available to any specified entity any property or financial or other related services). Clause 9 also offers protection against civil and criminal liability to any person who reports a suspicion to the Attorney-General or discloses information in connection with a report of that kind.

183. In addition to the *Suppression of Terrorism and Afghanistan Measures Order 2003*, other ATROs have been made under several separate enactments which are referred to and listed in clause 99. These regulations or orders separately define the UNSCR designated entities including, the Taliban and Al-Qaeda, as "terrorist entities".

184. The *Anti-terrorism Regulations Order No. 9 of 2002* ("ATRO No.9") made under section 63 of the FIA, requires a financial institution to immediately freeze the account of any terrorist entity or any entity suspected of being involved in or associated with FT or the holding or raising of funds for terrorism. The financial institution is also required to –

- immediately give written notice of the existence of such an account to the RBV and VFIU;
- within 24 hours after giving notice to close the account; and
- not to remit funds from the account unless the RBV gives its prior written approval.

185. A financial institution is not required to give notice of its actions to the holder of the account.

186. Apart from the provisions of the POCA that allow for search warrants and production orders to be made in relation to foreign serious offences (referred to in section 48 of the *Mutual Assistance in Criminal Matters Act* (MACMA) as information gathering orders); and section 40 of the MACMA that allows for the registration of foreign

enforcement orders pertaining to conviction-based forfeiture/pecuniary penalty orders and restraining orders, there are no specific provisions under which Vanuatu can give effect to the actions initiated under the freezing mechanisms of other countries.

187. It is possible however that application to take control and custody of terrorist funds or assets could be made under section 12 of the CTTOCA on the grounds that the Attorney-General is satisfied that the property is "terrorist property". Terrorist property as defined in section 2 of the CTTOCA refers to property used or likely to be used to commit a "terrorist act" or used or likely to be used by a "terrorist group". The definition of "terrorist act" refers to "an act or omission in or outside Vanuatu" and a "terrorist group" not only refers to a specified entity but also to "an entity that has as one of its activities or purposes committing, or facilitation the commission of a terrorist act".

188. The ATRO No. 9, which provides for the freezing of terrorist funds held by financial institutions may also provide an avenue to give effect to actions initiated under the freezing mechanisms of other countries given that Regulation 3 authorises the RBV to declare from time to time by notice in writing that an entity is or suspected of being involved in or associated with FT or acts of terrorism. Under such a provision the RBV could designate a proposed designee as a terrorist or one who finances terrorism or terrorist organisations as a terrorist entity for the purposes of ATRO No.9. It should be noted however that the ATRO No.9 only applies to "financial institutions" which are further defined in the FIA as "any body corporate that carries on banking business".

189. Freezing actions in respect of funds or accounts held by banks are available under the ATRO No. 9. The funds or assets of designated persons, terrorists, those who finance terrorism or terrorist organisations can also be seized under section 12 of the CTTOCA by way of a Court application to take custody and control of terrorist property. Section 13F of the FTRA Amendment 2005, may also be utilised to halt a transaction or attempted transaction of terrorist funds of designated persons for a period of up to 5 days where the VFIU suspects on reasonable grounds that such funds are proceeds of FT or may be preparatory to a FT offence. It is noted however that no regulations have been made under section 4 of the CTTOCA designating as terrorist entities those entities identified under the UNSCR.

190. In terms of providing guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms, the RBV has issued as one of its Guidelines, Guideline No.9 which specifically directs domestic banks to return any money they have received that have not satisfied the banks in terms of their respective CDD checks. Section 13B (a) also authorises the VFIU to issue guidelines to financial institutions in terms of the identification of suspicious transactions, ML and FT typologies. This has not been done with respect to the new legislative amendments.

191. Vanuatu has no effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities. Section 14(5) of the CTTOCA provides that a directive issued under section 12 if not earlier revoked, can expire if the "entity ceases to be a specified entity" however, apart from the revocation of any regulations made under section 5 of the CTTOCA in respect of specified entities, there are no provisions that explain or set out the circumstances in which an entity can be de-listed.

192. Pursuant to section 16, third parties may apply for relief under section 17 of the CTTOCA. Section 17 allows a third party to apply for an order declaring the nature, extent and value of the person's interest in the property and that this interest is no longer subject to a section 12 directive – whether or not such a procedure is effective is difficult

to assess as the CTTOCA is yet to be implemented. In respect of publicly known procedures for unfreezing the funds of third parties, the Attorney-General is required by the Court to serve notice of a section 12 directive on any person who has an interest in the property. The Attorney-General is also required to serve notice of any application for a forfeiture order against terrorist property on any person who has an interest in the property and is further required to publish notice of such an application under section 19(3)(b) of the CTTOCA.

193. Section 14 of the CTTOCA allows the Court to impose conditions relating to a section 12 directive and although not specified or restricted, this authority would allow the Court to take into consideration matters relating to necessary basic expenses, payment of fees, service charges and extraordinary expenses in accordance with UNSR 1452. Once again, the fact that no regulations have been issued under section 4 giving effect to UNSCR 1267, weakens the application of this provision to the UNSC designated entities.

194. In respect of the ATRO No.9, although again not specified, the RBV is not prevented from considering such matters in terms of Regulation 2(5) which allows a bank to remit funds if approved in writing by the RBV.

195. Regulation 7 of the *Suppression of Terrorism and Afghanistan Measures Order No. 17 of 2003* authorises the Minister of Finance by notice in writing to "permit any one or more activities or transactions or classes of activities or transactions" that would otherwise be prohibited under the Regulations. Such an authorisation may be subject to terms and conditions; and may be amended, revoked or revoked and replaced.

196. The legal provisions referred to above provide a mechanism by which access to funds or other assets could be made for humanitarian needs or purposes, but given that these are yet to be implemented it is difficult to conclude that these are "appropriate procedures" for authorising access to funds or other assets that were frozen (UNSR 1267) and that have been determined to be necessary for basic expenses, payment of fees, expenses and service charges or for extraordinary expenses (UNSR 1452).

197. As the offences under the CTTOCA and the *Suppression of Terrorism and Measures against Afghanistan Order 2003* are within the definition of "serious offence" as that term is defined in section 2 of the POCA, the criteria under 3.1-3.4 and 3.6 would apply in relation to freezing, seizing and confiscation of terrorist-related funds or other assets in contexts other than those described in Criteria III.1 – III.10.

198. In addition to the protection provided to bona fide third parties under the POCA, sections 16 and 17 allow for third parties to apply for relief in respect of any property directed by the court under section 12 of the CTTOCA to be placed in the custody and control of the Administrator. The court can refuse such an application if it is satisfied that the person was knowingly involved in the carrying out of any terrorist acts or if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the person did not acquire the interest in good faith and for value, without knowing or having reason to believe the property was at the time of acquisition, property subject to a section 12 directive. Section 23 of the CTTOCA also provides protection for third parties in relation to any property forfeited under section 19, whereby the Court can make an order declaring the nature, extend and value of the person's interest if the Court is satisfied that the person has an interest in the property, has exercised reasonable care to ensure that the property is not terrorist property and that person is not a member of a specified entity.

199. Vanuatu does not yet have appropriate measures to effectively monitor the compliance with relevant legislation, rules or regulations governing the obligations under

SR III and to impose civil, administrative or criminal sanctions for failure to comply with such legislation, rules or regulations. In respect of civil or administrative sanctions, the RBV does have the authority to revoke licenses under section 17 of the FIA if the license-holder fails to comply with the provisions of the Act.

200. Although the legislation addresses some of the measures set out in the Best Practices Paper for SR III, these have not yet been implemented. Procedures to authorise access to funds or other assets that were frozen pursuant to SR1373 and that have been determined to be necessary for basic expenses, payment of fees, expenses and service charges, have not been implemented.

**Recommendation 32**

201. Vanuatu has no statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT as it has not yet investigated, made applications for or prosecuted any ML or FT cases. It has not yet made any applications to freeze property or funds.

**Conclusions**

202. Vanuatu's legislation for freezing funds used for terrorist financing is adequately covered by the CTTOCA, POCA, *Suppression of Terrorism and Afghanistan Measures Order No. 17 of 2003*, the ATRO No.9 and the *FTRA Amendment Act 2005*. However, as recommended earlier, there needs to be a review of the legislation to ensure that there is no duplication or overlap of responsibilities or powers. Given the CTTOCA is the latest legislation in time, statutory interpretation laws would generally provide that where there is any conflict with earlier legislation, the CTTOCA would override the earlier legislation but it would simplify matters a great deal if legislation that is no longer required, is repealed or revoked.

203. There are no regulations made under section 4 of the CTTOCA prescribing "specified entities". It could be argued therefore that the provisions of the CTTOCA do not apply to the terrorist entities identified in UNSCR 1267 (Taliban, Al Qaeda, Osama bin Laden). It should also be noted that this has a domino effect on other CFT provisions contained or inserted in the POCA and FTRA as a result of the CTTOCA. A clear example is section 5A of the CTTOCA, which provides that if a "prescribed entity" conducts or seeks to conduct a transaction, this is deemed to be a suspicious transaction. The definition of "prescribed entity" is "a specified entity within the [CTTOCA]".

2.4.2 RECOMMENDATIONS AND COMMENTS

204. It is recommended that the authorities:

- review the CTTOCA, POCA, *Suppression of Terrorism and Afghanistan Measures Order No. 17 of 2003*, the ATRO No.9 and the *FTRA Amendment Act 2005* to ensure that there is no duplication or overlap of responsibilities or powers.
- coordinate and provide a clear delineation of responsibilities among the Government agencies responsible for administering the legislation.
- Familiarise Government agencies with the legislation and how it links together. In this regard, the Vanuatu authorities are referred to the recommendations made under SR II.

205. It is also recommended that:

- The Minister responsible for Justice make regulations under section 4 of the CTTOCA giving effect to the UNSCRs;

- In terms of de-listing persons or entities, the authorities should give consideration to how this is to be done and amend the CTTOCA by setting out a process under which a person or entity can apply or be considered for de-listing;

- If the Vanuatu authorities decide to retain the *Suppression of Terrorism and Afghanistan Measures Order*, that Vanuatu amend the Schedule to ensure that clause 9 applies in respect of Osama bin Laden i.e. that the "whistleblower" protection provided under this clause is available in respect of this entity;

- In terms of the *United Nations Act No.1 of 2002*, under which the *Suppression of Terrorism and Afghanistan Measures Order* was made, that the Vanuatu authorities clearly identify who is responsible for administering this Act;

- In terms of identifying, preparing and distributing lists of specified entities as designated under the UNSCR, the Vanuatu authorities including the Ministry of Foreign Affairs, improve interagency coordination and communication in order to determine who is responsible for preparing the Orders or Regulations to be made under section 4 of the CTTOCA and/or the *United Nations Act No.1 of 2002*: and distributing such lists to the relevant government agencies and financial institutions;

- The RBV and other regulators of legal persons should ensure that a standard and fundamental condition of the licences includes compliance with the AML/CFT legislation in respect of civil or administrative sanctions or penalties;

- Vanuatu review its legislation under which legal persons are licensed or regulated, in terms of identifying what additional civil or administrative penalties can be imposed, for example, de-registration or the revocation of licences.

### 2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.III** | **Partially Compliant** | • **Given that Vanuatu has not frozen any terrorist funds under any of the legislation available, the effectiveness of its procedures cannot be assessed including whether it has effective systems in place for communicating actions taken under the freezing mechanisms to the financial sector and whether it has effective procedures for considering de-listing requests and unfreezing funds or assets of de-listed persons;**<br>• **There is a lack of awareness of the CFT legislation among the relevant Government agencies;**<br>• **There is a lack of coordination and communication between the relevant Government agencies in terms of identifying terrorist or specified entities as designated in the UNSCRs and distributing such information;** |

| | | |
|---|---|---|
| | | • **There are no regulations under the CTTOCA designating terrorist or specified entities.** |

## 2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26, 30 & 32)

2.5.1 DESCRIPTION AND ANALYSIS

**Recommendation 26**

206. The Vanuatu Financial Intelligence Unit (VFIU) was established in 2000 by the *Financial Transaction Reporting Act 2000* (FTRA), which was substantially amended by the *Financial Transactions Reporting (Amendment) Act 2005*. The amendments, which came into effect on 24 February 2006, substantially increase the responsibilities of the VFIU. Other legislated responsibilities of the VFIU are established by the *Mutual Assistance in Criminal Matters Act*, the *Counter Terrorism and Transnational Organized Crime Act* and the *Proceeds of Crime Act*, all of which were also substantially amended at the same time as the FTRA.

207. The VFIU operates within the State Law Office, headed by the Attorney General, and serves as Vanuatu's national centre for receiving and requesting Suspicious Transaction Reports (STRs) and other relevant matters related to money laundering and terrorist financing. The legislated duties of the VFIU include:

a. Receiving reports on financial transactions involving terrorist property, cash transactions over VT 1 million (US$ 8,800), the electronic transfer into or out of Vanuatu of funds exceeding VT 1 million, and the seizure of cash for violation of the cross border currency reporting requirements.

b. Disseminating information related to the detection, investigation or prosecution of a person for money laundering offences, financing of terrorism offences or any other serious offence, to the appropriate authority.

c. Conducting examinations of financial institutions to ensure compliance with AML/CFT legislation.

d. Issuance of guidelines and training to financial institutions in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies.

e. The compiling of statistics and records related to ML/FT. Providing feedback to financial institutions and other relevant persons regarding outcomes relating to the reports or information given to the VFIU.

f. Conducting research into trends and developments in the area of AML/CFT including improved ways of detecting, preventing and deterring money laundering and the financing of terrorism.

208. The VFIU currently receives STRs by fax transmission or hand delivery. Once the STR is received by the VFIU, it is manually entered into a database provided to the VFIU by the Australian FIU, AUSTRAC under AUSTRAC's Pacific Islands' FIU Database Project (PFIUDP) which was completed in December 2005. STRs are analysed to determine what action is appropriate. If the VFIU determines that there are sufficient grounds to support the suspicion of ML or FT, the STR is forwarded to the TCU of the

Vanuatu Police Department for further investigation. The VFIU routinely provides feedback to financial institutions on STRs they have filed. In instances where a financial institution files an STR with the VFIU as a result of a customer's failure to produce sufficient proof of identity, that institution must not proceed with the transaction unless instructed to do so by the VFIU.

209. The Evaluation Team was informed confidentially of one recent occurrence where an STR was deemed to be not suspicious after an investigation by the VFIU, and the bank was advised to proceed with the transaction. The bank, on its own volition, obtained further evidence after undertaking its own investigations, which proved a suspicious element. This data was provided to the VFIU and the transaction funds were later frozen. This suggests the possibility that investigations by the VFIU can be compromised, which the Evaluation Team believes may be due to resource constraints. It should also be noted that the Vanuatu authorities dispute the facts as recounted to the Team.

210. The VFIU has provided guidelines to the banks (both domestic and off-shore) which cover reporting requirements and prescribe the manner of reporting, including STR forms. However, these guidelines relate to the FTRA prior to the amendments that came into force in February 2006. At the time of the on-site visit, the VFIU had not produced guidelines addressing the new amendments. This is a matter of some concern given that the amendments to the legislation contain many additional responsibilities for the VFIU as well as expanding the scope of coverage and obligations of the FTRA to include many institutions previously not covered by an AML/CFT regime. Representatives from the private sector met by the Evaluation Team were of the opinion that the guidelines provided by the VFIU technically covered the law (as it was prior to the introduction of the February 2006 amendments) but were of limited practical use in educating financial institution staff. Private sector representatives stated that the guidelines were clearly sourced from generalised templates that had not been adapted to suit Vanuatu's particular financial sector. Examples provided in the guidelines related to the provision of financial services not offered in Vanuatu and were therefore of little practical use.

211. The VFIU has not provided guidelines or training for insurance providers, money exchange and remittance services nor for DNFBPs, such as lawyers, accountants and trust and company service providers. The absence of new guidelines reflecting the recent legislative amendments, which bring many of these bodies under the FTRA, creates the potential for some Vanuatu businesses to be unwittingly operating outside the law since February 2006. This situation needs to be addressed as soon as possible.

212. Under section 13A(c) of the amended FTRA, the VFIU is entitled to receive information relating to its powers under the Act from an assisting entity, including the Vanuatu Police Force. There is no formal access by the VFIU to police records, although section 13C provides for the development of agreements between the VFIU and assisting entities for the exchange of any information relating to money laundering or terrorist financing. The Team was, however informed by the authorities that informal access is granted.

213. The VFIU is empowered, through the FTRA, to seek or receive additional information related to a STR filed by any financial institution. Under section 13 D of the FTRA, the VFIU has direct authority to examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance by the financial institution with AML/CFT legislation. In 2005 the VFIU conducted audits, pursuant to this power, of both domestic and off-shore banks in Vanuatu and provided each audited institution with written feedback regarding the state of the institution's

compliance. In addition, the VFIU can and often does accompany the RBV during the execution of RBV compliance audits.

214. If the VFIU feels that there are reasonable grounds to suspect that information it has received through reports or other means is relevant to the prosecution of a person or persons for ML/FT offences or the commission of a ML/FT offences or any other serious offence it has the authority, under the FTRA, to disclose that information to a law enforcement agency or supervisory body. Although instances are few, the VFIU has in the past provided STRs to the TCU of the Vanuatu Police Department.

215. The structure within which the VFIU operates does not appear to provide sufficient operational independence and autonomy. The VFIU is established within the State Law Office but it was not clear to the Evaluation Team that State Law Office has a clear understanding of AML/CFT legislation and relevant operational practice. Prior to amendments to AML/CFT legislation that came into effect on 24 February 2006, the VFIU was required to obtain permission from the Attorney General before disseminating reports to the police department for further investigation. Information provided to the ME Team indicates that there were no formal criteria by which the Attorney General determined whether the release of the information was appropriate. Although the approval of the Attorney General is no longer a requirement, the historical ability of the VFIU to adequately and expediently perform its duties is uncertain. There are also indications that the State Law Office does not give sufficient priority to Mutual Legal Assistance requests, evidenced when questioning staff about long delays with a number of MLA requests that were outstanding at the time of the on-site visit. As many of these requests involve financial crimes and investigations, the ability of the VFIU to adequately perform its current duties under the direction of the State Law Office is called into question.

216. Security procedures for information held by the VFIU are set forth in a series of written Standard Operating Procedures (SOP) that include such provisions such as password protection for computerised files, a clear desk policy, access to the VFIU facility by visitors, removal of data from VFIU premises. Although the policies set forth in the VFIU operating procedures are sound, it is noted that the Team were not required to sign in upon entry to the VFIU facility as required by policy. In fact, the VFIU readily admitted that it does not adhere to some of the SOP. Information held in computer data bases is secured through the use of a password-enabled log in process. Paper files maintained by the VFIU are kept in locked cabinets accessed only by VFIU staff. There are, however, no IT backup systems protecting these files as stipulated in VFIU policy. The building housing VFIU offices is within a government compound housing the offices of the Prime Minister, the State Law Office and other government components. Doors to the VFIU offices are locked at the close of business.

217. The VFIU has provided some information to the financial sector, law enforcement, and prosecutors regarding ML/FT trends and typologies through a training seminar conducted in 2005, a computer based training module available at the VFIU, and the issuance of guidelines to financial institutions. However, apart from one press release issued in 2005, the VFIU has never issued public reports regarding its activities, statistics, or typologies and trends.

218. The VFIU is a member of the Egmont Group, which requires members to adhere to a policy of information exchange between FIUs. The Standard Operating Procedure (SOP) of the VFIU states that one of the functions of the VFIU is to assist overseas FIUs and other agencies regarding analysis and or investigation of money laundering and related crimes. The SOP goes on to state that formal requests from or to foreign FIUs should follow the format set out in the Egmont Group “Best Practices for the Improvement of Exchange of Information between Financial Intelligence Units”. The VFIU also has a

policy allowing for informal exchange of information with foreign FIUs. The Evaluation Team was provided with several examples of the VFIU's ability to exchange information and work with other FIUs.

**Recommendation 30**

219. The VFIU currently consists of two staff. Funding for the VFIU is provided through the State Law Office budget. Currently the VFIU budget is VT 5 million ($USD 40,000) per year, augmented by contributions of VT 1 million ($USD 8,000) each from the VFSC and the RBV a financial contribution which ended in 2005. Information received by the Evaluation Team from the financial sector revealed a genuine concern by the industry about the VFIU's capacity to perform all of its functions. Although there is ample indication that the VFIU promptly acts upon STRs received by financial institutions, the depth of that response, apart from a program of cursory checks with other FIUs, is unclear.

220. The staffing, administrative structure, technical and financial resources of the VFIU are of particular concern in relation to its additional legislated responsibilities as a result of the amendments to the FTRA (described above), which greatly expanded the VFIU's responsibilities in Vanuatu's AML/CFT program. In particular, the legislation dramatically lowered the threshold triggering the mandatory filing of a Cash Transaction Report (CTR) with the VFIU. The Evaluation Team considers that the VFIU, as currently staffed and resourced, will be unable to effectively perform all its duties as required under the new legislation. It is also a concern to the Evaluation Team that the appointment of a Manager of the VFIU, was only appointed by the Prime Minister at the time of the ME on-site visit.

221. The VFIU staff consists of a financial analyst, currently the ranking official, who prior to joining the VFIU was a Vanuatu Police Officer of 20 years; and a Compliance Officer who has 3 years prior experience as the Compliance Officer of a Vanuatu bank. Both VFIU officials have received ML/FT training through previous employment, through the VFIU, and through seminars conducted by the IMF or the APG. The Team was informed subsequent to the on-site visit that the financial analyst had been promoted to the position of Manager of the FIU during the period of the on-site visit.

**Recommendation 32**

222. The VFIU keeps statistics on CTRs and STRs filed by financial institutions. These statistics include a breakdown of the type of institution filing the STR, the type of criminal activity associated with the STR, and referral of the STR. The following tables are examples of statistics provided to the evaluation team by the VFIU regarding STRs:

Table 1: Types of financial institution and number of STR submitted to VFIU since 2000.

| **Types of financial institution** | **2000/2001** | **2002** | **2003** | **2004** | **2005** |
|---|---|---|---|---|---|
| Private Sector Domestic Banks | 35 | 33 | 21 | 34 | 22 |
| Casinos and gaming | 73 | | | | |
| Money Remitters | | 1 | | | |
| Off-shore Banks | | | 2 | | 1 |
| Reserve Bank of Vanuatu | | | 1 | | |
| | **108** | **34** | **24** | **34** | **23** |

Table 2: STR analysed and disseminated in year 2000 to 2005

| Action taken | 2000/2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|
| STR analysed and disseminated to the Police for detail investigation (1) | 5 | 4 | | | 8 |
| STR analysed and disseminated to the other regulatory or law enforcement agencies for further action (2) | 71 | | | | |
| No further action required (3) | 2 | 2 | | | |
| Action unknown (4) | 23 | 28 | 24 | 33 | 15 |
| Overseas interest (5) | 7 | | | | |
| | 108 | 34 | 24 | 33 | 23 |

223. The VFIU keeps track of the investigations conducted by the Vanuatu Police Department initiated by the referral of STRs. However these investigations are few in number and have not resulted in the filing of criminal charges. The VFIU also manually notes the type of criminal activity associated with STRs however those findings are not reflected in the statistical charts provided. What is lacking in the VFIU is a measurement or analysis of the overall effectiveness of the systems employed by Vanuatu in combating money laundering and terrorist financing.

### 2.7.2 Recommendations and Comments

224. It is recommended that the authorities should ensure that:

- The VFIU issues as a matter of priority up-to-date AML/CFT guidelines to all applicable financial institutions and designated non-financial businesses and professions that are now covered by new amendments to the FTRA.
- The VFIU reviews its training programmes to ensure they are relevant to the market in Vanuatu as well as widening the scope and audience of the training to incorporate the new amendments.
- The VFIU strictly applies its own Standard Operating Procedures.
- The VFIU institutes a policy of regularly issuing public reports regarding its activities as well as details of ML/FT statistics and ML/FT typologies and trends.
- A Manager of the VFIU with strong qualifications, skills and experience in AML/CFT be appointed as soon as possible.
- Consideration is given to undertaking a review of the administrative structure under which the VFIU operates.
- A comprehensive study be undertaken to determine the necessary staffing, funding, and technical resources needed to comply with legislated responsibilities of the VFIU

### 2.5.3 Compliance with Recommendations 26, 30 & 32

| | Rating | Summary of factors relevant to s.2.5 underlying overall rating |
|---|---|---|
| **R.26** | **PC** | • Guidelines issued to financial institutions are out of date due to recent AML/CFT legislation. |

| | | |
|---|---|---|
| | | • No guidelines have been issued to or examinations conducted of non-traditional financial businesses.<br>• The VFIU has not issued public reports on its activities and ML/FT typologies and trends.<br>• There are substantial weaknesses in the administrative structure responsible for overseeing the VFIU.<br>• There is no evidence that the work of VFIU has resulted in the successful investigation, prosecution or conviction for money laundering or terrorist financing activities. |
| **R.30** | **NC** | • The staff of the VFIU appear to have adequate experience and training in AML/CFT but their capacity to apply this is not clear.<br>• The management structure under which the VFIU operates does not have adequate knowledge of AML/CFT legislation and its implementation to properly supervise the VFIU nor to ensure that the VFIU can adequately perform its duties<br>• The VFIU does not have the requisite number of staff or the financial and technical resources to effectively perform its duties, particularly in light of recent AML/CFT legislation that greatly expand the responsibilities of the VFIU |
| **R.32** | **PC** | • The VFIU keeps statistics on STR and CTR filings but does not provide an analysis of the overall effectiveness of AML/CFT systems in Vanuatu. |

## 2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27, 28, 30 & 32)

### 2.6.1 DESCRIPTION AND ANALYSIS

**Recommendation 27**

225. The Vanuatu Police Force is the primary agency responsible for ensuring the ML/FT offences are properly investigated in Vanuatu. Prosecution of money laundering and terrorist financing offences is the responsibility of the Public Prosecutions Office (PPO). The seizure of criminal proceeds is the responsibility of the State Law Office, headed by the Attorney General. Legislation regarding money laundering, terrorist financing and the government's ability to track and seize criminal proceeds is addressed in the *Proceeds of Crime Act*, the *Financial Transactions Reporting Act*, the *Counter Terrorism and Transnational Crime Act*, and the *Criminal Procedure Code*.

226. To combat money laundering and terrorist financing the Vanuatu Police Force established the Transnational Crime Unit (TCU) in 2001, which currently consists of 4 officers. The TCU is responsible for conducting investigations involving money laundering and terrorist financing offences, the identification and seizure of criminal proceeds, and conducting investigations in cooperation with foreign jurisdictions.

227. There is no evidence that special investigative techniques such as controlled deliveries or undercover operations have ever been used in Vanuatu. During the on-site visit, it became clear to the Evaluation Team that neither law enforcement nor prosecution authorities were familiar with such techniques nor were they even aware that legislation had been passed allowing the use of controlled deliveries in terrorist investigations.

228. There is no provision in Vanuatu law that allows law enforcement officers to postpone the arrest of persons involved in ML offences for the purpose of furthering an investigation. However; there is a provision in the *Counter Terrorism and Transnational Organized Crime Act*, effective 24 February 2006, that allows for the postponement of a seizure and the controlled delivery of property, which includes cash and monetary instruments, for the purpose of gathering evidence to identify persons involved in the criminal activity or to facilitate a prosecution. This provision applies only to offences set out in the *Counter Terrorism and Transnational Organized Crime Act* and does not apply to predicate offences for money laundering or money laundering offences.

**Recommendation 28**

229. Law enforcement officers in Vanuatu, including those assigned to the TCU have legislated powers, through judicial process, to compel the production of records, conduct searches of persons and premises, and seize and obtain all relevant records related to a money laundering or terrorist financing investigation or prosecution. Vanuatu law enforcement officials also have legislated authority to conduct investigations and compel the production of records to identify, trace, and seize proceeds of crime as well as take statements from witnesses and suspects for use in criminal proceedings regarding ML/FT and predicate offences.

**Recommendation 30**

230. The Vanuatu Police Force, through the TCU, conducts all investigations relating to ML/FT offences and the confiscation of criminal proceeds. The Criminal Investigations Division (CID) of the police department conducts investigations into ML predicate offences known as “serious offences”, which under Vanuatu law are defined as offences punishable by at least 12 months imprisonment. A Police Inspector heads the TCU which consists of four officers (including the team leader). The TCU team leader only reports to the Commissioner of Police.

231. For the last two years, the position of Commissioner of Police has been vacant pending legal action taken by the former Police Commissioner who was dismissed, and following the rejection by Government of a replacement candidate who was not Ni-Vanuatu. An Acting Commissioner has led the Vanuatu Police Force during this time.

232. The number of staff assigned to the TCU appears to be sufficient to effectively address the money laundering and terrorist financing threat in Vanuatu. However, although the police department has taken a positive step in Vanuatu’s AML/CFT program by establishing the TCU, the department has not made it mandatory for other units, such as the CID, to refer potential money laundering cases or cases involving a financial element to the TCU, potentially limiting the unit’s effectiveness. There are indications that the TCU is assigned other duties, at the discretion of senior police department management, that seriously lessen the unit’s ability to effectively perform its duties There are also indications that investigative steps taken in money laundering investigations by the TCU, such as the issuance of mutual legal assistance requests to other jurisdictions, can be unnecessarily delayed by police department bureaucracy.

233. In Vanuatu, prosecutions for ML/FT offences are the responsibility of the PPO while the State Law Office is responsible for confiscation and forfeiture of criminal proceeds. The PPO and the State Law Office are housed within separate ministries with differing missions and priorities. There has never been a money laundering or terrorist financing prosecution or criminal proceeds seizure in Vanuatu, apart from honouring mutual legal assistance requests from other jurisdictions, so assessing the government’s

ability to effectively implement AML/CFT legislation is difficult. However, the potential for conflicts that could negatively affect the government's ability to effectively identify, track, and seize criminal proceeds is obvious.

234. Recruitment for the police is undertaken by the Police Service Commission and other law enforcement entities that deal with AML/CFT in Vanuatu such as Immigration and Customs Officers is undertaken by the Public Services Commission, a central public service employment centre, which applies the same recruitment procedures for all public servants. There are no enhanced or specialised procedures for employing law enforcement officers. Background checks prior to employment by all agencies seem to be somewhat rudimentary. While there is a criminal history check for applicants, the background investigation goes no further, with no mandatory program to interview previous employers, neighbours, classmates or any other acquaintances. The hiring practices of the Customs Department are of some concern as the Public Service Commission, with very little input from Customs, is solely responsible for identifying suitable applicants. Both the Police and Customs Department have a uniform code of conduct, which address professional and integrity standards that their officers must abide by. While the Customs Departments code of conduct is quite comprehensive, the Police Department "code of ethics" consists of a short overview of expected employee behaviour contained in the Department's 2006 Business Plan. There is neither anti-corruption training nor any other on-going guidance in this regard.

235. Customs Officers lack skills and sufficient training with respect to AML/CFT issues. The Customs Department's role is limited to enforcement of the cross border currency reporting obligations, which was not being enforced at the time of the Evaluation Team's on site visit. The skill level of Police Department personnel involved in AML/CFT is basic. Examples of investigations undertaken by law enforcement officers provided to the Evaluation Team consisted of several situations where obvious potential ML charges were overlooked and there was a significant lack of technical skills to enable the identification and tracing criminal proceeds as a normal part of an investigation.

236. The TCU has investigated several STRs referred to it by the VFIU. A review of these matters by the Team indicated that the investigations were confined to cursory financial record checks. The Evaluation Team found no evidence that in-depth investigations involving suspect and witness interviews and other techniques were being conducted. There appears to be a lack of proactive efforts by law enforcement to uncover ML offences.

237. Police Officers in Vanuatu, including TCU Officers, are required to attend a basic training academy where they receive instruction on standard police procedures and basic investigative techniques for serious offences. One member of the TCU has received specialized ML training and a member of the Criminal Investigations Division recently received training regarding proceeds of crime. In addition TCU members have attended an AML/CFT seminar conducted by the VFIU in August 2005. Customs Officers, apart from one officer who completed a computer based money laundering training module provided by the VFIU, receive no formal training in ML/FT or any other aspect of the duties they perform.

**Recommendation 32**

238. There have been no ML or FT prosecutions in Vanuatu; therefore no statistics on the subject are available. There are no records of any investigations. Vanuatu, through the VFIU, does keep statistics on matters relevant to money laundering and terrorist financing, such as suspicious transaction and cash transaction reports. Vanuatu also keeps statistics on money laundering predicate offences. There is no evidence that

Vanuatu authorities involved in AML/CFT keep statistics regarding international wire transfers or the physical movement of funds into or out of the country.

### 2.6.2 RECOMMENDATIONS AND COMMENTS

239. It is recommended that the authorities:

- Enact legislative provisions enabling enforcement officers to postpone arrest, conduct controlled deliveries, and use other specialised techniques in money laundering and terrorist financing investigations.
- Improve the criteria and selection process for selecting law enforcement officers, especially for the TCU, including developing specialised and centralised recruitment specifically designed for law enforcement officers.
- Improve the resourcing, specialised training and operational independence of the TCU.
- Ensure adequate training for law enforcement officers on the role of the TCU and mandate the referral of appropriate case to the TCU for investigation.
- Establish more stringent background checks of prospective law enforcement officers.
- Develop a comprehensive code of conduct for police officers including a component on ethics and anti-corruption.
- Develop dedicated training coupled with policy guidelines for conducting proactive money laundering and terrorist financing investigations.

### 2.6.3 COMPLIANCE WITH RECOMMENDATION 27, 28, 30 & 32

| | Rating | Summary of factors relevant to s.2.6 underlying overall rating |
|---|---|---|
| **R.27** | **Non compliant** | • The authority to postpone arrest, conduct controlled deliveries, and use other specialised techniques in ML/FT investigations limited to legislation addressing terrorist financing only<br>• There is a lack of awareness by law enforcement and prosecution authorities of the value or authority to use specialised investigation techniques in FT investigations |
| **R.28** | **Partially Compliant** | • There is a lack of effective implementation of broad authorities to compel the production of records, conduct searches and make seizures in money laundering and terrorist financing investigations |
| **R.30** | **Non Compliant** | • Conflicting assignments of duty for the TCU limit effectiveness of its AML/CFT mission<br>• There is a lack of ML/FT training for Customs officers<br>• Inability or unwillingness of police and prosecution authorities to identify ML offences and criminal proceeds<br>• Limited background checks of prospective law enforcement officers<br>• Inefficient system for prosecuting ML/FT offences and seizing criminal proceeds |
| **R.32** | **Partially** | • Statistics are kept regarding money laundering predicate |

| | | |
|---|---|---|
| | **Compliant** | offences however there are no statistics kept on international movement of funds |

## 2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)

### 2.7.1 DESCRIPTION AND ANALYSIS

240. The POCA, enacted in 2002, allows "authorised officers" to seize or detain currency in the amount of VT 1 million ($USD 8,000) or greater being brought into or taken out of Vanuatu if there are reasonable grounds to suspect that the currency is derived from a serious offence or is intended for use in the commission of a serious offence. There was no provision in the law prior to the amendments in this Act that required the reporting of currency or negotiable bearer instruments transported into or out of Vanuatu. The 2006 amendments to the POCA require persons entering or leaving the country to report to the Department of Customs the transport of over VT 1 million prior to their arrival or departure. There is, however, no system in place to enforce the legislation and no reporting form.

241. Although Customs, Immigration, and Airports Vanuatu Ltd are cited by Vanuatu authorities as the responsible entities for the implementation of the cross border reporting legislation, none of those organisations claimed to play a role in the control of cross border currency movement. Customs and Immigration authorities were unable to provide any examples of currency seizures occurring at the border since the enactment of the legislation in 2002. In fact, the Customs Department was not aware that the currency reporting legislation had been enacted. Additionally, the new amendments to the POCA grants power for an "authorised officer" to conduct searches for and make seizures of currency being transported across the border in violation of the reporting requirement. The Act defines an "authorised officer" as the Commissioner of Police; or a police officer authorised by the Commissioner of Police for a provision of the Act; or a person authorised by the Prime Minister for a provision of the Act. At the time of the on-site visit, no Customs officers or other law enforcement officers had been designated as an "authorised officer".

242. Following the amendments to the POCA, Vanuatu law now calls for the declaration to Customs of over VT 1 million ($USD 8,300) in cash or negotiable bearer instruments prior to entering or departing the country. Failure to make such declaration carries a penalty of VT1 million or a prison term of 2 years or both. Implementation of this legislation has not been addressed. Customs and Immigration personnel have received no instructions from their departments to make routine inquiries of travellers regarding the transport of cash or bearer instruments upon their arrival or departure from the country. In addition, no currency reporting form has been issued despite the legislation being in effect.

243. Section 70 of the *Customs Act* authorises Customs Officers to stop and questions persons arriving in or departing from Vanuatu. In addition, Police Officers, which include Immigration Officers, have the power to questions individuals and to take statements. These provisions would allow officials to make inquiries of a courier as to the origin of and intended use of currency or negotiable instruments. There is however no indication that such questioning is or has ever been employed in Vanuatu with respect to the enforcement of cross border currency reporting legislation.

244. Under section 79B of the POCA, currency or negotiable instruments may be detained, but not for more than 24 hours unless application is made to the court, by an "authorised officer" for the continued detention of the currency or negotiable instruments. The court may grant continued detention, for an initial period of 3 months and a maximum

period of 2 years, if there are reasonable grounds for the suspicion that the cross border reporting requirement has been violated and/or an investigation is conducted to determine the origin or derivation, to include ML/TF offences, of the currency, or the currency is to be held for criminal proceedings against the violator(s). The legislation also forbids the release of the currency or negotiable instruments where an application has been made for a confiscation order, or a restraining order pending a determination of its liability to confiscation, or the registration of a foreign confiscation or restraining order. Such confiscation would be subject rules set forth in the POCA regarding the confiscation of proceeds of crime and terrorist property which also provides for the release of detained property to bona fide innocent third parties.

245. Vanuatu has clear legislative provisions to hold currency or negotiable instruments as well as to obtain the identification details of the bearer. The ability of Vanuatu's law enforcement officers to actually implement this legislation is, however, questionable. As previously mentioned there is no program to enforce cross border currency reporting legislation and no law enforcement officials have been designated as an "authorised officer" to do so. There is no policy in place for the seizure/detention of currency or for the safeguarding of the identification data of the bearers of currency that has been illegally transported into or out of Vanuatu or currency detected at the border that is suspected to be linked to ML/FT or the proceeds of crime.

246. Coordination between Customs, Immigration, and other related authorities in Vanuatu regarding the implementation of SR IX is non-existent. Whereas the Immigration Department seems to be aware that legislation requiring the reporting of currency or negotiable instruments over VT 1 million exists, they defer to Customs for the enforcement of the legislation. Customs, for their part, at the time of the ME onsite visit did not know that the legislation was in place. Neither agency has provided training or instruction to their officers regarding identifying cash couriers or procedures to be followed in the event of a cash seizure. The net result is that the agencies logically involved in controlling cross border currency movement have not implemented a policy, formally or informally, to coordinate their efforts in this area.

247. The POCA requires that currency seizures for violations of the reporting requirement must be reported to the VFIU. However, there is no process in place for the sharing of information related to cross border currency movement in the absence of a seizure, such as the filing of a cross border currency movement declaration, with the VFIU. Dialogue between the VFIU and the agencies involved in border security regarding the implementation of SR IX have begun and all parties are confident that a comprehensive policy for the implementation of SR IX will be arrived at in the near future.

248. Vanuatu has a programme to respond to mutual legal assistance requests from other jurisdictions. The programme appears to be somewhat haphazardly implemented as the on-site visit revealed evidence that there is confusion regarding the steps to be taken upon receipt of a mutual legal assistance request and an admission by the State Law Office that mutual legal assistance requests were not a "priority". This, combined with a lack of an implementation program regarding cross border currency reporting legislation, makes it impossible to assess Vanuatu's willingness or ability to implement bilateral Customs to Customs information exchanges on cross border currency transportation reports and seizures. What is apparent is there are no such agreements currently in place in Vanuatu. Vanuatu however does have a policy of sharing, through the VFIU, information related to ML/TF offences, including cross border currency movements.

249. The POCA refers to Directors, Servants, or Agents of a body corporate acting in violation of the Act. The Act does not set out additional civil penalties, for a body

corporate. The RBV and the Department of Customs are the supervisory authority for financial institutions and other businesses in Vanuatu and have the authority to apply sanctions such as removing board members or revoking a license of a financial institution or business that fails to meet fit and proper standards which would include the violation of Vanuatu law.

250. The *Counter Terrorism and Transnational Crime Act (2005)* makes it a crime in Vanuatu to collect, possess, or conduct any transaction in regards to terrorist property, which includes cash or negotiable instruments. The *Proceeds of Crime Act* makes it a crime to possess or bring into Vanuatu proceeds of crime. Both of these offences would apply to persons carrying out physical cross border transportation of currency or bearer negotiable instruments related to terrorist financing or money laundering contrary to Vanuatu's cross border currency reporting requirement and both of the Acts include language that address the commission of the crime by bodies corporate.

251. In regards to freezing or confiscating funds related to cross border currency reporting violations that are related to terrorist financing in accordance with SR III, the evaluation team found that Vanuatu procedures for complying with the freezing of funds of persons designated by the United Nations under S/RES/1267 and S/RES/1373 were unclear. Although legislation has been passed in Vanuatu to implement the freezing and confiscation of such funds, the evaluation team was unable to determine which agency was responsible for implementation of the legislation and in fact received conflicting information regarding procedures to be followed. This calls into question Vanuatu's ability to effectively implement the legislation.

252. Vanuatu is a member of the Oceania Customs Organization (OCO) and as such has agreed to a practice of cooperation and partnership with other OCO stakeholders.

253. Vanuatu has also demonstrated a policy of information sharing regarding financial investigations with other jurisdictions and it is assumed that the policy would include information regarding the suspicious movement of precious metals and stones. There are however no examples of information sharing regarding suspicious movement of precious metals and stones to measure Vanuatu's willingness and ability to share such information.

254. Vanuatu does not yet have a system to track cross border currency movement or to implement cross border currency legislation and therefore does not keep any statistics regarding those matters. The VFIU does have system for keeping Suspicious Transaction and Cash Transaction reports in a safeguarded computer database however Vanuatu has not established if cross border currency transaction reports will be maintained by the VFIU or another authority. Currency seizures occurring at the border are, according to Vanuatu law, to be reported to the VFIU. The system to be used by the VFIU to capture that information has not yet been established.

### 2.7.2 RECOMMENDATIONS AND COMMENTS

255. It is recommended that the authorities in Vanuatu:

- Produce and distribute declaration forms for the transportation into or out of Vanuatu VT 1 million or greater in cash or bearer negotiable instruments.
- Establish a protocol for the collection and analysis of cross border currency declaration forms.
- Establish a protocol for the sharing of data related to cross border currency movement with the VFIU.

- Establish a protocol identifying each applicable law enforcement agencies role in the enforcement of the cross border currency reporting requirement.
- Establish bilateral agreements with the Customs departments of other jurisdictions regarding, at a minimum, the sharing of information regarding cross border currency movement.
- Ensure the official designation of “authorised officers” as defined in the *Proceeds of Crime Act*.
- Establish a standard operating procedure to be followed in the event of a currency seizure.

2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATIONS IX

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.IX** | Non Compliant | • The agency primarily responsible for enforcement of cross border reporting requirement, Customs, unaware of responsibilities under the governing legislation.<br>• There is no policy for the implementation of cross border currency reporting legislation.<br>• There is no mechanism in place to notify travellers of cash reporting requirements.<br>• There is no reporting mechanism in place.<br>• There is no system for tracking cross border currency movement.<br>• Administrative measures required by law to implement cross border currency reporting legislation, such as the delegation of "authorised officers", have not been undertaken. |

# 3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

## ***Customer Due Diligence & Record Keeping***

### 3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

256. The Vanuatu authorities have not undertaken an AML/CFT risk assessment of the financial sector. While there are currently gaps in the application of AML/CFT requirements across the different parts of the sector, the authorities have not sought to implement a regime that consciously excludes particular types of business from the minimum requirements on the basis of a risk assessment.

### 3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

**Recommendation 5**

257. Section 2 of the *Financial Transactions Reporting (Amendment) Act No.28 of 2005* (FTRA) lists the financial institutions that are subject to the Act, including the requirement to adequately identify and verify their customers. These institutions includes:

a. domestic banks licensed under the *Financial Institutions Act No.2 of 1999* (FIA);
b. international banks licensed under the *International Banking Act No.4 of 2002* (IBA);
c. credit unions registered under the *Credit Union Act No.14 of 1999*;
d. cooperative societies registered under the *Cooperative Societies Act* [CAP152];
e. insurance companies and money changing/remittance service providers.

258. The amended FTRA also defines financial institutions to include casinos licensed under the *Casino Control Act No.6 of 1993*, lawyers, notaries, accountants and trust and company service providers. This definition accords with the definition provided by FATF of designated non-financial business and other professions (DNFBPs). The scope of the legislation is so wide that even car dealers and certain financial services that currently do not exist in Vanuatu (and are unlikely to in the future) are covered by the legislation.

259. The financial institutions listed under Section 2 of the FTRA must identify and verify the identity of a person if the person:

a. opens an account with the financial institution or
b. engages the services of the financial institution or enters into a business relationship with the financial institution.

260. A financial institution must also identify and verify the identity of a person if the person conducts or attempts to conduct a transaction through or by using a financial institution (Section 10).

261. In addition to the above circumstances, the amended FTRA also provides for additional specific occasions where a financial institution must perform these verification procedures, including those cases in which a financial institution carries out an electronic funds transfer for the customer, suspects that the customer is involved in a money laundering offence or a financing of terrorism offence, or has doubts about the veracity or adequacy of the customer identification and verification documentation it had previously obtained (Section 10A).

262. Financial institutions are exempted from undertaking customer identification/verification obligations in certain cases (Section 10B). This exception applies to situations where:

a. a financial institution conducts a transaction with another financial institution that is subject to prudential regulation by the RBV or the Vanuatu FSC;
b. the customer transaction is part of an established business relationship with a person and the person has already produced satisfactory evidence of identity, unless the financial institution suspects the transaction is suspicious or unusual; or
c. the transaction is an occasional transaction not exceeding VT 1 million ($USD 8,000) or such other amount as is prescribed, other than an electronic funds transfer unless the financial institution suspects the transaction is suspicious or unusual.

263. The FTRA proscribes both a financial institution and a person who intends to establish a business relationship with the financial institution from opening or holding any accounts in a false, fictitious or incorrect name. Section 10H provides that a financial institution must maintain an account in the true name of the account holder, and that a

financial institution must not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name, while Section 16 prescribes that a person must not open or operate an account with a financial institution in a false, fictitious or incorrect name.

264. Section 10C of the amended FTRA provides for the specific information that must be obtained when identifying and verifying a customer. If the customer is an individual, such information must include the customer's name, address and occupation as well as his or her national identity card or passport or other applicable official identifying document. If the customer is a legal entity, such information must disclose:

a. the customer's name, legal form, address and its directors;
b. the principal owners and beneficiaries and control structure;
c. provisions regulating the power to bind the entity; and
d. the authorization of any person purporting to act on behalf of the customer.

265. Section 10F of the FTRA provides for the issuance of regulations which define what are acceptable official or other identifying documents for identifying a customer and what are acceptable reliable and independent source documents, data or information or other evidence to verify the identity of the customer. At the time of the on-site visit, these regulations had not been issued.

266. The RBV Prudential Guideline No.9 (Customer Due Diligence), on the other hand, which is issued under the FIA and the IBA, suggests that banks verify the customer's identity against original documents of identity issued by an official authority. For trust accounts, corporate and other business customers, it also suggests that banks obtain evidence of their legal status. Examples of such documents or evidence include: a) identity cards, passports and photo driver's license; b) incorporation document, partnership agreement, association documents or a business license; and c) details of the nature of the trust or other arrangements in place.

267. Representatives from the local banks in Vanuatu advised that there were difficulties with obtaining the required identifying documentation from many of the ni-Vanuatu customers who do not have passports or traditional means of verifying their identity. As a result, local banks have introduced their own alternative identification procedures to discharge this legal requirement, which include a requirement for local customers to obtain references from certain sources including local island chiefs. Banks that are branches of overseas banks (both from Australia) also apply their head office regulations, which are more detailed and practical than the RBV guidelines.

268. With regard to identifying and verifying the beneficial owner, the FTRA stipulates that if a person conducts or attempts to conduct a transaction through or by using a financial institution, and if the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then the financial institution must identify and verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

269. The FTRA also imposes duties on financial institutions to obtain information on the purpose and intended nature of a business relationship when opening an account with any customer (Section 10C).

270. The amended FTRA also introduces the requirement for financial institutions to continually monitor the relationship with their customers and to conduct scrutiny of any transaction undertaken by them to ensure that the transaction being conducted is

consistent with the financial institution's knowledge of the customers, their business and risk profile, including where necessary, the source of funds (Section 9D).

271. The FTRA has no specific provisions about measures to allow financial institutions to vary their intensity of due diligence according to the different risk categories of customer, business relationship or transaction. Financial institutions are not required to enhance the level of due diligence for any higher risk circumstances; neither do they have any right of choice to apply reduced or simplified measures where there are low risks. Financial institutions are not permitted to determine the extent of the CDD measures on a risk sensitive basis.

272. The FTRA has no specific provisions as to when the verification procedure must be completed when an account is opened. The amended FTRA is not clear about whether financial institutions are required to complete verifying the customer identification before or during the course of establishing a business relationship or allowed to do so after the business relationship has been established. In case of conducting transactions for occasional customers, the legal requirements on timing of verification are also opaque. The amended FTRA authorises the Minister for Justice to introduce regulations on the timing of the identification and verification requirements of any particular customer or class of customers (Section 10F); however, at the time of the on-site visit, no such regulations had been issued.

273. If a financial institution has failed to complete the required CDD measures for a person who intended to open the account, commence business relations or perform the transaction, the financial institution must prepare a suspicious transaction report of any transaction attempted to be conducted by the person and submit this to the Financial Intelligence Unit (VFIU) as if the transaction were a suspicious transaction; and the financial institution must not proceed any further with the transaction unless directed to do so by the VFIU (Section 10G).

274. However, where a financial institution has already commenced the business relationship under certain circumstances and it is unable to complete the required CDD measures within a reasonable period of time afterwards, there are no specific legal provisions under the FTRA that require the financial institution to terminate the business relationship and to consider making a suspicious transaction report. This concern has been addressed in the RBV Prudential Guideline No.9 (Customer Due Diligence), which states that where an account has already been opened but problems of verification arise in the banking relationship that cannot be resolved, banks should close the account and return the monies to the source from which they were received.

275. The FTRA does not provide specific legal obligations for financial institutions to apply CDD requirements to existing customers who had established a business relationship prior to the FTRA coming into force on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times. Neither are there any specific legal provisions that require financial institutions to perform the required CDD measures retroactively as regards those existing customers who had already held anonymous accounts or accounts in fictitious names before the FTRA was brought into force.

276. The legal reporting obligations introduced by the amended FTRA will enhance Vanuatu's efforts to improve compliance with many of the international AML/CFT standards. However, because the amendments to the FTRA were publicly gazetted and came into force just a few days before the Evaluation Team commenced the on-site visit, it was not possible to judge how effective the new legislation would be implemented in Vanuatu. Judging from the lack of preparation and the absence of any guidelines for key

stakeholders, the implementation of the legislation would be problematic, especially given the resource constraints faced by Vanuatu.

277. During the on-site visit, the Evaluation Team had several meetings with officials from local and overseas banks, who indicated that they had not been aware of the fact that the amended FTRA was now in place nor that they had additional responsibilities and obligations under the amended legislation. Concern was raised that they might have already contravened the new rules or engaged in operations that could be subject to penalties under the amended FTRA. Despite this, the Evaluation Team was assured that the banks had always met (and exceeded) their legal obligations and that the new requirements would not pose any difficulties.

278. These bankers' comments reflected the fact that they had already adopted measures set out under the RBV Prudential Guideline No.9 (Customer Due Diligence). However, this guideline has been issued only pursuant to the FIA and the IBA. According to the amended FTRA, it is not the RBV or any other relevant supervisory bodies but the VFIU that is the designated authority to issue guidelines to financial institutions (as covered by the amended FTRA) in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies (Section 13B). The Prudential Guideline is based mainly with the Basel Committee recommendations and is primarily focussed on protecting the interest of the depositors or the respective financial institutions.

279. In addition to guidelines yet to be issued by the VFIU, regulations prescribed under Section 10 F have not been even drafted at the time of the on-site visit (see previous discussion). Without the issuance of guidance from the Government, it will be difficult for financial institutions to ensure their business practices are conforming to the new legislative requirements.

280. The means of identification and verification are crucial and fundamental factors to determine the adequacy of financial institutions' compliance with most of the basic requirements imposed under the FTRA. In particular non-bank financial institutions and non-financial businesses and professions are not aware of the new legal requirements. Providing training programs for financial institutions in relation to customer identification, record keeping, reporting obligations and the identification of suspicious transactions is another function of the VFIU (Section 13B). The VFIU has not addressed these issues yet.

281. Prescribing implementing regulations, issuing relevant guidelines and providing adequate training are closely interrelated to one another, and could achieve the maximum benefits only when all these efforts are well coordinated and systematically organised. The VFIU has not initiated extensive outreach projects in cooperation with the RBV, the FSC and other pertinent authorities. These financial regulators and the VFIU would have to meet on a regular basis to discuss the state of compliance in each industry. Based on the input from the financial regulators, the VFIU, as the single AML/CFT supervisor under the FTRA, would be able to initiate its own on-site examination to ensure general compliance by financial institutions on an ongoing basis.

282. The existing RBV guidelines have neither been reviewed nor updated in accordance with the amended FTRA. The RBV has neither reviewed the current on-site inspection manual on customer due diligence nor revised it to reflect the new legislative requirements in order to ensure consistency with the new legal obligations. The Evaluation Team noted, however, that the RBV supervision department staff was aware of the need to do this.

283. Under the previous FTRA, non-bank financial institutions and non-financial businesses and professions did not have sufficient and effective supervision and monitoring by their respective regulators or the VFIU with respect to their compliance with the AML/CFT requirements. Under the amended FTRA, the VFIU has not yet established adequate supervisory processes such as on-site and off-site examinations for those financial institutions not subject to prudential supervision by financial regulators. Similarly, there are no guidelines issued to assist all financial institutions in performing their CDD programs under the new amendments.

284. There is a need for the VFIU to organise regular meetings with the representatives of each industry defined as a financial institution to increase awareness of their obligations to comply with customer identification and verification requirements and any other due diligence measures under the amended FTRA, and to prepare them for their new reporting obligations.

**Recommendation 6**

285. Under Section 10C of the amended FTRA, financial institutions are required to have risk management systems capable of determining whether a customer is a politically-exposed person, and where the customer is determined to be such a person, the financial institutions must:

a. take reasonable measures to establish the source of wealth and funds;
b. obtain the approval of senior management before establishing a business relationship with the customer; and
c. conduct regular and on-going enhanced monitoring of the business relationship.

286. The amended FTRA also defines a politically exposed person (PEPs) as an individual who is or has been entrusted with prominent public functions in a foreign country, for example Heads of State, or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important officials of a political party (Section 10C).

287. Prior to the introduction of the amendments to the FTRA, the issue of PEPs was only addressed in the RBV Prudential Guideline No.9 (Customer Due Diligence), which cautions banks against significant reputational and/or legal risks that may come from the business relationships with individuals holding important public positions and with persons or companies clearly related to them. The new legal requirements introduced by the amendments to the FTRA reflect the RBV's guideline. The Evaluation Team notes that some banks have documented procedure for dealing with potential PEPs and rely on the World-Check database to identify PEPs.

**Recommendation 7**

288. The FTRA, as amended, requires under Section 10D that when providing cross border correspondent banking service, financial institutions must:

a. adequately identify and verify the respondent person with whom it conducts such a business relationship;
b. gather sufficient information about the nature of the respondent's business;
c. determine from publicly available information the reputation of the respondent and the quality of supervision the respondent is subject to;
d. assess the respondent's anti-money laundering and terrorist financing controls;

e. obtain approval from senior management before establishing a new correspondent relationship; and
f. document the responsibilities of the financial institution and the respondent.

289. Under Section 10D of the amended FTRA, there are also specific requirements that financial institutions must follow to provide payable-through accounts to a respondent person. If a financial institution allows the person with whom it carries out cross border correspondent banking relationship to establish accounts in the financial institution for use by that person's customers, the financial institution must be satisfied that that person:

a. has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and
b. will be able to provide to the financial institution customer identification data of the customers upon request.

290. In addition to these new legal requirements, the RBV guideline advises banks to pay particular attention when continuing correspondent relationships with respondent banks located in those jurisdictions which have poor KYC standards or have been identified as being "non-cooperative" in the fight against money laundering and terrorist financing. The guideline also prompts banks to establish such correspondent relationships only with those foreign banks which are effectively supervised by the relevant authorities.

**Recommendation 8**

291. There are no specific legal provisions under the FTRA that require financial institutions to have policies in place or take reasonable measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. Neither are there any legal requirements under the FTRA for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

292. With respect to banks, however, the Prudential Guideline No.9 (Customer Due Diligence) requires banks to proactively assess various risks posed by emerging technologies and design customer identification procedures with due regard to such risks. This guideline also suggests that banks should apply the same effective customer identification procedures and on-going monitoring standards for non-face-to-face customers as for those available for interview. In accepting business from non-face-to-face customers, banks must take specific and adequate measures to mitigate the intrinsic higher risks. These measures include requesting for certification of documents presented; requisition of additional documents to complement those which are required for face-to-face customers; independent contact with the customer by the bank; seeking verification of the source of funds for the initial deposit, including sighting documentary evidence confirming the source of the funds.

3.2.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 5**

293. It is recommended that:

- The VFIU initiate extensive outreach for financial institutions as defined under the amended FTRA regarding new legal requirements concerning CDD under

the amendments in cooperation with RBV, the VFSC and other pertinent authorities as soon as possible in order to alert them to their new obligations and provide training;

- Regulations under the amended FTRA be urgently drafted and issued as soon as possible, particularly those relating to acceptable means for identifying and verifying the identity of customers;

- The VFIU issue guidelines to all financial institutions and DNFBPs as soon as possible in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and AML/CFT typologies, and provide training to them regarding the new guidelines as soon as possible;

- The VFIU and the RBV liaise to ensure that there is consistency between guidelines issued by both agencies.

- The RBV review and update the existing Prudential Guideline No.9 (Customer Due Diligence) to ensure consistency with the amended FTRA, and revise the current onsite inspection manual; and,

- The VFIU establish adequate supervisory processes such as on-site and off-site examinations particularly for those financial institutions not subject to prudential supervision by financial regulators, and have a meeting on a regular basis regarding the state of compliance in each industry.

**Recommendation 6**

294. It is recommended that:

- In line with the new legislative requirements on PEPs under the new FTRA, the VFIU, in consultation with the relevant supervisory bodies, provide non-bank entities with detailed and specific guidelines to help them develop internal policies and procedures so that they could remain particularly alert when dealing with PEPs and high profile individuals or with persons and companies that are clearly related to them; and,

- The RBV review the current prudential guideline particularly from the viewpoint of ensuring its consistency with specific languages and texts under the amended FTRA, and if necessary it should consider revising it in a way to provide more detailed guidance and suggestions to banks to help them keep strengthening risk management policies and procedures with regard to PEPs.

**Recommendation 7**

295. It is recommended that:

- As regards businesses similar to cross border correspondent banking, non-bank financial institutions and non-financial businesses and professions be fully aware of the new legal requirement on this issue, and start developing more detailed knowledge of their customers who may provide similar services to correspondent banking, particularly on the customers' management, major business activities, where they are located, their money laundering prevention

and detection efforts, and the purpose of their account or specific transactions; and,

- To support these efforts, the VFIU consider issuing detailed sector-specific guidelines on these topics.

**Recommendation 8**

296. It is recommended that:

- Relating to technological developments and non-face to face businesses, guidelines be issued to financial institutions by the VFIU under the amended FTRA, defining specifically the required elements that need to be contained in their acceptable CDD programs; and,

- The authorities establish legislative requirements or regulations for financial institutions to have policies and procedures to address risks arising from new or developing technologies and non-face to face businesses in particular internet accounts.

### 3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.5** | **Partially Compliant** | • **The legislative requirements on CDD have been substantially augmented under the amended FTRA, which address most of the Recommendation 5's essential criteria collocated under the FATF assessment methodology.**<br>• **No financial institutions appeared aware of the fact that the amended FTRA had been put into force. No implementation has been made in practice of the new legislation.**<br>• **Under the previous FTRA, banks were implementing most of the required CDD measures provided for under the FATF recommendations in accordance with the RBV guidelines but non-bank financial institutions were not subject to adequate supervision including monitoring their compliance with basic legal requirements under the previous FTRA.** |
| **R.6** | **Partially Compliant** | • **The legislative requirements on PEPs have been introduced under the amended FTRA.**<br>• **All the other financial institutions except for banks have not been aware of this new requirement.**<br>• **Banks have been observing this requirement in accordance with the RBV prudential guidelines.** |
| **R.7** | **Partially Compliant** | • **The legislative requirements on cross border correspondent banking or other similar relationships have been introduced under the amended FTRA.** |

| | | |
|---|---|---|
| | | • **All the other financial institutions except for banks have not been aware of this new requirement.**<br>• **Banks have been observing this requirement in accordance with the RBV prudential guidelines.** |
| **R.8** | **Partially Compliant** | • **There are no requirements for financial institutions except for banks to have polices or take measures against money laundering and terrorist financing threats that may arise from new or developing technologies as well as non-fact to face businesses.**<br>• **Banks have been observing this requirement in accordance with the RBV prudential guideline.** |

## 3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

297. The amended FTRA provides that if a financial institution relies on an intermediary or a third party to undertake its CDD obligations or to introduce business to it, the financial institution must:

a. satisfy itself that the intermediary or third party is regulated and supervised, and has measures in place to comply with the relevant CDD requirements;
b. ensure that copies of identification data and other relevant documentation relating to the requirements will be made available to it from the intermediary or the third party upon request without delay; and
c. immediately obtain the requisite information.

298. The RBV Prudential Guideline No.9 (Customer Due Diligence) that applies to banks outlines several criteria which banks should follow in determining whether an introducer can be relied upon:

- The introducer must comply with the minimum customer due diligence practices identified in the RBV guideline;
- The customer due diligence procedures of the introducer should be as rigorous as those which the bank would have conducted itself for the customer;
- The bank must satisfy itself as to the reliability of the systems put in place by the introducer to verify the identity of the customer;
- The bank must reach agreement with the introducer that it will be permitted to verify the due diligence undertaken by the introducer at any stage; and
- All relevant identification data and other documentation pertaining to the customer's identity should be immediately submitted by the introducer to the bank, who must carefully review the documentation provided.

299. The RBV guideline also sets down requirements for banks to subject transactions with customers in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism to additional scrutiny to examine the background and purpose of the transaction. In this context, the guideline also warns banks not to rely on introducers that are subject to weaker standards than those governing the banks' own KYC procedures. Under the RBV guideline, it is also

stated that the ultimate responsibility for banks to know its customer lies with the banks and not on the third party or introducer.

3.3.2 RECOMMENDATIONS AND COMMENTS

300. It is recommended that:

- The VFIU initiate an extensive outreach program toward financial institutions to make them fully aware of the new requirements under the amended FTRA, and develop detailed sector-specific guidelines to assist them in complying with their legal obligations; and,

- The RBV help the VFIU develop these guidelines, and also review its own prudential guideline and revise it as necessary to ensure its consistency with the new legislative requirements.

3.3.3 COMPLIANCE WITH RECOMMENDATION 9

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.9** | **Partially Compliant** | • **The legislative requirements governing reliance on an agent/intermediary to perform CDD have been introduced under the amended FTRA.**<br>• **While banks have been acting on the RBV guidelines that have specific provisions regarding introduced business and client accounts opened by professional intermediaries, all the other financial institutions are not aware of this new requirement.** |

## 3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

301. There are a number of secrecy provisions provided under various pieces of legislation governing financial institutions in Vanuatu. Section 17 of the amended FTRA, however, overrides all existing secrecy provisions for these institutions in order to provide protection when fulfilling their reporting obligations under the FTRA.

302. Section 125 of the *International Companies Act No. 31 of 1992* (ICA), however, provides a very strict secrecy provision for any person from divulging any information regarding the shareholding, the beneficial ownership, the management and the affairs of the international business companies registered in Vanuatu and in practice, this provision has been used by the industry to decline requests made by the VFIU for such information. To overcome this doubt, section 17 (3) of the new amended FTRA clearly states that the new secrecy overriding provision in the FTRA overrides section 125 of the ICA.

303. Officials that the Evaluation Team met during the on-site visit indicated that generally the private sector responds positively to the request made by the authorities for customers' information during their course of carrying out their functions provided it is done according to the requirement of the existing legislation. The VFIU generally has access to the detail information of individuals / entities reported under the suspicious transaction reporting mechanism that has been established since 2002. The investigators also indicated that the court has on most occasions granted such request for the company's information under section 125 of the ICA to be released for the purpose of

investigation either by the domestic enforcement agencies or based on the mutual legal assistance request made on behalf of foreign countries.

3.4.2 RECOMMENDATIONS AND COMMENTS

304. The secrecy provision in the ICA has previously inhibited the disclosure to and sharing of requisite information with the competent authorities as and when it is required for them to carry out their official duties. The recently amended FTRA however removes any legal doubts that the secrecy provision of the ICA is overridden with the disclosure requirement under the FTRA.

3.4.3 COMPLIANCE WITH RECOMMENDATION 4

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.4** | **C** | • **Recommendation 4 is fully observed.** |

## 3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

**Recommendation 10**

305. Under Section 9 of the FTRA, financial institutions are required to keep records of every transaction that is conducted through the financial institution as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the VFIU. Financial institutions must keep the records for a period of six years after the completion of the transaction.

306. The specific contents of the information to be stored in the records are itemised under Section 9 of the FTRA as follows:

a. the nature of the transaction;
b. the amount of the transaction and the currency in which it was denominated;
c. the date on which the transaction was conducted;
d. the name, address and occupation, business or principal activity, as the case requires, or each person:
    i. conducting the transaction; and
    ii. for whom, or for whose ultimate benefit, the transaction is being conducted, if the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person;
e. the type and identifying number of any account with the financial institution involved in the transaction;
f. if the transaction involves a negotiable instrument other than currency:
    i. the drawer of the institution; and
    ii. the name of the institution on which it is drawn; and
    iii. the name of the payee (if any); and
    iv. the amount and date of the instrument; and
    v. the number (if any) of the instrument and details of any endorsement appearing on the instrument;
g. the name and address of the financial institution, and of each officer, employee or agent of the financial institution who prepared the relevant record or a part of the record; and

h. such other information as may be prescribed.

307. With respect to customers' identification records, the FTRA provides that a financial institution must keep a record of evidence of a customer's identity in the form of either a copy of the evidence or information that enables a copy of it to be obtained (Section 11). The financial institution is also required to keep a record of all correspondence between the identified customer and the financial institution. These two types of customer records must be kept for a period of six years after the evidence was obtained or the date of the correspondence, as the case requires.

308. With respect to transaction records, there are specific legal provisions under the FTRA that require financial institutions to keep the transaction records in a machine-readable form with appropriate back up and recovery procedures (Section 9B). The FTRA allows financial institutions to alternatively keep these records in an electronic form if a paper copy can be readily produced (Section 9B). Under the Section 9C of the FTRA, financial institutions also must make available any of these transaction records to the VFIU if requested to do so in writing by the unit. With respect to customer identification records, however, there are no specific legal provisions under the FTRA that requires financial institutions to make the records available on a timely basis to domestic competent authorities upon appropriate authority.

309. Under Section 13B of the amended FTRA, the VFIU is authorised to issue guidelines to financial institutions in relation to record-keeping obligations. The VFIU had the same authority under the previous FTRA, based on which it had issued a guideline, specifying how this obligation was to be fulfilled by financial institutions. The Evaluation Team was informed that the VFIU was currently drafting a new guideline consistent with the augmented requirements under the amended FTRA, although this was not evidenced. It is essential that the VFIU complete this work and publish the new guidelines as soon as possible. The VFIU should also organise a meeting with the representatives of each industry, so as to make them fully aware of their obligation to comply with the new record-keeping obligations.

310. Under Section 13 of the FTRA, the VFIU has the authority to carry out examinations of financial institutions to ensure their compliance with the Act. It is also been given an additional function under the Section 13B to provide training programs for financial institutions about their record-keeping obligations. While there is no explicit reference to the role of the RBV in enforcing the record-keeping obligation on banks under the current legislation, the VFIU should, in cooperation with the RBV and other relevant supervisory bodies, initiate a program of on-site examinations to assess compliance by banks and non-bank financial institutions with record-keeping requirements on the basis of randomly selected samples of individual accounts.

**Special Recommendation VII**

311. Section 9E of the amended FTRA requires financial institutions to include accurate originator information on electronic funds transfer or on any other form of funds transfer. This information is required to be transmitted with the transfer that was conducted. The only exception, however, is for electronic fund transfer using a credit or debit card where the card number is included in the information accompanying such transfer and when the funds transfers are conducted between two financial institutions where the originator and beneficiary of the transfer are financial institutions acting on their own behalf.

312. Section 9D (2) (b) of the amended FTRA also requires financial institutions to pay special attention and conduct ongoing due diligence to electronic funds transfer that

do not contain complete originator information. As there is no threshold set for this mechanism, such due diligence and record requirements applies to all funds transfer transactions. Section 8A (1) (b) and (c), on the other hand, requires financial institutions to report to the VFIU all electronic or other fund transfer either to or from Vanuatu for an amount exceeding VT 1 million or its equivalent in a foreign currency. This reporting requirement will be implemented on 1 September 2006 and financial institutions are required to submit report in the prescribed form within two days for transaction involving foreign currency or 15 days for transaction involving Vatu.

313. Although the legislation has been enacted and brought into force on 24 February 2006, guidelines have not been established pursuant to the Act. There is no guidance given to the financial institutions on what type of information needs to be included in such transfer. All financial institutions providing wire transfers services at the moment are subject to their counterparty's requirement which require the information of the originator to be provided together with the transfer instructions. The financial institutions met during the on-site visit indicated that they will have no problem to comply with these requirements as measures are already in place in order to meet the obligations set by their correspondent partners. However, they stated that they would welcome a clear guidance from the authorities to ensure that they are fully compliant with the requirements of the amended FTRA.

### 3.5.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 10**

314. It is recommended that:

- The VFIU complete the current work on drafting a new guideline in relation to record-keeping consistent with the augmented requirements under the amended FTRA, and publish it as soon as possible;

- The VFIU organise a meeting with the representatives of each industry defined as a financial institution under the amended FTRA, in order to make them fully aware of their obligations to comply with the new record-keeping requirements;

- The VFIU, in cooperation with the RBV and other relevant supervisory bodies, initiate a program of on-site examinations to assess compliance by banks and non-bank financial institutions with record-keeping requirements on the basis of randomly selected samples of individual accounts;

- With respect to customer identification records, the FTRA be amended so as to provide that financial institutions are obliged to keep customers' records for a prescribed period of time following the termination of an account or business relationship with customers; and

- The FTRA also be amended so as to provide that financial institutions make the customer identification records available on a timely basis to the competent authorities upon appropriate authority.

**Special Recommendation VII**

315. It is recommended that:

- The VFIU in consultation with the RBV update the current guidelines issued to the banking institutions to include specific details about requirement for funds transfer;
- The guideline should include the type of information that need to be collected and maintained such as:

  i. the name of the originator;
  ii. the originator's account number or a unique identification number if there is no account;
  iii. either the originator's address or in some cases the national identity's number or customer identification number or date and place of birth.

3.5.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.10** | **Partially Compliant** | • **There is a legal requirement for financial institutions to keep transaction records for six years after the completion of the transaction, which must be available on a timely basis to the VFIU upon request.**<br>• **There is a legal requirement for financial institutions to keep customer records for six years after the evidence was obtained; this could be shorter than the FTAF requirement of five years after the customer account was closed.**<br>• **There are neither legal requirements nor regulations requiring financial institutions to make customer records available on timely basis to the VFIU upon request.** |
| **SR.VII** | **Partially Compliant** | • **There is a legal requirement for financial institutions to conduct due diligence and collect information of originators for wire transfers.**<br>• **There is lack of guidance provided to the financial institutions on the type of information that should be collected and maintained for wire transfer.** |

## ***Unusual and Suspicious Transactions***

### 3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

3.6.1 DESCRIPTION AND ANALYSIS

**Recommendation 11**

316. Under Section 5C of the amended FTRA, when financial institutions suspect that a transaction or attempted transaction is:

a. complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or

b. part of an unusual pattern of transactions that does not have any apparent or visible economic or lawful purpose.

The financial institution must prepare a report of the transaction or attempted transaction and give the report to the VFIU as soon as possible, but no later than two working days after forming the suspicion.

317. In the course of performing on-going due diligence and scrutiny of transactions, financial institutions must also:

a. examine as far as possible the background and purpose of the transactions, business relations and transfers, and record its findings in writing; and
b. upon a request in writing by the VFIU, make available such findings to the unit, to assist the unit in any investigation relating to a money laundering offence, a financing of terrorism offence or any other serious offence (Section 9D).

318. There are no specific legal provisions under the FTRA, however, that require financial institutions to keep the examination findings for at least five years.

319. Prior to the amendment to the FTRA, banks have been advised by the RBV Prudential Guideline No.9 (Customer Due Diligence) to have systems in place to detect unusual or suspicious patterns of activity for all accounts. Under the RBV guideline, banks are required to set key indicators for higher risk accounts, taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved, and other higher risk factors. Banks have also been counselled on establishing limits for a particular class or category of accounts, and paying particular attention to transactions that exceed these limits.

320. The guideline quotes certain types of transactions that should alert banks to the possibility that the customer is conducting unusual or suspicious activities. They include transactions that do not appear to make economic or commercial sense, or that involve large amounts of cash deposits that are not consistent with the normal and expected transactions of the customer. Very high account turnover, inconsistent with the size of the balance, is also cited as an example of indicating that fund are being “washed” through the account.

321. Under the RBV guideline, banks are also required to ensure they have adequate management systems in place to identify and effectively monitor higher risk customer accounts in a timely manner. Senior management in charge of private banking business should have a detailed knowledge of the personal circumstances of the bank’s high-risk customers.

**Recommendation 21**

322. The amended FTRA requires financial institutions to pay special attention to business relations and transactions with persons from jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism (Section 9D). With regard to these business relations and transactions, financial institutions are also required to:

a. examine as far as possible the background and purpose of the transactions, business relations and transfers, and record its finding in writing; and
b. upon a request in writing by the VFIU, make available such findings to the unit (Section 9D).

323. There are no effective measures currently in place, however, to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries, except for issuance of advisory notes to banks by the RBV on the FATF NCCT lists. Neither is there any established mechanism whereby the relevant authorities of Vanuatu could apply appropriate counter-measures against those countries continuing not to apply or insufficiently applying the FTAF Recommendations.

3.6.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 11**

324. It is recommended that:

- The VFIU launch an extensive outreach project as soon as possible to develop awareness among financial institutions (as defined by the Act) of the new legal requirement concerning complex, unusual large transactions, or unusual patterns of transactions, that have apparent or visible economic or lawful purposes, paying due regard to the fact that this is a total new obligation to all the other financial institutions but banks;

- The VFIU provide financial institutions with sector-specific guidelines to help them identify unusual transactions in consultation with the relevant supervisory bodies such as the RBV; and,

- The FTRA be amended, and/or relevant regulations/guidelines be issued, to require financial institutions to keep details of the reported transaction at least five years.

**Recommendation 21**

325. It is recommended that:

- The VFIU initiate an extensive outreach program for financial institutions to make them fully aware of the new legal requirement under the amended FTRA to pay special attention for higher risk countries;

- The VFIU put effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries in consultation with the relevant supervisory bodies such as the RBV; and,

- Cooperation and coordination mechanism among relevant authorities and private sectors be established whereby the country as a whole could apply appropriate counter-measures against those countries continuing not to apply or insufficiently applying the FTAF Recommendations.

3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.11** | **Partially Compliant** | • The legislative requirement for financial Institutions to pay special attention to complex, unusual large transactions, or unusual patterns of transaction has been introduced under the |

| | | |
|---|---|---|
| | | amended FTRA.<br>• Financial institutions were not aware of this new legal requirement as of the onsite visit.<br>• Only banks have been advised of the necessity to pay special attention to such unusual transactions in accordance with the RBV guideline.<br>• There is no requirement for financial institutions to keep the examination findings with respect to unusual transactions for at least five years. |
| **R.21** | **Partially Compliant** | • The legislative requirement for financial Institutions to pay special attention to business relations and transactions with persons in jurisdictions without adequate AML and CFT systems has been introduced under the amended FTRA.<br>• This new requirement has not been known to financial institutions, except for banks which have been receiving advisory notes from the RBV on the FATF NCCT lists.<br>• There have no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.<br>• No mechanism has been put in place whereby the country as a whole applies appropriate counter-measures against a country continuing not to apply or insufficiently applying the FATF Recommendations. |

## 3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

### 3.7.1 DESCRIPTION AND ANALYSIS[4]

**Recommendation 13 & Special Recommendation IV**

326. Section 5 of the amended FTRA provides that financial institutions must report suspicious transactions if the financial institution suspect that a transaction or the attempted transaction is relevant to the detection, investigation or prosecution of a money laundering offence, a financing of terrorism offence or any other serious offences. Financial institutions must also report if there is a suspicion that the transaction involved the commission of a money laundering, a financing of terrorism offence or any other serious offence as well as if it is involved in the preparatory act to a financing of terrorism offence or relevant to the enforcement of the FTRA and the Proceeds *of Crime Act No. 13 of 2002*. The term "serious offences" is defined in the FTRA as an offence against the law of Vanuatu which carries the maximum penalty of imprisonment of at least 12 months or similar offence if it is occurred in another country.

327. Section 5 (B) of the amended FTRA specifically provides that financial institutions must report to the VFIU if they have in their possession information concerning any transaction or attempted transaction which they suspect involving terrorist property or property linked to terrorists or terrorist organisations.

328. Section 5 (C) on the other hand, provides that financial institutions must report transactions that appear to have no legitimate purpose to the VFIU. This section applies when the financial institutions suspects that such transaction or an attempt transaction is complex, unusual or large and does not have any apparent economic or lawful purpose or it is part of an unusual pattern or transactions that does not have any apparent economic and lawful purpose.

329. On all these occasions, financial institutions are required to prepare and submit the suspicious transaction reports as soon as possible to the VFIU but not later than two working days after such suspicions was formed.

330. Section 4.1 of the Guidelines for Financial Institutions issued by the VFIU on the law relating to money laundering in the Republic of Vanuatu specify that financial institutions need to submit suspicious transaction reports when any person conducts or seek to conduct any transaction through a financial institution, and there are reasonable grounds to suspect that such transaction or proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence or relevant to the enforcement of the serious crimes. However, in practice, representatives from the private sector indicated to the Evaluation Team that they usually only report suspicious transactions that have taken place for existing customers and not the attempt to conduct such transaction by non-customers or prospective customers. The Team was advised of circumstances where a bank declined to accept the custom of an individual due to concerns about the legitimacy of that person's funds but no STR was lodged as a result of this.

**Recommendation 14**

331. The FTRA provides full legal protection to the financial institutions for submitting suspicious transaction reports. Section 7 of the amended FTRA protects the financial institutions, their officers, employees and agent from any civil and criminal liability for breach of confidentiality for reporting information under the FTRA in good faith to the VFIU. Section 7(A) of the FTRA also provides protection to the auditor or supervisory body of a financial institution as well as the officer, employee and agent of such body for reporting to the VFIU in good faith.

332. "Tipping off" a customer or any third party in connection with reporting of STR to the VFIU is prohibited by section 6 of the FTRA. No one is allowed to disclose to any other person that a report has been made under the FTRA by the financial institutions or the supervisory authority or the auditor of the financial institution. Exception, however, is provided in circumstances where the VFIU needs to share this information for the purpose of carrying out its functions under the FTRA. Section 4.1 of the VFIU guidelines also clarify that the institution involved in the transaction that was reported and the identity of the person making the report or involved in such transaction cannot be revealed by the VFIU or the Police except in very limited circumstances. However, it is not clear in what circumstances such disclosure is allowed to be made by the VFIU or the Police. A person breaching this provision is subject to a fine not exceeding VT 50 million (USD 450,000) or imprisonment term not exceeding 10 years or both.

**Recommendation 19**

333. The amendments to the FTRA includes the obligation for the financial institution to report transaction exceeding VT 1 million (USD 8,300) or its equivalent in a foreign currency to the VFIU. This obligation also includes electronic transmissions into or out of Vanuatu or any other funds transfer of an amount exceeding VT 1 million or its equivalent

in a foreign currency. The Vanuatu Government has gazetted for this provision to be implemented by 1 September 2006 to provide ample time for the VFIU to prepare for the implementation of this new requirement. Section 8 (B) of the FTRA also provides provision to deal with possible smurfing activities by individuals or entities who conduct two or more sequential transactions below the threshold amount.

334. CTR information is expected to be maintained in the VFIU database which has been developed with the assistance from Australia's AUSTRAC. Most of the financial institutions met during the onsite visit, are concerned with the ability of the VFIU to manage and make use of additional CTR information as the current resources in the VFIU may be inadequate to take on these new responsibilities and functions. There are also concerns by the Team about the lack of research conducted to study the implication of such reporting in terms of the number of reports and mechanisms to be established for reporting such transaction.

**Recommendation 25**

335. The VFIU writes to every financial institution that has submitted suspicious transaction reports to confirm the receipt of the STR. The VFIU has also conducted reviews of the AML/CFT internal procedures of some of the institutions as well as conducting on-site visits and interviews with these institutions. For banks, this visit is usually conducted in conjunction with the RBV as part of their general examination exercise. Besides banks, other institutions that have been visited by the VFIU include the remittance agents, money exchangers and the casino. The VFIU has been provided with and has conducted reviews of these institutions' internal policies and procedures. However, the institutions met during the on-site visit indicated that they do not believe that they have received adequate feedback from the VFIU. With the exception of banking industry, there is also issue of lack of awareness amongst the other categories of financial institutions on their obligations under the FTRA. The financial institutions also expressed the view that the guidelines issued by the VFIU is of little help in fulfilling legal obligations.

336. One awareness programme for the reporting institutions was conducted in 2005 by the VFIU which was held at the premises of the RBV. The programme was a generic one which tried to cover all financial institutions covered by the FTRA prior to the introduction of the amendments. No industry-specific programmes have been developed. Representatives from the financial institutions advised the Mutual Evaluation Team that they require more feedback in the form of typologies and red flag indicators to assist them to come up with a better suspicious transaction monitoring mechanism.

337. Representatives from the private sector met during the on-site visit, including those from the banking sector, indicated their preference for industry-specific guidelines rather than the current single set of generic guidelines issued by the VFIU. Industry-specific guidelines tailored to address risk in terms of AML/CFT as well as information on typology studies in each industry will provide greater assistance to financial institutions and their employees in order to establish a practical implementation plan. The VFIU also needs to provide more specific feedback to reporting institutions, particularly concerning the status of STRs as well as sharing the outcomes of specific cases.

### 3.7.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 13 and Special Recommendation IV**

338. It is recommended that the VFIU:

- conduct outreach programmes to the financial institutions to ensure that all institutions understand the need to report not only suspicious transactions but attempted suspicious transactions;
- review information, along with other regulatory bodies, on declined business during their on-site inspections to financial institutions and require explanations for non-submission of STRs for these non-customers.

**Recommendation 19**

339. It is recommended that the VFIU establish a comprehensive implementation plan to prepare for the implementation of the threshold reporting requirements before they come into effect on 1 September 2006.

**Recommendation 25**

340. It is recommended that:

- The VFIU establish a feedback mechanism to share typologies, red flag indicators, statistics and other relevant information with the financial institutions
- The operation of reported and analysed STRs be shared with the other industry players through this feedback mechanism.

3.7.3 COMPLIANCE WITH RECOMMENDATIONS 13, 14, 19 AND 25 (CRITERION 25.2), AND SPECIAL RECOMMENDATION IV

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.13** | **Largely Compliant** | • **Attempted suspicious transactions have not been reported to the VFIU.** |
| **R.14** | **Compliant** | • **Recommendation 14 is fully observed** |
| **R.19** | **Largely Compliant** | • **Although there is a requirement under the amended FTRA for submission of cash transactions and remittance exceeding VT 1 million, there seems lack of planning and resources allocated to carry out this function** |
| **R.25** | **Non Compliant** | • **The only feedback provided is the acknowledgment for submitted suspicious transaction reports**<br>• **The VFIU needs to provide more specific feedback including statistical comparisons of STRs submitted and typologies data** |
| **SR.IV** | **Largely Compliant** | • **Financial institutions do not report STRs to the VFIU for attempted suspicious transactions and declined businesses.** |

## ***Internal controls and other measures***

### 3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

**Recommendation 15**

341. Financial institutions are required by the amended FTRA to establish and maintain internal procedures to implement the suspicious and financial transaction reporting requirements and to implement the customer identification requirements, record keeping and retention requirements (Section 8).

342. Section 8 of the amended FTRA further obliges financial institutions to (a) appoint a person as a compliance officer who is responsible for ensuring the financial institution's compliance with the requirements of the act and the regulations; and (b) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

343. The FTRA also requires financial institutions to establish and maintain internal procedures: (a) to make the institution's officers and employees aware of the laws in Vanuatu about money laundering and financing of terrorism; and (b) to make the institution's officers and employees aware of the procedures, policies and audit systems adopted by the institution to deal with money laundering and financing of terrorism; and (c) to train the institution's officer and employees to recognize and deal with money laundering and financing of terrorism (Section 8)

344. Financial institutions are not legally required, however, to put in place screening procedures to ensure high standards when hiring employees. They normally train and educate their employees on AML/CFT issues and standards through in-house training programs, after their employees have been recruited based primarily on their academic qualifications.

345. In the banking sector, regardless of the legislative requirements above set out under the FTRA, the RBV Prudential Guideline No.9 (Customer Due Diligence) requires banks to put in place controls and risk management procedures to ensure effective implementation of the banks' AML/CFT measures, particularly with respect to their KYC policies. Compliance functions and internal audits have also been well recognised by banks' senior management as essential components for the effective implementation of the AML/CFT requirements.

346. Under the previous FTRA, the required internal procedures for financial institutions was limited to providing training to officers and employees of financial institutions to keep them well informed of relevant laws and in-house AML/CFT measures, as opposed to the new obligations requiring financial institutions to formalise internal procedures for transaction reporting, record keeping, and customer identification requirements, as well as to appoint a compliance officer and establish an audit function.

**Recommendation 22**

347. The FTRA is silent with regard to the application of AML/CFT policies and procedures to foreign branches and subsidiaries of locally incorporated financial institutions. This weakness is mitigated by the fact that none of the locally incorporated financial institutions currently have overseas operations.

348. However, the FIA requires banks to apply to the RBV for permission if setting up a foreign branch. Section 41 of the FIA provides that a domestic licensee must not open a new branch, agency or office in any place outside Vanuatu unless it obtains the prior written approval of the RBV. Section 34 of the Act also provides that a licensee must not:

a. create a subsidiary;

b. conduct banking business through a subsidiary; or
c. permit a subsidiary to carry on business in any way;

unless it has obtained the prior written approval of the RBV.

349. Under the RBV Guideline No.9, banking groups should apply an accepted minimum standard of KYC policies and procedures to both their local and overseas operations. Parent banks are expected to communicate their policies and procedures to their overseas branches and subsidiaries, and have a routine for testing compliance against both home and host country KYC standards in order for their programmes to operate effectively globally. Such compliance tests will also be tested by external auditors and supervisors.

350. The RBV guidelines further states that, however small an overseas establishment is, a senior officer should be designated to be directly responsible for ensuring that all relevant staff are trained in, and observe, KYC procedures that meet both home and host standards. While this officer will bear primary responsibility, internal auditors and compliance officers from both local and head offices as appropriate should support him or her.

3.8.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 15**

351. It is recommended that:

- Financial institutions be reminded that the amended FTRA has strengthened the legislative requirements for them to establish and maintain their internal procedures.

- The VFIU develop and promulgate comprehensive guidelines for financial institutions to enable them to ensure they are meeting the new requirements; and,

- The VFIU launch an extensive outreach program to increase awareness of financial institutions on this new legal requirement (especially for those newly designated financial institutions).

**Recommendation 22**

352. It is recommended that the authorities amend the FTRA to require financial institutions to:

- Apply their AML/CFT policies and procedures to their foreign branches and subsidiaries; and,

- Apply the higher of either the home or host country standards to operations in host countries, if the two standards differ.

3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.15** | **Partially** | • **The legislative requirements have been augmented under the amended FTRA with respect to the internal** |

| | | |
|---|---|---|
| | **Compliant** | **procedures that financial institutions must establish.**<br>• **Financial institutions were not even aware of this enhanced requirement as of the dates of the onsite visit.**<br>• **Under the previous FTRA, financial institutions have already implemented certain internal procedures on providing training for officers and employees. Particularly, banks have already put in place more substantial internal procedures than required under the previous FTRA in accordance with the RBV guidelines.** |
| **R.22** | **Partially Compliant** | • **There are no requirements to extend policies on AML and CFT to overseas operations of locally incorporated financial institutions, except for the RBV guidelines that apply to banks only.** |

## 3.9 SHELL BANKS (R.18)

### 3.9.1 DESCRIPTION AND ANALYSIS

353. The Government of Vanuatu has introduced new regulatory framework for the establishment of the offshore banks in Vanuatu. The new framework includes shifting the supervision and regulation of the offshore banks from the Financial Services Commission to the RBV pursuant to the *International Banking Act No. 4 of 2002* (IBA). The offshore banking sector, which in its peak in 1993 saw 120 off-shore banks licensed to operate, consisted of 34 off-shore banks in the year 2000 which declined further to seven off-shore banks with the introduction of the IBA in 2002, where it has remained steady up to the date of the on-site visit. The reduction in numbers is mainly due to the requirement for off-shore banks to maintain a physical presence in Vanuatu and to employ full time staff in Vanuatu. However, during the on-site visit to the RBV, there was evidence that there are several applications for offshore banking licenses that are currently being evaluated by the RBV.

354. Section 20 of the IBA specifically requires an international bank to occupy a premise in Vanuatu within 30 days after the issuance of license by the RBV. It is part of the licensing requirement for the RBV to be satisfied that the physical presence will be used for the conduct of the banking activities, to maintain the transaction records, to be staff by a full time employee within that premise and such premise adequately symbolise the physical presence of the bank in Vanuatu. The IBA also requires that at least one of the employees must have a day-to-day knowledge of the international banking business conducted by the bank and warrant the bank to seek RBV's approval before any changes to their physical presence can be made. These requirements have an effect requiring licensees to have an effective "mind and management" of these institutions to reside within Vanuatu.

355. Prudential Guideline 11 of the RBV issued to the International Bank further clarifies section 20 of the IBA. It provides clear distinction of what type of services that the bank can share with other entities. The guideline also establishes the expectation of the RBV that the number of staff in such premise should reflect the size of business and intended business plan. The employee appointed to manage the business must be vested with adequate executive powers to manage the day-to-day operations of the bank in Vanuatu.

356. Guideline 9 of the RBV issued to the domestic and international banks also requires banks to gather sufficient information about their respondent banks and to fully understand the nature of the respondent bank's businesses. Included amongst the information required to be gathered by the banks is information about the respondent bank's management, major business activities, where it is located and the AML/CFT mechanism that has been put in place by the respondent bank. Banks are also required to pay particular attention to banking relationship with jurisdictions that have poor KYC standards or have been identified as being non-cooperative in the AML/CFT areas. Meetings with representatives from some of the off-shore banks revealed that their correspondent relationship is established mainly with banks in major financial centres as well as the neighbouring countries like Australia, New Zealand, Singapore, the United Kingdom and the United States of America. All these correspondent banks are well regulated and based in jurisdictions that are members of the FATF. Bankers, however, advised the Mutual Evaluation Team of their difficulties in establishing new correspondent relationships with some banks due to the perception of lack of regulation in Vanuatu.

357. Since the introduction of IBA, regulation governing the operation of international banks in Vanuatu has been strengthened tremendously. The requirement for physical presence has been established and properly implemented and regulated.

358. However, there are no prohibitions against banks establishing correspondent banking relations with shell banks overseas or with banks that have shell banks as customers. Given the nature of the banks operating in Vanuatu and their policies in place, this was not considered a significant risk factor but may become one should the situation in Vanuatu change.

### 3.9.2 RECOMMENDATIONS AND COMMENTS

359. It is recommended that authorities introduce a prohibition against local banks establishing correspondent banking relations with overseas shell banks and banks that have shell banks as customers.

### 3.9.3 COMPLIANCE WITH RECOMMENDATION 18

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.18** | **Largely Compliant** | • **Shell banks have been prohibited from operating in Vanuatu.**<br>• **There is no prohibition against local banks establishing correspondent banking relations with shell banks or banks with shell bank customers overseas.** |

***Regulation, supervision, guidance, monitoring and sanctions***

## 3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SROS ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 30, 29, 17, 32 & 25)

### 3.10.1 Description and Analysis

**Recommendation 23 (Licensing and supervision of financial institutions)**

360. The licensing function for financial institutions is mainly divided between the RBV and the VFSC. The RBV is responsible for the licensing and regulatory of the domestic and international banks. The VFSC, on the other hand is responsible for the licensing of the insurance companies, including their agents and brokers, the registration of companies, international companies, trust companies and charitable associations. Money remitters and money exchange businesses are licensed by the Department of Customs and Inland Revenue as business entities similar to all other businesses in Vanuatu. The prime responsibility for Vanuatu's AML/CFT efforts, however, rests with the VFIU within the State Law Office. All financial institutions are legally required to take all reasonable steps to ensure that they comply with their obligations under the amended FTRA (Section 13E), and the VFIU is authorised to monitor compliance by the financial institutions.

361. Section 13E of the FTRA authorises the VFIU to direct a financial institution that has failed to comply with any of its obligations such as reporting suspicious transactions or to verifying and keeping customer identity in accordance with the law to: (a) implement the obligations within such time as is specified in the direction; and (b) produce a written action plan in relation to the implementation of the obligations.

362. The VFIU is also empowered to carry out on-site and off-site examinations of financial institutions to ensure their compliance with the FTRA (Section 13A). Section 13D of the FTRA provides that a member of the VFIU or a person authorised by the Attorney General may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with their obligations under the FTRA.

363. Under Section 13B of the FTRA, the VFIU may issue guidelines to financial institutions in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies, in consultation with the relevant supervisory body (where appropriate).

364. The RBV appears to work closely with the VFIU. The RBV's supervisory oversight is governed by the *Financial Institutions Act No.2 of 1999* (FIA) and the *International Banking Act No.4 of 2002* (IBA) and to some extent the *Reserve Bank of Vanuatu Act [CAP125]*. Based on these legal powers, the RBV supervises banks with the remit of maintaining the soundness and stability of the financial system and to ensure that depositors' interests are protected. The RBV uses its functions as provided for pursuant to the FIA and the IBA to carry out prudential supervision of licensed banks, which include collection and analysis of licensees' prudential information, encouraging and promoting licensees to carry out sound practices in relation to prudential matters, and evaluation of the effectiveness and execution of these practices.

365. To discharge these supervisory responsibilities, the RBV ensures that individual banks have appropriate policies in place to manage operational risks. These policies are reviewed and checked by the RBV to ensure compliance with the regulatory requirements of Vanuatu and other international standards.

366. The RBV and the VFIU maintain up-to-date copies of banks' policy documents in relation to anti-money laundering and terrorist financing and conducts off-site analysis of these documents. The RBV conducts on-site reviews of each bank at least every two years, which include an AML/CFT component. These on-site inspections entail reviews of policies and procedures for account opening, staff training related to money laundering, and recent developments on compliance with policies/procedures and responsibilities on

anti-money laundering and terrorist financing within banks. These reviews also include testing a random sample of deposit accounts, whether they are newly opened or existing ones, across a broad spectrum of account holders. After these reviews, a discussion is held with banks' management to clarify issues which have arisen during the inspections. The RBV also evaluates banks' compliance with its prudential guidelines on customer due diligence issued on the basis of the FIA and the IBA.

367. The VFSC, on the other hand, currently does not have the power to conduct examination to the entities supervised by the VFSC. The VFSC which license the operation of insurance companies, its brokers and agents is not provided with the power to conduct prudential examination. However, a new *Insurance Act* has been passed by the Parliament and currently efforts are in progress to prepare for the implementation of the new Act before it is gazetted. During the on-site visit, the VFSC shared with the Evaluation Team a copy of the Act as well as the draft regulations that have been developed and are ready to be implemented and issued when the law is gazetted.

368. The VFSC has also prepared a Procedure Manual for Insurance Supervision in anticipation of the power provided under this Act. The procedure manual takes into consideration both off-site and on-site inspections to be conducted by the supervisors on AML / CFT area.

**Recommendation 30 (Structure and resources of the supervisory authorities)**

369. The VFIU, as the supervisory authority for AML / CFT matters, is resourced with two officers, one of whom has three years working experience in one of the banks and the other officer who has over 20 years experience as a Police Officer. The VFIU has conducted several on-site examinations on financial institutions in Vanuatu, including banks. The examinations of the banks were conducted jointly with the RBV's Supervision Department. The VFIU staff have attended a number of training seminars and workshops organised by international and regional agencies.

370. The RBV is staffed by an experienced and qualified team. Staff appear to be technically proficient in the use of technology and computers. The department currently consists of seven staff members including a director, a secretary and five bank supervisors, one of whom is currently on study leave. The overall supervisory function is under the responsibility of the Director, who also holds the position of Deputy Governor of the RBV.

371. Section 12 of the *Reserve Bank Act*, prohibits any officer or employee of the bank from disclosing to any person any information relating to the affairs of the bank or any financial institution which he has acquired in the performance of his duties except for the purpose of the performance of his duties or when lawfully required to do so by a court. Staff are not allowed to publicly disclose confidential information regarding individual banks' business performances and other related confidential information.

372. The Bank Supervision Department staff attend a range of training workshops and seminars overseas to improve their knowledge and skills. These trainings cover money laundering and terrorism issues as well as credit risk management, capital adequacy on Basel II and other supervisory issues on effective banking supervision.

373. Training on combating money laundering and terrorist financing offered by the VFIU consists of a computer based training programme which is utilised by the supervisors in order to have a better understanding of AML/CFT issues, including the scope of predicate offences, ML and FT typologies, techniques to investigate and prosecute these offences, techniques for tracing property that is the proceeds of crime or

is to be used to finance terrorism, and ensuring that such property is seized, frozen and confiscated.

374. The VFSC which currently is not provided with any supervision function has also established a new supervision unit, with two staff responsible for finalising the inspection manual as well as to preparing for the implementation of the new insurance act.

**Recommendations 29 (Power to examine)**

375. The principal objectives of the RBV, as Vanuatu's Central Bank, are described in the *Reserve Bank of Vanuatu Act*. These objectives are:

a. to regulate the issue, supply, availability and international exchange of money; to advise the Government on banking and monetary matters;
b. to promote monetary stability; to promote a sound financial structure;
c. to foster conditions conducive to the orderly and balanced economic development of Vanuatu; and
d. to regulate and supervise domestic and international (off-shore) banks.

376. In order to regulate and supervise banks, the FIA and the IBA empower the RBV to conduct on-site examinations whereby the RBV ensures that appropriate internal controls are in place and that banks are in compliance with supervisory and regulatory guidance.

377. Section 28 of the FIA provides for the RBV to initiate on-site examinations of the accounts and affairs of any licensee or any of its subsidiaries or affiliates, including any branch, agency or office of the licensee or of its subsidiaries or affiliates. Under the Section 28(2) of the *Financial Institutions Act*, an examination may be conducted by one or more of the following people: (a) an officer or officers of the Reserve Bank; and (b) any other person or persons appointed by the Reserve Bank as an examiner.

378. Section 14 of the IBA provides for the RBV to carry out the following:

a. inspect the premise and the business, within or outside Vanuatu, including the systems and controls, of relevant persons;
b. inspect the assets, including cash, belonging to or in the possession or control of a relevant persons; and
c. examine and make copies of the records belonging to or in the possession or control of a relevant person, being records that are in the opinion of the Reserve Bank relate to the carrying on of international banking business by the relevant person.

379. With these legal powers, the RBV has a responsibility to monitor if banks are applying sound KYC policies and are sustaining ethical and professional standards on a continuous basis. The monitoring process will include not only a review of policies and procedures but also a review of customer files and the sampling of random accounts, so that the RBV can ensure that banks are in compliance with the requirements to combat money laundering and terrorist financing as per the FTRA.

380. The RBV has the right to compel production of materials to be used for the assessment and monitoring of the financial and other operational conditions of banks. This includes the right to gain access to all records, documents or information relevant to monitoring compliance, such as monthly and quarterly data on:

- assets and liabilities;

- profitability;
- large credit exposures and deposits;
- maturity profile of assets and liabilities;
- country exposures;
- exposures to related entities;
- capital adequacy; loan (asset quality) classification; and
- schedule of equity investments.

381. The RBV can exercise the power to compel production of any material or obtain access to any information on banks' activities but this power appears to be restricted to information regarding banks' financial performance.

382. The VFIU, as the AML/CFT supervisor for all financial institutions is authorised under the FTRA to request the production of any record, or cause it to be reproduced from any data contained in or available to any computer system or data processing system in any premises, when a member of the VFIU or any person authorised by the Attorney General believes, on reasonable grounds, that there are records relevant to ensuring compliance by a financial institution with obligations to report suspicious or financial transactions as well as to keep records and verify customer identity (Section 13D). This power can be exercised by the VFIU as part of its examination process without the need to require a court order.

383. The FSC, on the other hand, does not have such powers at this stage. However, this is provided for in the new legislation that has been passed by the parliament and is awaiting gazettal.

**Recommendation 17 (Sanction)**

384. The FTRA provides limited power to the VFIU with regard to sanctions that may be imposed on financial institutions for non-compliance with AML/CFT requirements. The Act mostly lays down possible criminal sanctions on financial institutions for non-compliance with the legal obligations. When a bank or its managers/employee contravene the legislative requirements, the case would have to be brought to a court for criminal sanction, and the financial institution could be subject to fines or imprisonment (if individuals) after conviction. In practice, the VFIU has not prosecuted any financial institution for non-compliance with the FTRA.

385. With respect to administrative sanctions, the FTRA provides the VFIU with limited power to direct a financial institution that has failed to comply with its obligations under the Act to implement the obligations within such time as specified in the direction, and produce a written action plan in relation to the implementation of the obligations.

386. The RBV, on the other hand, has extensive powers to impose administrative sanctions against banks which have contravened requirements set out under the FIA or the IBA. The RBV can revoke banking licenses (Section 17 of the FIA and Section 11 of the IBA) and issue a directive (Section 45 of the FIA and Section 25 of the IBA). License revocation may be imposed under limited circumstances where, for instance, a bank has violated any of the licensing conditions or any of the provisions of the acts such as capital adequacy requirement or other prudential standards but a directive can be issued in various situations as follows.

387. Under Section 45 of the FIA, the RBV may issue a directive to a bank if the RBV is of the opinion that the bank:

a. is following unsound or unsafe practices in the conduct of its banking business that are:
    i. likely to jeopardize its obligations to its depositors or other creditors; or
    ii. likely to adversely affect the operation or stability of the financial system in Vanuatu; or
b. has contravened or failed to comply with the terms and conditions of its license or any of the provisions of the Act.

388. With this directive, the RBV may require a bank: (a) to cease the practice, contravention or non-compliance; and (b) to take such action (including action to replace or strengthen management) as may be specified in the directive to correct the conditions resulting from the practice, contravention or non-compliance.

389. Under Section 25 of the IBA, the RBV may direct in writing a licensee to remove a person who is an officer of the licensee (other than a director of a foreign incorporated licensee) if the RBV is satisfied that the person: (a) is a disqualified person; or (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential guidelines. The Evaluation Team is aware of a number of circumstances where this has occurred in relation to the operations of an off-shore bank.

390. The RBV can thus direct that a bank remove persons from key positions where they no longer meet the criteria for fitness and propriety. The RBV also consults other regulators (domestic/offshore) regarding the suitability of personnel for the bank. The assessment of a suitable candidate is based on criteria set out under the RBV Prudential Guideline No.10 on management of financial institutions: fit and proper requirements. The only major shortcoming in this power is that there is no similar limitation to regulate owners of financial institutions. This has lead to the situation where directors that have lost their directorship of a financial institution due to criminal activity are still permitted to maintain their ownership of that same financial institution.

391. These directives which the RBV may issue under the FIA or the IBA, however, also would not be able to address directly any infringement of fundamental AML/CFT measures such as customer identification, record keeping and suspicious transaction reporting requirements, all of which are provided for under the FTRA. The Evaluation Team was informed that there have been in practice no cases where the RBV has issued such a directive for the purpose of dealing directly with a bank's violation of AML/CFT requirements.

**Recommendation 23 [Market Entry and Ownership/Control]**

392. Market entry of any banks (both domestic and off-shore) to conduct banking business in Vanuatu is governed by the FIA (Section 13 and 14) and the IBA (Section 8). Based on these two Acts, the RBV has the power to issue bank licenses. An applicant for a banking license must submit the following information for assessment by the RBV :

- Details of ownership, financial capacity and financial history;
- Information on major shareholders and the character and experience of senior management and board of directors;
- Details of risk management, accounting and internal control systems;
- Details of the applicant's capital structure;
- A detail business plan outlining the types of services to be offered including a three year projections for assets, liabilities and profitability;

- A written undertaking that the applicant will provide the RBV with any information it may require to carry out its responsibilities under the acts; and,
- In the case of foreign bank applicants, the RBV must satisfy itself as to the adequacy of home country supervisory arrangements and that the home country supervisor conducts supervision on a consolidated basis; the RBV must be furnished with a written statement from the home country supervisor stating that it has no objections to the applicant establishing an operation in Vanuatu; the RBV must be furnished with a written statement from the home country supervisor confirming that its supervisory practices are consistent with the guidelines established by the Basel Committee on Banking Supervision and that it is willing to cooperate in the supervision of the Vanuatu operation; the applicant must provide a written acknowledgement that the RBV may discuss its conduct and status with the home country supervisor; and the RBV retains the discretion to seek additional information from any applicant and may impose higher capital requirements on a new entrant to the market.

393. The RBV may request further and better particulars if required.

394. Any change of significant ownership/control of domestic and off-shore banks needs the RBV's express approval. Section 51 of the FIA provides that a domestic bank must obtain the written approval of the RBV before it carries out a specified event that will result in a person acquiring, or exercising power over, 20 percent or more of the voting stock of the licensee. Section 28(1) of the IBA provides that a person owning or holding a significant interest in a locally incorporated off-shore bank must not sell, transfer, charge or otherwise dispose of the person's interest or any part of the person's interest, unless the person has obtained the prior written approval of the RBV.

395. The RBV requires that a bank's directors and senior managers must have a sufficient degree of probity and competence commensurate with their responsibilities. There is no such requirement for owners of the bank (see comments above). The RBV also ensures that at a minimum, each bank should have policies and procedures in place to address the criteria for fitness and propriety of its directors and senior managers as per the requirements of the Acts (see following).

396. Section 42 of the FIA provides that an individual must not act or to continue to act as a director, manager, secretary or other officer of any bank without the written authorisation of the RBV, if the individual: (a) has been a director, or directly concerned in the management, of a financial institutions which has had its license revoked or has been wound up by a court; or (b) has been convicted by a court for an offence involving dishonesty; or (c) is or becomes bankrupt; or (d) suspends payment to or compounds with his or her creditors.

397. Section 24 of the IBA provides that international bank must not appoint: (a) a disqualified person as an officer; or (b) any other person as an officer unless the RBV has given prior written approval for the appointment. The RBV must not give its approval to the appointment of a person as an officer of a licensee unless it is satisfied that the person concerned meets all of the criteria for fitness and propriety set out in the prudential guidelines.

398. The current *Insurance Act* only requires for the registration of the insurance companies with the Financial Services Authority. However, the newly passed *Insurance Act* requires all application for an insurance licence to submit the following information to be reviewed by the VFSC:

- Latest audited financial statements or the recent audited accounts of the immediate parent company and the latest consolidated group accounts
- Completed personal questionnaires of all the directors, key executives and shareholders of the applicant
- Auditor's consent to act as auditor
- Actuary's consent to act as actuary
- Certificate of Incorporation and all other documents by which the applicant is constituted
- List of all existing and proposed branch offices
- Type of policy the applicant issues or proposed to issue.

399. Businesses offering money transfer services are currently licensed by the Department of Customs and Inland Revenue. However, this licensing requirement is solely for the purpose of collecting business fees and not for prudential or AML/CFT regulations. As such, minimal due diligence is conducted on the person or legal person offering such services.

**Recommendation 25 [AML/CFT Guidelines]**

400. The RBV and the VFIU have established guidelines that assist banks and financial institutions, respectively, to implement and comply with their AML/CFT requirements. The RBV prudential guidelines address comprehensive issues related to customer due diligence, and apply to both domestic and international banks. The RBV requires all banks to incorporate the principles and recommendations outlined in the guidelines into their sound risk management policies and practices. These guidelines are based on principles outlined by the Basle Committee on Banking Supervision in its paper, "Customer due diligence for banks" issued in October 2001.

401. The primary objective of the RBV guidelines is to ensure that banks have in place adequate know-your-customer (KYC) policies, which are closely associated with the fight against money laundering. The RBV's approach to KYC is from a wider prudential perspective, not specifically on AML/CFT issues; it is based on the idea that sound KYC procedures must be seen as a critical element in the effective management of banking risks.

402. The VFIU has issued guidelines for banks and other financial institutions it has responsibility for prior to the new amendments under the FTRA. These guidelines begin with providing explanatory notes on the three relevant pieces legislation it has responsibility for (the *Serious Offences (Confiscation of Proceeds) Act 1999*, the *Financial Transaction Reporting Act 2000*; and the *Mutual Assistance in Criminal Matters Act 1989*), and supplies educational materials explaining money laundering as well as some referential information as to what could be identified as suspicious transactions to be reported to the VFIU. The guidelines also instruct financial institutions on how to report and who should they contact concerning their reporting requirements. These guidelines were, however, issued under the old legal FTRA, and therefore do not reflect the recent major legislative changes including measures against terrorist financing. They are also generic and do not address Vanuatu's financial sector specifically. In addition, the VFIU's contact information has not been updated.

403. The VFSC which license insurance companies does not have any power within its current legislation to provide guidelines to the insurance industry players.

**Recommendations 32 [Ongoing Supervision and Monitoring]**

404. In the process of ongoing supervision, the RBV holds a range of information on AML/CFT issues relating to individual banks. This includes banks' policies, on-site reports, and minutes of meetings held with management on current AML/CFT standards.

405. The RBV's approach to ongoing bank supervision is based on the premise that the prime responsibility for the prudent operation of a supervised financial institution (SFI) rest with the Board of Directors (or Trustees) and senior management of the institution. The RBV seeks to satisfy itself that each SFI is following sound management practices, which limit risks to prudent levels and that its control procedures are kept under review to take account of changing economic and financial conditions.

406. The RBV has issued under the provisions of the FIA and the IBA a number of prudential policy guidelines that all banks are required to observe in their daily operations. The guidelines cover:

a. minimum capital requirement;
b. maximum exposure limits;
c. restrictions on shareholdings;
d. constraints on lending to persons connected with the bank's owner;
e. credit risk management;
f. guidelines for loan classification and provisioning for impaired assets;
g. supervision of the adequacy of liquidity of banks;
h. relationship between banks, their external auditors and the RBV;
i. customer due diligence;
j. management of financial Institutions;
k. physical presence of licensees and employment in Vanuatu; and
l. outsourcing.

407. To ascertain whether banks have put into practice these policies and procedures, the RBV conducts on-site visits to banks not only from the viewpoint of evaluating risks relating to their business operations but also effectiveness of their AML/CFT measures. The AML/CFT-specific on-site visits by the RBV are conducted every two years against each of the four domestic banks and seven international banks. Since the establishment of the Bank Supervision Department in 1996, followed by the enactment of the FIA in 1999, the FTRA in 2000 and the IBA in 2002, the RBV has recorded seven AML onsite visits to domestic banks and six to off-shore banks. Apart from these visits, the RBV also accompanied the VFIU on its AML/CFT onsite inspections.

3.10.2 Recommendations and Comments

**Recommendation 17**

408. It is recommended that:

- The VFIU be given more administrative power to sanction a financial institution which has failed to comply with AML/CFT requirements provided for under the FTRA; and

- The VFSC be provided with extensive administrative powers to sanction insurance companies that have failed to comply with prudential regulations under the relevant laws.

**Recommendation 23**

409. It is recommended that:

- The new *Insurance Act* to be brought into force as soon as possible. Insurance companies should be subjected to adequate regulation and supervision by the VFSC;

- The regulation and supervision of money changers and remittance agents should be taken over either by the RBV or the VFSC;

- Money changers and remittance agents be subject to the same regulation and supervision as financial institutions currently supervised by the RBV

**Recommendation 25**
410. It is recommended that:

- The VFIU, in consultation with the RBV and the FSC, review and issue comprehensive guidelines to financial institutions in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies in accordance with the amended FTRA

**Recommendation 29**
411. It is recommended that:

- The new *Insurance Act* to be brought into force soon and the FSC Procedure Manual for Inspection to be implemented.

**Recommendation 30**
412. It is recommended that:

- The VFIU and the VFSC be adequately structured, funded, staffed and provided with sufficient technical and other resources to ensure the effective implementation of AML/CFT measures provided for under the FTRA.

- The RBV, VFSC and the VFIU should coordinate their examination activities to avoid duplications and to maximise the resources. VFIU should not duplicate examinations conducted by the RBV and in the future by the VFSC for Banks and Insurance Companies.

**Recommendation 32**
413. It is recommended that:

- The VFIU prepare and maintain comprehensive statistics on onsite examinations of financial institutions conducted by the relevant supervisory bodies including the RBV and the FSC;

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

| | Rating | Summary of factors relevant to s.3.10 underlying overall rating |
|---|---|---|
| **R.17** | **Partially Compliant** | • **The RBV has extensive administrative powers to sanction a bank that has failed to comply with prudential regulations under the FIA and the IBA but has no such powers with respect to AML/CFT measures under the FTRA.** |

| | | |
|---|---|---|
| | | • **The VFIU has limited administrative powers to sanction financial institution that has failed to comply with AML/CFT measures provided for under the FTRA.**<br>• **The VFSC has limited power to sanction non compliance and does not have any power to conduct inspection on non-compliance** |
| **R.23** | **Partially Compliant** | • **Banks are subject to adequate regulation and supervision by the RBV which ensures banks' compliance with AML/CFT measures from the sound risk management point of view.**<br>• **Insurance companies are not adequately regulated and supervised by the VFSC. There is no examination power and there is no power to issue guideline to insurance companies**<br>• **Money changers/remitters are not regulated and supervised by any authority. Licenses are issued by the Department of Customs and Inland Revenue but the department does not have power to issue regulation or to conduct onsite inspection.** |
| **R.25** | **Non Compliant** | • **Prior to the amendment to the FTRA, the RBV established prudential guidelines related to AML/CFT measures under the FIA and BIA; these guidelines have not been reviewed from the viewpoint of ensuring consistency with the amended FTRA.**<br>• **The VFIU has neither revised nor updated the existing guidelines issued under the previous legislations, and has not issued yet any guidelines under the amended FTRA.**<br>• **The FSC does not have any power to issue guideline under the current Insurance Act.** |
| **R.29** | **Partially Compliant** | • **The RBV has adequate monitoring powers and inspection authority under the FIA and the BIA.**<br>• **The VFIU has adequate monitoring powers and inspection authority under the FTRA.**<br>• **The VFSC, however, do not have such power.** |
| **R.30** | **Non Compliant** | • **The RBV is adequately structured, funded, staffed and provided with sufficient technical and other resources.**<br>• **The VFIU has been provided with major additional functions under the new FTRA but has not been resources properly.**<br>• **The VFSC needs to be adequately structured, funded** |

| | | |
|---|---|---|
| | | **and staffed to carry out its new responsibility with the expected amendment to the various legislations administered by the VFSC.** |
| **R.32** | **Partially Compliant** | • **Statistics on AML/CFT onsite examinations of banks conducted by the RBV are available.** |

## 3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

3.11.1 Description and Analysis (summary)

414. The Department of Customs and Inland Revenue licenses all business activities in Vanuatu including the business of exchanging money and remittances. There are seven money changers and two money transfer services operating in Vanuatu. Both money transfer outlets are agents for the international money transfers service providers i.e. MoneyGram and Western Union.

415. The main reason that these entities are licensed by the Department of Customs and Inland Revenue of the revenue they provide: the collection of licensee's fees contributes to 5% of Vanuatu's total expected revenue.

416. Foreigners seeking to establish a remittance or exchange business (or, indeed, any business) in Vanuatu must firstly obtain an approval certification from the Vanuatu Investment Promotion Authority (VIPA). The Evaluation Team was told by a representative from the VIPA that they will review the application and seek information from the VFIU to verify the suitability of the applicant before such certificate is granted. There was no evidence available that this was done for money exchange bureaus. The VIPA will analyse financial plans provided by the applicant to determine whether there is a viable business proposition with a sustainable income. Once VIPA is satisfied that the applicant is of sound character with a viable business plan, it will issue a certificate which needs to be presented to the Department of Customs and Inland Revenue before a business license can be issued. Business licences are renewed on an annual basis. The VIPA requires business entities to provide yearly progress reports to monitor the financial sustainability of the business before providing the necessary certification so that the business license can be renewed by the Department of Customs and Inland Revenue.

417. There is no vetting process for local Vanuatu citizens seeking to obtain a business licence. This is a significant vulnerability given many of the operators of financial institutions were expatriates who had obtained Vanuatu citizenship.

418. The VIPA advised the Evaluation Team that the RBV has requested that the VIPA consult with the Bank in relation to any future applications for money exchange and remittance services in the future and that consultation with the RBV be carried out as part of the evaluation process for issuing a business licence.

419. These remittance providers are classified as financial institutions under the FTRA and therefore have obligations to establish the same AML/CFT mechanisms as other financial institutions. The Department of Customs and Inland Revenue provides no specific AML/CFT guidance to these bodies. The only available AML/CFT guidelines available are the generic AML / CFT guideline issued by the VFIU. The VFIU advised that it had visited both remittance service providers and the money exchangers in Port Vila and conducted a review of their internal programmes.

420. The assessors visited both remittance providers in Port Villa. Although there is no real guidance provided by the VFIU or the Department of Customs and Inland Revenue, the remittance providers are subject to their main service providers' (MoneyGram and Western Union) requirements. As such, both agents have put in place the necessary requirements for the identification of customers based on the requirement by their service providers. The inspection findings by the VFIU shows that the remittance agents record the identity of the sender if the amount remitted exceeds their internal threshold although there is no threshold limit provided by the FTRA or the VFIU. To-date there have been no suspicious transaction reports submitted. However, during the on-site visit, the Evaluation Team was informed of an incident were a transaction was not carried out because of suspicious acts by an applicant. This incident, however, was not reported to the VFIU and represents a direct breach of the obligation under section 8 of the FTRA for reporting of suspicious transactions. Both remittance providers were also unaware of the new amendment to the FTRA that was brought to force on 24 February 2006.

421. There does not appear to be an underground remittance service operating in Vanuatu. The National Bank of Vanuatu provides non-electronic banking services to a number of remote islands.

3.11.2 Recommendations and Comments

422. It is recommended that:

- The activities of the money exchange and remittance services be subjected to greater supervision and regulation through the introduction of appropriate legislative measures commensurate with the requirements of banks and other financial institutions;
- Regulation and supervisions obligations should be moved to either the RBV or the FSC as soon as possible.
- Pending this action, the establishment of money exchange and remittance services by local Vanuatu citizens should be subject to the same procedures as applications from foreign businesses.
- The VFIU should provide money exchange and remittance services with specific guidelines or guidance for compliance with the FTRA and facilitate on-going training and guidance.

3.11.3 Compliance with Special Recommendation VI

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.VI** | **Non Compliant** | • **There is inadequate supervision and regulation of money exchange and remittance services**<br>• **There is no specific AML/CFT guidelines for the money exchange and remittance services sector**<br>• **There is lack of awareness of AML/CFT requirements amongst the staff of money exchange and remittance services**<br>• **The current general guidelines need to be updated to reflect the changes in the FTRA** |

# 4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

## 4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

(applying R.5 to 10)

423. The definition of financial institutions under the amended FTRA includes all the required designated non-financial businesses and professions pursuant to the FATF's definitions of DNFBPs.

4.1.1 DESCRIPTION AND ANALYSIS

Applying Recommendation 5

424. The amended FTRA's definition of financial institutions includes casinos as licensed under the *Casino Control Act No. 6 of 1993*, real estate and motor vehicles dealers, dealers in bullion, dealers in property exceeding VT 1 million, lawyers, notaries, accountants and trust and company service providers. An AML/CFT risk assessment, however, has not conducted on these industries to establish the risk and the suitable implementation plan for effective AML/CFT mechanism for such businesses and professions. Other types of businesses are identified in the amended FTRA, but these businesses do not exist in Vanuatu currently and are unlikely to be established in the future.

*Lawyers*
425. The lawyers in Vanuatu are governed by the *Legal Practitioners Act 1996 (CAP 119)*. The Act provides for the establishment of the Law Council comprising of the following individuals:

- The Chief Justice who shall be the chairman;
- The Attorney General;
- One legal practitioner appointed for 2 years by the Minister responsible for Justice and who shall be eligible for re-appointment.

426. The Law Council is responsible for prescribing the necessary qualifications for legal practitioners, keeping a register of all legal practitioners in Vanuatu, carrying out disciplinary actions, regulating conduct of practitioners and provides for the legal education and training of legal practitioners. The Law Council also control the registration of notaries public in Vanuatu. There is no requirement for lawyers to undertake any continuing legal education to maintain their right to practice.

*Trust and company service providers (TCSPs)*
427. TCSPs, on the other hand, are licensed by the VFSC. The VFSC has drafted the new *Company and Trust Services Providers Act* which is to be further reviewed with the assistance from the Asia Development Bank. The VFSC is looking for assistance from a trust expert as they do not have the necessary expertise in this area. Vanuatu has a large number of international businesses taking advantage of the tax-free status, and TCSPs maintain a register of companies that have been established.

*Accountants*
428. Accountants operating in Vanuatu are required to have professional accounting qualifications recognised in any other Commonwealth jurisdictions before they can operate in Vanuatu. However, there is no mechanism in place to check the veracity of these qualifications, nor is there any requirement to prove maintenance of membership of any professional accounting body.

429. All these designated non-financial businesses and other professions (DNFBPs) operating in Vanuatu (including real estate agents or any high value dealers) are also subject to the requirement to obtain business licences issued by the Department of

Customs and Inland Revenue. Foreigners seeking to establish business in Vanuatu are required to obtain an approval certification from the Vanuatu Investment Promotion Authority (VIPA). VIPA reviews this application and seeks assistance from the VFIU from time to time to verify the suitability of the applicant before such certificate is granted. The VIPA certificate is to be presented to the Department of Customs and Inland Revenue before a business license can be issued. Business license is renewed on an annual basis. As mentioned previously, there is a serious deficiency that local Vanuatu citizens do not have to go through such a vetting process. As also discussed earlier, the main reason for these entities to be licensed by the Department of Customs and Inland Revenue is to ensure the collection of the licensee's fees which consist 5% of the expected revenue of the business operation. The Department of Customs and Inland Revenue however does not issue any guidelines to these businesses. The Department also did not conduct any inspections on these businesses except to ensure the right amount of licensee fees is collected.

430. All the DNFBPs are subject to the same CDD obligations as are banks and other financial institutions, although the level of understanding amongst the businesses and professions is significantly lower. There are no specific guidelines issued to DNFBPs. The only guidelines available are the generic ones issued by the VFIU which does not address KYC and CDD requirements for non-financial businesses and professions. Having not been covered by the FTRA prior to the amendments, some of these DNFBPs would not have been issued with the VFIU guidelines in the first place.

431. While the amended FTRA addresses most of the requirements under Recommendation 5, there are serious deficiencies in the implementation of the legislative requirements. At the time of the on-site visit, the VFIU and other responsible regulatory authorities had not developed any plans to implement the amendments to the FTRA to ensure that DNFBPs were aware of their new responsibilities. The VFIU has indicated that the current guideline is being reviewed to reflect the changes made to the FTRA. However, there is little indication during the onsite visit that such revision has taken place and when it will be completed. There is minimal information available for the evaluators to assess whether such revision has taken into consideration concerns raised by the financial institutions and the DNFBPs with regard of getting an industry specific guideline tailored to their business activities.

Applying Recommendation 6

432. Section 10C of the amended FTRA requires financial institutions (including DNFBPs) to have risk management systems capable of determining whether a customer is a politically-exposed person and details the necessary actions to be taken by these institutions, including establishing the source of wealth and funds, obtaining the approval of senior management before establishing a business relationship and conducting regular and on-going enhanced monitoring of the business relationship. However, most of the DNFBPs in Vanuatu were unaware of this obligation at the time of the on-site visit.

Applying Recommendation 8-10

433. There are no specific legal provisions under the FTRA requiring financial institutions (including the DNFBPs) to have policies in place or take reasonable measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. The FTRA also does not address the issues of requiring the financial institutions to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions. The amended FTRA however, provides provision for financial institutions to rely on an intermediary or third party to undertake the CDD obligations provided that the institution is

satisfy that the third party is regulated and supervised and has measures in place to comply to the similar CDD requirements and able to obtain the identification data and documentation as and when it is required to do so. The FTRA requires record are kept for a period of 6 years from the date the transaction was completed. Similar to the other recommendations discussed earlier in this section, DNFBPs in general are unaware of these obligations under the newly amended FTRA.

### 4.1.2 RECOMMENDATIONS AND COMMENTS

434. It is recommended that the VFIU:

- Collaborate with the RBV and the Vanuatu FSC, conduct a risk assessment of DNFBPs' money laundering and terrorist financing vulnerabilities;
- Establish specific guidelines for of the DNFBPs that are present in Vanuatu.
- Implement the CDD, PEPs and record keeping requirements for DNFBPs accordance with the amended FTRA;
- Conduct awareness programmes individually tailored for the different DNFBPs on their new obligations and responsibilities under the amended FTRA.

### 4.1.3 COMPLIANCE WITH RECOMMENDATION 12

| | Rating | Summary of factors relevant to s.4.1 underlying overall rating |
|---|---|---|
| **R.12** | **Non Compliant** | • **The FTRA provides the necessary legal instrument for compliance.**<br>• **However, there is no clear implementation plan to implement the amended FTRA**<br>• **Awareness amongst the DNFBPs of the requirements under FTRA is significantly low** |

## 4.2 MONITORING TRANSACTIONS AND OTHER ISSUES (R.16)
(applying R.13-15, 17 & 21)

### 4.2.1 DESCRIPTION AND ANALYSIS
Applying Recommendation 13 – 15

435. The obligations for some of the DNFBPs to report suspicious transactions existed before the new amendment to the FTRA was brought into force. Casinos as licensed under the *Casino Control Act No. 6 of 1993*, Interactive gaming, trustees, lawyers, accountant, and anyone dealing in bullions are classified as financial institutions under the FTRA and has the obligations to report suspicious transactions to the VFIU. However, besides the internet casino which reported 73 STRs in 2000 and 2001, there is no other report submitted by any of the other category of DNFBPs. The internet casino is no longer in operation since 2002. During the meeting with some players in the DNFBPs sectors, there is indication that they do face occasions where attempted transaction which is suspicious in nature and has declined such businesses. However, these incidents were not reported to the VFIU on the basis that the transaction had not taken place. This is a clear breach of section 5 of the FTRA either before or after the amendment which requires financial institutions to report a person who conducts or seeks to conducts transaction that is suspicious in nature.

436. The recent amended FTRA extended the reporting requirement of suspicious transaction to the other DNFBPs including real estate agents and car dealers, dealers in high value properties (exceeding VT 1 million) and the trust and company service providers. The reporting requirement for the lawyers and accountants and notary has been clarified further to include the following activities:

- Buying or selling of real estate or business entities;
- Managing of money, securities or other assets;
- Managing of bank, savings or securities accounts;
- Organising of contributions for the creation, operation or management of companies;
- Creating, operating or managing legal persons or arrangement.

437. Any person conducting the following activities related to company service providers is also included in the new amended FTRA:

- Forming or managing legal persons;
- Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, a business address or accommodation, correspondence or an administrative address for a company, a partnership or any other legal person or arrangement;
- Acting as (or arranging for another person to act as) a trustee of a trust;
- Acting as (or arranging for another person to act as) a nominee shareholder for another person;

438. Most of the DNFBPs met during the onsite visit requested clearer and industry-specific guidelines to be issued they each have varied risks and vulnerabilities.

439. As with financial institutions, section 7 of the amended FTRA provide the protections to the DNFBPs sectors, including officers, employees and agents, from any civil and criminal liability for breach of confidentiality for reporting information under the FTRA in good faith to the VFIU. The provision for tipping off under section 6 of the amended FTRA is also extended to the DNFBPs sectors prohibiting anyone from disclosing that a suspicious transaction or any other report has been made under the FTRA to the VFIU.

Applying Recommendation 17 & 21

440. Section 9D of the FTRA requires DNFBPs to pay special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism. In circumstances where this applies, DNFBPs are required to examine the background and purpose of such transactions, the business relations and transfers, and to record its finding in writing and provide to the VFIU upon request made by the VFIU. However, the procedures to implement this requirement are not in place and there is no guidance provided either by the VFIU or any other authority to assist DNFBPs to identify jurisdictions that do not have adequate AML / CFT measures

### 4.2.2 RECOMMENDATIONS AND COMMENTS

441. It is recommended that the Vanuatu government takes the following actions:

- Establish clear and industry specific guidelines to each category of DNFBPs to assist them in fulfilling their obligations under the FTRA.

- The guidelines should include industry specific red flag indicators and typologies to assist the DNFBPs in identification and reporting of suspicious transactions.
- Conduct an assessment and inspection to investigate why there have not been any suspicious report reported by the DNFBPs to the VFIU despite the FTRA being in place since 2002.
- To issue information notes / guidance practice to the DNFBPs on jurisdictions that do not have adequate AML / CFT measures in place.

4.2.3 COMPLIANCE WITH RECOMMENDATION 12 AND 16

| | Rating | Summary of factors relevant to s.4.2 underlying overall rating |
|---|---|---|
| **R.16** | **Non Compliant** | • **Although all DNFBPs have been designated as reporting entities under the FTRA, there seems to be lack of knowledge and no actual implementation by them.**<br>• **The current guidelines issued by the VFIU are too general and provide minimal assistance to the DNFBPs sector**<br>• **There is no guidance provided to identify the jurisdictions that do not have adequate AML / CFT measures in place.** |

## 4.3 REGULATION, SUPERVISION AND MONITORING (R. 17, 24-25)

4.3.1 DESCRIPTION AND ANALYSIS

**Recommendation 24**

442. There is currently only one casino operating in Vanuatu licensed under the *Casino Control Act No. 6 of 1993*. Several applications to open casinos are currently being considered by the relevant regulatory authority, which is the Department of Customs and Inland Revenue. The casino is open to all foreign players as well as local Ni-Vanuatu once they are registered members of the casino. The casino requires photo ID identification or in the absence of the photo ID, two other forms of identification are required. Applications by foreigners to open casinos are subject to clearance by the VIPA which reviews applications and conducts a form of due diligence on the applicant before issuing a certification of the department of Customs and Revenue to issue an appropriate licence. The Department of Customs and Inland Revenue receives applications from local applicants directly. However, in both circumstances, it is unclear whether a criminal check on applicants or the beneficial owner of the casino is conducted. There is no clear procedure for the determination of applications to run casinos, which renders casinos potentially with considerable vulnerability to the involvement of criminal elements. The representatives from the Customs and Revenue Department that the Evaluation Team met seemed to know very little about the casino business.

443. Casinos fall under the definition of a financial institution under the FTRA, and are therefore subject to the same reporting requirements as banks and supervised by the VFIU. The one casino currently operating in Port Vila has developed internal policies and procedures to assist its employees in carrying out the obligations under the FTRA, despite the fact that the current guidelines provided by the VFIU do not specifically address the AML/CFT risks in casinos. The current internal policy and procedures for the casino include red flags of possible suspicious activities that may happen in the casino and which need to be reported to the VFIU. However, to-date, no STRs have been submitted by the casino. Representatives from the casino informed the Evaluation Team

that they would welcome more guidance to assist them with the identification of suspicious transactions as well as to enable them to comply with the requirements and they were not aware of the recently gazetted amended FTRA legislation.

**Recommendation 25**

444. No feedback or training has been provided by the VFIU for any of the DNFBPs. This is partly due to the fact that there is no suspicious transaction reported by the DNFBPs and the current practices of the VFIU to provide feedback in the form of acknowledgement to the report submitted by the reporting entities.

445. There is no risk assessment conducted for the other DNFBPs and currently the same obligations and supervision applicable to the financial sectors is also applicable to the DNFBPs. Given the resources and capabilities of the VFIU and other authorities in Vanuatu, it is worthwhile for the authority to conduct the risk assessment of each DNFBPs sector before deciding the extent of the AML / CFT measures and supervision required to be carried out. This risk assessment needs to be reviewed from time to time to reflect the changes in environment and risk factors.

### 4.3.2 RECOMMENDATIONS AND COMMENTS

**Recommendation 24**

446. It is recommended that the Vanuatu authorities:

- Review the regulation and licensing of casinos with a view to moving responsibility away from the Department of Customs and Revenue to a more appropriate and experienced body.
- Establish a clear and rigorous process for conducting due diligence for all applicants seeking a licence to operate a casino (applicable to both foreigners and locals)

**Recommendation 25**

447. It is recommended that the authorities

- Provide each sector of DNFBPs with specific and clear guidelines taking into consideration the AML / CFT risk factors of each industry
- Provide feedback to the DNFBPs of their obligation and the level of compliance to date with the FTRA
- Conduct risk assessment analysis of DNFBPs sectors to establish the extent of regulation and supervision of DNFBPs

### 4.3.3 COMPLIANCE WITH RECOMMENDATION 16

| | Rating | Summary of factors relevant to s.4.3 underlying overall rating |
|---|---|---|
| **R.24** | **NC** | • **There are no clear procedure to process the application to open casinos**<br>• **There is no system in place to monitor and ensure compliance with AML / CFT requirements.**<br>• **There is no risk assessment of risk of money laundering and terrorist financing in DNFBPs sector** |
| **R.25** | **NC** | • **There is no specific guidelines issued to assist the casino and other DNFBPs to carry out their obligation under the FTRA**<br>• **There is no feedback mechanism established with DNFBPs** |

### 4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS – MODERN TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

448. The FTRA extended the application of FATF's Recommendation 5, 6, 8-11, 13-15, 17 and 21 to a wider range of non financial businesses and professions including dealers in high value goods (transaction exceeding VT 1 million), vehicle dealers or car hire firms and betting and gaming providers including internet gaming (other than casinos). However, the risk of money laundering and terrorist financing was not conducted before such entities are included in the list of entities listed under the definition of financial institutions in the FTRA. There are no guidelines issued to these sectors to-date and almost all were unaware of their new obligations under the FTRA.

449. Vanuatu is a cash-based society and there is a strong reliance on cash transactions. The biggest note denomination in circulation is VT 5000 and the smallest is VT 100. Taking into consideration such reliance on cash transactions and the failure to implement declaration of currency at border, the risk of money laundering and terrorist financing is of concern.

450. The National Bank of Vanuatu, which is a government owned bank, operates throughout Vanuatu while the three other commercial banks operate only in Port Vila. Four of the National Bank branches are connected to automated teller machine facilities, while the others rely on passbook deposit and withdrawals methods.

4.6.2 RECOMMENDATIONS AND COMMENTS

451. It is recommended that the Vanuatu authority takes the following actions:

- Provide the entities under the FTRA with specific guidelines to the industry as designated by the FTRA.
- The RBV and other authority should look into developing modern and secure techniques to reduce the risk of money laundering and terrorist financing.

4.6.3 COMPLIANCE WITH RECOMMENDATION 20

| | Rating | Summary of factors relevant to s.4.4 underlying overall rating |
|---|---|---|
| **R.20** | **Partially Compliant** | • **Although the FTRA has been extended to the other non-financial businesses and professions, there is no clear implementation plan to-date**<br>• **The authorities have not considered developing modern and secure techniques to address the risk of money laundering and terrorist financing** |

# 5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

### 5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

5.1.1 DESCRIPTION AND ANALYSIS

452. Legal persons in Vanuatu are created through the following legislation:

*a. Companies Act [CAP 191]*

*b. International Companies Act [No. 32 of 1992]*
*c. Charitable Association Act;*
*d. Business Names Act;*

453. Under Vanuatu law a limited liability company can be limited by shares or by Guarantee, where the owners guarantee debts up to a certain sum. This is often used by social clubs such as sporting associations.

454. There are 3 types of limited liability companies in Vanuatu:

a. *Local companies:* Local companies have an unrestricted license to do business in Vanuatu. They must have a valid business license if the nature of their business requires it. They can conduct their business anywhere in the world. Local companies can either be public or private. Public companies are entitled to sell shares to the general public if they issue a prospectus, while private companies are not allowed to.
b. *Exempted companies:* Exempted companies have less onerous requirements to receive a licence but they are severely restricted as to what they can do in Vanuatu. They cannot make contracts or agreements with local companies or persons except in regard to business carried on outside of Vanuatu. They can have bank accounts and agreements with Vanuatu based banks, accountants, Lawyers and business such as TCSPs. They can contract with other exempt companies and international companies.
c. *International companies:* International companies cannot conduct business in Vanuatu except to further their business elsewhere. This category of company provides for more flexibility and simpler administration than an exempt company.

455. A Trust is not a legal entity in Vanuatu but an agreement that sets out the terms on which someone holds property on behalf of another. Only a local company, which holds a Trust Company License, can charge for this service.

456. Although there is a very strict secrecy provisions under Section 125 of the *International Companies Act*, meetings with the officials during the on-site visit indicates that in practice such provisions does not prohibit the investigators from obtaining court orders to investigate such companies either for domestic investigations or to assist a foreign jurisdiction's investigation. Section 17 (3) of the newly amended *Financial Transactions Reporting Act* also clearly states that the new secrecy overriding provision in the *Financial Transaction Reporting Act* overrides section 125 of the *International Companies Act*.

457. Both the *Companies Act* and the *International Companies Act* allows for bearer shares mechanisms for all three types of companies. In this situation, the possibility of misuse and concealment of a real beneficial owner of such companies is heightened. Although there is a requirement for companies to inform the Vanuatu Financial Services Commission (FSC) of the issuance of new bearer shares, there is no requirement for the transfer of ownership of the bearer shares to be reported to the FSC.

458. In addition to the three types of companies mentioned above, Vanuatu also provides for what are termed overseas companies. Overseas companies are companies incorporated in a foreign jurisdiction which have to re-register in Vanuatu under the *Companies Act*. An overseas company registered in Vanuatu must nominate two Vanuatu residents who can accept notices on its behalf and are required to lodge an annual return along with audited accounts.

459. Based on the information provided by the FSC during the mutual evaluation visit, there are 6,021 companies registered with the Registrar of Companies as at 28 February 2006. A detail breakdown of the companies is as follows:

| Type of company | Number |
|---|---|
| Local Companies | 1,297 |
| Exempt Companies | 97 |
| Overseas Companies | 25 |
| International Companies | 4,602 |

460. More than 75% of companies registered in Vanuatu are International Companies and these companies are not required to submit the information about the beneficial owners of such entities.

5.1.2 RECOMMENDATIONS AND COMMENTS

461. It is recommended that the Vanuatu authorities:

- Amend the International Business Act to require the following information:
  a. Name and addresses of the directors
  b. Name and addresses of the shareholders
  c. Notification to subsequent changes

- To regulate the issuance and changes to the bearer shares to enable the authority to identify the real beneficial owner of such shares.

5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.33** | **Partially Compliant** | • **Details of beneficial owner are required to be filed with the VFSC and are publicly available.**<br>• **Secrecy provisions in Section 125 of the *International Companies Act* do not seem to hinder investigations.**<br>• **International companies are not required to file information about beneficial owners or directors.**<br>• **The identity of owners of bearer shares issued by international companies is not known to the authorities.** |

## 5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

462. Trusts in Vanuatu are formed in accordance with the United Kingdom's *Trustee Act 1925*. Currently there is no requirement for trust to be registered with the central authorities because trusts are not required to be registered in Vanuatu. As such, the FSC does not have the power to conduct due diligence on any trusts. However, trust companies which are registered legal entities and usually act as the trustees and service providers are required by the Financial Transaction Reporting Act to apply customer due diligence towards their customers before such services can be rendered. The access to

such information by the competent authorities at this stage is limited to trusts where trust companies act as the trustee only.

463. Although the trust companies and service providers are also required to report suspicious transaction reports and keep records of their businesses, statistics shows that there is no such report being made.

464. During the on-site visit, the VFSC has indicated that they are currently working on the new trust and company service providers' bills. The new bill is expected to require trust and company service provider to be registered and will introduce the application of fit and proper criteria to be applied to all persons applying to provide such services. The new legislation is expected to be introduced by middle of 2006 and the VFSC is currently requesting assistance from the Asian Development Bank for expert assistance in the trust area because they do not have such expertise within their resource.

### 5.2.2 RECOMMENDATIONS AND COMMENTS

465. It is recommended that the Vanuatu authorities:

- Ensure the passage and introduction of the new Trust and Company Service Providers' bill.
- The new bill should introduce the requirement to register trust deeds and this information should be made available to the competent authorities upon request.

### 5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.34** | **Non Compliant** | • **There is no central authority to register trust and there is no need to register trust**<br>• **Information on trusts are not available to the competent authorities.** |

## 5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

### 5.3.1 DESCRIPTION AND ANALYSIS

466. Most of the NPOs in Vanuatu provide assistance to Vanuatu citizens through funds donated from entities outside of Vanuatu. The fact that the financing of terrorism through an NPO operating in Vanuatu is unlikely does not make it impossible. Although there are regulations regarding NPOs under the *Charitable Organisations Act*, the lack of implementation practices indicate that Vanuatu officials consider such an eventuality to be non-existent.

467. Vanuatu has not conducted an evaluation of the adequacy of laws related to NPOs. Vanuatu authorities have taken the position that there is a low FT threat posed by NPOs. The Evaluation Team agrees with this assessment; however there is no indication that this assessment was arrived at through any sort of formal evaluation or risk assessment.

468. Non-profit organisations in Vanuatu are governed by the *Charitable Organizations Act*. AML/CFT legislation is found in the *Proceeds of Crime Act*, the *Financial Transactions Reporting Act*, the *Counter Terrorism and Transnational Crime Act*, and the *Criminal Procedures Code*. This legislation does not specifically address NPOs, however there is no indication that an NPO is in any way exempt from any of the asset freezing or seizing measures contained in the legislation.

469. Vanuatu, through registration requirements of the VFSC and legislative oversight of the *Charitable Organisations (Incorporation) Act*, has measures in place to insure that funds or assets collected by NPOs are not diverted to support the activities of terrorists or terrorist organizations. There is however no effective implementation of these measures. While the FT risk posed by NPOs operating in Vanuatu is low, the over site of these organizations is virtually non-existent. During the on site visit, the Evaluation Team learned that one NPO had not provided, nor been asked to provide, a financial statement to the VFSC, although required to do so on a yearly basis. This is a significant vulnerability to misuse of the NPO.

470. The Evaluation Team found no evidence that any NPO in Vanuatu has ever undergone any type of audit by an AML/CFT regulatory body. As far as the evaluation team was able to determine, no guidance regarding customer due diligence, suspicious transaction reporting, or other AML/CFT measures related to NPOs has been provided to financial institutions.

5.3.2 RECOMMENDATIONS AND COMMENTS

471. It is recommended that the authorities:

- Implement measures consistent with the Interpretative Note to SR VIII to ensure that terrorist organisation cannot pose as legitimate NPOs, and to ensure that funds collected by or transferred through NPOs are not diverted to support terrorist activities, or organisations.
- Conduct a review of laws and regulations regarding NPOs which may be vulnerable to exploitation by terrorists and terrorist organisations
- Provide AML/CFT guidance to financial institutions regarding NPOs

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR. VIII** | **Non Compliant** | • **There has been no review of the adequacy of laws and regulations relating to supervision of NPOs**<br>• **There is a lack of effective implementation of laws and regulations regarding NPOs**<br>• **Failure to provide AML/CFT guidance regarding NPOs to financial institutions** |

# 6 NATIONAL AND INTERNATIONAL CO-OPERATION

## 6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31 & 32)

### 6.1.1 DESCRIPTION AND ANALYSIS

**Recommendation 31**

472. Vanuatu has set up a Combined Law Agency Group (CLAG) which comprises representatives from the State Law Office, the Financial Intelligence Unit, the Police Department, Ministry of Internal Affairs, the Immigration Department, Airports Vanuatu Limited, and Customs and Inland Revenue. The last meeting of CLAG was in February 2005.

473. The State Law Office is currently reviewing a CLAG Working Charter that is to be presented to the Council of Ministers for approval. Like other CLAGs in the region, this body is set up to facilitate information and intelligence sharing between local law enforcement agencies and to provide regular networking opportunities.

474. Vanuatu also has a committee called the Vanuatu Financial Sector Assessment Group (VFSAG) which comprises of the Director-General of the Prime Minister's Office, the Director-General of Finance, the Attorney-General, the Governor of RBV and his deputy, Commissioner, VFSC and the Financial Analyst of VFIU. The VFSAG has been set up to formulate or discuss government policy, laws or issues in respect of matters affecting Vanuatu's finance sector including the OECD Harmful Tax initiatives. The VFSAG is generally required to meet once a fortnight or when called upon by the Chairman. Since October 2005, the VFSAG has had one meeting.

**Recommendation 32**

475. Vanuatu has reviewed its legislation in respect of effectiveness of their systems for combating ML and FT, which lead to the new AML/CFT legislation being gazetted and thereby coming into force on 24 February 2006. This included the CTTOCA and amendments to the POCA, MACMA and FTRA. These new laws brought into force further legal requirements necessary under the FATF recommendations.

476. In respect of CLAG, reference was made to this body by several departments as a mechanism in place which enables them to co-operate and co-ordinate domestically in respect of policy or operational matters concerning the development and implementation of the AML/CFT legislation. However, although the mechanism exists, given that its last meeting was almost a year ago, it does not appear to have been effective. This assessment is further compounded by the lack of awareness and familiarity among the Government department officials of the AML/CFT legislation or how they respectively 'tie in' with its administration. There was also little evidence that there was good communication and coordination among the Government departments or agencies, particularly the law enforcement agencies. The responsibility of chairing CLAG was unclear and although common reference was made to the Attorney-General, he advised that he was not the chairman.

477. The VFSAG appeared to have met more frequently than the CLAG and as a group, did discuss the new legislation that was gazetted on 24 February 2006.

### 6.1.2 RECOMMENDATIONS AND COMMENTS

478. It is noted that the Vanuatu Government already has two committees and in particular, the CLAG, through which cooperation, coordination and communication among the relevant agencies can be improved. For this reason it is recommended:

- That the State Law Office complete its review of the CLAG Working Group Charter and for the same to be forwarded to the Council of Ministers for approval which will include a recommendation as to who will chair the CLAG;

- The CLAG should consider setting out a plan of action in terms of familiarising its members with the AML/CFT legislation and clearly identifying the responsibilities of each department or agency including how to effectively implement the POCA;

- That the CLAG and VFSAG establish communication lines in terms of awareness of any policies or issues that arise concerning the AML/CFT legislation or the implementation thereof.

479. Given that the CLAG does not include the RBV or VFSC (and it is noted that the VFSC is a member of VFSAG), the Vanuatu Government may want to consider forming a national coordinating AML/CFT committee comprising all relevant Government departments or agencies.

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.31** | **Non Compliant** | • **There are no effective mechanisms in place which enable law enforcement and other competent authorities to cooperate and where appropriate coordinate domestically with each other concerning the development and implementation of AML/CFT policies and activities;**<br>• **Outside of any mechanisms such as CLAG, there is little cooperation or coordination among the competent authorities in terms of implementing the legislation;** |
| **R.32** | **Partially Compliant** | • **Vanuatu has reviewed, amended and improved the laws but no procedures are in place to implement the new laws;**<br>• **There is a lack of awareness of the new laws among the relevant Government departments or agencies.** |

## 6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

480. Vanuatu ratified the Vienna Convention by way of the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001* which is stated to be "binding on the Republic of Vanuatu in accordance with its terms". Vanuatu has also ratified the Palermo Convention by way of the *United Nations Convention Against Transnational Organised Crime Act 2003*.

481. Vanuatu ratified the International Convention for the Suppression of the Financing of Terrorism by way of the *International Convention for the Suppression of the Financing of Terrorism Act 2002*. Section 1(2) of this Act provides that the Convention "is binding on the Republic of Vanuatu in accordance with its terms". This Act came into force on 15 September 2003. This was followed by an instrument of accession being signed by the Minister of Foreign Affairs on 27 October 2005, whereby the Vanuatu

Government undertakes to faithfully perform and carry out the stipulations contained therein.

482. In respect of the United Nations Security Council Resolutions, the *United Nations Act No.1 of 2002* empowers the Prime Minister of Vanuatu to make such orders as are necessary to apply any measures that will give effect to any decision of the UN Security Council. This Act also provides for ancillary offences in respect of any breach of such orders:

> *(1) A person who:*
> *(a) commits or attempts to commit, or does any act with intent to commit, any offence against any orders made under this Act; or*
> *(b) counsels, procures, aids, abets, or incites any other person to commit, or conspires with any other person (whether in Vanuatu or elsewhere) to commit, any offence against any orders made under this Act;*
> *is punishable on conviction by the penalty set out in subsection (2).*
> *(2) The penalty is:*
> *(a) in the case of an individual, to imprisonment for not more than 5 years or to a fine not exceeding VT 20,000,000; or*
> *(b) in the case of a body corporate, to a fine not exceeding VT 100,000,000.*

483. To date, only the Suppression of Terrorism and Afghanistan Measures Order 2003, has been made under this Act. This Order prohibits the following:

- Collecting or providing funds for specified entities (listed in the Schedule to the Order as every Al-Qaeda entity; the Taliban; every Taliban entity and Osama bin Laden);
- Dealing with property of, or derived or generated from property of, specified entities;
- Making property, or financial or other related services available to specified entities; and
- Recruiting members of a specified entity.

484. However, clause 9 of this Order does not apply to Osama bin Laden. Clause 9 provides "whistleblower" protection for those persons who comply with clause 4 of the Order (not to deal with any property of a specified entity) and clause 6 (not to make available to any specified entity any property or financial or other related services). Clause 9 also offers protection against civil and criminal liability to any person who reports a suspicion to the Attorney-General or discloses information in connection with a report of that kind.

485. Section 4 of the CTTOCA also authorises the Minister responsible for Justice to make regulations prescribing as a specified entity a person or group identified by the UNSC however, no regulations have yet been made under this provision.

486. There are also several other ATRO made under various legislation referred to in clause 99 of this Report, that give effect to UNSCR 1267, 1269, 1333 and 1390.

487. No other relevant international conventions have been signed or ratified. The Ministry of Foreign Affairs has established a Treaties and Conventions Division which is currently concentrating on a backlog of other treaties and conventions, in identifying and addressing Vanuatu's obligations under those instruments. The Vanuatu Government is

yet to consider other relevant international conventions such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

6.2.2 RECOMMENDATIONS AND COMMENTS

488. Although Vanuatu has signed and ratified the three main conventions in terms of the Vienna, Palermo and the Terrorist Financing Convention, the issue as to whether it has "fully implemented" these conventions cannot be assessed given that there have been no ML or FT prosecutions or investigations and no confiscation of proceeds under the POCA.

6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.35** | **Largely Compliant** | • **Given that there have been no ML prosecutions or any assets frozen under POCA, it is difficult to conclude that the Vienna and Palermo Conventions have been "fully implemented"** |
| **SR.I** | **Largely Compliant** | • **Given that there have been no FT or counter-terrorism prosecutions or investigations, it is difficult to conclude that the Terrorist Financing Convention has been "fully implemented"** |

## 6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V, R.32)

6.3.1 DESCRIPTION AND ANALYSIS

**Recommendation 36**

489. The *Mutual Assistance in Criminal Matters Act 2002* (MACMA) sets out the circumstances in which mutual legal assistance can be provided upon request by a foreign country for international assistance in a "criminal matter". The term "criminal matter" is defined as follows:

> ***criminal matter*** *includes a matter (whether arising under Vanuatu law or a law of another country) relating to:*
> *(a) the forfeiture or confiscation of property for an offence; or*
> *(b) the restraining of dealings in property that may be forfeited or confiscated for an offence.*

It is noted that the MACMA does not contain any definition for the term "offence". However, other than the assistance that can be granted in terms of requesting evidence to be taken and documents to be produced under section 12, all other assistance available under the MACMA is only available for "criminal matters involving a serious offence".

490. Part 3 of the MACMA authorises the Attorney-General to provide assistance with taking of evidence and production of documents or other articles. Pursuant to section 12 if a foreign country asks that evidence be taken in Vanuatu for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise the taking of evidence and the transmission of the

evidence to the requesting country. Assistance can also be granted to a foreign country requesting that a document or other article in Vanuatu be produced for a proceeding or investigation. The Attorney-General can under section 12, authorise the production of the documents or articles and have the same transmitted to the requesting country.

491. Where the Attorney-General authorises the taking of evidence, pursuant to section 13, a Judge may take on oath, the evidence of each witness in the matter and cause the evidence to be put in writing and certify that he or she took the evidence, which is then sent to the Attorney-General. Where the Attorney-General authorises the production of a document, under section 14 the Judge may require the document to be produced to him or her and send it, or a copy of it certified by the Judge to be a true copy, to the Attorney-General. If the Attorney-General authorises the production of an article other than a document, a Judge may require it to be produced and send it to the Attorney-General.

492. Part 4 of the MACMA sets out the provisions under which a foreign country can make requests for search and seizure. Section 19 provides that the Attorney-General may direct an authorised officer to apply to the Court for a search warrant if:

*(a) a proceeding or investigation for a criminal matter involving a serious offence has commenced in a foreign country or in relation to terrorist property; and*
*(b) the Attorney-General believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in Vanuatu; and*
*(c) the foreign country requests the Attorney-General to arrange for the issue of a search warrant for that thing.*

493. Section 19(3) further provides that "having regard to the need for prompt action in seizing property that may be at risk of being destroyed or removed, the Court must make itself available to hear an application for a search warrant under this section at short notice."

494. A search warrant granted under section 19, authorises the authorised officer to enter the land or premises and to search it "for that thing and seize it". Section 21 of the MACMA further authorises the authorised officer while searching for a thing of a kind specified in the warrant, to seize any other thing the officer believes, on reasonable grounds, to be relevant to the proceeding or investigation in the foreign country or to provide evidence about the commission of a criminal offence in Vanuatu.

495. Section 40 of the MACMA provides that the Attorney-General may apply for registration of a foreign forfeiture order or foreign pecuniary penalty order in the Court if he is satisfied that the person has been convicted of the offence, and that the order is not subject to further appeal in the foreign country. Under this provision the Attorney-General can also make arrangements for the enforcement of a foreign restraining order.

496. Apart from the above, Vanuatu has no laws which specifically effects the service of judicial documents.

497. Sections 31 to 34 of the MACMA, address any requests by foreign countries for the removal of a prisoner in Vanuatu to the foreign country to attend at a proceeding or investigation about a criminal matter that has commenced in the foreign country. The Attorney-General can facilitate such a request where he believes that the prisoner is capable of giving relevant evidence, the prisoner has consented to giving evidence or assistance in the foreign country and the foreign country has given adequate undertakings in respect of the matters mentioned in section 33 of the MACMA. Such

matters include that the person will not be detained, prosecuted or punished for an offence against the law of the foreign country committed or alleged to have been committed, before the person's departure from Vanuatu and that the person will not be required to give evidence in a proceeding other than the one to which the request relates.

498. Pursuant to section 46, where a foreign country requests the Attorney-General to obtain the issue of a search warrant for tainted property or terrorist property, the Attorney-General may direct an authorised officer to apply to the Court under the POCA for such a search warrant "if a proceeding or investigation has commenced in a foreign country for a serious offence or terrorist property; and the Attorney-General believes on reasonable grounds that tainted property or terrorist property for the offence is located in Vanuatu".

499. Pursuant to section 47, a foreign country can also request the Attorney-General to obtain the issue of a restraining order under the POCA against property connected with a serious offence if a proceeding has commenced, or the Attorney-General believes on reasonable grounds that a proceeding is about to commence for the offence; and he believes that property is located in Vanuatu.

500. Section 48 of the MACMA (as amended by the MACM Amendment Act 2005) provides as follows:

> *(1) Subsection (2) applies if:*
> *(a) a proceeding or investigation has commenced in a foreign country for a serious offence or terrorist property; and*
> *(b) a property-tracking any document of the type described in subsection 79A (1) or (2) of the Proceeds of Crime Act connected with the offence is reasonably believed to be located in Vanuatu [sic]; and*
> *(c) the foreign country requests the Attorney-General to obtain the issue of:*
> *(i) an order requiring the documents to be produced or made available for inspection under the law of Vanuatu; or*
> *(ii) a search warrant for obtaining the documents the offence [sic].*
> *(2) The Attorney-General may direct an authorised officer to apply to the Court for:*
> *(a) a production order under the Proceeds of Crime Act in connection with the offence to obtain possession of the property-tracking document; or*
> *(b) a search warrant under that Act for obtaining the documents the property-tracking document. [sic]*

501. The *MACM Amendment Act 2005* which came into force on 24 February 2006, amended section 48 and these amendments are incorporated above. Section 79A (1) or (2) of the POCA are provisions relating to currency reporting at the border, with section 79A (2) being an offence provision. Some of the other amendments to this section, have resulted in anomalies where indicated, particularly in respect of subsection (1) (b).

502. The MACMA is administered by the State Law Office, the responsibility of which has been delegated by the Attorney-General as head of the State Law Office to the Solicitor-General's division. Since 2003, the State Law Office has received 22 mutual legal assistance requests, the majority of which are from Australia (12) followed by the USA (7). Out of the 22 requests received, 4 are yet to be addressed. In respect of timeliness issues, of the 18 requests actioned, 4 were actioned in a year or less (the shortest period being 3 months) and the other requests were actioned in a period ranging

from just over 1 year and upwards. The 4 outstanding requests were received in 2003 and the State Law Office indicated that the delay in dealing with them is due to low priority accorded to the particular requests. The Vanuatu authorities clarified this by citing the lack of staff and resources to enable it to address these requests, while faced with the daily demand of delivering its other outputs of civil litigation, legislative drafting services and providing legal advice to all Government departments.

503. The Office has also provided assistance in respect of 4 requests received for information regarding international companies, by obtaining from the Court a search warrant under the MACMA and a Court order under section 125 of the *International Companies Act No. 32 of 1992*.

504. Section 7 of the MACMA provides that assistance may be provided subject to any conditions that the Attorney-General determines. Under sections 8, 9 and 10, the Attorney-General may refuse a request:

> ***8 Refusal of assistance generally***
>
> *A request by a foreign country for assistance under this Act must be refused if, in the opinion of the Attorney-General:*
> *(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or*
> *(b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for a political offence; or*
> *(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions; or*
> *(d) the granting of the request would prejudice the sovereignty, security or national interest of Vanuatu; or*
> *(e) the request relates to the prosecution of a person for an offence if, for that offence or another offence constituted by the same act or omission as that offence, the person:*
> *(i) has been acquitted or pardoned by a competent tribunal or authority in the foreign country; or*
> *(ii) has undergone the punishment provided by the law of that country.*
>
> ***9 Refusal of assistance — death penalty***
> *(1) A request by a foreign country for assistance under this Act may be refused if:*
> *(a) it relates to the prosecution or punishment of a person charged with, or convicted of, an offence for which the death penalty may be imposed in the foreign country; and*
> *(b) the Attorney-General is not of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.*
> *(2) A request by a foreign country for assistance under this Act may be refused if the Attorney-General:*
> *(a) believes that the provision of the assistance may result in the death penalty being imposed on a person; and*
> *(b) after taking into consideration the interests of international criminal cooperation, is of the opinion that in the circumstances of the case the request should not be granted.*
>
> ***10 Refusal of assistance — Attorney-General's discretion***

*A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General:*

*(a) the request relates to the prosecution or punishment of a person for an act or omission that, if it had occurred in Vanuatu, would not have constituted an offence against Vanuatu law; or*

*(b) the request relates to the prosecution or punishment of a person:*

*(i) for an act or omission that occurred, or is alleged to have occurred, outside the foreign country; and*

*(ii) if a similar act or omission occurring outside Vanuatu in similar circumstances would not have constituted an offence against Vanuatu law; or*

*(c) the request relates to the prosecution or punishment of a person for an act or omission and the person responsible could no longer be prosecuted by reason of lapse of time or any other reason if:*

*(i) it had occurred in Vanuatu at the same time; and*

*(ii) it had constituted an offence against Vanuatu law; or*

*(d) the provision of the assistance could prejudice an investigation or proceeding for a criminal matter in Vanuatu; or*

*(e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Vanuatu); or*

*(f) the provision of the assistance would result in manifest unfairness or a denial of human rights; or*

*(g) the provision of the assistance would impose an excessive burden on the resources of Vanuatu; or*

*(h) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted."*

505. It is noted in particular that under section 10, the Attorney-General can refuse to provide assistance upon the principles of dual criminality. Vanuatu has indicated that requests will be refused on these grounds. Under section 40, only conviction-based foreign forfeiture and pecuniary penalty orders will be considered by the Attorney-General for application of registration in the Court.

506. All mutual legal assistance requests are received by the Attorney-General, which are actioned by the Solicitor-General's division within the State Law Office. If the request is refused under sections 8, 9 or 10, this refusal is communicated to the requesting country. Since 2003, no request has yet been refused. If the request is accepted, Counsel will prepare the relevant court documents, obtain assistance from the Police and file the papers with the Court Registry. On receiving sealed copies of the Court documents, the Police will execute the search warrants or serve the documents on the relevant financial institution.

507. There is no reference in sections 8, 9 or 10 to refusing a request on the sole ground that the offence is also considered to involve fiscal matters. However, requests concerning acts or omissions which constitute tax offences in the requesting country would not satisfy the dual criminality element as there are no tax laws in Vanuatu.

508. Section 125 of the International Companies Act No.32 of 1992 is a secrecy provision within the laws of Vanuatu and provides as follows:

*(1) Any person who, except when required by a court of competent jurisdiction, with respect to any company otherwise than for the purposes of the administration of this Act or for the carrying on of the business of the company in Vanuatu or elsewhere, divulges, attempts, offers or threatens to divulge or*

*induces or attempts to induce other persons to divulge any information concerning or respecting:*

*(a) the shareholding in, or beneficial ownership of any share or shares in a company;*

*(b) the management of such a company; or*

*(c) any of the business, financial or other affairs or transactions of the company;*

*shall be guilty of an offence.*

*(2) Any person who contravenes the provisions of subsection (1) shall, on conviction, be liable to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.*

509. In practice, the State Law Office has had no difficulty obtaining court orders in respect of requests received from foreign countries for information or documents pertaining to an international company. The State Law Office indicated that these applications are made by way of a combination of an application for a search warrant under the MACMA and a Court order under section 125, by virtue of the words "except when required by a court of competent jurisdiction". It was indicated by State Law Office that the application is made *ex parte* and the person/s upon which it is served has 24 hours to make application to the Court opposing the Order. To date, no such opposing applications have been made.

510. Section 17 of the FTRA provides that a financial institution and an officer, employee or agent of the financial institution must comply with the requirements of the FTRA "despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise." This section further provides that no civil or criminal proceedings can be taken against a financial institution, etc. for complying with its obligations under the Act and subsection (3) specifically provides that the section "overrides section 125 of the *International Companies Act No. 32 of 1992*".

511. The powers of competent authorities required under Recommendation 28 that are available for use in response to mutual legal assistance requests, are set out in sections 46, 47 and 48 of the MACMA. Pursuant to section 46, a search warrant for tainted property or terrorist property, can be obtained under the POCA. An application can also be made under section 47 for a restraining order under the POCA against property connected with a serious offence. Given the wording of section 48 as a result of the *MACM Amendment Act 2005*, the anomalies need to be corrected but subsection (2) does allow for production orders to be applied for under the POCA; and search warrants for obtaining the property-tracking documents.

512. Vanuatu has not yet given consideration to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

513. Pursuant to section 13A (d) of the FTRA, the VFIU is able to disclose information derived from any report or information provided to the VFIU under the FTRA to an "assisting entity" if it is relevant to the detection, investigation or prosecution of a person for a ML, FT or other serious offence; the commission of a ML, FT or other serious offence; an act preparatory to a FT offence; or the enforcement of the FTRA, POCA or any other Act prescribed by regulations. Sections 13A (g) and 13C authorise the VFIU to enter into agreements or arrangements with an assisting entity and exchange information in accordance with those agreements or arrangements.

514. An "assisting entity" is defined in section 1 of the FTRA Amendment 2005 as:

*(a) a law enforcement agency or supervisory body outside Vanuatu or any other institution or agency of the relevant foreign state; or*
*(b) an international organization established by the governments of foreign states; or*
*(c) a body outside Vanuatu with functions similar to the Unit; or*
*(d) a law enforcement agency or supervisory body within Vanuatu;*

515. Other than the above, powers of other judicial or law enforcement authorities required under Recommendation 28 are not available for use when there is a direct request from their domestic counterparts.

**Recommendation 37**

516. The term "serious offence" is defined in section 2 of the POCA:

*(a) an offence against a law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months; or*
*(b) an offence against the law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months.*

517. Pursuant to section 10 of the MACMA, a request can be refused on the grounds that dual criminality is not satisfied. Vanuatu will refuse a request that does not satisfy this element.

518. Vanuatu has no legal or practical impediment to rendering assistance where both Vanuatu and the requesting country criminalise the conduct underlying the offence. Technical differences between the laws in a requesting country and Vanuatu such as differences in the manner in which each country categorises or denominates the offence, do not pose an impediment to the provision of mutual legal assistance.

**Recommendation 38**

519. The MACMA provides a comprehensive legal framework for "effective and timely" responses to mutual legal assistance requests related to the identification, freezing, seizure or confiscation of laundered property and proceeds from instrumentalities used in or intended for use in the commission of any ML, FT or other serious offences. These include:

- Application to the court for a search warrant for a thing relevant to the requesting country's investigation or proceeding (section 19). Subsection (3) further provides: "Having regard to the need for prompt action in seizing property that may be at risk of being destroyed or removed, the Court must make itself available to hear an application for a search warrant under this section at short notice";
- For a search warrant issued under section 19, if any other thing relevant to the proceeding or investigation in the foreign country is discovered by the authorised officer, he or she may seize it (section 20);
- Registration of foreign forfeiture and pecuniary penalty orders, and foreign restraining orders under section 40. Section 41 further provides that if the Attorney-General applies to the Court for registration of a foreign order under section 40, the Court must register the order accordingly. The effect of registration as provided under section 42 is that the foreign orders may be enforced as if they were orders made under the POCA and in respect of

foreign pecuniary penalty orders, the amount payable under the order is treated as payment required to be made to the State;

- The registration of an order is done by registering a copy of the appropriate order sealed by the Court or other authority that made the order. A facsimile copy of a sealed or authenticated copy of an order is treated as if it were a sealed or authenticated copy (section 44);
- Search and seizure warrants for tainted property can be made under the POCA at the request of a foreign country under section 46
- Requests for restraining orders under the POCA can be made under section 47;
- Information gathering orders can be made under section 48.

520. "Property" and "tainted property" have the same meaning as given in section 2 of the POCA:

> ***property*** *includes money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property;*
>
> ***tainted property*** *in relation to a serious offence, means:*
> *(a) property intended for use in, or used in, or in connection with the commission of the offence; or*
> *(b) proceeds of crime.*

521. Section 5 of the POCA defines "proceeds of crime":

> (1) In this Act:
>
> ***proceeds of crime*** *means property derived or realised directly or indirectly from a serious offence, including –*
> *(a) property into which any property derived or realised directly from the offence is later successively converted or transformed; and*
> *(b) income, capital or other economic gains derived or realised from that property since the offence.*
> *(2) If property that is proceeds of crime (**the original proceeds**) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime.*

522. "Terrorist property" is defined in the CTTOCA and refers to property used to commit a terrorist act, or property used by a terrorist group or property owned or controlled by a specified entity or on behalf of that entity. The term "property" is defined in the CTTOCA and satisfies the definition of "funds" as that term is defined in Article 1 of the Terrorist Financing Convention.

523. Vanuatu does not yet have formal arrangements in place for the coordination of seizure and confiscation actions with other countries but has indicated that it will enter into such arrangements if and when the need arises.

524. Vanuatu has not established an asset forfeiture fund and is yet to give consideration to the need for such a fund.

525. Section 42(3) of the MACMA authorises the Attorney-General to enter into an arrangement with a foreign country to share with that country the amount forfeited in

respect of a registered foreign forfeiture order or amount paid under a registered foreign pecuniary penalty order.

526. Vanuatu does not recognise or enforce foreign non-criminal confiscation orders.

**Special Recommendation V**

527. The assistance that can be provided under the MACMA in respect of ML and serious offences is similarly available in respect of FT, terrorist acts and terrorist organisation offences. However, the MACMA does not refer to the CTTOCA in terms of the Attorney-General's powers to apply for a court direction under section 12 for the Administrator to take custody and control of any property he believes to be terrorist property - an application that can be made *ex parte*. Neither does the MACMA refer to the CTTOCA in terms of enforcement of foreign forfeiture orders relating to terrorist property, which may be civil-based. Under section 40 of the MACMA, only conviction-based foreign forfeiture orders will be considered for registration. Section 19 of the CTTOCA allows the Attorney-General to apply for civil-based forfeiture against terrorist property.

528. As long as there is dual criminality, Vanuatu has no legal or practical impediment to rendering assistance where both Vanuatu and the requesting country criminalise the conduct underlying FT, terrorist act or terrorist organisation offences. Technical differences such as the manner in which each country categorises or denominates these offences do not pose an impediment to the provision of assistance.

**Recommendation 32**

529. The State Law Office was able to provide statistics in respect of mutual legal assistance requests received from 2003 onwards:

> *Number of requests made by Vanuatu – 3. All have been responded to by the foreign countries concerned.*
>
> *Number of requests to Vanuatu from:*
> - *Fiji – 1*
> - *Australia – 12*
> - *France – 1*
> - *United States of America – 7*
> - *Cayman Islands – 1*
> - *TOTAL – 22 requests*
>
> *All have been addressed and completed except for 4 requests on which work is still ongoing from 2003.*

530. The turnaround time for dealing with the requests to Vanuatu:

> *Of the 18 requests dealt with, 4 were dealt with in a year or less (shortest period a request was dealt with was 3 months), and the others dealt with in a period ranging from just over a year to up to 4 and a half years.*
>
> *Number of requests that required information regarding international companies – 4.*

531. Since the commencement of the *Extradition Act No.16 of 2002*, no extradition requests have been made by or to Vanuatu. No statistics were provided in respect of any extradition requests that may have been made under the former *Extradition Act 1988*.

532. No other statistics are kept for other formal assistance requests made or received by law enforcement agencies relating to ML or FT.

533. Vanuatu has not yet considered devising and applying mechanisms for determining the best venue for prosecution of FT, terrorist acts or terrorist organisation offences that are subject to prosecution in more than one country. Apart from the powers of the VFIU available under the FTRA, other law enforcement agencies or competent authorities are unable to utilise their powers in respect of receiving direct requests from their domestic counterparts.

534. In respect of an asset forfeiture fund, sharing of confiscated assets and foreign non-criminal confiscation orders as they apply in respect of ML and serious offences, also apply in respect of FT, terrorist acts and terrorist organisation offences.

### 6.3.2 RECOMMENDATIONS AND COMMENTS

535. Vanuatu has a robust legislative framework within which to provide effective and timely mutual legal assistance. Given the number of requests that have been received and dealt with by the State Law Office since 2003, one can conclude that Vanuatu is able to provide MLA without any legislative or legal difficulties. It would seem however, from the four outstanding requests since 2003, that Vanuatu still has problems in terms of "timeliness" and prioritising MLA requests. The State Law Office indicates that this is due to a lack of staff and resources to enable it to address these requests, while faced with the daily demand of delivering its other outputs of civil litigation, legislative drafting services and providing legal advice to all Government departments

536. It is recommended that:

- the Attorney-General should seek and introduce ways to analyse and address the impediments to providing timely responses to MLA requests.

- Vanuatu amend the legislation to correct the anomalies made in section 48 of the MACMA;

- Vanuatu consider amending the definition of "serious offence" to include a reference to pecuniary penalties, given that if a foreign country request related to an investigation, prosecution or court order concerning a legal person, the penalty of which was a fine only, such requests would not satisfy the definition of "serious offence" and therefore fall outside the MACMA;

- Vanuatu give consideration to reviewing its policy on refusing MLA requests on the grounds that it does not satisfy dual criminality in terms of the assistance available under section 12 of the MACMA for requests concerning "criminal matters";

- procedures are established for co-ordinating seizure and confiscation actions with other countries;

- Vanuatu consider establishing an asset forfeiture fund, to be used for law enforcement, health, education or other appropriate purposes;

- Vanuatu give consideration to devising and applying mechanisms for determining the best venue for prosecution of defendants that are subject to prosecution in more than one country;

- Vanuatu consider amending the legislation to allow for the Attorney-General to make application under section 12 of the CTTOCA for taking custody and control of terrorist property; and section 40 to allow consideration of civil-based foreign forfeiture orders over terrorist property.

6.3.3 COMPLIANCE WITH RECOMMENDATIONS 32, 36 TO 38, AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.3 underlying overall rating |
|---|---|---|
| **R.32** | **Partially Compliant** | • **Although the State Law Office has some statistics on MLA, timeliness is an issue.** |
| **R.36** | **Partially Compliant** | • **MLA requests has been and continues to be subject to undue delays;**<br>• **Request for MLA will be refused on sole ground that the offence involves fiscal matters because Vanuatu has no tax laws, therefore dual criminality requirement is not met;**<br>• **Vanuatu has not considered mechanisms for determining venue of prosecution in cases that are subject to prosecution in more than one country** |
| **R.37** | **Largely Compliant** | • **Vanuatu will refuse MLA requests where dual criminality requirement not met** |
| **R.38** | **Largely Compliant** | • **Vanuatu does not have arrangements for co-ordinating seizure and confiscation actions with other countries;**<br>• **Vanuatu has not considered establishment of asset forfeiture fund;** |
| **SR. V** | **Largely Compliant** | • **Vanuatu does not provide MLA in respect of the powers available to the Attorney-General under the CTTOCA, namely the ability to apply for directive over custody of terrorist property; and applications for civil-based forfeiture orders pertaining to terrorist property** |

## 6.4 EXTRADITION (R.39, 37 & SR.V)

6.4.1 DESCRIPTION AND ANALYSIS

**Recommendation 39**

537. Section 2 of the Extradition Act 2002 defines “extradition offence” as having the “meaning given by subsection (3) (1).” Section 3(1) provides as follows:

*(1) An offence is an extradition offence if:*

*(a) it is an offence against a law of the requesting country for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and*

*(b) the conduct that constitutes the offence, if committed in Vanuatu, would constitute an offence in Vanuatu for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months.*

538. As the penalty for ML is for a natural person a fine of 10 million vatu or imprisonment for a term of 10 years or both, ML is an extradition offence in respect of natural persons.

539. Pursuant to section 17(2) (d) of the Extradition Act, the Attorney-General may refuse to order that the person be surrendered if the person is "a citizen of Vanuatu". Section 60 of the Act provides that a person may be prosecuted and punished in Vanuatu for an offence if under subsection (1) (b), "the Attorney-General refuses to order the surrender of the person because of a circumstance listed in subsection (2)". Subsection (2) (a) provides: "the person is a citizen of Vanuatu". Subsection (3) further provides that for the purposes of prosecution, the person must be taken to have engaged in the conduct in Vanuatu and it is for the Public Prosecutor to determine whether there is sufficient evidence in Vanuatu to justify the prosecution.

540. Pursuant to section 62, if Vanuatu refuses to surrender a citizen of Vanuatu, Vanuatu may surrender the person for the purpose of being tried in the requesting country if Vanuatu is satisfied that if the person is convicted the person will be returned to Vanuatu to serve the sentence imposed.

541. Section 61 of the Extradition Act provides that if another country has refused to order that a person be surrendered to Vanuatu but the country is prepared to prosecute the person for the offence for which Vanuatu sought surrender of the person, the Public Prosecutor must give the other country all available evidence to enable the other country to prosecute the person.

542. There are no measures or procedures that would allow extradition requests and proceedings relating to ML to be handled without undue delay. Any extradition requests and proceedings relating to ML are treated the same as any other extradition offence. However, it is noted that "faster" procedures may be available in terms of the requesting country's "status" under the Act. For example, under Part 4 of the Act, a backing of warrants procedure is available to South Pacific countries only.

543. The Extradition Act does not allow for direct extradition requests to be made between appropriate ministries. Other than the backing of warrants procedure available to South Pacific countries, persons cannot be extradited based only on warrants of arrest or judgements but there is a simplified procedure of extradition for consenting persons who waive formal extradition proceedings under sections 11 and 34 of the Act. Persons cannot be extradited based only on warrants of arrest or judgements but there is a simplified procedure of extradition for consenting persons who waive formal extradition proceedings under sections 11 and 34 of the Act. Pursuant to these sections, if at any time a person tells a magistrate that he or she consents to being surrendered to the requesting country and the magistrate is satisfied that the consent was given voluntarily, the effect of the consenting is that the person will be committed to prison without any extradition proceedings and the person will be surrendered to the requesting country.

**Recommendation 37**

544. Vanuatu's policy of refusing mutual legal assistance in the absence of dual criminality, does apply in respect of extradition requests, given section 3 of the Extradition Act. However, section 3(4) provides that an offence may be an extradition offence although it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters and Vanuatu does not impose a duty, tax, impost or control of that kind. Where dual criminality exists, Vanuatu has no legal or practical impediment to rendering assistance where both Vanuatu and the requesting country criminalise the conduct underlying the offence. Technical differences between laws do not pose an impediment to the provision of assistance. Section 3(2) of the Extradition Act provides that "in determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct".

**Special Recommendation V**

545. FT, terrorist acts and terrorist organisation offences are extradition offences under section 3(1) of the Extradition Act as the penalties far exceed the 12 month imprisonment threshold. For example, section 6 of the CTTOCA which criminalises FT, provides a penalty upon conviction of imprisonment for not more than 25 years or a fine of not more than VT 125 million ($USD 1 million), or both. It should be noted that if a legal person receives the fine only, then an issue may arise as to whether in such a case FT is an extradition offence.

546. In respect of extradition requests relating to citizens of Vanuatu, FT, terrorist acts and terrorism organisation offences would fall within sections 7, 17, 61 and 62 of the Act. In respect of measures or procedures adopted that will allow extradition requests and proceedings relating to FT, terrorist acts and terrorist organisation offences to be handled without undue delay, the same principles or comments made in respect of ML, would apply.

547. In respect of simplified procedures of extradition, the same principles or comments made in respect of ML, would apply to FT, terrorist act and terrorist organisation offences.

### 6.4.2 RECOMMENDATIONS AND COMMENTS

548. Vanuatu has comprehensive extradition laws but have no statistics on any extradition requests made or received. For this reason, it is difficult to assess the effectiveness of the law or whether it has or is being fully implemented. It is recommended:

- that Vanuatu considers measures or procedures that will allow extradition requests and proceedings for ML to be handled without undue delay.

### 6.4.3 COMPLIANCE WITH RECOMMENDATIONS 32, 37 & 39, AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.4 underlying overall rating |
|---|---|---|
| **R.32** | **Partially Compliant** | • **Vanuatu does not have statistics for extradition requests made or received** |
| **R.37** | **Largely Compliant** | • **As there are no statistics for extradition requests, it is difficult to assess whether the legislation has been fully implemented** |

| | | |
|---|---|---|
| **R.39** | **Largely Compliant** | • **Vanuatu has no measures or procedures that will allow extradition requests and proceedings for ML to be handled without undue delay** |
| **SR. V** | **Partially Compliant** | • **As no requests have been made or received relating to terrorist acts or FT, it is difficult to assess whether the legislation has been fully implemented** |

## 6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.32 & 40, & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

**Recommendation 40**

549. Sections 13A and 13C of the FTRA provides the legal authority under which the VFIU can provide information to its counterparts in other jurisdictions. There are no legal impediments to the VFIU providing this information in a rapid, constructive and effective manner. The Vanuatu Government signed its first Memorandum of Agreement for exchange of information between AUSTRAC and the VFIU on 28th September 2002, in order to facilitate the sharing and exchange of information on transnational crime including financial crimes.

550. In respect of other competent authorities, there are no legal or statutory gateways in place that facilitate cooperation or the exchange of information to their foreign counterparts but the Vanuatu Police through TCU has a wide network that contributes to the exchange of information. These networks are created with law enforcement agencies regionally and internationally. The Australian Federal Police has a Liaison Officer in Vanuatu located within Australia's High Commission. This Officer provides a link between Australian and local law enforcement agencies and predominately performs a liaison role and facilitates capacity building in the region on transnational crime issues. Other than this arrangement, there are no bilateral or multilateral agreements or arrangements through which cooperation/information can be given. However, international and regional organisations are available as avenues through which law enforcement agencies can exchange information upon request, including Interpol, Oceania Customs Organisation and Transnational Organised Crime Office in Fiji and the Pacific Islands Legal Officers Meeting (PILOM).

551. Vanuatu has regular police to police contact through the TCU network in the Pacific and has daily contact with the Pacific Transnational Crime Coordination Centre (PTCCC) based in Fiji, which draws together all the TCUs that have been formed under AFP assistance.

552. Section 13A (h) sets out as one of the VFIU's functions, the power to request information from an assisting entity to assist with any analysis or assessment mentioned in paragraph (f). Paragraph (f) refers to the VFIU's function to collect information that the Unit considers relevant to a ML offence, FT offence or any other serious offence. The VFIU has also requested and received information through the Egmont secretariat.

553. Pursuant to section 13B (d) of the FTRA, the VFIU may undertake enquiries as may be requested in writing by an assisting entity where appropriate. The definition of "assisting entity" includes "a body outside Vanuatu with functions similar to the Unit". Section 13A(1)(f) of the FTRA authorises the VFIU to collect information that the Unit considers relevant to a ML, FT or other serious offence, "whether or not the information is publicly available, including information in commercially available databases or databases

maintained by Government". Pursuant to section 13C, the VFIU can exchange such information with an assisting entity that it has entered into a written agreement or arrangement with, as section 13C (2) provides that the VFIU may exchange information that both the VFIU and assisting entity "have reasonable grounds to suspect would be relevant to detecting, investigating or prosecution a ML, FT offence or other serious offence; or an offence that is substantially similar to such an offence".

554. Other than the assistance that can be granted under the MACMA and POCA, Vanuatu has no other laws which authorise the competent authorities to conduct investigations on behalf of foreign counterparts.

555. Vanuatu has indicated that it will cooperate in requests relating to fiscal matters through the VFIU. The VFIU may enter into agreements with its counterparts in other countries to share or exchange information on financial crime, as has been agreed upon between the VFIU and AUSTRAC pursuant to the Memorandum of Agreement signed on 28th September 2002.

556. In respect of refusing requests for cooperation on the grounds of secrecy, section 125 of the International Companies Act no.32 of 1992 is a secrecy provision that makes it an offence for any person to divulge or attempt to divulge any information concerning or respecting an international company "except when required by a court of competent jurisdiction". Such requests for cooperation are refused by Vanuatu unless they come in the form of a court order or formal request from the requesting country, forwarded to the State Law Office.

557. Section 17 of the FTRA provides that a financial institution and an officer, employee or agent of the financial institution must comply with the requirements of the FTRA "despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise." This section further provides that no civil or criminal proceedings can be taken against a financial institution, etc. for complying with its obligations under the Act and subsection (3) specifically provides that the section "overrides section 125 of the International Companies Act No. 32 of 1992".

558. Section 13C(3) of the FTRA requires that any agreement or arrangement entered into between the VFIU and an assisting entity must be restricted to the use of information to purposes relevant to investigating or prosecuting a ML offence, FT offence or any other serious offence "or an offence that is substantially similar to such an offence" and stipulate that the information is to be treated in a confidential manner and not to be disclosed without the express consent of the VFIU and assisting entity. Pursuant to section 13C(4), in the absence of such an agreement or arrangement, the VFIU may exchange information with its counter-part in another jurisdiction provided that the use of the information is restricted as referred to above.

559. Vanuatu does not have any mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts. The VFIU can under section 13B (d) undertake enquiries requested in writing by an "assisting entity" which is defined as including its foreign counterpart.

**Special Recommendation V**

560. In respect of SRV, the assistance and cooperation available for other serious offences including ML offences, is also available for FT, terrorist act and terrorist organisation offences.

**Recommendation 32**

561. Vanuatu law enforcement authorities do have mutual legal assistance statistics compiled since 2003 but do not have or keep statistics in respect of other international or formal requests. The MLA statistics are kept by the State Law Office and are set out in clauses 526 and 527. The VFIU also keeps statistics concerning requests for assistance it has requested and received.

562. The legislative "gateways" available to the VFIU by virtue of the FTRA, enables the VFIU to cooperate and provide prompt, constructive exchanges of information with other agencies – be they FIUs in other jurisdictions or other law enforcement agencies within the jurisdiction. There is an absence of similar legislative gateways (or bilateral/multilateral treaties) available to other competent authorities who currently rely upon direct 'agency to agency' contact, or regional and international networks in cooperating and exchanging information. The lack of a statutory or legislative framework of course, not only restricts the type of assistance or cooperation that can be provided but also results in a lack of effective controls over the information provided or received and may also limit the priority given to any requests of this nature. Although cooperation and exchange of information among law enforcement agencies other than VFIU is taking place through organisational networks, the process through which this is provided is not clearly set out or monitored.

### 6.5.2 RECOMMENDATIONS AND COMMENTS

563. It is recommended that Vanuatu introduce legislation pertaining to the respective competent authorities other than VFIU, that:

- authorises the competent authority to conduct enquiries on behalf of foreign counterparts;
- identifies the information that can be requested and establishes controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner.

564. With regard to Recommendation 32, it is recommended that :

- the competent authorities maintain statistics on requests for cooperation and information.

### 6.5.3 COMPLIANCE WITH RECOMMENDATIONS 32 & 40, AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.5 underlying overall rating |
|---|---|---|
| **R.32** | **Partially Compliant** | • **MLA statistics and VFIU statistics have been provided but no statistics on other requests for cooperation and information;** |
| **R.40** | **Partially Compliant** | • **Apart from the VFIU, there are no legislative gateways or mechanisms that:**<br>o **authorise other competent authorities to cooperate and exchange information with its foreign counterparts;** |

| | | |
|---|---|---|
| | | ○ **identifies the information that can be requested and establishes controls and safeguards to ensure that the information is used in authorised manner;**<br>• **The process for cooperation or exchange of information through agency to agency and organisational networks is not clearly set out or monitored** |
| **SR.V** | **Partially Compliant** | • **See comments for R.40** |

# 7 OTHER ISSUES

## 7.1 OTHER RELEVANT AML/CFT MEASURES OR ISSUES

## 7.2 GENERAL FRAMEWORK FOR AML/CFT SYSTEM (SEE ALSO SECTION 1.1)

# TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**
**Table 2: Recommended Action Plan to improve the AML/CFT system**
**Table 3: Authorities' Response to the Evaluation**

### Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

***Note:*** *These ratings reflect the status of the legislation in force at the time of the mutual evaluation in March 2005: that is, they reflect the fact that the PMLA and the implementing Rules had not come into force. The significant measures that have been brought into place by Vanuatu would result in increased levels of compliance with the FATF Recommendations and improve the ratings.*

| Forty Recommendations | Rating | Summary of factors underlying rating[5] |
|---|---|---|
| **Legal systems** | | |
| 1. ML offence | **PC** | • It is not specified in the relevant legislation whether property or proceeds includes property or proceeds situated outside Vanuatu;<br>• Vanuatu has not criminalised all the designated categories of offences;<br>• The ML offence does not apply to persons who commit the predicate offence;<br>• It is not specified in the law that the ancillary offences available under the Penal Code are applicable to the ML offence |
| 2. ML offence – mental element and corporate liability | **PC** | • The law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances;<br>• Vanuatu does not have "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for ML;<br>• Given that no ML offences have been prosecuted, it is difficult to assess the effectiveness of the ML legislation. Furthermore, while interviewing the law enforcement agencies responsible for administering the ML legislation, it was evident that they were not familiar with the ML legislation. |
| 3. Confiscation and provisional | **PC** | • The legislation is not being utilised despite some cases arising under which applications could have been made |

[5] These factors are only required to be set out when the rating is less than Compliant.

| | | |
|---|---|---|
| measures | | under the POCA;<br>• Lack of awareness and understanding of the POCA by the administering law enforcement agency;<br>• Lack of coordination between the law enforcement agencies in the administration or implementation of the POCA;<br>• As a result of the above, despite having robust confiscation of proceeds regime, it is not being effectively implemented |
| **Preventive measures** | | |
| 4. Secrecy laws consistent with the Recommendations | **C** | • Recommendation 4 is fully observed. |
| 5. Customer due diligence | **PC** | • The legislative requirements on CDD have been substantially augmented under the amended FTRA, which address most of the Recommendation 5's essential criteria collocated under the FATF assessment methodology.<br>• No financial institutions appeared aware of the fact that the amended FTRA had been put into force. No implementation has been made in practice of the new legislation.<br>• Under the previous FTRA, banks were implementing most of the required CDD measures provided for under the FATF recommendations in accordance with the RBV guidelines but non-bank financial institutions were not subject to adequate supervision including monitoring their compliance with basic legal requirements under the previous FTRA. |
| 6. Politically exposed persons | **PC** | • The legislative requirements on PEPs have been introduced under the amended FTRA.<br>• All the other financial institutions except for banks have not been aware of this new requirement.<br>• Banks have been observing this requirement in accordance with the RBV prudential guidelines. |
| 7. Correspondent banking | **PC** | • The legislative requirements on cross border correspondent banking or other similar relationships have been introduced under the amended FTRA.<br>• All the other financial institutions except for banks have not been aware of this new requirement.<br>• Banks have been observing this requirement in accordance with the RBV prudential guidelines. |
| 8. New technologies & non face-to-face business | **PC** | • There are no requirements for financial institutions except for banks to have polices or take measures against money laundering and terrorist financing threats that may arise from new or developing technologies as well as non-fact to face businesses. |

| | | |
|---|---|---|
| | | • Banks have been observing this requirement in accordance with the RBV prudential guideline. |
| 9. Third parties and introducers | **PC** | • The legislative requirements governing reliance on an agent/intermediary to perform CDD have been introduced under the amended FTRA.<br>• While banks have been acting on the RBV guidelines that have specific provisions regarding introduced business and client accounts opened by professional intermediaries, all the other financial institutions are not aware of this new requirement. |
| 10. Record keeping | **PC** | • There is a legal requirement for financial institutions to keep transaction records for six years after the completion of the transaction, which must be available on a timely basis to the VFIU upon request.<br>• There is a legal requirement for financial institutions to keep customer records for six years after the evidence was obtained; this could be shorter than the FTAF requirement of five years after the customer account was closed.<br>• There are neither legal requirements nor regulations requiring financial institutions to make customer records available on timely basis to the VFIU upon request. |
| 11. Unusual transactions | **PC** | • The legislative requirement for financial Institutions to pay special attention to complex, unusual large transactions, or unusual patterns of transaction has been introduced under the amended FTRA.<br>• Financial institutions were not aware of this new legal requirement as of the onsite visit.<br>• Only banks have been advised of the necessity to pay special attention to such unusual transactions in accordance with the RBV guideline.<br>• The FTRA be amended, and/or relevant regulations/guidelines be issued, to require financial institutions to keep details of the reported transaction at least five years. |
| 12. DNFBP – R.5, 6, 8-11 | **NC** | • The FTRA provides the necessary legal instrument for compliance.<br>• However, there is no clear implementation plan to implement the amended FTRA<br>• Awareness amongst the DNFBPs of the requirements under FTRA is significantly low |
| 13. Suspicious transaction reporting | **LC** | • The industry players do not reported STRs to the VFIU for attempted suspicious transactions. |
| 14. Protection & no tipping-off | **C** | • Recommendation 14 is fully observed |

| | | |
|---|---|---|
| 15. Internal controls, compliance & audit | **PC** | • The legislative requirements have been augmented under the amended FTRA with respect to the internal procedures that financial institutions must establish.<br>• Financial institutions were not even aware of this enhanced requirement as of the dates of the onsite visit.<br>• Under the previous FTRA, financial institutions have already implemented certain internal procedures on providing training for officers and employees. Particularly, banks have already put in place more substantial internal procedures than required under the previous FTRA in accordance with the RBV guidelines. |
| 16. DNFBP – R.13-15 & 21 | **NC** | • Although all DNFBPs have been designated as reporting entities under the FTRA, there seems to be lack of knowledge and no actual implementation by them.<br>• The current guidelines issued by the VFIU are too general and provide minimal assistance to the DNFBPs sector<br>• There is no guidance provided to identify the jurisdictions that do not have adequate AML / CFT measures in place. |
| 17. Sanctions | **PC** | • The RBV has extensive administrative powers to sanction a bank that has failed to comply with prudential regulations under the FIA and the IBA but has no such powers with respect to AML/CFT measures under the FTRA.<br>• The VFIU has limited administrative powers to sanction financial institution that has failed to comply with AML/CFT measures provided for under the FTRA.<br>• The FSC has limited power to sanction non compliance and does not have any power to conduct inspection on non-compliance |
| 18. Shell banks | **LC** | • **Shell banks have been prohibited from operating in Vanuatu.**<br>• **There is no prohibition against local banks establishing correspondent banking relations with shell banks or banks with shell bank customers overseas.** |
| 19. Other forms of reporting | **LC** | • Although there is requirement under the amended FTRA for submission of cash transactions and remittance exceeding VT 1 million, there seems lack of planning and resources allocated to carry out this function |
| 20. Other DNFBP & secure transaction techniques | **PC** | • Although the FTRA has been extended to the other non-financial businesses and professions, there is no clear implementation plan to-date |

| | | |
|---|---|---|
| | | • The authorities have not considered developing modern and secure techniques to address the risk of money laundering and terrorist financing |
| 21. Special attention for higher risk countries | **PC** | • The legislative requirement for financial Institutions to pay special attention to business relations and transactions with persons in jurisdictions without adequate AML and CFT systems has been introduced under the amended FTRA.<br>• This new requirement has not been known to financial institutions, except for banks which have been receiving advisory notes from the RBV on the FATF NCCT lists.<br>• There have no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.<br>• No mechanism has been put in place whereby the country as a whole applies appropriate counter-measures against a country continuing not to apply or insufficiently applying the FATF Recommendations. |
| 22. Foreign branches & subsidiaries | **NC** | • There are no requirements to extend policies on AML and CFT to overseas operations of locally incorporated financial institutions, except for the RBV guidelines that apply to banks only. |
| 23. Regulation, supervision and monitoring | **PC** | • Banks are subject to adequate regulation and supervision by the RBV which ensures banks' compliance with AML/CFT measures from the sound risk management point of view.<br>• Insurance companies are not adequately regulated and supervised by the VFSC. There is no examination power and there is no power to issue guideline to insurance companies<br>• Money changers/remitters are not regulated and supervised by any authority. Licenses are issued by the Department of Customs and Inland Revenue but the department does not have power to issue regulation or to conduct onsite inspection. |
| 24. DNFBP - regulation, supervision and monitoring | **NC** | • There are no clear procedure to process the application to open casinos<br>• There is no system in place to monitor and ensure compliance with AML / CFT requirements.<br>• There is no risk assessment of risk of money laundering and terrorist financing in DNFBPs sector |
| 25. Guidelines & Feedback | **NC** | • The only feedback provided is the acknowledgment for submitted suspicious transaction reports<br>• VFIU needs to provide more specific feedback including statistical comparisons of STRs submitted and |

| | | |
|---|---|---|
| | | typologies data<br>• There is no specific guidelines issued to assist the casino and other DNFBPs to carry out their obligation under the FTRA<br>• There is no feedback mechanism established with DNFBPs |
| **Institutional and other measures** | | |
| 26. The VFIU | **PC** | • The VFIU serves as the national centre for matters regarding AML/CFT<br>• There are routine information exchanges between the VFIU, law enforcement, and other relevant authorities in relation to ML/FT issues.<br>• There is adequate authority vested in the VFIU to receive information from and conduct examinations of financial institutions to ensure compliance with AML/CFT legislation<br>• The VFIU has provided guidance and training to financial sector, law enforcement, and other relevant entities through an AML/CFT seminar in 2005 and computer based AML/CFT training module available at the VFIU<br>• The VFIU is a member of the Egmont Group<br>• Guidelines issued to financial institutions are out of date due to recent AML/CFT legislation.<br>• No guidelines have been issued to or examinations conducted of non-traditional financial businesses.<br>• There has been a failure by the VFIU to issue public reports on its activities and ML/FT typologies and trends.<br>• There are substantial weaknesses in the administrative structure responsible for overseeing the VFIU.<br>• There is no evidence that the work of VFIU has resulted in the successfully investigation, prosecution and conviction for money laundering or terrorist financing activities. |
| 27. Law enforcement authorities | **NC** | • The authority to postpone arrest, conduct controlled deliveries, and use other specialised techniques in ML/FT investigations limited to legislation addressing terrorist financing only<br>• There is a lack of awareness by law enforcement and prosecution authorities of the value or authority to use specialised investigation techniques in FT investigations |
| 28. Powers of competent authorities | **PC** | • There is a lack of effective implementation of broad authorities to compel the production of records, conduct searches and make seizures in money laundering and terrorist financing investigations |
| 29. Supervisors | **PC** | • The RBV has adequate monitoring powers and |

| | | |
|---|---|---|
| | | inspection authority under the FIA and the BIA.<br>• The VFIU has adequate monitoring powers and inspection authority under the FTRA.<br>• The VFSC, however, do not have such power. |
| 30. Resources, integrity and training | **NC** | • The staff of the VFIU appears to receive adequate experience and training in AML/CFT but their capacity to apply this is not clear.<br>• The management structure under which the VFIU operates does not have adequate knowledge of AML/CFT legislation and its implementation to properly supervise the VFIU nor to ensure that the VFIU can adequately perform its duties<br>• VFIU does not have the requisite number of staff or the financial and technical resources to effectively perform its duties, particularly in light of recent AML/CFT legislation that greatly expand the responsibilities of the VFIU<br>• Conflicting assignments of duty for the TCU limit effectiveness of its AML/CFT mission<br>• There is a lack of ML/FT training for Customs officers<br>• Inability or unwillingness of police and prosecution authorities to identify ML offences and criminal proceeds<br>• Limited background checks of prospective law enforcement officers<br>• Inefficient system for prosecuting ML/FT offences and seizing criminal proceeds<br>• The RBV is adequately structured, funded, staffed and provided with sufficient technical and other resources.<br>• The VFIU has been provided with major additional functions under the new FTRA but has not been resources properly.<br>• The VFSC needs to be adequately structured, funded and staffed to carry out its new responsibility with the expected amendment to the various legislations administered by the VFSC. |
| 31. National co-operation | **NC** | • There are no effective mechanisms in place which enable law enforcement and other competent authorities to cooperate and where appropriate coordinate domestically with each other concerning the development and implementation of AML/CFT policies and activities;<br>• Outside of any mechanisms such as CLAG, there is little cooperation or coordination among the competent authorities in terms of implementing the legislation; |

| | | |
|---|---|---|
| 32. Statistics | **PC** | • Statistics are kept regarding money laundering predicate offences however there are no statistics kept on international movement of funds<br>• Statistics on AML/CFT onsite examinations of banks conducted by the RBV are available.<br>• Although the State Law Office has some statistics on MLA, timeliness is an issue<br>• MLA statistics and VFIU statistics have been provided but no statistics on other requests for cooperation and information;<br>• Vanuatu has reviewed, amended and improved the laws but no procedures are in place to implement the new laws;<br>• There is a lack of awareness of the new laws among the relevant Government departments or agencies.<br>• Vanuatu does not have statistics for extradition requests made or received |
| 33. Legal persons – beneficial owners | **PC** | • Details of beneficial owner are required to be filed with the VFSC and are publicly available.<br>• Secrecy provisions in Section 125 of the International Companies Act do not seem to hinder investigations.<br>• International companies are not required to file information about beneficial owners or directors.<br>• The identity of owners of bearer shares issued by international companies is not known to the authorities. |
| 34. Legal arrangements – beneficial owners | **NC** | • There is no central authority to register trust and there is no to register trust<br>• Information on trusts is not available to the competent authorities. |
| **International Co-operation** | | |
| 35. Conventions | **LC** | • Given that there have been no ML prosecutions or any assets frozen under POCA, it is difficult to conclude that the Vienna and Palermo Conventions have been "fully implemented" |
| 36. Mutual legal assistance (MLA) | **PC** | • MLA requests has been and continues to be subject to undue delays;<br>• Request for MLA will be refused on sole ground that the offence involves fiscal matters because Vanuatu has no tax laws, therefore dual criminality requirement is not met;<br>• Vanuatu has not considered mechanisms for determining venue of prosecution in cases that are |

| | | |
|---|---|---|
| | | subject to prosecution in more than one country |
| 37. Dual criminality | **LC** | • Vanuatu will refuse MLA requests where dual criminality requirement not met<br>• As there are no statistics for extradition requests, it is difficult to assess whether the legislation has been fully implemented |
| 38. MLA on confiscation and freezing | **LC** | • Vanuatu does not have arrangements for co-ordinating seizure and confiscation actions with other countries;<br>• Vanuatu has not considered establishment of asset forfeiture fund; |
| 39. Extradition | **LC** | • Vanuatu has no measures or procedures that will allow extradition requests and proceedings for ML to be handled without undue delay |
| 40. Other forms of co-operation | **PC** | • Apart from the VFIU, there are no legislative gateways or mechanisms that:<br>o authorise other competent authorities to cooperate and exchange information with its foreign counterparts;<br>o identifies the information that can be requested and establishes controls and safeguards to ensure that the information is used in authorised manner;<br>• The process for cooperation or exchange of information through agency to agency and organisational networks is not clearly set out or monitored |
| **Nine Special Recommendations** | **Rating** | |
| SR.I Implement UN instruments | **LC** | • Given that there have been no FT or counter-terrorism prosecutions or investigations, it is difficult to conclude that the Terrorist Financing Convention has been "fully implemented" |
| SR.II Criminalise terrorist financing | **PC** | • The legislation covers the majority of requirements to criminalise terrorist financing however, the legislation is piecemeal which has lead to duplication; inconsistencies; statutory interpretation issues; and a lack of clarity as to its practical application<br>• There is a lack of familiarity among Vanuatu Government agencies with the legislation or who administers the legislation;<br>• There are no ancillary offences to the FT or other counter-terrorism offences under the CTTOCA<br>• Vanuatu does not have "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for FT;<br>• Given that no FT or other terrorism offences have been |

| | | |
|---|---|---|
| | | prosecuted or investigated, it is difficult to assess the effectiveness of the law. |
| SR.III Freeze and confiscate terrorist assets | **PC** | • **Given that Vanuatu has not frozen any terrorist funds under any of the legislation available, the effectiveness of its procedures cannot be assessed including whether it has effective systems in place for communicating actions taken under the freezing mechanisms to the financial sector and whether it has effective procedures for considering de-listing requests and unfreezing funds or assets of de-listed persons;**<br>• **There is a lack of awareness of the CFT legislation among the relevant Government agencies;**<br>• **There is a lack of coordination and communication between the relevant Government agencies in terms of identifying terrorist or specified entities as designated in the UNSCRs and distributing such information;**<br>• **There are no regulations under the CTTOCA designating terrorist or specified entities.** |
| SR.IV Suspicious transaction reporting | **LC** | • Financial institutions do not report STRs to the VFIU for attempted suspicious transactions and declined businesses. |
| SR.V International co-operation | **PC** | • Vanuatu does not provide MLA in respect of the powers available to the Attorney-General under the CTTOCA, namely the ability to apply for directive over custody of terrorist property; and applications for civil-based forfeiture orders pertaining to terrorist property<br>• As no requests have been made or received relating to terrorist acts or FT, it is difficult to assess whether the legislation has been fully implemented<br>• See comments for R.40 |
| SR VI AML requirements for money/value transfer services | **NC** | • There is inadequate supervision and regulation of money exchange and remittance services<br>• There is no specific AML/CFT guidelines for the money exchange and remittance services sector<br>• There is lack of awareness of AML/CFT requirements amongst the staff of money exchange and remittance services<br>• The current general guidelines need to be updated to reflect the changes in the FTRA |
| SR VII Wire transfer rules | **NC** | • There is a legal requirement for financial institutions to conduct due diligence and collect information of originators for wire transfers.<br>• There is lack of guidance provided to the financial institutions on the type of information that should be collected and maintained for wire transfer. |
| SR.VIII Non-profit organisations | **NC** | • There has been no review of the adequacy of laws and regulations relating to supervision of NPOs |

| | | |
|---|---|---|
| | | • There is a lack of effective implementation of laws and regulations regarding NPOs<br>• Failure to provide AML/CFT guidance regarding NPOs to financial institutions |
| SR. IX Cash Couriers | **NC** | • The agency primarily responsible for enforcement of cross border reporting requirement, Customs, unaware of responsibilities under the governing legislation.<br>• There is no policy for the implementation of cross border currency reporting legislation.<br>• There is no mechanism in place to notify travellers of cash reporting requirements.<br>• There is no reporting mechanism in place.<br>• There is no system for tracking cross border currency movement.<br>• Administrative measures required by law to implement cross border currency reporting legislation, such as the delegation of "authorised officers", have not been undertaken. |

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT System | Recommended Action (listed in order of priority) |
|---|---|
| **1. General** | No text required |
| **2. Legal System and Related Institutional Measures** | |
| Criminalisation of Money Laundering (R.1 & 2) | It is recommendations that the Vanuatu authorities:<br>• amend either section 11 of the POCA, or the Penal Code [135] to ensure that the ancillary offences under the Penal Code apply to the ML offence;<br>• amend both definitions of "property" and "proceeds of crime" to clarify that this includes property or proceeds situated in Vanuatu or elsewhere;<br>• amend section 11 of the POCA to ensure that a person may be convicted of the ML offence notwithstanding the absence of a conviction in respect of the predicate crime;<br>• consider amending the definition of "serious offence" to also include reference to a pecuniary penalty threshold;<br>• criminalise illicit arms trafficking and piracy of products and consider criminalising insider trading and market manipulation.<br>• In the absence of any provision in the Constitution of Vanuatu to the contrary, amend section 11 of the POCA by inserting a provision that allows for a person to be found guilty of the ML offence even if the property involved is derived from a serious offence committed by that same person.<br>• amend section 11 of the POCA by inserting a provision that specifies that knowledge, intent or purpose may be inferred from objective factual circumstances.<br>• review its legislation under which legal persons are licensed or regulated, in terms of identifying what additional civil or administrative penalties can be imposed, for example providing for de- |

| | |
|---|---|
| | registration or the revocation of licences.<br><br>In respect of civil or administrative sanctions or penalties, it is recommended that the RBV and other regulators of legal persons should ensure that a standard condition of the licences is to comply with the AML/CFT legislation.<br><br>It is recommended that authorities in Vanuatu such as the State Law Office provide training or awareness-raising seminars on the legislative provisions of the POCA for law enforcement officers, prosecutors and the judiciary in order to ensure that they are familiar with the ML legislation and its practical application. |
| Criminalisation of Terrorist Financing (SR.II) | Given that the criminalisation of FT, terrorist acts and terrorism organisations is scattered over various enactments, it is recommended that the authorities in Vanuatu:<br><br>• undertake a review of all its counter terrorism legislation with the intention of harmonising the legislation so as to avoid duplication and inconsistencies; statutory interpretation issues and to clearly identify which Government departments or agencies are responsible for administering the legislation;<br><br>• ensure that there is clear cooperation and communication among the relevant Government department and agencies as to the administration of the legislation;<br><br>• ensure that the law enforcement agencies (i.e. those responsible within the department for counter-terrorism), are familiar with all counter-terrorism legislation.<br><br>In terms of meeting the other criteria set out in SR II, the following recommendations are made:<br><br>• It is recommended that Vanuatu ensure that the ancillary offences available under the Penal Code [Cap 135] apply to offences committed under the CTTOCA;<br><br>• The legislation does not permit the intentional element of the offence of FT to be inferred from objective factual circumstances. It is therefore recommended that Vanuatu amend section 6 of the CTTOCA by inserting a provision that specifies that knowledge, intent or purpose may be inferred from objective factual circumstances.<br><br>• In respect of civil or administrative sanctions or |

| | |
|---|---|
| | penalties, the RBV and other regulators of legal persons should ensure that a standard condition of the licences is to comply with the AML/CFT legislation. Vanuatu should also review its legislation under which legal persons are licensed or regulated, in terms of identifying what additional civil or administrative penalties can be imposed – for example, de-registration or the revocation of licences. |
| Confiscation, freezing and seizing of proceeds of crime (R.3) | It is recommended that:<br>• The Vanuatu authorities review and improve coordination between the relevant law enforcement agencies, namely the Police, State Law Office, VFIU and the Public Prosecutors Office (PPO) in terms of AML/CFT either through reviving the CLAG or through some alternative process;<br>• These law enforcement agencies identify the problems or reasons as to why the legislation is not being implemented and produce an implementing plan or outline of implementing procedures aimed at resolving these problems and if necessary have these measures endorsed as Government policy;<br>• Vanuatu consider placing the POCA under the administration of the Public Prosecutors Office (PPO) given that the PPO is responsible for prosecutions and in this role are working alongside the Police and are therefore in a better position to know when an investigation or case falls within the auspices of the POCA. This may be done by either amending the POCA to replace the references to "Attorney-General" with "Public Prosecutor" where appropriate;<br>• Vanuatu ensures that the law enforcement agencies are familiar with the POC legislation through for example, training or awareness-raising seminars/meetings.<br>Given the criminalisation of "organised criminal groups" in the CTTOCA, Vanuatu may consider inserting a definition of "transnational criminal activity". |
| Freezing of funds used for terrorist financing (SR.III) | It is recommended that the authorities:<br>• Review CTTOCA, POCA, Suppression of Terrorism and Afghanistan Measures Order No. 17 of 2003, the ATRO No.9 and the FTRA Amendment Act 2005 to ensure that there is no |

| | |
|---|---|
| | duplication or overlap of responsibilities or powers.<br>• Coordinate and provide a clear delineation of responsibilities among the Government agencies responsible for administering the legislation.<br>• Familiarise Government agencies with the legislation and how it links together. In this regard, the Vanuatu authorities are referred to the recommendations made under SR II.<br><br>It is also recommended that:<br>• The Minister responsible for Justice make regulations under section 4 giving effect to the UNSCRs;<br><br>• In terms of de-listing persons or entities, the authorities should give consideration to how this is to be done and amend the CTTOCA by setting out a process under which a person or entity can apply or be considered for de-listing;<br><br>• If the Vanuatu authorities decide to retain the Suppression of Terrorism and Afghanistan Measures Order, that Vanuatu amend the Schedule to ensure that clause 9 applies in respect of Osama bin Laden i.e. that the "whistleblower" protection provided under this clause is available in respect of this entity;<br><br>• In terms of the United Nations Act No.1 of 2002, under which the Suppression of Terrorism and Afghanistan Measures Order was made, that the Vanuatu authorities clearly identify who is responsible for administering this Act;<br><br>• In terms of identifying, preparing and distributing lists of specified entities as designated under the UNSCR, the Vanuatu authorities including the Ministry of Foreign Affairs, improve interagency coordination and communication in order to determine who is responsible for preparing the Orders or Regulations to be made under section 4 of the CTTOCA and/or the United Nations Act No.1 of 2002: and distributing such lists to the relevant government agencies and financial institutions;<br><br>• The RBV and other regulators of legal persons should ensure that a standard and fundamental condition of the licences includes compliance with the AML/CFT legislation in respect of civil or administrative sanctions or penalties;<br><br>• Vanuatu review its legislation under which legal |

| | |
|---|---|
| | persons are licensed or regulated, in terms of identifying what additional civil or administrative penalties can be imposed, for example, de-registration or the revocation of licences. |
| The Financial Intelligence Unit and its functions (R.26, 30 & 32) | It is recommended that the authorities should ensure that:<br>• The VFIU issues up-to-date AML/CFT guidelines to all applicable financial institutions and designated non-financial businesses and professions that are now covered by new amendments to the FTRA.<br>• The VFIU review its training programmes to ensure they are relevant to the market in Vanuatu as well as widening the scope and audience of the training to incorporate the new amendments.<br>• The VFIU strictly apply their Standard Operating Procedures<br>• The VFIU institute a policy of regularly issuing public reports regarding its activities as well as details of ML/FT statistics and ML/FT typologies and trends<br>• A Manager of the VFIU with strong qualifications, skills and experience in AML/CFT be appointed as soon as possible.<br>• Consideration is given to undertaking a review of the administrative structure under which the VFIU operates<br>• A comprehensive study is undertaken to determine the necessary staffing, funding, and technical resources needed to comply with legislated responsibilities of the VFIU |
| Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32) | It is recommended that the authorities:<br>• Enact legislative provisions enabling enforcement officers to postpone arrest, conduct controlled deliveries, and use other specialised techniques in money laundering and terrorist financing investigations.<br>• Improve the criteria and selection process for selecting law enforcement officers, especially for the TCU, including developing specialised and centralised recruitment specifically designed for law enforcement officers. |

| | |
|---|---|
| | • Improve the resourcing, specialised training and operational independence of the TCU.<br><br>• Ensure adequate training for law enforcement officers on the role of the TCU and mandate the referral of appropriate case to the TCU for investigation.<br><br>• Establish more stringent background checks of prospective law enforcement officers.<br><br>• Develop a comprehensive code of conduct for police officers including a component on ethics and anti-corruption.<br><br>• Develop dedicated training coupled with policy guidelines for conducting proactive money laundering and terrorist financing investigations. |
| Cross-border declaration or disclosure (SR.IX) | It is recommended that the authorities in Vanuatu:<br>• Produce and distribute declaration forms for the transportation into or out of Vanuatu VT 1 million or greater in cash or bearer negotiable instruments.<br><br>• Establish a protocol for the collection and analysis of cross border currency declaration forms.<br><br>• Establish a protocol for the sharing of data related to cross border currency movement with the VFIU.<br><br>• Establish a protocol identifying each applicable law enforcement agencies role in the enforcement of the cross border currency reporting requirement.<br><br>• Establish bilateral agreements with the Customs departments of other jurisdictions regarding, at a minimum, the sharing of information regarding cross border currency movement.<br><br>• Ensure the official designation of "authorised officers" as defined in the Proceeds of Crime Act.<br><br>• Establish a standard operating procedure to be followed in the event of a currency seizure. |
| **3. Preventive Measures – Financial Institutions** | |
| Risk of money laundering or terrorist financing | |

| | |
|---|---|
| Customer due diligence, including enhanced or reduced measures (R.5 to 8) | **Recommendation 5**<br><br>It is recommended that:<br><br>• The VFIU initiate extensive outreach for financial institutions as defined under the amended FTRA regarding new legal requirements concerning CDD under the amendments in cooperation with RBV, the FSC and other pertinent authorities as soon as possible in order to alert them to their new obligations and provide training;<br><br>• Regulations under the amended FTRA be urgently drafted and issued as soon as possible, particularly those relating to acceptable means for identifying and verifying the identity of customers;<br><br>• The VFIU issue guidelines to all financial institutions and DNFBPs as soon as possible in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies, and provide training to them regarding the new guidelines as soon as possible;<br><br>• The VFIU and the RBV liaise to ensure that there is consistency between guidelines issued by both agencies.<br><br>• The RBV review and update the existing Prudential Guideline No.9 (Customer Due Diligence) to ensure consistency with the amended FTRA, and revise the current onsite inspection manual; and,<br><br>• The VFIU establish adequate supervisory processes such as on-site and off-site examinations particularly for those financial institutions not subject to prudential supervision by financial regulators, and have a meeting on a regular basis regarding the state of compliance in each industry.<br><br>**Recommendation 6**<br><br>It is recommended that:<br><br>• In line with the new legislative requirements on PEPs under the new FTRA, the VFIU, in consultation with the relevant supervisory bodies, provide non-bank entities with detailed and specific guidelines to help them develop internal policies and procedures so that they could remain |

| | |
|---|---|
| | particularly alert when dealing with PEPs and high profile individuals or with persons and companies that are clearly related to them; and,<br><br>• The RBV review the current prudential guideline particularly from the viewpoint of ensuring its consistency with specific languages and texts under the amended FTRA, and if necessary it should consider revising it in a way to provide more detailed guidance and suggestions to banks to help them keep strengthening risk management policies and procedures with regard to PEPs.<br><br>**Recommendation 7**<br><br>It is recommended that:<br><br>• As regards businesses similar to cross border correspondent banking, non-bank financial institutions and non-financial businesses and professions be fully aware of the new legal requirement on this issue, and start developing more detailed knowledge of their customers who may provide similar services to correspondent banking, particularly on the customers' management, major business activities, where they are located, their money laundering prevention and detection efforts, and the purpose of their account or specific transactions; and,<br><br>• To support these efforts, the VFIU consider issuing detailed sector-specific guidelines on these topics.<br><br>**Recommendation 8**<br><br>It is recommended that:<br><br>• Relating to technological developments and non-face to face businesses, guidelines be issued to financial institutions by the VFIU under the amended FTRA, defining specifically the required elements that need to be contained in their acceptable CDD programs; and,<br><br>• The authorities establish legislative requirements for financial institutions to have policies and procedures to address risks arising from new or developing technologies and non-fact to face businesses in particular internet accounts. |
| Third parties and introduced business (R.9) | It is recommended that: |

| | |
|---|---|
| | • The VFIU initiate an extensive outreach program toward financial institutions to make them fully aware of the new requirements under the amended FTRA, and develop detailed sector-specific guidelines to assist them in complying with their legal obligations; and,<br><br>• The RBV help the VFIU develop these guidelines, and also review its own prudential guideline and revise it as necessary to ensure its consistency with the new legislative requirements. |
| Financial institution secrecy or confidentiality (R.4) | Fully compliant |
| Record keeping and wire transfer rules (R.10 & SR.VII) | **Recommendation 10**<br><br>It is recommended that:<br><br>• The VFIU complete the current work on drafting a new guideline in relation to record-keeping consistent with the augmented requirements under the amended FTRA, and publish it as soon as possible;<br><br>• The VFIU organise a meeting with the representatives of each industry defined as a financial institution under the amended FTRA, in order to make them fully aware of their obligations to comply with the new record-keeping requirements;<br><br>• The VFIU, in cooperation with the RBV and other relevant supervisory bodies, initiate a program of on-site examinations to assess compliance by banks and non-bank financial institutions with record-keeping requirements on the basis of randomly selected samples of individual accounts;<br><br>• With respect to customer identification records, the FTRA be amended so as to provide that financial institutions are obliged to keep customers' records for a prescribed period of time following the termination of an account or business relationship with customers; and<br><br>• The FTRA also be amended so as to provide that financial institutions make the customer identification records available on a timely basis to the competent authorities upon appropriate authority.<br><br>**Special Recommendation VII** |

| | |
|---|---|
| | It is recommended that:<br>• The VFIU in consultation with the RBV update the current guidelines issued to the banking institutions to include specific details about requirement for funds transfer;<br><br>• The guideline should include the type of information that need to be collected and maintained such as:<br><br>i. the name of the originator;<br>ii. the originator's account number or a unique identification number if there is no account;<br>iii. either the originator's address or in some cases the national identity's number or customer identification number or date and place of birth. |
| Monitoring of transactions and relationships (R.11 & 21) | **Recommendation 11**<br><br>It is recommended that:<br><br>• The VFIU launch an extensive outreach project as soon as possible to develop awareness among financial institutions (as defined by the Act) of the new legal requirement concerning complex, unusual large transactions, or unusual patterns of transactions, that have apparent or visible economic or lawful purposes, paying due regard to the fact that this is a total new obligation to all the other financial institutions but banks;<br><br>• The VFIU provide financial institutions with sector-specific guidelines to help them identify unusual transactions in consultation with the relevant supervisory bodies such as the RBV; and,<br><br>• The FTRA be amended, and/or relevant regulations/guidelines be issued, to require financial institutions to keep the examination findings with respect to unusual transactions for at least five years.<br><br>**Recommendation 21**<br><br>It is recommended that:<br><br>• The VFIU initiate an extensive outreach program for financial institutions to make them fully aware of the new legal requirement under the amended FTRA to pay special attention for higher risk countries;<br><br>• The VFIU put effective measures in place to |

| | |
|---|---|
| | ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries in consultation with the relevant supervisory bodies such as the RBV; and,<br><br>• Cooperation and coordination mechanism among relevant authorities and private sectors be established whereby the country as a whole could apply appropriate counter-measures against those countries continuing not to apply or insufficiently applying the FTAF Recommendations. |
| Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | **Recommendation 13 and Special Recommendation IV**<br><br>It is recommended that the VFIU:<br><br>• conduct outreach programmes to the financial institutions to ensure that all institutions understand the need to report not only suspicious transactions but attempted suspicious transactions;<br>• review information, along with other regulatory bodies, on declined business during their on-site inspections to financial institutions and require explanations for non-submission of STRs for these non-customers.<br><br>**Recommendation 19**<br>It is recommended that the VFIU establish a comprehensive implementation plan to prepare for the implementation of the threshold reporting requirements before they come into effect on 1 September 2006.<br><br>**Recommendation 25**<br>It is recommended that:<br><br>• The VFIU establish a feedback mechanism to share typologies, red flag indicators, statistics and other relevant information with the financial institutions<br>• The operation of reported and analysed STRs be shared with the other industry players through this feedback mechanism. |
| Internal controls, compliance, audit and foreign branches (R.15 & 22) | **Recommendation 15**<br><br>It is recommended that:<br><br>• Financial institutions be reminded that the amended FTRA has strengthened the legislative |

| | |
|---|---|
| | requirements for them to establish and maintain their internal procedures.<br><br>• The VFIU develop and promulgate comprehensive guidelines for financial institutions to enable them to ensure they are meeting the new requirements; and,<br><br>• The VFIU launch an extensive outreach program to increase awareness of financial institutions on this new legal requirement (especially for those newly designated financial institutions).<br><br>**Recommendation 22**<br><br>It is recommended that the authorities amend the FTRA to require financial institutions to:<br><br>• Apply their AML/CFT policies and procedures to their foreign branches and subsidiaries; and,<br><br>• Apply the higher of either the home or host country standards to operations in host countries, if the two standards differ. |
| Shell banks (R.18) | It is recommended that authorities introduce a prohibition against local banks establishing correspondent banking relations with overseas shell banks and banks that have shell banks as customers. |
| The supervisory and oversight system - competent authorities and SROs<br>Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25). | **Recommendation 17**<br>It is recommended that:<br><br>• The VFIU be given more administrative power to sanction a financial institution which has failed to comply with AML/CFT requirements provided for under the FTRA; and<br><br>• The VFSC be provided with extensive administrative powers to sanction insurance companies that have failed to comply with prudential regulations under the relevant laws.<br><br>**Recommendation 23**<br>It is recommended that:<br><br>• The new *Insurance Act* to be brought into force as soon as possible. Insurance companies should be subjected to adequate regulation and supervision by the VFSC;<br><br>• The regulation and supervision of money |

| | |
|---|---|
| | changers and remittance agents should be taken over either by the RBV or the VFSC;<br><br>• Money changers and remittance agents be subject to the same regulation and supervision as financial institutions currently supervised by the RBV<br><br>**Recommendation 25**<br>It is recommended that:<br><br>• The VFIU, in consultation with the RBV and the VFSC, review and issue comprehensive guidelines to financial institutions in relation to customer identification, record keeping, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies in accordance with the amended FTRA<br><br>**Recommendation 29**<br>It is recommended that:<br><br>• The new *Insurance Act* to be brought into force soon and the VFSC Procedure Manual for Inspection to be implemented.<br><br>**Recommendation 30**<br>It is recommended that:<br><br>• The VFIU and the VFSC be adequately structured, funded, staffed and provided with sufficient technical and other resources to ensure the effective implementation of AML/CFT measures provided for under the FTRA.<br><br>• The RBV, VFSC and the VFIU should coordinate their examination activities to avoid duplications and to maximise the resources. VFIU should not duplicate examinations conducted by the RBV and in the future by the VFSC for Banks and Insurance Companies.<br><br>**Recommendation 32**<br>It is recommended that:<br><br>• The VFIU prepare and maintain comprehensive statistics on onsite examinations of financial institutions conducted by the relevant supervisory bodies including the RBV and the VFSC; |
| Money value transfer services (SR.VI) | It is recommended that:<br><br>• The activities of the money exchange and |

| | |
|---|---|
| | remittance services be subjected to greater supervision and regulation through the introduction of appropriate legislative measures commensurate with the requirements of banks and other financial institutions;<br>• Regulation and supervisions obligations should be moved to either the RBV or the VFSC as soon as possible.<br>• Pending this action, the establishment of money exchange and remittance services by local Vanuatu citizens should be subject to the same procedures as applications from foreign businesses.<br>• The VFIU should provide money exchange and remittance services with specific guidelines or guidance for compliance with the FTRA and facilitate on-going training and guidance. |
| **4. Preventive Measures – Non-Financial Businesses and Professions** | |
| Customer due diligence and record-keeping (R.12) | It is recommended that the VFIU:<br>• Collaborate with the RBV and the Vanuatu FSC, conduct a risk assessment of DNFBPs' money laundering and terrorist financing vulnerabilities;<br>• Establish specific guidelines for of the DNFBPs that are present in Vanuatu.<br>• Implement the CDD, PEPs and record keeping requirements for DNFBPs accordance with the amended FTRA;<br>• Conduct awareness programmes individually tailored for the different DNFBPs on their new obligations and responsibilities under the amended FTRA. |
| Monitoring of transactions and relationships (R.12 & 16) | It is recommended that the Vanuatu government takes the following actions:<br>• Establish clear and industry specific guidelines to each category of DNFBPs to assist them in fulfilling their obligations under the FTRA.<br>• The guidelines should include industry specific red flag indicators and typologies to assist the DNFBPs in identification and reporting of suspicious transactions.<br>• Conduct an assessment and inspection to investigate why there have not been any suspicious report reported by the DNFBPs to the VFIU despite the FTRA being in place since 2002.<br>• To issue information notes / guidance practice to the DNFBPs on jurisdictions that do not have adequate AML / CFT measures in place. |

| | |
|---|---|
| Suspicious transaction reporting (R.16) | It is recommended that the Vanuatu government takes the following actions:<br><br>• Establish clear and industry specific guidelines to each category of DNFBPs to assist them in fulfilling their obligations under the FTRA.<br>• The guidelines should include industry specific red flag indicators and typologies to assist the DNFBPs in identification and reporting of suspicious transactions.<br>• Conduct an assessment and inspection to investigate why there have not been any suspicious report reported by the DNFBPs to the VFIU despite the FTRA being in place since 2002.<br>• To issue information notes / guidance practice to the DNFBPs on jurisdictions that do not have adequate AML / CFT measures in place. |
| Regulation, supervision and monitoring (R.17, 24-25) | **Recommendation 24**<br>It is recommended that the Vanuatu authorities:<br>• Review the regulation and licensing of casinos with a view to moving responsibility away from the Department of Customs and Revenue to a more appropriate and experienced body.<br>• Establish a clear and rigorous process for conducting due diligence for all applicants seeking a licence to operate a casino (applicable to both foreigners and locals)<br><br>**Recommendation 25**<br>It is recommended that the authorities<br>• Provide each sector of DNFBPs with specific and clear guidelines taking into consideration the AML / CFT risk factors of each industry<br>• Provide feedback to the DNFBPs of their obligation and the level of compliance to date with the FTRA<br>• Conduct risk assessment analysis of DNFBPs sectors to establish the extent of regulation and supervision of DNFBPs |
| Other designated non-financial businesses and professions (R.20) | It is recommended that the Vanuatu authority takes the following actions:<br>• Provide the entities under the FTRA with specific guidelines to the industry as designated by the FTRA.<br>• The RBV and other authority should look into developing modern and secure techniques to reduce the risk of money laundering and terrorist financing. |

| | |
|---|---|
| **5. Legal Persons and Arrangements & Non-Profit Organisations** | |
| Legal Persons – Access to beneficial ownership and control information (R.33) | It is recommended that the Vanuatu authorities:<br>• Amend the *International Business Act* to require the following information be provided and available to authorities on request:<br>1. Name and addresses of the directors<br>2. Name and addresses of the shareholders<br>3. Notification to subsequent changes<br>• To regulate the issuance and changes to the bearer shares to enable the authority to identify the real beneficial owner of such shares. |
| Legal Arrangements – Access to beneficial ownership and control information (R.34) | It is recommended that the Vanuatu authorities:<br>• Ensure the passage and introduction of the new Trust and Company Service Providers' bill.<br>• The new bill should introduce the requirement to register trust deeds and this information should be made available to the competent authorities upon request. |
| Non-profit organisations (SR.VIII) | It is recommended that the authorities:<br>• Implement measures consistent with the Interpretative Note to SR VIII to ensure that terrorist organisation cannot pose as legitimate NPOs, and to ensure that funds collected by or transferred through NPOs are not diverted to support terrorist activities, or organisations.<br>• Conduct a review of laws and regulations regarding NPOs which may be vulnerable to exploitation by terrorists and terrorist organisations<br>• Provide AML/CFT guidance to financial institutions regarding NPOs |
| **6. National and International Co-operation** | |
| National co-operation and coordination (R.31) | It is noted that the Vanuatu Government already has two committees and in particular, the CLAG, through which cooperation, coordination and communication among the relevant agencies can be improved. For this reason it is recommended:<br>• That the State Law Office complete its review of the CLAG Working Group Charter and for the same to be forwarded to the Council of Ministers for approval which will include a recommendation as to who will chair the CLAG; |

| | |
|---|---|
| | • The CLAG should consider setting out a plan of action in terms of familiarising its members with the AML/CFT legislation and clearly identifying the responsibilities of each department or agency including how to effectively implement the POCA;<br><br>• That the CLAG and VFSAG establish communication lines in terms of awareness of any policies or issues that arise concerning the AML/CFT legislation or the implementation thereof;<br><br>Given that the CLAG does not include the RBV or VFSC (and it is noted that the FSC is not a member of VFSAG), the Vanuatu Government may want to consider forming a national coordinating AML/CFT committee comprising all relevant Government departments or agencies. |
| The Conventions and UN Special Resolutions (R.35 & SR.I) | Although Vanuatu has signed and ratified the 3 main conventions in terms of the Vienna, Palermo and the Terrorist Financing Convention, the issue as to whether it has "fully implemented" these conventions cannot be assessed given that there have been no ML or FT prosecutions or investigations and no confiscation of proceeds under the POCA. |
| Mutual Legal Assistance (R.32, 36-38, SR.V) | It is recommended that:<br><br>• the Attorney-General should seek and introduce ways to analyse and address the impediments to providing timely responses to MLA requests.<br><br>• Vanuatu amend the legislation to correct the anomalies made in section 48 of the MACMA;<br><br>• Vanuatu consider amending the definition of "serious offence" to include a reference to pecuniary penalties, given that if a foreign country request related to an investigation, prosecution or court order concerning a legal person, the penalty of which was a fine only, such requests would not satisfy the definition of "serious offence" and therefore fall outside the MACMA;<br><br>• Vanuatu give consideration to reviewing its policy on refusing MLA requests on the grounds that it does not satisfy dual criminality in terms of the assistance available under section 12 of the MACMA for requests concerning "criminal matters";<br><br>• procedures are established for co-ordinating seizure and confiscation actions with other |

| | |
|---|---|
| | countries;<br><br>• Vanuatu consider establishing an asset forfeiture fund, to be used for law enforcement, health, education or other appropriate purposes;<br><br>• Vanuatu give consideration to devising and applying mechanisms for determining the best venue for prosecution of defendants that are subject to prosecution in more than one country;<br><br>• Vanuatu consider amending the legislation to allow for the Attorney-General to make application under section 12 of the CTTOCA for taking custody and control of terrorist property; and section 40 to allow consideration of civil-based foreign forfeiture orders over terrorist property. |
| Extradition (R.32, 37 & 39, & SR.V) | Vanuatu has comprehensive extradition laws but have no statistics on any extradition requests made or received. For this reason, it is difficult to assess the effectiveness of the law or whether it has or is being fully implemented. It is recommended :<br>• that Vanuatu considers measures or procedures that will allow extradition requests and proceedings for ML to be handled without undue delay. |
| Other Forms of Co-operation (R.32 & 40, & SR.V) | It is recommended that Vanuatu introduce legislation pertaining to the respective competent authorities other than VFIU, that:<br><br>• authorises the competent authority to conduct enquiries on behalf of foreign counterparts;<br><br>• identifies the information that can be requested and establishes controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner.<br><br>With regard to Recommendation 32, it is recommended that :<br><br>• the competent authorities maintain statistics on requests for cooperation and information. |
| **7. Other Issues** | |
| Other relevant AML/CFT measures or issues | |
| General framework – structural issues | |

# 8 ANNEXES

## ANNEX 1: LIST OF ABBREVIATIONS

**AML** – Anti-Money Laundering
**APG** – Asia/Pacific Group on Money Laundering
**ATRO** - *Other Anti-Terrorism Regulation Orders*
**CDD** – Customer Due Diligence
**CFT** – Combating the Financing of Terrorism
**CLAG** – Combined Law Agencies Group
**CTTOCA** - *Counter Terrorism and Transnational Organised Crime Act No.29 of 2005*
**DNFBP** – Designated Non-financial Business and Professions
**FATF** – Financial Action Task Force
**FI** – Financial Institutions
**VFIU** – Financial Investigation Unit
**VFSC** – Vanuatu Financial Services Commission
**FT** – Financing of Terrorism
**FTRA** – *Financial Transactions Reporting Act 2000*
**FTRAA** - *Financial Transactions Reporting Amendment Act 2005*
**GDP** – Gross Domestic Produce
**KYC** – Know Your Customer
**MACMA** - *Mutual Assistance in Criminal Matters Act 2002*
**ML** – Money Laundering
**MLA** – Mutual Legal Assistance
**MLAT** – Mutual Legal Assistance Treaty
**MOU** – Memorandum of Understanding
**NCCT** – Non-compliant Countries and Territories
**NDPS** – Narcotic Drugs and Psychotropic Substances
**PILOM** - Pacific Islands Legal Officers Meeting
**POCA** - *Proceeds of Crime Act 2002*
**PPO** – Public Prosecutions Office
**RBV** – Reserve Bank of Vanuatu
**STR** – Suspicious Transaction Report
**UN** – United Nations
**UNSCR** – United Nations Security Resolutions
**UNTOC** – United Nations Convention against Transnational Organised Crime
**VIPA** – Vanuatu Investment Promotion Authority

**ANNEX 2: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION - MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS.**

1. HE Kalkot Matas Keleke, President of Vanuatu
2. Hon. Ham Lini Vanuarorora, Prime Minister of Vanuatu
3. Hon. Vincent Lunabek, Chief Justice of Vanuatu
4. State Law Office
5. Reserve Bank of Vanuatu
6. Ministry of Finance
7. Department of Finance and Economic Management
8. Vanuatu Financial Intelligence Unit
9. Immigration Department
10. Vanuatu Financial Services Commission
11. Vianka Bank
12. Department of Foreign Affairs
13. Goodies Money Changers and Money Transfer
14. Western Union Money Transfer
15. Public Prosecutions Department
16. National Bank of Vanuatu
17. Royal Palms Casino
18. Police Department
19. Ministry of Internal Affairs
20. European Bank
21. Airports Vanuatu Ltd
22. Ministry of Foreign Affairs
23. Vanuatu Bankers' Association
24. Westpac Bank
25. Department of Customs and Inland Revenue
26. Ombudsmen
27. BDO Chartered Accountants and Business Advisors
28. Blake Lawyers
29. Vanuatu Investment Promotion Authority
30. Vanuatu Association of Non-Government Organisations

**ANNEX 3: LIST OF ALL LAWS, REGULATIONS AND OTHER MEASURES**
(Click through for link to legislation, where available on-line)

*Banking (Repeal) Act No. 18 of 2002;*
*Constitution of the Republic of Vanuatu*
*Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001*
*The Counter Terrorism And Transnational Organised Crime Act No. 29 of 2005*
*Criminal Procedure Code [Cap 136]*
*Customs Act 1999*
*Extradition Act 1988*
*Financial Institutions Act No. 2 of 1999*
*The Financial Transactions Reporting (Amendment) Act No. 28 of 2005*
*Financial Transactions Reporting (Amendment) Act 2002*
*Financial Transactions Reporting (Terrorism Amendment) Act 2002*
*Financial Transactions Reporting Act No 33 of 2000*
*Gaming (Control) Act [Cap 172]*
*International Banking Act No. 4 of 2002*
*International Convention for the Suppression of the Financing of Terrorism Act No. 3 of 2002*
*Legal Practitioners (Qualifications) Regulations Act 1996*
*Legal Practitioners Regulation (Amendment) Act 1989*
*Mutual Assistance in Criminal Matters (Amendment) Act 2001*
*Mutual Assistance in Criminal Matters Act 2002*
*Penal Code (Amendment) Act 2003*
*Proceeds Of Crime (Amendment) Act No. 30 of 2005*
*Proceeds of Crime Act 2002*
*Reserve Bank of Vanuatu (Amendment) Act No 17 of 2002*
*Reserve Bank of Vanuatu (Amendment) Act No. 12 Of 1997*
*Serious Offences (Confiscation of Proceeds) Act 1989*
*State Law Office Act 1998*
*State Law Office (Amendment) Act No 5 of 1999*
*Trust Companies Act [Cap 69] 1971*
*United Nations Act No 1 of 2002*
*United Nations Convention Against Transnational Organised Crime Act 2003*
*Vanuatu Financial Services Commission (amendment) Act 2002*
*Vanuatu Financial Services Commission Act 1993*