



The World Bank

**DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

Fiji

FINAL
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ACRONYMS

AML	ANTI-MONEY LAUNDERING
ACAC	ANTI-CORRUPTION ADVISORY COMMITTEE
APG	ASIA-PACIFIC GROUP ON MONEY LAUNDERING
CDD	CUSTOMER DUE DILIGENCE
CMDA	CAPITAL MARKETS DEVELOPMENT AUTHORITY
CMDA Act	CAPITAL MARKETS DEVELOPMENT AUTHORITY ACT
CFT	COMBATING THE FINANCING OF TERRORISM
CTC	COUNTER-TERRORISM COMMITTEE
CTCOC	CTC OFFICIAL COMMITTEE
DNFBPs	DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS
FATF	FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING
FATF 40 + 9	The FATF Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing
FIU	FINANCIAL INTELLIGENCE UNIT
FPF	FIJI POLICE FORCE
FTR Act	FINANCIAL TRANSACTION REPORTING ACT
IT	INFORMATION TECHNOLOGY
MACM	MUTUAL ASSISTANCE IN CRIMINAL MATTERS
MoJ	MINISTRY OF JUSTICE
MLA	MUTUAL LEGAL ASSISTANCE
ML	MONEY LAUNDERING
MACM Act	MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT
NAMLOC	NATIONAL ANTI-MONEY LAUNDERING OFFICIALS COMMITTEE
NAMLC	NATIONAL ANTI-MONEY LAUNDERING COUNCIL
POC Act	PROCEEDS OF CRIME ACT
POLICY 6 (1999)	BANKING SUPERVISORY POLICY STATEMENT No. 6
RBF	Reserve Bank of Fiji
STR	Suspicious Transaction Report
TCU	Transnational Crime Unit
UK	United Kingdom
UN	United Nations
Palermo Convention	United Nations Convention against Transnational Organized Crime
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

A. PREFACE

1. An assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Fiji 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 as revised. The assessment considered the laws, regulations and other materials supplied by the authorities, and information obtained by the assessment team during its mission from 20 February- 4 March 2006, and subsequently until 1 June 2006. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the detailed assessment report.

2. The assessment was conducted by a team of assessors composed of staff of the World Bank (WB) and an expert acting under the supervision of WB staff. The evaluation team consisted of: Ms. Heba Shams (Legal Expert and Team Leader), Mr. Mark Butler (Law Enforcement Expert) and Mr. Allan Schott (Financial Expert) The assessors 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.

3. This report provides a summary of the AML/CFT measures in place in Fiji as at the date of the mission and until 1 June 2006. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 3). It also sets out Fiji's levels of compliance with the FATF 40+9 Recommendations (see Table 2).

B. EXECUTIVE SUMMARY

Main Findings

4. Fiji has committed substantial resources to bringing its AML/CFT system up to international standards. With the entry into force of the Financial Transactions Reporting Act (FTR Act) in January 2006, Fiji has added a central piece to a strong AML/CFT legislative framework. The FTR Act closely reflects the international standard in creating a range of AML/CFT preventive regulatory requirements and extending them to a wide range of financial institutions and non-financial businesses and professions. The Act is recent and implementation is still at an early stage. The criminalization of money laundering is in line with international standards. Fiji also enjoys a progressive and comprehensive legislative framework for preserving and recovering the proceeds of crime.
5. Fiji criminalizes a range of terrorist financing (TF) acts. The criminalization falls short of international requirements in some technical respects. While no TF acts have been detected, it was established that enforcing the TF provisions is operationally contingent on the passing of a comprehensive anti-terrorism law, which is still at an early stage of drafting.
6. Fiji has had a functioning FIU since 2003. With some operational challenges, the FIU has a track record of receipt, analysis and dissemination of STRs.
7. Implementation and resources are a serious constraint for Fiji's AML/CFT regime. This is further aggravated by the ambitious approach that Fiji adopts towards fighting ML and TF. Achieving effective enforcement of the penal provisions and effective functioning of the FIU will require capacity building, risk-based implementation and leveraging of resources.
8. The supervisory framework is unclear and as structured under the FTR Act cannot be effective.
9. Fiji's legislative framework for international cooperation is exemplary. This reflects a general commitment to international cooperation across competent agencies.

General Situation of Money Laundering and Terrorist Financing

10. In global terms, Fiji is a small country with a population of less than 1 million. It enjoys a relatively low level of crime with a decrease of total reported crime in recent years. Notwithstanding this, Fiji is aware that its geographical location makes it a convenient potential staging post for Australia and New Zealand. This has been demonstrated by some recent significant drug related cases and a noted increase in the number of human smuggling cases. These cases have shown that cross-border crime gangs involving individuals from neighboring Asian countries are operating within Fiji. The country suffers from low-level systemic corruption in certain sectors. Indicators suggest that there is a low risk of terrorist activity within Fiji. To date, there have been no known instances of terrorist financing activity.

11. The authorities report that the principal methods used to disguise the origin of funds include: the use of legal entities and the purchase of real estate and high-value goods especially cars.

Overview of the Financial Sector and DNFbps

12. The financial sector in Fiji is relatively small. The total size of assets of the prudentially regulated sector is approximately FJ\$8 billion, FJ3 billion of which is in the banking sector and FJ3 billion in Fiji National Provident Fund (FNPF). The range of institutions operating in Fiji include banks, credit institutions, life insurance, general insurance, securities brokers, securities dealers, investment advisors, unit investment trusts, foreign exchange dealers, fund transfer dealers, credit unions, cooperatives, money lenders and a superannuation fund (the FNPF). Four of the five banks operating in Fiji are branches of foreign banks. The one locally incorporated bank is 100% foreign-owned.

13. Casinos are prohibited. Trust and company services are provided only by lawyers and accountants. The notary function is carried out by lawyers licensed as notaries by the Minister of Justice. All designated non-financial businesses and professions are covered by the Financial Transaction Reporting Act (FTR Act).

Legal Systems and Related Institutional Measures

14. Fiji criminalizes money laundering under the *Proceeds of Crime Act* (POC Act), which came into force in 1998. The offence of money laundering (ML) is well drafted. All the essential elements of the offence are consistent with international standards. Predicate offences include all serious offences defined by a sentencing threshold that is lower than the minimum set by the international standard. Fiji's penal laws include offences in all but one of the designated categories. The criminalization provisions, however, are often old. As a result, their language does not describe the criminal conduct in a manner that reflects current criminal practices and they are often associated with lenient sanctions. While this may not affect the effectiveness of the ML offence domestically, it may have implications for international cooperation. A program to reform the entire penal code is currently underway, which will address these difficulties.

15. One conviction for ML has been secured to date. Approximately 50 investigations emanating from suspicion of ML are currently underway. Law enforcement authorities tend to prefer pursuing offenders for the predicate offence rather than for ML. This creates doubt regarding the effectiveness of enforcement against ML activities. It should however be considered in the context of low crime rates and relatively low value of proceeds.

16. Section 70A of POC Act came into force on 1 January 2006 criminalizing the financing of terrorism (FT) as an independent offence. Section 70A creates an offence within each of the categories of financing terrorist acts, financing terrorist organizations and financing individual terrorists. The current drafting of the provision does not criminalize "providing or collecting funds" for terrorist organizations or individual terrorists and in that regard falls short of the international standard. This should be rectified.

17. According to the authorities, the enforcement of the TF offences, described above, is contingent on the passing of a comprehensive anti-terrorism law, which is still at an early stage of preparation. This gap should be addressed urgently. The concern is only partially mitigated by the lack of evidence that terrorist financing activities are taking place in or through Fiji.

18. The legal framework for asset recovery, which is established by the POC Act, is very comprehensive providing for both criminal and civil forfeiture. It gives the competent authorities extensive powers to identify, trace, preserve and recover assets that constitute the proceeds of crime whether direct or indirect. While detailed statistics were not available, successful asset recovery remains limited. This is largely due to scarce technical skills and material resources that are required to conduct financial investigations effectively and to identify and trace property at an early stage and in tandem with the investigation to prove the offence. Maintaining the value of seized assets pending forfeiture proceedings is problematic. These implementation constraints are the key issue undermining the POC Act. Building the capacity of the competent authorities in using the powers under the Act is essential.

19. Fiji has not yet taken steps to implement the freezing mechanisms under United Nations (UN) Security Council Resolutions 1267 and 1373. The existing legal framework contains powers that may be used to implement a designation and restraining mechanism for terrorist assets. It does not, however, provide for the designation of an individual terrorist or for the freezing of property belonging to an individual terrorist or to those who finance terrorism. Absent actual implementation, it is not clear whether the freezing mechanism available under the law provides effective means for de-listing, unfreezing, challenging and accessing funds for necessary expenses. The authorities indicate that these measures are on hold pending the enactment of the comprehensive anti-terrorism law referred to above. Steps should be taken as a matter of urgency to implement the UN Security Council Resolutions.

20. Fiji has had a functioning FIU since July 2003. Pending the enactment of a comprehensive law on reporting, an interim FIU was created by virtue of a Memorandum of Agreement (MOA) and was housed and resourced by the Reserve Bank of Fiji (RBF). The FTR Act recently created a permanent FIU. Fiji's FIU is, therefore, currently in transition. Its director was appointed under the Act on May 1, 2006 and it will continue to be housed and resourced by the RBF.

21. In addition to the core functions of an FIU, the FTR Act gives the FIU, numerous functions including supervision of all covered sectors, receipt of cash transaction reports and electronic fund transfer reports, and issuing guidelines for all reporting institutions. The FIU has not yet begun to fully carry out these additional functions, as it has not yet secured the additional staffing and technical resources.

22. The FIU received an average of 311 STRs since 2003, with a peak to 432 STRs in 2004. The FIU has limited capacity to handle this number of reports, which is reflected in a substantial backlog of reports pending finalization. There are plans to expand the unit from 3 staff to 5 in 2006, with a further 6 staff being appointed by 2008. Even with the full expected capacity of 14 staff by 2008, the FIU will not have sufficient resources to perform all the new functions assigned to it under the Act. This is a key issue that

concerns the ability of the FIU to perform its core functions effectively as well as the overall effectiveness of the AML/CFT supervisory framework. Priority should be given to ensuring the effective performance of the core functions; i.e., receipt, analysis and dissemination of STRs. The FIU is currently in process of establishing an on-line reporting system for various types of reports.

23. . Since 2003, the FIU has analyzed and disseminated an average of 68 STRs per year to a wide range of authorities but mostly to the Fiji Islands Revenue and Customs Authority (FIRCA) for tax-related matters. One of these STRs has resulted in a conviction for ML.. The practices of maintaining statistics, conducting strategic analysis, and reviewing the operations of the FIU are not yet up to international standards and could be significantly improved.

24. Three agencies are responsible for the investigation and prosecution of ML and TF cases within Fiji: the Office of the Director of Public Prosecutions (DPP), the Fiji Police Force (FPF), and the Fiji Islands Revenue and Customs Authority (FIRCA). The legal framework gives the authorities extensive powers to search, seize and compel production of documents. The authorities use special investigative techniques to investigate offences including controlled delivery and electronic interception.

25. Experience in conducting ML and TF investigations and exercising the powers provided under relevant laws is limited. Technical skills and material resource constraints are evident in all agencies, though this is most acute within the FPF. The small team within the FPF which is responsible for conducting ML and TF investigations, has a significant case load and additional unrelated duties which demand 50% of the team's time. The team is currently handling over 20 ML related investigations with limited progress. The larger range of reports required by the FTR Act will lead to greater dissemination of reports to investigative agencies and will make the resource needs more pressing. Unless the needs of the law enforcement authorities for both technical skills and resources are addressed, the effectiveness of the AML/CFT penal system in Fiji will remain limited.

26. There are some measures under the Exchange Control Act concerning the cross border physical transportation of cash. These measures are not sufficient to deal with the AML/CFT risk. The measures are also not well enforced as a result of the geographic characteristics of Fiji. The FTR Act includes provisions to enhance the monitoring of this activity specifically to prevent ML and TF. The provisions are largely in line with the international standards. The relevant section of the Act has not yet entered into force. It will be brought into force once the relevant agencies, especially the FIU, complete the preparation for implementation.

Preventive Measures – Financial Institutions

27. Fiji's AML/CFT preventive measures are at a transitional stage. As indicated above, the FTR Act came into force in January 2006 and has not yet been implemented. On the other hand, banks are currently implementing certain customer identification and verification, record keeping, and suspicious transaction reporting requirements under Banking Supervisory Policy Statement No. 6 which came into effect in 1 January 2001. Both these instruments, as well as banks' practices are examined against the international

standard in this Report. As a regulatory instrument, Policy 6 is superseded by the FTR Act. It is considered in this Report solely as indicative of the practice of covered institutions.

28. The FTR Act extends the scope of AML/CFT measures to all the financial activities required to be covered under the international standards. The Act does not differentiate between financial institutions (FIs) on basis of risk and does not exempt any financial activity or institution from the scope of the Act. For example, the Act applies its full range of measures to money lenders, which offer typically very low value loans to poor debtors. The Act also extends the scope of measures to financial institutions that would not be covered under international standards, such as general insurers that do not offer investment related products. There was no evidence of risk assessment in determining the scope of AML/CFT measures. The Act gives the competent Minister very limited power to exempt an institution from the scope of the identification requirements under the Act. It also makes the coverage of certain institutions limited to transactions above a certain threshold to be set by the Minister. These are the only two elements of flexibility under the Act.

29. Overall, Fiji's FIs do not keep anonymous accounts or accounts in fictitious names. Also, confidentiality requirements and practices are moderate and they do not impose any undue restrictions on the implementation of the AML/CFT system. In addition, the FTR Act's CDD, record keeping, wire transfers, internal controls, transaction monitoring, and suspicious transactions reporting requirements are substantially in line with international standards.

30. The FTR Act presents, however, some weaknesses. For example, the Act does not impose an obligation on FIs to identify the natural person who ultimately owns or controls a trust or a legal person. The Act also does not require FIs to exercise enhanced due diligence: (1) with regard to customers that they identify as of higher risk, or (2) in relation to Politically Exposed Persons (PEPs) that are existing customers of the FI or beneficial owners of a new customer.

31. Implementation is however the main issue. Only banks are currently implementing AML/CFT measures according to Policy 6. Credit institutions and all non-bank financial institutions are not currently implementing any such measures. Policy 6 measures go some way towards implementing the FTR Act's requirements, but they fall short of international standards in many ways. Most importantly, Policy 6 does not impose any on-going due diligence or transaction monitoring obligations. It is also vague on the need to verify the identification of an occasional customer prior to executing a transaction. It does not impose any enhanced due diligence requirements with regard to PEPs, cross-border correspondent banks or unusual transactions. It is important to note that banks' practices sometimes go beyond Policy 6. This is not however sufficient to bridge the gap with international standards or the FTR Act.

32. Ensuring effective implementation of preventive measures is a priority. This is especially so in view of the identified weaknesses in the penal process in terms of law enforcement capacity. In approaching implementation, the authorities should introduce a

risk-based approach into the system. Beyond the prudentially regulated sectors, the authorities should seriously consider, on basis of sound risk analysis, excluding financial institutions that pose low risk from the scope of the Act. On the same basis, the authorities should also consider simplifying the requirements for some financial institutions on basis of ML/TF risk and materiality as well as on basis of capacity.

33. With regard to wire transfers, the FTR Act imposes a set of obligations that are, with some minor ambiguity, consistent with international standards. Policy 6, on the other hand, does not impose an obligation on financial institutions to include the originator's information with the wire transfer whether it is domestic or international. Banks' and other money remitters do not currently adhere to a practice that is consistent with international standards with regard to either attaching the originators' information or verifying the identity of an occasional customer before wiring the funds. The domestic fund transfer providers, while falling under the FTR Act, are not currently implementing the Act or otherwise adopting practices in line with the requirements of the Act. There is anecdotal evidence of a limited existence of informal value transfer services. Such services are, by definition, subject to the FTR Act but the authorities have limited information on their operations and they are not currently licensed or regulated. These weaknesses should be addressed as a matter of priority.

34. The only agency with clear AML/CFT supervisory responsibility under the FTR Act is the FIU. The Act provides that other supervisory authorities that have licensing or supervisory obligations with regard to any category of FIs are authorized, but not required, to use their powers to supervise and inspect FIs for compliance with the Act. Discussions with the relevant authorities revealed lack of clarity on whether they should or would use these powers for AML/CFT purposes. This leaves the supervisory system hinging entirely on the FIU, which, as indicated above, completely lacks the resources to conduct effective supervision. The supervisory system as set up in the Act cannot achieve effectiveness.

35. The relevant laws give the RBF, and the Capital Market Supervisory Authority (CMDA) adequate powers to inspect, compel supply of information, issue directives, and impose sanctions with regard to the institutions they regulate. RBF is the regulatory agency for banks, credit institutions, the insurance sector and the FNPF. CMDA is the regulatory authority for the securities sector including dealers and intermediaries. The RBF also have licensing and regulatory powers with regard foreign exchange dealers and fund transfer services for the purposes of the Exchange Control Act. While, the RBF and the CMDA have the supervisory capacity, their role in enforcing AML/CFT measures under the FTR Act is ambiguous as indicated above. There is nothing in the Banking Act or the CMDA Act to preclude the RBF or the CMDA from playing this role. The other non-bank financial institutions, such as credit unions, are only subject to licensing requirements and limited off-site supervision by under-resourced registrars.

36. For obligations that are regulatory in nature, the FTR Act relies primarily on a penal scheme of sanctions to enforce FIs' compliance with the AML/CFT requirements. In addition, the Act gives the Attorney General the power to seek a court order imposing a financial penalty on any FI that fails to comply with a directive to take remedial action

issued by the FIU. Consistent with the analysis above, discussions with the relevant authorities revealed that there is no clarity on whether the supervisory authorities for the banking, insurance and securities sectors should or would use their sanctioning powers to enforce compliance with AML/CFT requirements. The Act therefore lacks a sufficient range of sanctions to ensure effective and proportionate enforcement of its requirements.

37. Prior to the FTR Act, RBF conducted three on-site targeted inspections of banks and credit institutions for compliance with Policy 6. The inspections involved sampling of accounts and identified weaknesses in the inspected institutions. RBF directed the relevant institutions to take remedial action.

38. In order to achieve effective AML/CFT supervision, the FTR Act supervisory framework should be fully reconsidered. Supervisory authorities, such as the RBF and the CMDA, should be given exclusive and explicit responsibility to supervise, for AML/CFT purposes, the sectors they currently supervise for other purposes. Consideration should also be given to extending the supervisory role of the RBF in AML/CFT matters to other related institutions, such as credit unions. The authorities should also conduct a risk assessment to determine the level of supervision required for certain types of non-prudentially regulated institutions and to simplify supervision where the degree of ML/TF risk does not merit measures such as on-site inspections.

Preventive Measures – Designated Non-Financial Businesses and Professions

39. The FTR Act applies to all the designated businesses and professions (DNFBPs), which are defined in a manner consistent with the international standards. The Act does not distinguish between FIs in terms of obligations. In fact, the Act terms all covered institutions “financial institutions.” The obligations of dealers in precious metal and stones will not enter into force until the threshold for covered transactions is set up by Ministerial regulations.

40. In addition to the DNFBPs required by the international standard, the FTR Act extends to other categories of businesses and professions, such as car dealers and travel agencies. The authorities indicated that these activities were included because they were high risk or featured in previous ML investigations. The obligations of these sectors will not come into force until the threshold for covered transactions is set up by Ministerial regulations.

41. The supervisory framework of these businesses and professions suffers from the same weaknesses identified in relation to FIs’ supervision above. Currently they fall within the responsibility of the FIU, which lacks the capacity to carry out supervision at this scale. The authorities should reconsider the system of supervision and seek to identify agencies that may be able to carry out parts of the supervisory functions. Should the FIU maintain part of the supervisory function, it should be adequately resourced and this should not be at the expense of the performance of the core functions.

Legal Persons and Arrangements & Non-Profit Organizations

42. Fiji has not yet conducted a formal review of the non-profit sector to assess its vulnerability for terrorist financing. The Law Reform Commission is however currently

examining the legal framework for NPOs with a view to introducing reforms. This reform project has high priority on the agenda of the Commission and is due to be completed at the end of 2006. Currently, the NPO sector in the form of charitable trusts and religious bodies, cooperatives, friendly societies and charitable companies is subject to registration requirements under various acts. The registrars are all manually archived and lack capacity to monitor compliance with the reporting requirements under the relevant acts. There is no information on the sources of the funding of the sector.

43. The company sector in Fiji is large, relative to the size of the economy, albeit unsophisticated. The company registrar is ill-equipped and manually maintained. There is however currently a comprehensive externally funded project to reform the registrar and to computerize it and would enable the authorities to better monitor the activities of the registered entities. It will also enable better networking amongst stakeholders namely, FIRCA, Fiji Law Society, FIU, etc. The competent authorities, including the company registrar, have adequate investigative powers to access information for the purposes of determining ownership and control, prosecuting money laundering, and seeking forfeiture orders. The technical ability of the competent authorities to conduct this type of investigation is however limited and is therefore insufficient to ensure the transparency of the sector. There is evidence of abuse of the sector for various purposes. Most evidently for the purpose of evading immigration, tax, customs, and other related laws in Fiji.

44. The use of trusts in Fiji is limited. Existing laws do not have sufficient measures to ensure the transparency of trusts. When the provisions of the FTR Act become adequately implemented by lawyers and accountants, this will contribute to the transparency of trusts.

National and International Co-operation

45. Fiji has the benefit of a functional national coordination committee (National Anti-Money Laundering Officials Committee, NAMLOC). The Committee enjoys strong leadership by the Ministry of Justice in close collaboration with the Central Bank. The Committee facilitates both policy and operational coordination. Law enforcement authorities have well-established mechanisms of cooperation that have proved effective in recent years.

46. While the Palermo Convention is not yet ratified, Fiji's AML measures implement a substantial part of the measures required under the Convention. Government revisions to the Drug Control Act in 2004 have implemented into domestic law some of the measures required by the Palermo Convention. The Government's approach is to implement the requirements of international conventions domestically prior to proceeding to ratification. Convention ratification is also hindered by resource constraints and as such is subject to prioritization based on the country's interests and strategies. Fiji should seek to ratify Palermo convention as soon as possible.

47. Fiji has a comprehensive system of mutual legal assistance established by Mutual Assistance in Criminal Matters Act (MACM Act), which was amended in 2005. The Act allows Fiji to provide mutual assistance regardless of the existence of treaties with the requesting state. The Act also excludes the requirement of dual criminality for the purposes of mutual legal assistance. Delays occur in the process of delivering mutual

legal assistance (MLA) responses to the counterparts in the Ministry of Foreign Affairs. Also, lack of technical capacity undermines the ability of competent authorities to act on complex mutual assistance requests. Sometimes, MLA is used in situations where less formal means of cooperation, such as police-to-police cooperation could have been used.

48. The legal framework for extradition in Fiji is well developed. Extradition Law 2003 minimizes the restrictions on responding to foreign extradition requests and allows extradition in the absence of a treaty with the country concerned subject to some conditions. The disparity between the extradition framework established by the Act and the extradition framework of existing extradition treaties, which is more restrictive, may undermine the effectiveness of the Act in relation to some important treaty countries. Fiji's cooperation with other countries is also undermined by the lack of reciprocity on behalf of some of its key counterparts and the high cost of seeking extradition of persons to Fiji from foreign jurisdictions. Dual criminality for extradition purposes, while still required, is defined in an unrestrictive way under the Act.

49. Law enforcement authorities, the FIU and the RBF have the legal authority to use their powers to secure information for a foreign counterpart. The CMDA does not have such powers under its law. The international cooperation conducted by law enforcement authorities is conducted upon established pathways, which have proven to be effective. The RBF, on the other hand, has not yet established any cooperation arrangements with foreign counterparts.

50. The FIU cooperates with foreign FIUs and law enforcement authorities spontaneously and upon request. Because of the interim nature of the FIU until the recent appointment of the director, formal cooperation arrangements have not yet been established. However, the FIU is actively seeking membership in the Egmont Group and planning to enter into MOUs with a number of foreign counterparts. The language of the FTR Act restricts the FIU's exchange of information to situations where there is an actual investigation or prosecution for ML/TF. This is too restrictive and, if enforced, will restrict the ability of the FIU to cooperate at the stage of analysis prior to any investigation. In its supervisory capacity, the FIU does not have the power to enter into cooperation arrangements with foreign supervisory authorities.

C. GENERAL

General Information on Fiji

51. Located in the South Pacific Ocean, the Republic of the Fiji Islands is an independent nation that is part of the Melanesian culture. Located about 2,100 kilometers north of Auckland, New Zealand, this archipelago consists of approximately 330 islands in which about one-third are inhabited. Fiji has only two cities, the capital Suva, and Lautoka, both of which are situated on the main island of Viti Levu. As of July 2005, Fiji has an estimated population of 893,354 with a population growth rate of 1.4%. Fijians, those of Melanesian and Polynesian descent, account for 51% of the population. Indians account for the remaining 44%, and others, including Europeans, Pacific Islanders and Chinese for about 5%. English is the official language.

52. The Republic of the Fiji Islands gained independence from the United Kingdom on October 10, 1970. The Constitution was promulgated on July 25, 1990 and amended on July 25, 1997 in order to make multiparty government compulsory and to allow for greater representation of non-ethnic Fijians in the government. The government consists of an executive, legislative, and judicial branch. The executive branch is represented by the President (elected by the Great Council of Chiefs) operating as the Chief-of-State; the Prime Minister, who is the Head of Government; and the Prime Minister's appointed Cabinet. The legislative branch is a bicameral Parliament based on the Westminster model, consisting of a Senate (appointed) and a House of Representatives (elected). The Supreme Court, Court of Appeal, High Court, and Magistrates' Courts compose the Judicial Branch. The legal system in Fiji is based on the British system.

53. Fiji has a tiered system of local government. The local government, including cities and town councils, are supervised by the Ministry of Housing, Urban Development, and Environment. The cities and town councils are each led by a Mayor and elected councilors. These municipal councils have the authority to levy taxes for the funding of capital development and operations. The government provides grants and loans, along with assistance in town planning and related services. Part of this local system of government includes smaller administrative units divided into 14 provinces. The basic administrative unit is the village (Koro) of which several create a district (Tikina), leading to several districts forming a province. These provinces are governed by a council and executive head (Roko Tui). This Fijian Administration is governed by the Fijian Affairs Board, the guardian of the system and other Fijian customs.

54. Since Fiji gained independence in 1970, it has experienced three coups, two of which occurred in 1987. The latest attempt to seize power transpired in 2000 when armed men took Prime Minister Chaudhary and most members of parliament hostage. The coup, led by ethnic Fijian nationalist George Speight, lasted for eight weeks until the Republic of Fiji military forces took power and brokered an agreement. Leader George Speight violated the agreement and was subsequently arrested. He was convicted in February 2002 of treason and sentenced to life in prison. The political instability hindered development and affected all aspects of life in Fiji.

55. Following the events of May 2000, Fiji formed a new government led by Mr. Laisenia Qarase. Despite some occasional political turbulence since then, the events of May 2000 led to an aggressive set of programs for reconciliation and reinvigoration of the economy.

56. Although Fiji, is considered to have one of the most developed economies in the Pacific Islands region (GDP per capita \$6000), it remains a developing nation based on a large subsistence agricultural sector. It relies heavily on the tourism industry, which has substantially increased since the early 1980s. Large contingents of these tourists are attracted from Australia, New Zealand, the United States, the United Kingdom, and Japan. Tourism represents double the revenue from the sugar and garment industries, Fiji's two main exports. The economy has grown on annual average of 2.6% since 2001. Growth for 2005 is estimated to be around 1.5%. There is possible further slowdown in the growth rate due to the reforming sugar industry and competition in the textile market, however, tourism and remittances from abroad may aid in diminishing those effects.

57. There is a perception that corruption is a widespread problem within Fiji, though the view is that it is largely low level corruption. The issue of corruption has been brought increasingly into the public domain in recent years. This follows several large scale cases involving government officials such as Fiji's largest financial scandal involving the collapse of the National Bank of Fiji. Subsequently, there have been several inquiries into public sector corruption, most notable was an inquiry into the Immigration and Customs Department. Only a few cases have been brought before the Courts. Further, the Fiji Law Reform Commission is reviewing the Criminal Procedure Code and the Penal Code to ensure that they are updated and able to address these concerns.

58. A recent report by the local Chapter of Transparency International conveyed that the areas of concern were nepotism involving the appointment and promotion of public officers and executives in state-owned enterprises; corruption in public procurement and government contracts; the misuse of public funds; and kickbacks in several government departments including the Immigration Department, the Fiji Islands Revenue and Customs Authority and the Land Transport Authority.

59. In 2003, the Fiji Law Reform Commission completed a report on bribery and corruption within Fiji, "Bribery and Corruption Report 2003: Building an Anti-Corruption Culture for Fiji." The report gave rise to the decision to form an Anti-Corruption Advisory Committee (ACAC) to advise the Cabinet on how to tackle corruption and to establish an independent anti-corruption agency to investigate complaints of corruption.

60. The ACAC is chaired by the Fiji Law Reform Commission Chairman; its members include the Solicitor General, the Chief Executive Officers of the Prime Minister's Office, the Ministry of Finance and National Planning, the Ministry of Justice, Public Service Commission, the Director of Public Prosecutions and the Commissioner of Police. The committee is tasked with examining matters relating to the creation of an anti-corruption agency including addressing the issue of the need for review of the current corruption related legislation. Funding of FJ\$120,000 has been set to facilitate the setting up of an anti-corruption agency in 2006.

61. In addition to the work of the ACAC, other anti-corruption efforts include seeking greater international co-operation and assistance abroad; raising public awareness; drafting whistleblower legislation; developing a code of ethics; creating additional means to investigate and prosecute corruption; and institutional strengthening and training.

General Situation of Money Laundering and Financing of Terrorism

62. Crime statistics indicate Fiji enjoys a relatively low level of crime with much of the reported crime being assaults as well as small scale thefts and robberies. There has been a general decline in the number of crimes reported over the past five years. However, the number of fraud and false pretence cases has fluctuated in recent years with 387 cases being reported in 2004. Fraud cases involving both local and overseas victims have occurred. Though the majority of cases are not on large scale, many of the cases have involved transactions through the financial sector.

1. There is limited drug trafficking within Fiji, with locally grown marijuana being the predominate drug. However, two cases in the last years have indicated the vulnerability of Fiji to be used as a transshipment point. In 2000, 357 kg of heroin was intercepted as it was being repackaged for transit to Sydney. In 2004, a large scale methamphetamine manufacturing centre was uncovered within Suva. This case was funded from Hong Kong and involved cash smuggling. This case also demonstrates the involvement of Asian crime gangs within Fiji, which is considered to be an increasing problem. The involvement of criminal gangs is further demonstrated by a case in 2005, in which 41 persons were arrested in connection with operating illegal gambling and prostitution.

63. Human smuggling is also a growing concern for the authorities. Several cases have occurred during 2005. The cases have often involved travelers from neighboring countries obtaining genuine Fijian passports, which contain false data to facilitate entry into Australia and New Zealand. Geographic proximity and transportation links make Fiji vulnerable to such cases.

64. Fiji has foreign exchange controls. These controls increase the likelihood of currency smuggling occurring as well as the use of money laundering techniques aimed at circumventing such controls. The significant cash economy within Fiji further escalates the potential for cash smuggling. One particular case to note is the seizure of USD85,000 in sequential notes, which had been brought into Fiji by air and was to have been taken out by a fishing vessel.

65. The authorities report that a frequent method to disguise the origin of funds is the use of legal entities. The purchase of real estate and high-value goods especially cars has been seen in several instances. Lawyers and accountants are the principal agencies for incorporation of companies within Fiji.

66. Whilst there is the potential that terrorist activity could occur within Fiji, the authorities have indicated the potential is considered to be low. Furthermore, to date, there is no evidence of terrorist financing activity within or through Fiji.

Overview of the Financial Sector and DNFBP

67. **General:** There is no comprehensive data or estimates on the total size of assets in the financial system. This is because certain types of financial institutions, such as

credit unions, cooperatives and money lenders, are generally subject to registration, but not to more comprehensive supervision or reporting. As a result, accurate information about their assets is not available. While there are relatively many of these institutions, their respective share of the overall financial sector is relatively small. Clearly, the overall financial sector is dominated by commercial banks; credit institutions; insurance companies; insurance intermediaries (brokers and agents); and the Fiji National Provident Fund, a superannuation or pension fund. The commercial banking sector is supervised and regulated by the Reserve Bank of Fiji (RBF). In addition, the RBF is responsible for the supervision and regulation of certain other deposit taking institutions in Fiji, i.e., credit institutions, insurance companies and intermediaries, money changers and foreign exchange dealers. The securities sector is supervised and regulated by the Capital Markets Development Authority (CMDA).

68. **Banks:** As of the end of 2005, total bank assets were approximately FJ\$3.04 billion. There are five banks operating a total of 50 branch offices in Fiji. Of the five banks, four are branches of foreign banks. Two of these banks are branch operations of Australian banks and one each is a branch operation of an Indian and Pakistani bank, respectively. The fifth bank is chartered by Fiji, but it is owned entirely by a third Australian bank. In Fiji, banks take deposits; make various types of loans; provide money transmission services; engage in foreign exchange operations; provide payment mechanisms, such as credit and debit cards, checks, travelers checks, money orders, electronic money or similar instruments; issue financial guarantees and commitments; provide safekeeping facilities; and administer, manage, or maintain custody of funds or money on behalf of others. Banks are regulated and supervised by the RBF under the Reserve Bank of Fiji Act of 1985 and the Banking Act of 1995.

69. **Credit Institutions:** As of year end 2004, there were three credit institutions operating in Fiji with total assets of approximately FJ\$ 293 million. Credit institutions are chartered under the Banking Act of 1995; they take term or time deposits (but not demand deposits) and make loans. Although their lending activities are not specifically limited by statute, they have undertaken, for their own business purposes, specialized lending activities, such as merchant and equipment lending, home loans, and automobile lending. Recently, they have been expanding the types of loans that they make available to customers.

70. **Foreign Exchange Bureaux:** There are three types of financial institutions that engage in foreign exchange operations in Fiji: banks, money changers and restricted foreign exchange dealers. The non-bank entities are licensed under the Exchange Control Act. Currently, there are three money changers in Fiji, each of which is owned by Fiji companies and each of which operates one office. In general, money changers merely exchange one currency for another. There are eight restricted foreign exchange dealers, five of which are at least partially owned by Fiji companies. Together, the restricted foreign exchange dealers operate 27 offices. Restricted foreign exchange dealers exchange one currency for another, but are also authorized to transfer, deliver and negotiate funds on behalf of others, including transmitting money to other countries. Unlike the authorized banks, restricted foreign exchange dealers and money changers, are

more limited in the amounts that can be transacted and the types of transactions that can be carried out for customers. .

71. **Insurance:** The insurance sector comprise nine companies and several brokers, representing total assets of approximately FJ\$ 715 million. The insurance sector is regulated by the RBF. Of the nine insurance companies, seven are general insurers (property, casualty and health and medical) and two are life insurers. The two life insurance companies are owned by an Australian and an Indian insurance company, respectively. Life companies offer several different types of life insurance products, including term, whole life and endowment plans, which is an annuity type of product that combines insurance with investment attributes. Of the seven general insurers operating in Fiji, three are owned by Australian companies; two are owned by Fiji companies; and one each is owned by an Indian and a New Zealand company, respectively. There are a total of 42 insurance branch offices operating in Fiji. Consumer insurance products are sold through agents, which tend to be tied or dedicated agents with respect to a particular company, but since not all companies offer all types of products, agents may be dedicated to more than one company depending upon the particular product being offered.

72. **Securities:** Securities firms buy and sell transferable securities through the South Pacific Stock Exchange, which is the single securities exchange operating in Fiji. As of year end 2004, there were a total of sixteen companies listed on the exchange with a total capitalization of approximately FJ\$892 million. Also as of year end 2004, there were licensed securities intermediaries consisting of three brokers, two dealers and ten investment advisors. It should be noted that there is some overlap in these entities: the two dealers are also brokers and two of the brokers are also investment advisors. In addition, as of year end 2004, there were six licensed unit investment trusts with total assets of approximately FJ\$144 million. Unit investment trusts are mutual fund type of investments. Each of these licensed intermediaries and unit trust entities is regulated by the CMDA under the CMDA Act. The securities sector is relatively small; by practice, trading is limited to common equity shares. There is currently no trading of preferred shares, options or warrants, or commercial paper, although such types of securities could be traded.

73. **The Fiji National Provident Fund:** This is a superannuation fund or pension plan intended to provide financial security for individuals at the time of retirement, protection in the case of disability, survivor benefits in case of the death of a contributing individual. As of year end 2004, this fund had total assets of approximately FJ\$3 billion. While intended primarily as a retirement vehicle, the Fund has different categories for contributions, including education and home purchases. The Fund is supervised by the RBF under the Insurance Act.

74. **Credit Unions:** There are 58 credit unions currently registered, pursuant to the Credit Union Act, with the Ministry of Justice under the Registrar for Credit Unions, with estimated total assets of approximately FJ\$80 million. Credit unions offer saving type accounts and consumer loans. They do not offer checking accounts or credit cards. While on-site inspections are authorized under the statute, there are none. Nor is there any other prudential supervision.

75. **Money Lenders:** Money lenders are required to register with the Registrar under the Ministry of Justice. Only residents of Fiji may apply. Currently, there are 337 registered money lenders; most are individual or partnerships. They tend to be small operations, making consumer-type loans. There are no inspections, although they are authorized under the statute, the Money Lenders Act. The primary reason for registering is to enforce a loan contract; contracts with unregistered money lenders are not, by statute, enforceable in the courts. There is no reliable information on the amount of loans outstanding by money lenders.

76. **Cooperatives :** A cooperative is defined as an association aimed “at promoting the economic and social interests of its members by providing effective services which the members need and can make use of.” Cooperatives can be involved in the acceptance of deposits from its members and the provision of credit to its members. All cooperatives are required to register with the Department of Cooperatives and to comply with the Cooperatives Act. This includes producing an annual return which includes an audited financial statement. There are currently 680 cooperatives registered, though only 480 are active. The Cooperative Department has the authority to dissolve any cooperative in breach of the legislation.

77. **Lawyers:** In general, lawyers in Fiji offer all the traditional legal services to individuals and companies, although most tend to be general practitioners and do not specialize. Lawyers can purchase and sell, or arrange for the purchase and sale of real estate; manage money or securities; organize the creation of companies; or manage legal arrangements for trusts, unincorporated associations, and partnerships. Client funds are commingled and deposited in a lawyers trust account at banks, pursuant to the Trust Accounts Act. In order to facilitate the formation of a company, lawyers often maintain several shelf companies, which are actually inactive shell companies ready to be placed into action with changes in directors and addresses. There are 80 law firms, with 320 practicing lawyers in Fiji. General supervision of lawyers is through the Fiji Law Society, which was created by Legal Practitioners Act.

78. **Accountants:** Accountants also serve individuals and companies in a variety of service capacities. Similar to lawyers, these services include purchasing and selling real estate or other assets; safekeeping of money or assets; organizing companies or trusts, unincorporated associations, and partnerships. The formation of companies is facilitated through the purchase of a shelf company from a lawyer. Accountants also perform payroll services for employers. Client funds are commingled in a bank account under the Accountants Trust Act. Supervision for accountants is provided by the Fiji Institute of Accountants, which was created under the Fiji Institute of Accountants Act. Currently, there are a total of 37 chartered accountants with certificates for public practice and 170 other chartered accountants.

79. **Casinos :** Gambling within Fiji is controlled under the Gaming Act. It is an offence to operate a gaming house, the definition of which includes a casino. Fiji has one lottery which is a branch of an Australian lottery and which is licensed by the Solicitor General. There is one bookmaker which is also licensed by the Solicitor General. There are no known internet casinos operating within Fiji.

80. **Real Estate Dealers :** There is currently no legislation or supervisory authority relating to real estate dealers within Fiji. The Real Estate Agents Bill has been drafted and was recently circulated to the industry for consultation. The legislation will create a Real Estate Agents Licensing Board and will regulate the handling of real estate transactions. At present, there are three agencies of international real estate companies and five local real estate companies within Fiji. However, there are several hundred individuals offering real estate services. For transactions conducted through the companies, the funds will normally be handled through the lawyers acting on behalf of the vendors and purchasers.

81. **Dealers in Precious Stones and Precious Metals:** There are no licensing or regulatory requirements for dealers in precious stones and metals. Whilst there is one gold mine in Fiji, all of the extractions are sold in Australia. There are several local chains of jewelry with outlets in the main towns. There is no specific association for dealers in precious stones or precious metals

82. **Trust and Company Service Providers:** There are no known trust and company service providers other than lawyers and accountants.

Type of financial activity (see the Glossary of the 40 Recommendations)	Type of financial institutions that perform this activity in Fiji
Acceptance of deposits and other repayable funds from the public	Banks, Credit Institutions, Credit Unions, Cooperatives
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, Credit Institutions, Credit Unions, Money Lenders, Cooperatives Fiji Development Bank
Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks, credit institutions Other Finance Companies
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks, Postal System, Western Union, Restricted Foreign Exchange Dealers
Issuing and managing means of payment (e.g. credit and debit cards, checks, traveler's checks, money orders and bankers' drafts, electronic money)	Banks, Postal System Restricted Foreign Exchange Dealers
Financial guarantees and commitments	Banks
Trading in: (a) money market instruments (checks, bills, CDs, derivatives etc.)	(a) Banks (b) Restricted Foreign Exchange Dealers, Money Changers

(b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	(c) Banks (d) Securities Firms, Securities Brokers and Dealers
Participation in securities issues and the provision of financial services related to such issues.	Securities firms, Securities brokers and dealers
Individual and collective portfolio management (covers mgt. of collective investment schemes such as unit trusts, mutual funds, pension funds)	Unit trusts, Fiji National Provident Fund
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks, Lawyers, Accountants
Otherwise investing, administering or managing funds or money on behalf of other persons.	
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and insurance intermediaries (agents and brokers))	Insurance Companies, Insurance Agents and Brokers
Money and currency changing	Banks, Restricted Foreign Exchange Dealers, Money Changers

Overview of commercial laws and mechanisms governing legal persons and arrangements

83. The laws of Fiji create various types of legal persons: (1) Companies created under the Companies Act (1985); (2) Associations, which include a body of persons incorporated under any written law other than the Companies Act or the Co-operatives Act, such as credit unions incorporated under the Credit Union Act (1954) as amended; and (3) Cooperatives formed under the Co-operatives Act (1996). Co-operatives and some types of associations will be discussed in the sections relating to financial institutions and/or NPOs.

84. The Company Act was introduced in 1984 repealing the Companies Act 1913 and was modeled on the UK company legislation from 1948. In terms of liability, there are two types of companies under Fiji law: (1) limited companies where the liability of members is limited to the unpaid amount on the shares held by each of them (company limited by shares) or (2) limited companies where the liability is limited by the amount each undertook to contribute to the assets of the company in the event of liquidation (company limited by guarantee). In terms of ownership, there are two types of companies: (1) "private companies" that are prohibited by their articles of association from inviting the public to subscribe for any shares or debentures of the company. Their membership cannot exceed 50 members; and (2) companies that are not private in that

they do not restrict the transfer of shares and do not prohibit the invitation of the public to subscribe for shares or debentures. Most companies formed in Fiji are private companies.

85. In order to form a company in Fiji, a minimum of seven persons or two in the case of “private companies” must subscribe their names to a memorandum of association and comply with the registration requirements of the Company Act. In the case of a company limited by guarantee or an unlimited company, articles of association prescribing regulations for the company must be registered with the memorandum of association.

86. The Company Act permits companies incorporated outside Fiji to operate within Fiji subject to requirements and conditions defined by the Act. The requirements of the Act only apply to foreign companies that establish a place of business in Fiji. Doing business through an agent at the place of business of the agent does not constitute an establishment of a place of business under the Act.

87. The registration requirements for companies are cumbersome. This has led to the extensive use of “shelf companies” to expedite the process of company formation. “Shelf companies” are typically formed by lawyers, who then sell the companies “off-the-shelf” to clients seeking to form a company in Fiji. Officers and directors are then changed to those specified by the new owner.

Number of New Companies Registered in Fiji*				
Year	Domestic		Foreign	Total
	Public	Private		
1998	0	480	14	494
1999	3	557	22	582
2000	2	424	14	440
2001	2	522	5	529
2002	5	427	12	444
2003	1	606	15	622
2004	2	1035	9	1046
2005	1	1055	16	1072
Total Registered Companies	18473			

* Information provided by Registrar of Companies.

88. Fiji laws permit the formation of, and recognize other types of legal arrangements, such as partnership and trust. Partnerships are governed by the Partnership Act (1910) as amended. Under the Act, partnerships do not have a separate legal status apart from the individuals that constitute the partnership. Trust is a “common law” arrangement in Fiji. Only some aspects of trust are regulated by a statute, such as trustee powers, rights and duties (Trustee Act 1966). Some types of trusts, such as unit trusts, which are used as investment vehicles, and charitable trusts are regulated by special statutes: Unit Trusts Act (1978) and Charitable Trusts Act (1965).

89. Trusts under Fiji law could be express, implied or constructive. They are governed primarily by the instrument creating the trust. The Trustee Act allows corporations to act as trustees without any restrictions except with regard to administering

the estate of a deceased person. Generally speaking, apart from unit trusts and charitable trusts, trust arrangements are not widely used in Fiji. Some use of trusts occurs as an asset protection mechanisms. This use is particularly common amongst partners in professional firms as a result of the fact that the Partnership Act does not give firms legal personality and does not allow liability of partners to be limited.

Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

90. The authorities indicated that AML/CFT initiatives are driven by Fiji's commitment to the global fight against money laundering and terrorist financing. Legislative reform was undertaken as a matter of priority. Every effort is being made by the government and other agencies in Fiji to ensure timely and effective implementation of the additional measures under the POCA, MACMA and FTR Act.

91. In the context of implementing this legislative package, the current priorities include:

- Full implementation of FTR Act in 2006/2007
- Issuing the regulations implementing the FTR Act (initial draft completed and to be issued for industry consultation June/Sept 2006)
- Securing AUSTRAC assistance to develop FIU IT database and on-line reporting system in 2006.
- Providing additional human and technical resources for law enforcement, prosecutorial, and financial sector regulatory agencies in 2006.

92. The authorities also indicated that a number of legislative reforms are underway as a matter of priority. The Law Reform Commission is currently:

- Conducting a review of the NPO sector with a view to introducing a comprehensive package of reforms. The review is to be completed in 2006.
- Conducting a comprehensive review of the Criminal Procedure Code and the Penal Code.
- Conducting a review of anti-corruption laws with a view to introducing a comprehensive package of reforms.

93. In addition, the Ministry of Home Affairs is leading the effort on drafting a comprehensive Counter Terrorism Bill.

94. On international cooperation, Fiji aims to secure the FIU's Egmont membership in 2006/2007 and to enter into FIU-to-FIU and FIU-to-Foreign law enforcement authorities agreements in 2006.

95. Outreach, awareness raising and training are amongst the authorities' on-going priorities.

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

96. **Fiji's National Anti-Money Laundering Officials Committee (NAMLOC):** It was established informally in 1998 as a national coordinating committee for the enforcement of anti-money laundering laws and regulations. In addition, under the memorandum of agreement establishing the Financial Intelligence Unit (FIU), NAMLOC provides an advisory support to the FIU. The Committee comprises representatives from: the Office of the Solicitor General, the Director of Public Prosecution, the Fiji Police Force, the Reserve Bank of Fiji, the Fiji Revenue and Customs Authority, Capital Markets Development Authority, Ministry of Foreign Affairs, Ministry of Finance, Immigration Department, Fiji Trade and Investment Bureau, Ministry of Home Affairs, Office of the Auditor General, and is chaired by the Chief Executive Officer of Justice. The composition of the NAMLOC has expanded over the years. The authorities confirmed that the Committee meets once a month, that attendance has been adequate and from staff of a sufficiently high level. The Committee indicated that it has focused on legal reform, implementation of AML/CFT strategies, and the facilitation of information sharing and coordination amongst the relevant agencies.

97. **The CTC Officials Committee (CTCOC):** It was established under the aegis of the National Security Council in 2003 to undertake the intended reforms required under the Security Council Resolution 1373. The CTCOC comprise the sectoral heads of the three CLAGs (Combined Law Agency Groups): Commissioner of Police, Commander, Solicitor General, Chief Executive Officer for Justice, Governor of Reserve Bank, Chief Executive Officer for Foreign Affairs & External Trade (Chair & secretariat), Chief Executive Officer for Finance & National Planning, Chief Executive Officer for Home Affairs, The Fiji Revenue and Customs Authority, Director of Immigration, and NAMLOC. The CTCOC meets on quarterly basis. The CTCOC handles reporting to the Security Council's Counter-Terrorism Committee (CTC), carries out all the paper work necessary for implementation of the UN Security Council Resolution 1373, and the ratification of international conventions on terrorism through Cabinet decisions.

98. **The National Anti-Money Laundering Council (NAMLC):** This was created by Part 6 of the Financial Transactions Reporting Act (FTR Act, 2004) consisting of: The Chief Executive Officer responsible for the Ministry of Justice (Chairperson); the Director of the FIU; the Director of Public Prosecution; the Commissioner of Police; the Governor of the Reserve Bank of Fiji; and the Chief Executive Officer of the Fiji Islands Revenue and Customs Authority. The functions of the Council are:

- advise the FIU and the Minister of Justice on any matters relating to the prevention of money laundering or the financing of terrorism;
- make recommendations to the FIU and the Minister on any matters relating to the prevention of money laundering or the financing of terrorism;
- assist the FIU and the Minister in the formulation of policies or strategies relating to the prevention of money laundering or the financing of terrorism; and
- assist the FIU in coordination between various Government departments and statutory corporations.

99. The Council has not yet convened.

100. **The Reserve Bank of Fiji (RBF)** was established under Reserve Bank of Fiji Act 1985 (RBF Act). It is the central authority with the primary responsibility for the regulation and supervision of the largest part of the financial sector. RBF licenses, regulates and supervises all banks, credit institutions, insurance companies including insurers and intermediaries, Fiji National Provident Fund, restricted foreign exchange dealers, and money changers. In addition, RBF has a more limited regulatory role with regard to Fiji Development Bank, and Housing Authority, unit trusts, credit unions and cooperative societies. Accordingly, RBF is the primary agency responsible for administering the Banking Act (1995), the Insurance Act (1998) and Exchange Control Act (1985).

101. RBF is represented by the Governor in NAMLOC, CTCOC, and the NAMLC. RBF has AML/CFT supervisory powers under section. 36 of the Financial Transactions Reporting Act 2004 (FTR Act 2004).

102. **The Financial Intelligence Unit** was established as an interim arrangement by a memorandum of agreement signed between the Ministry of Justice, the Reserve Bank of Fiji, the Director of Public Prosecution and the Fiji Police Force in July 2003 to replace a dual reporting requirement of STRs to the FPF and DPP, and pending the establishment of a FIU pursuant to legislation. Part 4 of FTR Act 2004 establishes the FIU as a permanent unit and describes its composition, functions, duties and powers. The Act came into effect on January 1, 2006. The FIU Director was appointed under the Act on May 1, 2006. The FIU is housed in RBF and staffed by RBF officers with a police officer on secondment from the FPF. The FIU reports administratively to the Governor of RBF.

103. **Capital Market Development Authority (CMDA)** was established by the Capital Market Development Authority Act 1996 as the supervisory authority for the stock exchange, brokers, dealers, investment advisors, unit trusts, mutual funds, and all representatives of any of the above.

104. **The Director of Public Prosecutions Office (DPP)** is a constitutionally established office under section 114 of the Constitution (Amendment) Act of 1997. DPP may institute, take over or discontinue criminal proceedings. The DPP's Office also plays an important role in mutual legal assistance.

105. **Fiji Police Force (FPF)** is headed by the Commissioner of Police, whose office is established under Section 11 of the Constitution (Amendment) Act 1997. The operation of the Criminal Investigation Department (CID) is divided into several sections, which are due to undergo a revision in structure before mid-2006. Currently, the money laundering investigation capacity of the FPF is a team within the Organized Crime Division. The team is tasked to handle all money laundering and terrorist financing investigations conducted by the FPF.

106. The FPF is represented at the National Security Council, the Counter-Terrorism Council Officials Committee and the National Anti-Money Laundering Officials Committee. The Commissioner of Police also holds a position on the NAMLC.,

107. **The Judiciary** is the third arm of government, which is created under Chapter 9 of the Constitution (Amendment) Act of 1997. Section 117 of the Constitution vests in the High Court, Court of Appeal, and the Supreme Court, the judicial power of the State

of Fiji. The Constitution guarantees the independence of the judiciary. The High Court has primary jurisdiction for matters arising under the POC Act (s. 6) and the FTR Act (s. 29). There are a total of 12 High Court judges in Fiji and 30 magistrates. Out of the 12 High Court Judges, 4 handle criminal cases (3 based in Suva and 1 in Lautaka). The Supreme Court and the Court of Appeal are staffed by expatriate justices from Australia and New Zealand. The Court of Appeal holds session three times a year, while the Supreme Court holds session twice a year.

108. **Ministry of Justice** is under section 110 of the Constitution and is the leading agency on AML/CFT matters in Fiji. The CEO for Justice serves as chairman to the NAMLOC, NAMLC, and CTCOC.

109. **Fiji Islands Revenue and Customs Authority (FIRCA)** was established on January 1, 1999, upon the merger of the former Inland Revenue and Customs and Excise Departments. It is responsible for administering and enforcing the laws relating to taxation and customs and excise including revenue collection, facilitation of trade and border protection.

110. FIRCA is represented on the National Security Council, the Counter-Terrorism Council Officials Committee and the National Anti-Money Laundering Officials Committee. The Chief Executive of FIRCA also holds a position on the NAMLC under Part 6 of the FTR Act.

111. **The Attorney General:** The Office of the Attorney General and the Solicitor General are established under the Constitution of Fiji. The Attorney General is the Chief Legal Advisor to the Government. He is assisted by the Solicitor General who is the Chief Executive Officer of the Ministry. The Office comprises various Divisions, which administer various statutes assigned to the Attorney-General. The Attorney General plays an important role in the area of international cooperation in criminal matters.

112. **The Registrar of Credit Unions** is created by the Credit Union Act with responsibilities for registration, supervision, and monitoring compliance with the Act by registered credit unions. Even though there is authority for on-site supervision, due to resource constraints, there is no regular on-site supervision of credit union activities. The legislative framework is being reviewed in order to strengthen the enforcement sanctions, registration procedures, and monitoring of compliance with the Act.

113. **Fiji Law Society:** Lawyers in Fiji are supervised by the Fiji Law Society under the Legal Practitioners Act. This is an all volunteer organization that appears to be understaffed. There is currently a backlog of approximately 80 cases of complaints against lawyers going back more than a year.

114. **Fiji Institute of Accountants:** Accountants are supervised by the Fiji Institute of Accountants as required under the Fiji Institute of Accountants Act. It establishes requirements and standards for accountants and issues certificates for operating in Fiji.

c. **Approach concerning risk**

115. Authorities have stated that a risk-based approach to AML/CFT measures is considered an important aspect of Fiji's AML/CFT framework. The FTR Act goes beyond the international standard in many respects. Most notably, the Act adopts a very

broad definition of “financial institutions” that encompasses a range of financial activities as well as non-financial businesses and professions wider than those covered by the international standard. The Act does not exempt any sectors on the basis of vulnerability to ML/TF. With limited exceptions, the Act does not provide the government with flexibility to exempt sectors and/or institutions from the scope of AML/CFT requirements. The authorities indicated that going beyond the standard was based on an assessment of risks specific to local circumstances. Apart from limited individual cases, the assessors did not see evidence of a systemic risk assessment.

d. Progress since the last IMF/WB assessment or mutual evaluation

116. Fiji has not been assessed previously by the IMF or WB. In 2002, Fiji was evaluated for the first time by the Asia Pacific Group on Money Laundering (APG). The evaluation was conducted on basis of the 1996 FATF 40 Recommendations and took into account the FATF’s 25 Criteria for defining “Non-Cooperative Countries and Territories” (NCCT). The evaluation did not use FATF Special Recommendations as a standard and it did not use the 2002 Methodology, which was adopted months after the completion of the evaluation. Accordingly, the APG evaluation report does not include ratings of compliance.

117. The main weaknesses identified by the APG Report 2002 include:

- scattered and not comprehensive AML regulatory requirements.
- Absence of a Financial Intelligence Unit.
- The need for additional resources and training for AML/CFT matters.
- Suspicion transaction reporting was discretionary and STR management was decentralized.
- Insufficient identification and provisional powers for the enforcement of confiscation measures.
- Money laundering was not an extraditable offence.
- The definition of financial institutions under the Proceeds of Crime Act (POC Act) was too restrictive and excluded non-bank financial institutions.
- The need for a more comprehensive regulatory and supervisory framework for foreign exchange dealers, money changers and money remitters and other non-bank financial institutions.

118. Several steps towards setting up an AML/CFT regime were taken since 2002. The main developments are:

- POC Act was amended in 2005 widening the scope of predicate offences, criminalizing the financing of terrorism, introducing several provisions to deal with restraining and forfeiting terrorist property and introducing civil forfeiture.
- The Mutual Assistance in Criminal Matters Act 1997 was amended in 2005 expanding the range of international assistance that can be rendered

by Fiji, limiting the grounds for refusal of assistance and simplifying the process of requesting assistance. The amendments also expressly authorize the rendering of mutual assistance in the absence of a bilateral treaty.

- The Financial Transactions Reporting Act was passed in 2004 and entered into force in January 2006. The Act expands the definition of “financial institutions”, consolidates the AML/CFT obligations applicable to them, and establishes a Financial Intelligence Unit to replace the Interim Unit that has been in place since 2003.

119. The nature and scope of development in Fiji’s AML/CFT system since 2002 is so extensive that it is not useful to address them in detail in this section. The developments will be covered in detail throughout the Report and reference to the APG Report 2002 will be made as necessary. This DAR will be considered for adoption as an ME Report by the APG Plenary.

D. DETAILED ASSESSMENT

1. Legal System and Related Institutional Measures

Laws and Regulations

1.1 Criminalization of Money Laundering (R.1, 2 & 32)
Description and analysis
<p>120. Legal Framework: POC Act s. 69 (Knowing money laundering), s. 70 (Negligent money laundering), s. 3 (Interpretation), and s. 4(1A) (Definition of proceeds), Penal Code ss. 23, 38, 282, 383 & 385 (Ancillary offences).</p> <p>121. The Act of Money Laundering (C. 1.1) S. 69 of the POC Act (1997) as amended in 2005 criminalizes as money laundering any of the following acts if it occurs with regard to money or property that constitutes proceeds:</p> <ul style="list-style-type: none"> • Engaging in a transaction, including the receiving or making of a gift; • Receiving, possessing, concealing, using, disposing, bringing into Fiji; • Converting or transferring with the aim of disguising the illicit origin of the money or property; • Converting or transferring with the aim of aiding a person to evade the legal consequences; or • Concealing or disguising the true nature, origin, location disposition, movement, or ownership of the money or property. <p>The last two types of acts were added by the 2005 amendment to POC Act thus bringing the language of the Act more in line with the Vienna Convention and the Palermo Convention. Money laundering is therefore criminalized in line with the Vienna and Palermo conventions definition and consistent with criteria 1.1.</p> <p>122. What Constitutes Proceeds (c. 1.2) S. 3 of the POC Act interprets “property” broadly to include “money or any other property real or personal, things in action or other intangible or incorporeal property whether located in Fiji or elsewhere.” S. 4 (1A), which was inserted by the 2005 amendment to the POC Act defines “proceeds of crime” as any property or benefit:</p> <ul style="list-style-type: none"> • Wholly or partly derived directly or indirectly from the commission of a serious offence or foreign serious offence • Wholly or partly derived from the disposal or other dealing with proceeds • Wholly or partly acquired proceeds. <p>S. 4 (1A) also considers to be proceeds substitute and intermingled property and any income, capital or other economic gains derived from the property at any time after the offence. Consistent recommendation 1, the Act does not require any minimum value for the property or benefit to constitute proceeds.</p> <p>123. Proving that any property or benefit constitutes proceeds from crimes does not require conviction for a predicate offence. This is explicitly provided for in S. 69 (4) of POC Act , which states that “the offence of money laundering is not predicated on proof” of the predicate offence. This subsection was inserted by 2005 amendment to give the courts clear and explicit direction on this matter after a court took the position that it would not entertain a case of money laundering in the absence of conviction for the predicate offence. The case concerned an accused whose life-style was not commensurate with his known source of income.</p> <p>124. Definition of Predicate Offence (c. 1.3, 1.4) In defining the predicate offence for ML, Fiji adopts an “all serious offences” approach. S. 3 of the POC Act as amended in 2005, defines as a serious offence any offence for which the maximum penalty prescribed by law is death or imprisonment for not less than 6 months or a fine of not less than \$500. This is a threshold approach that goes beyond the FATF standard. The FATF standard would have been satisfied if the maximum penalty threshold was raised to “imprisonment for not less than one year.” The authorities stated that this threshold takes into consideration the level of sanctions prescribed for predicate offences under Fiji’s Penal Code and other Penal Laws.</p> <p>125. Designated Category of Offences (c. 1.3) With the exception of the category of “participation in an</p>

organized criminal group,” the assessors could establish that applicable laws contain a range of offences within each of the designated categories of offences sufficient to meet the international standard. This is set out in the table below. It is important to note that ss. 79 -81 of the Penal Code proscribe managing or becoming a member of an unlawful society. The definition used to identify a society as an “unlawful society” under s. 79 correspond more closely to the definition of a “terrorist organization” than to an “organized criminal group”; as a group aiming to carry out proceed-generating activities as intended by FATF and defined in the Palermo Convention. It is, therefore, the view of the assessors Fiji lacks a range of offences falling within the category of “participation in an organized criminal group.”.

126. It is worth noting that many of Fiji laws are outdated and, therefore, many offences that were considered by the assessors to be falling within the designated categories are drafted in a manner that does not reflect the forms that the criminal conduct would currently take. The outdated nature of the statutes is also reflected in the leniency of the sanctions attached. For example, all the offences against the Explosives Act, which dates back to 1938, are regulatory offences punishable as misdemeanors with maximum penalty ranging from 1-2 years of imprisonment and a maximum fine of \$800. Fiji is in the process of reforming its framework of penal laws. This is evident in the recent passing of the Immigration Act (2003), where Part 5 criminalizes acts of people trafficking and smuggling in a manner reflective of current criminal practices

Designated Category of Offences	Relevant Sections
Participation in an organized criminal group	Could not be established. Note that: sections 79 -81 of the Penal Code proscribe managing or becoming a member of an unlawful society. The definition of “unlawful society” is closer to the definition of a “terrorist group/organization” than a criminal group in the Palermo sense.
Terrorism, including terrorism financing	<ul style="list-style-type: none"> a) S. 70A POC Act, s. 70A (Financing of Terrorism). b) Penal Code: s. 50 (Treason by the law of England), s. 69 (Genocide), s. 324 (damaging with explosives), s. 325 (attempts to destroy property with explosives). c) Civil Aviation (Security) Act (1994): s. 3 (Hijacking), s. 5 (Aircraft Sabotage), s. 6 (Endangerment of Aircraft), s. 7 (Airport Sabotage), s. 10 (Taking of Aircraft), s. 11 & 12 (Threats and false statements respecting aircraft/airports), s. 12 (Offence relating to dangerous articles). d) Explosives Act & Subsidiary Regulations: s. 4 (Manufacture of explosives), s. 45 (Importation and exportations of explosives), s. 61 (Sale, possession and purchase).
Trafficking in human beings and migrant trafficking	Immigration Act (2003) criminalizes different acts of trafficking and smuggling in sections 17-30. The Act also specifically provides in s. 32 that these offences constitute predicate offence for money laundering.
Sexual exploitation (including of children)	Penal Code: 157 (Procuration), 161 (Detention with intent or in brothel), 162 (Selling minors for immoral purposes), 163 (Buying minors for immoral purposes), 166 & 167 (living or earning of prostitution), 170 (Brothels).
Illicit trafficking in narcotic drugs (2004)	Illicit Drugs Control Act (2004): s. 4 (Importation and Exportation), s. 5 (Unlawful Possession), s. 6 (Controlled chemicals and equipment).
Illicit Arms Trafficking	Arms and Ammunition Act (2003): s. 10 (Illicit Arms Dealing), s. 15 (Purchase, sale or acquisition), s. 23 (Concealing and Trafficking), s. 25 (Ships and crafts used for illegal importation and exportation).
Corruption and bribery	Penal Code: s. 106 (Official corruption), s. 107 (Extortion), s.

	108 (Receiving property to show favor), s. 111 (Abuse of Office).s. 142 (Frauds and breaches of trust).
Illicit trafficking in stolen and other goods	Penal Code: s. 313 (Receiving), s. 314 (receiving goods stolen outside Fiji).
Fraud	Penal Code: Chapter XXIX (Offences allied to stealing), Chapter XXXII (Frauds by trustees), Chapter XXXIII (False pretences).
Counterfeiting currency	Penal Code: Chapter XXXVIII (Offences relating to coin, and Bank and Currency Notes).
Counterfeiting and piracy of products	Copyright Act (1999): s. 121 (Criminal liability for making or dealing with infringing objects).
Environmental crime	Environment Management Act (2004): Part 6.
Murder, grievous bodily injury	Penal Code: Chapter XX (Murder and Manslaughter), Chapter XXIII (Offences endangering life and health).
Kidnapping, illegal restraint and hostage taking	Penal Code: Chapter XXVI: Offences against liberty.
Robbery or theft	Penal Code: Offences Relating to Property.
Smuggling	Customs Act (1986)
Extortion	Penal Code: s. 296 (Threatening to Publish with intent to extort).
Forgery	Penal Code: Division VII (Forgery)
Piracy	Penal Code: s. 72 (Piracy),
Insider trading and market manipulation	CMDA: s. 59 (Insider Trading), s. 60 (Fraudulent Inducement to invest), s. 61 (Fictitious Transactions), s. 62 (Misleading documents).

127. **Foreign Predicate Offences (c. 1.5 & 1.8)** The POC Act, as amended in 2005, considers proceeds to include money or property derived or acquired in the manners described by the law from a foreign serious offence defined as a serious offence against the law of a foreign country. The law is therefore consistent with the international standard on this point.

128. The law is silent on the issue of dual criminality with regard to foreign serious offences. This question has not yet been considered by the courts. The Director of Public Prosecution (DPP) indicated that there is nothing in the law that would preclude prosecuting a person for laundering in Fiji the proceeds of an act committed abroad that constitutes an offence abroad and does not constitute an offence in Fiji. This would be done with due consideration to the issues of fairness and due process. He indicated that it would be a matter for prosecutorial discretion when the case arises. He confirmed however that this has no bearing on mutual legal assistance where there is no requirement of dual criminality.

129. **Self-Laundering (c. 1.6)** The money laundering offence extends to persons who commit the predicate offence. This has been established by precedent. *State vs. Timothy Aaron O'Keefe & John Shafton Pillay* Criminal Case Number: 1974 of 2005 and (High Court Appeal Number 20 of 2006).

130. **Ancillary Offences (c. 1.7)** s. 69(3)(c) of POC Act considers a person to be engaging in money laundering when the person assists another in committing any of the acts that constitute money laundering under the Act. In addition, counseling, attempting, soliciting or inciting, and conspiring to commit money laundering offences would constitute offences punishable under the general provisions of Fiji Penal Code: s. 23 (counseling); s. 381-382 (attempt); s. 383 (soliciting or inciting), s. 385 (conspiring).

131. **Mental Element (c. 2.1)** s. 69 of POC Act establishes knowledge as the mental element. Knowledge under this section includes actual knowledge as well as situations where the person ought reasonably to know. Section 70 criminalizes negligent money laundering by punishing the commission of certain acts of money laundering when committed in situations where the money or property "may reasonably be suspected of being proceeds." In that regard, the Act goes beyond the minimum standard as set in R. 2.

132. **Inference (c. 2.2)** POC Act is silent on the type of evidence required for proof of the mental element of the offence of money laundering. It is, therefore, left to the general rules of evidence. The DPP confirmed that the courts in Fiji have accepted both direct and circumstantial evidence as proof of the mental element of the

offence. When asked whether there is any particular trend in this regard, the DPP confirmed that courts varied in their approach to this matter without setting a particular trend or precedent. An explicit rule establishing the validity of circumstantial evidence could have added more clarity. This concern is however offset by the definition of “knowledge” in the Act, which includes an objective standard as explained above.

133. **Liability of Legal Persons (c. 2.3, 2.4)** ss. 69-70 of POC Act extend liability for money laundering to legal persons. This is consistent with general common law principles applicable in Fiji. According to s. 71 of the POC Act, conduct is deemed to be engaged in by a “Body Corporate” when it is carried out on behalf of “the body corporate” by one of its directors, servants, or agents acting within the scope of his actual or apparent authority. The same also is deemed to occur when the conduct is carried out by a third person acting upon the direction, consent, or agreement of a directors, agent or servant of the body corporate, when such direction, consent, or agreement is within the scope of the actual or apparent authority of the person who granted it. The direction, consent or agreement could be express or implied. To prove the state of mind of the ‘body corporate’ as necessary under the Act, it is sufficient to prove the state of mind of the person acting on behalf of it.

134. Acts of money laundering could give rise to criminal, civil, administrative and disciplinary proceedings for both legal and natural persons involved. There is nothing in the general principles of Fiji law or in the specific provisions of POC Act to prohibit separate proceedings from running concurrently. The DPP’s office confirmed that the courts have upheld this principle on many occasions.

135. **Sanctions (c. 2.5)** A natural person who knowingly commits money laundering is punishable by a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both. A legal person who knowingly commits money laundering is punishable by a fine not exceeding \$600,000. Negligent money laundering is punishable by a fine not exceeding \$12,000 or imprisonment for a term not exceeding 2 years, or both. A legal person who commits negligent money laundering is punishable by a fine not exceeding \$60,000. Attempts to commit intentional money laundering are punishable according to s. 382 of the Penal Code as felonies with a maximum of seven years imprisonment. Attempts to commit negligent money laundering are punishable as misdemeanors with a maximum penalty of three years imprisonment. Soliciting or inciting another to commit money laundering bears the same sanction prescribed for money laundering. Under Section 69 of the Penal Code, conspiracy to commit money laundering is punishable by seven years imprisonment, while conspiracy to commit negligent money laundering is punishable as misdemeanor (maximum 3 years imprisonment).

136. Taking into consideration the level of sanctions for comparable offences under Fiji law, the available indicators of the size of proceeds of common offences in Fiji, the size of the market and assets of the financial sector, it is concluded that the sanctions prescribed are sufficiently dissuasive. With the courts’ ability to sentence for any period shorter and/or any fine lesser than the maximum prescribed by law (s. 28 & s. 35(b) Penal Code), it is safe to conclude that the current range of sanctions allows for proportionality. There is not sufficient precedent to determine the effectiveness of these sanctions. It is however worth noting that in the single conviction that has thus far been obtained for money laundering, the court was willing to impose a 5 year term of imprisonment, which was higher than that imposed for any of the other counts for which the defendant was convicted.

137. **Statistics (c.32.2)** There has only been one conviction for money laundering. There is a systematic practice of maintaining crime statistics in general. The single case of money laundering is insufficient to determine the effectiveness of statistic collection for money laundering though Fiji has a systematic practice of maintaining general crime statistics.

Analysis of Effectiveness:

138. In assessing effectiveness of R1 & R2, the assessors considered whether the drafting of the criminalization provisions and courts’ application and interpretation of these provisions is likely to undermine the effectiveness of the AML system in Fiji. According to press releases and to discussions with DPP’s office, the first conviction for money laundering was secured in Fiji in December 2005. The DPP indicated that the court ruling in the case confirmed appreciation of the gravity of the offence of money laundering by imposing a longer term of imprisonment for money laundering than the term imposed for the predicate offence. It is important to note, however, that the defendant plead guilty to the charge of money laundering, which precluded any challenge to the elements of the offence and court ruling thereon.

139. Precedent is still too limited to determine conclusively the effectiveness of criminalization of money

launders in Fiji.		
Recommendations and comments		
<p>140. The offence of money laundering in Fiji is well drafted. It goes beyond the minimum standard in several respects: negligent money laundering is criminal, and the threshold for the predicate offence is 6 months, which extends the scope to a wider range of predicate offences. There is no explicit requirement of dual criminality in the definition of “foreign serious offence” as a predicate offence for money laundering. To date, only one conviction for money laundering has been secured during the nine years since the entry into force of the provisions. Effective implementation is therefore not proved.</p> <p>141. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:</p> <ol style="list-style-type: none"> a) Examining the system to determine the reasons for the lack of detection and pursuit of money laundering. . b) Revising the laws to criminalize acts falling within the “designated categories of offences” to ensure that they reflect current criminal practices and correspond to the criminalization provisions in other countries. This could be useful in preventing possible obstacles to international cooperation arising from the application of the principle of dual criminality. c) Keeping detailed statistics on the ML investigations and the outcome of these investigations for the purposes of analyzing the effectiveness of the system and determining areas of vulnerability. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none"> • The criminalization of money laundering under POC Act is largely in line with international standards. • The effectiveness of the criminalization remains to be sufficiently tested in the courts. • A number of investigations are currently underway. • Many penal laws in Fiji are outdated. This may create obstacles to international cooperation where the outdated definition of the predicate offence is not considered to satisfy requirements of dual criminality in some jurisdictions. The CPC and the PC are currently being reviewed. This should not however have an impact on the effectiveness of the system domestically. It may have an impact on Fiji’s ability to receive international cooperation. • In reaching this rating, the assessors took into consideration the conviction achieved, the number of investigations currently underway, and the small scale of profiteering crime in general.
R.2	LC	<ul style="list-style-type: none"> • Fiji law establishes the mental element of the ML offences and the criminal liability of legal persons in a manner consistent with international standards. • The prescribed sanctions are proportionate and should be dissuasive. • In the single conviction secured to date, the court was willing to exercise the sanctioning power available to it effectively. • Some investigations are currently underway. • The effectiveness of the criminalization remains to be sufficiently tested in the courts. • In reaching this rating, the assessors took into consideration the conviction achieved, the number of investigations currently underway, and the small scale of profiteering crime in general.
R.32	PC	<ul style="list-style-type: none"> • There has only been one conviction for money laundering. • There is relatively systematic practice of maintaining crime statistics in general. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.

1.2 Criminalization of terrorist financing (SR.II & R. 32)

Description and analysis

142. **Legal Framework:** The Proceeds of Crime (Amendment Act) was passed in 2005. Clause 27 of the Act introduced an offence of “Financing of Terrorism” (s. 70A of POC Act). The amendment also incorporated by reference into the POC Act, the definitions of “terrorist act”, “terrorist group” and “terrorist property” as provided in s.2 of the Financial Transactions Reporting Act 2004. While the Proceeds of Crime (Amendment Act) came into force on 1 September 2005 by virtue of Legal Notice No. 44 (18 August 2005), Section 27 of the Amendment Act on “Financing of Terrorism” was however exempted by the notice from entry into force at the designated date. Section 70A criminalizing terrorism entered into force on 1 January 2006 by virtue of Legal Notice No. 70.

143. **Criminalization of Terrorist Financing (TF, c. II.1)** Section 70(A) of POC Act creates three offences of “financing of terrorism.” S. 70A(1) criminalizes the financing of a *terrorist act*. Under this section, it is a criminal offence to “provide, collect or make available by any means directly or indirectly, any property intending, knowing or having grounds to believe that the property will be used in full or in part to carry out a terrorist act.” As amended, POC Act defines “terrorist act” as an act that constitutes “an offence within the scope of counter terrorism conventions” or an act or threat of action that has a set of defined characteristics that correspond generally to the definition in the Terrorist Financing Convention. The definition explicitly includes acts committed outside the Fiji Islands. There is no requirement that the act has actually been committed or attempted for the offence of financing to occur. There is also no requirement that the “property” be linked to a specific act. “Property” is defined broadly in s. 3 of POC Act and without reference to its source, legitimate or illegitimate.

144. Section 70A(2)(a) criminalizes financing the commission or the facilitation of the commission of a terrorist act, and financing any person who is committing or facilitating the commission of a terrorist act. The act of financing includes providing or making available, directly or indirectly, financial or other related services. The Act does not define “financial and other related services.” The mental element for this offence is intention. Comparison to s. 70A(1) suggests that s. 70A(2)(a) offence requires proof of actual link to a *specific* terrorist act. The Act does not have a mechanism for identifying an individual as a “terrorist” absent a link to an actual terrorist act.

145. Section 70A(2)(b) criminalizes financing “a terrorist group.” Financing, as in s. 70A(2)(a), means *providing or making available, directly or indirectly, financial or other related services*. The mental element for this offence is knowledge that financial services or other related services “will be used by, or will benefit a terrorist group.” “Terrorist group” is defined in POC Act to include: (1) an entity that has as one of its activities or purposes committing, or facilitating a terrorist act; (2) an organization that is prescribed by regulation; (3) an entity that has knowingly committed, attempted to commit, participated in committing, or facilitated the commission of a terrorist act; or (4) an entity knowingly acting on behalf, of or at the direction of, or in association with such an entity and that has been prescribed under a written law relating to terrorism. The provision does not require the services to be linked to a specific act.

146. The above analysis reveals that Fiji law does not criminalize the collection or the provision of property to “terrorist organizations” and “individual terrorists.” While the existing provisions cover some aspects of this criminalization and maybe sufficient for the purposes of meeting the dual criminality requirements of international cooperation with other countries in the area of financing of terrorism, they still fall short of the international standard in these two respects.

147. Section 85 of the Penal Code allows properties belonging to an unlawful society to be forfeited to the State. Unlawful society as defined in s. 79 of the Penal Code has a legal meaning akin to a “terrorist organization.” Section 79 defines an unlawful society as any society of ten or more formed for any of a number of purposes: levying war, killing or injuring any person, destroying or injuring any property, subverting or promoting the subversion of the Government, interfering with the administration of the law, or disturbing the peace. A society that is established for the purpose of assisting or inciting any of the aforementioned acts is also an unlawful society. The provision also gives the competent Minister the power to declare a society an unlawful society. While the criminal offence of “membership of an unlawful society” may fall within the category of terrorism offences, it is not directly relevant to the criminalization of financing of terrorism or the freezing of terrorist assets.

<p>148. Ancillary Offences (c. II.1) As explained in Section 1.1 (R1) above, counseling, attempting, soliciting or inciting, and conspiring to commit financing of terrorism offences would constitute offences punishable under the general provisions of the Penal Code: s. 23 (counseling); s. 381-382 (attempt); s. 383 (soliciting or inciting), s. 385 (conspiring).</p> <p>149. Predicate Offence to ML (c. II.2) Financing of terrorism under s. 70A is a “serious offence” as defined under s. 3 POC Act and, as such, is a predicate offence for ML.</p> <p>150. Place of the Acts (c. II. 3) The definition of “terrorist act” incorporated in POC Act explicitly includes acts committed inside or outside the Fiji Islands. Consequently, the offences of s. 70A(1) & (2)(a) occur even when the act of financing occurs in Fiji and the “terrorist act” occurs elsewhere. S. 70A(2)(b) is silent on this point. It is not clear whether the financing of a terrorist group located abroad would constitute an offence under this section. There is nothing however to prohibit prescription by regulation as “terrorist group” of an entity located abroad.</p> <p>151. Inference (II. 4) S. 70A does not explicitly provide that the mental element of the offences of TF could be inferred from objective factual circumstances. It is, therefore, left to the general rules of evidence. (See Section 1.1 on R2 above).</p> <p>152. Legal Persons (II.4) Legal persons are punishable for TF under s. 70(A). The analysis provided in paragraph 132 above applies to TF.</p> <p>153. Sanctions (II.4) A natural person who commits any of s. 70A offences is punishable by a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both. In the case of a legal person, the penalty is a fine not exceeding \$600,000. Ancillary offences are punishable according to the general rule as described in Section 1.1 (R. 2) above.</p> <p>154. Statistics (c.32.2) In the absence of TF cases, the requirement to maintain statistics has not been tested.</p>						
<p>Analysis of Effectiveness</p>						
<p>155. The prevailing low risk of terrorist financing and the recent entry into force of Section 70A of POC Act preclude assessment of effectiveness. Discussions with the relevant competent authorities indicated that in their view the enforceability of s.70A offences remains contingent on the passing of a comprehensive anti-terrorism law. According to discussions with the DPP, s. 70A offences have some autonomy but the definition of the elements of the offences will not be clear in the absence of a law criminalizing terrorist acts and terrorist organizations. A drafting working group has been set up led by the Ministry of Home Affairs to draft a comprehensive anti-terrorism law. The project has not yet been endorsed by Cabinet and there is no specific timeframe for its completion.</p>						
<p>Recommendations and comments</p>						
<p>156. The enacted provision goes some way towards meeting the international standards in this area. It creates an offence within each of the categories of financing terrorist acts, financing terrorist organizations and financing individual terrorists. The current drafting of the provision, does not criminalize the acts of “providing and collecting funds,” and in that regard falls short of the international standard.</p> <p>157. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:</p> <ol style="list-style-type: none"> a) Expediting the enactment of a comprehensive anti-terrorism act that takes into consideration existing provisions under POC Act and FTR Act and ensures harmony and consistency between the various laws. b) Amending the s.70A(2) offences to explicitly criminalize “collecting and providing” property to terrorist groups and to individual terrorists in the same manner prescribed in s. 70A(1). c) Establishing a mechanism to regularly review the effectiveness of the criminalization of the offence of terrorist financing. 						
<p>Compliance with FATF Recommendations</p>						
<table border="1"> <thead> <tr> <th data-bbox="233 1816 349 1848"></th> <th data-bbox="349 1816 592 1848">Rating</th> <th data-bbox="592 1816 1471 1848">Summary of factors underlying rating</th> </tr> </thead> <tbody> <tr> <td data-bbox="233 1848 349 1881">SR.II</td> <td data-bbox="349 1848 592 1881">PC</td> <td data-bbox="592 1848 1471 1881"> <ul style="list-style-type: none"> • Fiji criminalizes the financing of terrorism in a manner that is partially in </td> </tr> </tbody> </table>		Rating	Summary of factors underlying rating	SR.II	PC	<ul style="list-style-type: none"> • Fiji criminalizes the financing of terrorism in a manner that is partially in
	Rating	Summary of factors underlying rating				
SR.II	PC	<ul style="list-style-type: none"> • Fiji criminalizes the financing of terrorism in a manner that is partially in 				

		<p>line with the international standard.</p> <ul style="list-style-type: none"> • The offence of financing of terrorism does not extend to the core act of “collecting and providing” funds to terrorist groups and to individual terrorists. • The authorities indicated that the full use of the offence is contingent on passing a comprehensive anti-terrorism act. This interpretation has not been tested because no TF acts have been detected to date. • In reaching this rating the assessors took into consideration that the presence of the offences on the books would be sufficient for the purposes of international cooperation in many instances. The assessors also took vulnerability into account.
R.32	PC	<ul style="list-style-type: none"> • In the absence of TF cases, the requirement to maintain statistics has not been tested. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.

1.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

Description and analysis

158. **Legal Framework:** The Proceeds of Crime Act, as enacted in 1997 and amended in 2005 provides the main legal framework for identifying, tracing, freezing/seizing and confiscating the proceeds of crime. POC Act provisions apply to the recovery of proceeds of “serious offences as defined in the Act and not only ML and TF offences. Aside from POC Act, there are confiscation/forfeiture provisions in various statutes that relate to specific offences. For example, s. 31 of the Illicit Drugs Control Act (2004) provides for forfeiture of instrumentalities used in the commission of the offence upon conviction and s. 10(7) of the Fisheries Act (1942 as amended) provides for the forfeiture of both instrumentalities and proceeds upon conviction.

- Under this framework there are four types of recovery actions: (1) forfeiture order upon conviction; (2) pecuniary penalty order upon conviction; (3) civil forfeiture without conviction; (4) automatic forfeiture upon conviction. The first three types are provided for under Part II of POC Act. Automatic forfeiture upon conviction is provided for under various statutes as a remedy available for specific offences such as the Illicit Drugs Control Act and the Fisheries Act referred to above.

159. **Property Subject to Forfeiture/Recovery (c. 3.1)** Section 5 of POC Act grants the DPP the powers, upon conviction, to seek an order to forfeit “tainted property” in respect of the offence, or a pecuniary penalty order to recover “benefits” derived from the commission of the offence. Sections 3 and 4 of POC Act as amended define the relevant terms for the purposes of the Act including: “property,” “tainted property,” “proceeds,” “benefit,” “realizable property,” and “gift caught by this Act.” Under this scheme, the scope of recovery in terms of property subject to forfeiture or pecuniary penalty order is broad. It extends to:

- Property used or intended for use in or in connection with the commission of the offence (instrumentalities used and intended).
- Proceeds of crime defined very broadly as discussed in Section 1.1 (R.1) above to include property derived directly or indirectly from the commission of a serious offence. It further extends to substitute assets, intermingled property and any income, capital or other economic gains.
- Benefits derived from the commission of the offence, which includes any property, service or advantage whether direct or indirect.

160. POC Act extends the scope of recovery to property not held or owned by the criminal defendant, but by a third party, by establishing the following:

161. Forfeiture orders are *in rem* measures that are carried out against the “tainted property” itself. Also, property qualifies as proceeds as long as it is derived from a serious offence in the manner defined in the Act “by any person” and not only by the defendant.

For the purposes of pecuniary penalty orders, “realizable property” under such order includes (1) property held *or controlled* by the person against whom a pecuniary penalty order may be made and (2) property held by another person as a “gift caught under the Act.” The rules on “gifts” under the Act are drafted broadly and in favor of preventing the use of “gifts” to defeat the recovery of “tainted property.” Most significantly, s. 25

includes as property of the person any property that is in the opinion of the court is subject to the effective control of the person regardless of whether the person has any legal or equitable interest in the property, or any right, power or privilege in connection with the property.

162. Property subject to forfeiture/recovery under the automatic forfeiture system provided for under special statutes such as Fisheries Act (1942) may include both instrumentalities used in the commission of the offence as well as proceeds of the offence. Section 10(7) of the Fisheries Act provides for the forfeiture upon conviction of “any vessel, apparatus, or catch or the proceeds of sale on any catch [...] employed in the commission or derived from [...] an offence.” Automatic forfeiture mechanisms under the penal laws provide for forfeiture automatically upon conviction and as part of the sentencing order without need for a separate proceeding.

163. **Provisional Measures (c.3.2, 3.3)** Part III of POC Act provides for measures that aim at preserving property liable to forfeiture and pecuniary money orders. Under s. 30, the police may seize any property found in the course of a search under warrant that the police officer believes on reasonable grounds to be tainted property in relation to any serious offence. Section 34, gives the DPP the power to apply for a restraining order against any property where there are reasonable grounds to suspect that it may be subject to forfeiture order or any realizable property where there is reasonable ground to suspect that a pecuniary penalty order may be issued against it. Initial application for a restraining order is made *ex-parte*. Inter parte hearing is only called after the issuing of an interim restraining order. While the powers provided seem adequate, the Act imposes with regard to property seized under ss. 28 & 30 a restrictive timeframe that may prove insufficient to secure forfeiture order in a complex case. Section 31(4) requires seized property to be returned if no forfeiture order was made against the property within 14 days from the date of its seizure.

164. **Powers to Identify and Trace (c. 3.4)** Division 3 of Part III of POC Act grants powers that facilitates police investigation. Section 50 gives the police the power to seek a production order against any person that there are reasonable grounds to suspect has possession or control of a property-tracking document. A property tracking document is any document relevant to identifying, locating, or quantifying tainted property that may be subject to forfeiture or pecuniary money order as well as any document that is necessary to transfer such property. Following the 2005 amendments, s.50(6) was repealed thus extending the scope of production orders to “accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books.” This was a necessary reform and it implemented one of the key recommendations of the APG MER (2002). S.50(5) explicitly excludes the applicability of “any enactment which prohibits the disclosure of information of a particular type.” S. 50(4) allows the courts take into consideration facts of “effective control” over a property and to issue production order with regard to documents that track property held by a company, or a trust or any other person as provided under s. 25 of the Act.

165. **Third Parties Rights (c. 3.5)** POC Act provides for the rights of *bona fide* third parties with regard to all the powers available under the Act. Forfeiture and pecuniary penalty orders have to be made by way of notice of motion and affidavit. Third parties have the opportunity to challenge recovery orders (forfeiture and pecuniary penalty orders) as well as restraining orders seeking to exclude property from the scope of the orders on account of their interest. The Act also establishes procedural requirements that guarantee the notification of third parties of orders that may affect their interests.

166. **Authority to Void Actions (c. 3.6)** s. 27A, introduced by the 2005 amendment, gives the courts the power to set aside any “any conveyance or transfer of money or other property or interest therein” if the court could infer from the circumstances that the action was intended to avoid the recovery order. The court may not void the action if the transfer was to a bona fide third party.

167. **Statistics (c.32.2)** The assessors did not receive data on the numbers of orders sought, the number of orders denied and granted, or on the value of assets seized, restrained or forfeited. While the authorities could provide the assessors with samples of cases, they indicated that the DPP’s office did not have the capacity to maintain systematic statistics.

Additional Elements

159. **Civil Forfeiture (c. 3.7)** Division 2A was introduced by 2005 amendment establishing a forfeiture system of tainted property without conviction.

168. **Reversal of the Burden of Proof (c. 3.7)** POC Act in determining that the property or benefit is derived from the offence in a manner that makes it “tainted property” or “realizable property” for the purposes of

any order under the Act, several provisions of the Act allows the court to use inference and permits reversal of burden of proof when certain circumstances are established.

Analysis of Effectiveness

169. The powers provided by the Act are adequate. They give the police and the DPP the powers needed to achieve recovery of assets. The most used orders under the Act are conviction-based “forfeiture orders” and “restraining orders.” The DPP indicated that “monitoring orders” were used on a couple of occasions against financial institutions for monitoring of bank accounts. He also indicated that production orders were also used few times. The authorities could not provide statistics on the number of orders sought, the number of orders denied and granted, or on the value of assets seized, restrained or forfeited. The DPP has however provided the team with examples of forfeiture orders and restraining orders granted by the courts.

170. Based on analysis of the case examples provided by the DPP and cases described in interviews with the various agencies, the team concluded that the level of recovery of assets is still limited. For example, in the only money laundering conviction case the total proceeds amounted to \$90, 930.78 while the amount recovered was \$1,487.74. The DPP also confirmed that the use of powers under the Act is still limited.

171. The most used system of forfeiture so far is the automatic forfeiture powers provided under the Fisheries Act. According to the DPP, this is largely facilitated by the fact that forfeiture under the Fisheries Act is automatic upon conviction and does not require a separate proceeding by use of notice of motion and affidavit. Also, the nature of the Fisheries Act violations is such that the instruments and proceeds are both seized upon detection of the offence. This facilitates the enforcement of forfeiture orders.

172. Apart from several cases of forfeiture under the Fisheries Act and the Exchange Control Act, and some cases of forfeiture under POC Act in relation to fraud offences, forfeiture in cases relating to other offences was not sufficiently demonstrated to the assessors.

173. Key weaknesses in the implementation of the existing asset recovery framework include:

- a) Lack of technical capacity within the police to pursue the assets and seek the necessary orders to preserve the assets at the same time as evidence is being gathered for the purposes of securing a conviction.
- b) Lack of technical resources necessary to prosecute crimes involving financial aspects. The DPP’s office does not have specialists in forensic accounting or other related skills. Getting budget and creating positions within the DPP’s office to fill this expertise gap is proving difficult in the context of a government cap on recruitment in the public sector. Currently, the DPP’s office relies on informal cooperation and assistance from counterparts such as Australia and New Zealand to fill in these skills needs.
- c) Disposal of forfeited assets has proved to be a challenge. The authorities confirmed that the system of managing seized assets faces resource shortages that affect the authorities’ ability to preserve the value of the assets. Also, agencies are not currently authorized to use part of the value of the forfeited assets to meet the cost of asset management and disposal. This is likely to improve once the “forfeited assets Funds” created by the 2005 amendment to POC Act is made operational.

Recommendations and comments

174. The legal framework for asset recovery in Fiji is very comprehensive. It gives the competent authorities extensive powers to identify, trace, preserve and recover assets that constitute the proceeds of crime whether direct or indirect. Successful asset recovery remains however limited. This is largely due to weaknesses in technical ability, the lack of resources necessary to conduct financial investigations successfully, and the inability to identify and trace property at an early stage of the investigation in tandem with the investigation for proof of the offence. There is also lack of technical expertise within the DPP’s office to pursue restraining and forfeiture orders in cases involving complex issues of tracing and property valuation, such as those that involve third party rights.

175. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Activating the “Forfeited Assets Fund” and setting up the protocols that allow appropriate management of seized assets and disposal of forfeited assets.

<p>b) Building the capacity of the police and the DPP's Office in using the powers available under POC Act in a timely manner.</p> <p>c) Establishing a mechanism to collect statistics on the number of orders sought, the number of orders denied and granted, or on the value of assets seized, restrained or forfeited.</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • The legal framework is adequate and consistent with international standards. • Implementation has been weak. The resources and technical capacity necessary for the effective implementation of the system are lacking. • The restrictive timeframe imposed for the release of seized property if no forfeiture order was made within 14 days may prove too impractical in complex cases.
R.32	PC	<ul style="list-style-type: none"> • No statistics were available on the amounts of property restrained, seized and forfeited. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
1.4 Freezing of funds used for terrorist financing (SR.III & R.32)		
Description and analysis		
<p>176. Legal Framework: FTR Act: s. 2 (Interpretation: "specified entity," "terrorist act," "terrorist group," "terrorist property"), and s. 16 (Duty to disclose information relating to property of terrorist groups). POC Act: s. 11 (Forfeiture order on conviction), s. 19A (Restraining order for terrorist property), Division 2B (Forfeiture order for terrorist property), s. 34 (Application for a restraining order). Also relevant are POC Act s. 28 (Warrant to search for terrorist property), s. 30 (Police seizure of other terrorist property) and s. 33 (Search and seizure of terrorist property in relation to foreign offences). S. 3 of POC Act incorporates the definitions of "terrorist act," "terrorist group," and "terrorist property" by reference to their meaning under the FTR Act.</p> <p>177. All the POC Act provisions relating to financing of terrorism were introduced by the Amendment Act in 2003. Considering the commencement dates of POC (Amendment) Act and FTR Act (Legal Notices Nos. 44 & 72). The current legal framework for freezing of terrorist funds came fully into force as recently as 1 January 2006.</p> <p>178. Security Council Resolutions 1267 & 1373 (c. III.1, III.2) Fiji adopts a dualist approach to international law. This approach means that international law is not part of the domestic legal system unless it is incorporated into national law by virtue of a domestic legislative instrument. As a consequence, Security Council Resolutions are not directly incorporated into Fiji law. Freezing terrorist funds pursuant to S/RES/1267 and S/RES/1373 is therefore subject to the general domestic framework for restraining and forfeiting terrorist property established by the legal framework referenced in the above section.</p> <p>179. Power to Freeze/Restrain "Terrorist Property" The only power available to freeze "terrorist property" under Fiji law is vested in the court under s. 34 and s. 19B of POC Act. Both sections give the Court, upon the request of the DPP, the power to grant a restraining order against property if the court is satisfied that there are reasonable grounds for suspecting that the property is "terrorist property" for which a forfeiture order may be made under s. 11 (Forfeiture order on conviction) or s. 19H (Civil forfeiture order for terrorist property). Both requests are made by notice of motion and affidavit process. The initial request to freeze in both cases may be made <i>ex parte</i>. The difference between s.34 power and s.19B power is not clear to the assessors. Judging by the practice of the court in issuing provisional orders, it seems that such orders could be issued expeditiously. This is based on interviews with the DPP and with a judge specialized in POC Act forfeiture and related orders. However, there was no statistical data available on this matter.</p> <p>180. These powers with regard to "terrorist property" have not yet been exercised. It is therefore difficult to establish the effectiveness of this judicial system of freezing for the implementation of UN Security Council Resolutions 1267 and 1373. Should the court interpret too strictly the standard of "reasonable grounds for suspecting that the property is "terrorist property" for which a forfeiture order may be made," the system may not be effective in implementing freezing requirements pursuant to UN Security Council resolutions. It is also not clear for how long a court would be willing to allow a restraining order to stand without action being taken to</p>		

pursue a forfeiture order. Therefore, while this system is perfectly adequate for restraining FT related property as a prelude for a forfeiture order in the ordinary manner, its effectiveness in enforcing the preventive freezing sought by the UN Security Council resolutions has not yet been demonstrated.

181. **Definition of “Terrorist Property” (c. III. 4)** Restraining orders and forfeiture orders could be sought under POC Act for “terrorist property.” Section 2 of FTR Act, incorporated by reference in POC Act, defines “terrorist property” to include proceeds from the commission of a terrorist act, instrumentalities used or intended for use to commit a terrorist act or by a terrorist group, and property which has been collected to support a terrorist group or fund a terrorist act. In addition, the definition extends to property owned or controlled by or on behalf of a terrorist group. “Terrorist group” is defined as in Section 1.2 (R.II) above by reference to terrorist acts committed, the purpose and activities of the group, or prescription under a written law relating to terrorism, including under FTR Act by virtue of the power provided under s. 2 definition of “terrorist group.” The scope of “terrorist property” therefore does not extend to:

- a) Property owned or controlled by terrorists or those who finance terrorism; and
- b) Property jointly owned by “persons targeted by the measures” or third parties.

182. It is also not clear whether it extends to individual terrorists designated by Security Council or by other designation mechanisms.

183. To the extent that the above categories of property (or funds) are not covered by the restraining powers in POC Act, the law of Fiji remains inconsistent with the international standard in this regard.

184. **Designation (c. I-III)** Section 2 of FTR Act includes in the definition of “terrorist group” “an organization that is prescribed by regulation” thus granting the competent authority the power to designate certain organization as a “terrorist group.” According to the analysis above, this designation would trigger the restraining mechanisms under POC Act. The authority to prescribe under the current arrangement, according to the understanding of the assessors, resides with Minister of Justice. Section 2 of FTR Act also envisions the emergence of other designation mechanisms under the laws relating to terrorism. In defining “specified entity” s. 2 provides “an entity knowingly acting on behalf of, or at the direction of, or in association with, an entity referred to in paragraph (a) and which has been prescribed under a written law relating to terrorism.” None of these available mechanisms for designation have been used and it is not clear how such powers may be exercised. To date, the authorities in Fiji have not implemented UN Security Council Resolutions 1267 and 1373 with regard to designation and freezing of assets of designated entities.

185. **Dissemination and Guidance (c. III. 5-6)** In the absence of designation of “specified entities” and “terrorist groups” there is no system currently in place to communicate freezing actions to financial institutions and no guidance have been issued on this issue. FTR Act imposes obligations on financial institutions to monitor accounts for suspicious transactions relating to money laundering and terrorist financing and to report such transactions upon suspicion. These obligations are described in detail in Sections 2.6-2.7 below.

186. **Delisting, Unfreezing and Access (c. III.7-11.10)** It is not clear whether a restraining order issued under s. 19B of POC Act would be subject to the same authority to challenge, alter, and subject to conditions that are available for orders issued under s.34. If the MoJ uses regulatory power to prescribe entities as “terrorist groups,” his decision will be subject to judicial review according to the standard procedures in this regard.

187. **Freezing, Seizing and Confiscation in General (c. III.11)** All the powers to seize, restrain and confiscate available under POC Act as described in Section 1.3 above have been extended to “terrorist property” by virtue of the Amendment Act in 2003.

188. **Third Party Protection (c.III.12)** The same protection available to bona fide third parties under POC Act as described in Section 1.3 above is applicable to restraining orders issued against “terrorist property” under s.34 and to forfeiture orders issued under s. 11 (conviction-based). It is not clear whether third parties affected by s. 19B restraining orders and s. 19F forfeiture orders (Civil forfeiture of terrorist property) could benefit from the same protection.

189. **Monitoring, Compliance and Sanctions (c. III.13)** Section 16 of FTR Act requires every person to disclose to the FIU when he has possession or control over property, which to his knowledge, or there are reasonable grounds to suspect, is terrorist property, Section 16 also requires every person to report any information regarding a transaction or proposed transaction in respect of terrorist property or there are reasonable

<p>grounds to suspect are relating to terrorist property. A breach of such obligations is punishable by a fine not exceeding \$30,000 or a term of imprisonment not exceeding 5 years or both. For legal persons, the sanction is a fine not exceeding \$150,000. This provision has not yet been enforced. Should a system of designation and restraining of terrorist assets be implemented, this obligation to disclose will provide a tool to sanction its operation.</p> <p>190. Statistics (c. 32.2) As the systems for restraining and forfeiting terrorist property are not yet implemented; the collection of statistics could not be tested.</p> <p>Analysis of Effectiveness</p> <p>191. The system for restraining and forfeiting terrorist property in Fiji is not yet in force. Fiji has not yet taken steps to implement the freezing mechanisms under UN Security Council Resolutions 1267 and 1373. The existing legal framework contains powers that may be used to implement a designation and restraining mechanism for terrorist assets. The general views of the authority indicate that existing measures are on hold pending the enactment of a uniform anti-terrorism law. This reform project is currently at an early stage without specific timeframe for completion.</p>		
Recommendations and comments		
<p>192. Fiji has a legal framework under POC Act that provides a mechanism for designating and restraining terrorist property, this system is not yet operational. Authorities are of the view that this system cannot be implemented in the absence of a comprehensive anti-terrorism law. To date, there is no evidence of terrorist financing, which makes it difficult to test the views of the authorities on the implementation of these provisions</p> <p>193. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:</p> <ol style="list-style-type: none"> a) Expanding the definition of “terrorist property” to include jointly held property and property of individual terrorists and those who finance terrorism. b) Revisiting the available mechanisms for prescribing organizations to clarify them and to ensure that they allow for designation of individuals as well as groups. c) Using the prescription mechanism available to implement S/RES/1267 and 1373 as soon as possible. d) Establishing adequate systems to disseminate the lists of designated entities and individuals to financial institutions to ensure that they do not hold assets in Fiji’s financial sector. e) Providing guidance to financial institutions on the implementation of their obligations with regard to freezing of terrorist property. f) Establishing clear, effective and publicly known mechanisms for de-listing, unfreezing, challenging and reviewing of listing and freezing decisions, and measures to access restrained funds for necessary categories of expenses. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • The FTR Act and POC Act include some legal provisions that could be used to give effect to the UN Security Council Resolutions. No steps have yet been taken to use these mechanisms to implement the Resolutions. • While POC Act creates a legal framework with regard to restraining and forfeiting of terrorist assets, the authorities confirmed that this system is not going to enter into force until a comprehensive anti-terrorism law is put in place.
R.32	PC	<ul style="list-style-type: none"> • In the absence of implementation of a designation and freezing system requirements to keep statistics are not applicable. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.

1.5 The Financial Intelligence Unit (FIU) and its functions (R.26, 30 & 32)

Description and analysis

194. **Legal Framework:** Memorandum of Agreement signed between the Ministry of Justice (MoJ), Reserve Bank of Fiji (RBF), DPP and FPF (11 July 2003), s. 61 POC Act (1997, repealed), FTR Act: s. 2 (definition of FIU), Part 4 (Financial Intelligence Unit), MoJ Delegation of Powers to the Governor of RBF (Legal Notice No. 73 dated 28 November 2005), and Banking Act Regulations (Legal Notice No. 57 dated 28 April 1995).

195. FTR Act only came into effect on January 1, 2006. At the time of the assessment, the FIU was beginning the recruitment exercise for the Director of the FIU. The Director was subsequently appointed on 1 May 2006. Until May 1, the FIU was still functioning as the interim FIU set-up under the Memorandum of Agreement. With the appointment of the FIU Director under the FTR Act, the formal creation of the FIU has now commenced. During the transition period, there was a degree of legal uncertainty that was reflected in STRs citing both the repealed Section 61 of POC Act and Section 22 of FTR Act.

196. In order to facilitate the creation of the FIU within RBF and to enable the RBF to administer the operation of the FTR Act, the Minister for Justice, as the Minister responsible for the FTR Act, delegated his functions and duties under the Act to the Governor of RBF on 25 November 2005 through Legal Notice No.73.

197. **Establishing an FIU (c. 26.1)** Suspicious Transaction Reporting (STR) by financial institutions began in 2000 following the introduction of the POC Act (1997). This required financial institutions to file STRs with either the FPF or the DPP. Furthermore, licensed financial institutions were mandated to file with STRs the Reserve Bank of Fiji. The absence of a centralized reporting unit was highlighted in the APG Mutual Evaluation Report. This comment gave rise to discussions, which led to a Memorandum of Agreement between the parties on July 11, 2003 to form an interim Financial Intelligence Unit (FIU) in anticipation of a formal unit being set up by law. The FIU has been housed in the RBF since its establishment in 2003.

198. Under the MoA, the FIU was created as the central agency for receipt of STRs and was given control over all suspicious transactions received by RBF, FPF or DPP under the previous arrangements. The FIU was also given the powers to request additional information, analyze the reports and disseminate to the “appropriate law enforcement authorities.

199. In December, 2004, the FTR Act was passed by the Fiji Parliament which provided for amongst other things, the formal creation of the Financial Intelligence Unit (FIU), and a new requirement to report STRs. The act came into force on January 1, 2006. The roles and responsibilities of the FIU are set out in Section 25 and include, amongst other things, the power to receive STRs, request information, analyze the received STRs and disseminate as appropriate.

The statistics for the receipt of STRs handled by the FIU since its formation in 2003 are:

Year	2003	2004	2005	Total
No. of STRs	221	432	280	933

200. The total number of STRs received prior to the formation of the FIU in 2003, pursuant to the Memorandum of Agreement, is 232, with the annual numbers being : 2000 – 5 STRs; 2001 – 81 STRs; and 2002 – 126 STRs.

201. One explanation given by the authorities for the reduction of the number of STRs received in 2005 compared with the number reported in 2004 was the greater awareness of AML matters which enhanced the capability of the banks’ compliance units to filter out poor quality STRs. The FIU noted in support of this explanation that there is an observed improvement in the quality of the STRs received.

202. The FIU encourages financial institutions to prepare STRs on paper and to hand deliver them to the premises of the FIU. Upon receipt by the FIU, the STRs are filed in the register before being passed to the analyst. The STR is then reviewed to ensure completeness of the data and to assess if further information is needed from the reporting institution. The contents of the STR are entered into the STR database, which is a simple Excel spreadsheet with no analytic capability other than field matching. The data contained in the new STR is checked against the STR database. A decision would then be made on whether to conduct further

analysis, disseminate the STR to a law enforcement agency or file the STR away. If further analysis is required, checks would be conducted with other government agencies. All analysis and action decisions are verified by the head of the FIU. No regular or systematic strategic analysis of the STRs is conducted.

203. Procedures for the handling of STRs are set out in the FIU Standard Operating Procedures which were created in 2003 and which cover amongst other things, the receipt, analysis and dissemination of STRs. As further aid to staff, a checklist has been created concerning the action to be conducted on the receipt and preliminary analysis of a STR.

204. The FIU conducts preliminary analysis of all STRs with further analysis being performed on the most obviously suspicious reports and dissemination being conducted as appropriate. The assessors were advised that the one successful prosecution to date was the result of an STR that was disseminated. The assessors were also advised there is a backlog in the decision-making process following the preliminary analysis of the reports which are not considered to be obviously suspicious. Some of the backlog involves reports which were made prior to the creation of the centralized FIU in 2003, however the majority were reported after 2003. At the time of the assessment, there were 51 reports undergoing further analysis and a decision on whether to conduct further analysis, disseminate or take no further action is pending in approximately 450 cases. No statistics were available to indicate the average length of time taken to finalize a report.

205. Section 25(1)(g) of the FTR Act sets out the requirement of the FIU to destroy a STR 7 years after it was received if there has been no further information relating to the report or the person, or 7 years after the last activity relating to the report or the person. The assessors were advised that it was considered that as the banking records relating to the report would no longer be available, then there was little value in keeping the STR in the FIU database. It should be noted that this rule is not imposed as a privacy safeguard. There is no data privacy legislation in Fiji which would require the deletion of such records. It is the view of the assessors that the deletion of such information may deprive the FIU of information which may be used in the analysis of future cases and may undermine the effectiveness of its work

206. **Guidance (c. 26.2)** In 1999 the RBF issued Banking Supervision Policy Statement Guideline No. 6 – “Guidelines for Licensed Financial Institutions to Counter Money Laundering” which came into effect in January 2001. This document describes banks’ responsibilities as set out in the then current legislation including the need to submit STRs. The policy does not provide guidance regarding the manner of reporting, , and the procedures that should be followed when reporting. There is also no guidance on how to identify a suspicious transaction. The STR form was revised in 2003 when the interim FIU was formed, and was circulated to the banks. The interim FIU subsequently conducted outreach to the reporting institutions to provide guidance on the identification of suspicious transactions and the method of reporting with eleven and seven sessions being conducted in 2004 and 2005 respectively.

207. Since the introduction of the FTR Act, the guidance to reporting institutions has not been revised. However, draft regulations for financial institutions and a revised STR form were circulated for consultation in April 2006.

208. **Access to Information (c. 26.3-4)** Section 3(c) of the MoA gives the FIU the power to request additional information directly from reporting institutions. Para. 3(K) of the MoA gives the FIU the power to request information from any law enforcement or supervisory authority. Section 14(3) of the FTR Act provides the FIU with the power to request, in writing, from the reporting institution any further information about the transaction or attempted transaction or the parties to the transaction. Sections 25(1)(b) and (d) give the FIU broad power to collect information including information stored in databases maintained by the government and the power to request information from any government agency, law enforcement agency, and supervisory agency without charge.

209. In addition to the database that it maintains, the FIU has access to the following sources of information to aid in the analysis process :

Direct Access

- a) Internet
- b) RBF’s database of fund transfers in to and out of Fiji which exceed F\$50,000
- c) ICC Crime Bureau’s database
- d) Worldcheck

Indirect Access

- e) Immigration Department – Travel and passport records
- f) FPF – criminal records
- g) Companies Registrar – Company records
- h) Registrar of Titles – Land records
- i) RBF – Reportable Foreign Exchange transactions
- j) FTIB – Investment in Fiji records
- k) CDMA – Authorized Trust brokers
- l) Land Transport Division – motor vehicle registration records

210. All information which the FIU can access indirectly can be attained upon receipt of a written request from the FIU. The results are ordinarily available within one week. Criminal record checks are conducted in about 50% of analyses.

211. **Authority to Disseminate (c. 26.5)** The authority to disseminate any information derived from a report and any other information that the FIU has received is set out in Section 25(1)(f). This section permits dissemination to any law enforcement agency or supervisory authority, either domestic or foreign. From the statistics available, dissemination has to date, even prior to the introduction of the FTR Act, been done to such bodies.

212. The total number of STRs disseminated to the various law enforcement agencies and supervisory authorities for 2004 and 2005, are as follows :

	No of STRs		
	Before 2004	2004	2005
Fiji Police Force	5	16	17
Fiji Islands Revenue and Customs	85	43	30
Immigration Department	0	3	14
Reserve Bank of Fiji	-	1	3
Capital Market Development Authority	-	-	3
Office of the Director of Public Prosecutions	-	-	2
Department of Trade and Commerce	-	-	2
Foreign Agencies	-	-	3
Total :	90	63	74

213. Dissemination to date has led to one successful prosecution of the offence of money laundering. The authorities have indicated disseminations have also resulted in FIRCA recovering income tax collections and the Immigration Department on immigration related offences.

214. **Operational Independence and Autonomy (c. 26.6)** Section 22 of the FTR Act formally establishes the FIU. The FIU is a separate unit within the RBF with its director reporting to the Governor of the RBF through the Deputy Governor. The Director for the FIU was appointed by the Governor of the RBF, on basis of a delegation of power issued by the Minister of Justice. The Act requires the appointment to be done upon the recommendation of the NAMLC. At the time of the assessment, the NAMLC had not met. The Director's remuneration and allowances is set by the Higher Salaries Commission as provided under section 23(2) of the FTR Act. The mandatory requirement for a recommendation from the multi-agency NAMLC for the appointment and dismissal of the FIU Director, as established by section 23 of the FTR Act, provides a statutory guarantee of the FIU's independence, by limiting the powers of the Governor of RBF to take unilateral decisions in this regard.

215. In performing his work, the FIU Director is responsible to make day-to-day operational decisions, including the dissemination of the reports made to the FIU. The Director of the FIU will report to the Governor of the RBF through the Deputy Governor. The Director will also be part of the National Anti-Money Laundering Council (NAMLC) which is formed subsequent to Section 35(1) of the FTR Act. The council members are the Chief Executive for Justice, the Director of the FIU, the Director of Public Prosecutions, the Commissioner of Police, the Governor of RBF and the Chief Executive Officer of the Fiji Islands Revenue and Customs Authority.

216. For 2006, a separate budget plan was prepared and a budget has been allocated to the FIU by RBF.

RBF will provide administrative, logistical and IT support to the FIU. The FIU considered the allocation was sufficient to cover their needs. While there is no documented agreement for the RBF to provide the FIU with such support and there is no commitment to continue to provide similar funding in the future, there is also no indicator to suggest any lack of commitment or interference through the use of funds. The track record since the establishment of the interim FIU in 2003 provides an indication of a good level of commitment on behalf of RBF.

217. The appointment and dismissal procedures of the Director of the FIU and the decision-making powers vested in him give the FIU sufficient operational independence. The allocation of funds to the FIU is similar to practices in other countries. The assessors were satisfied with the level of commitment shown to date to provide the FIU with resources.

218. **Information Security (c. 26.7)** The FIU is currently housed in the RBF. Electronic access systems are used to restrict access to the FIU office to the director and his staff. FIU data is currently held in a separate area of the RBF IT systems, which is only accessible by FIU staff and the IT administrator. Standard IT security measures are in place to prevent unauthorized access to the data.

219. The FTR Act has several provisions concerning the disclosure of material arising from the operations of the FIU. The restriction on revealing the existence of a STR concern, other than in the course of their duties, is applicable to all persons and carries a penalty of F\$12,000 or 2 years imprisonment. Restrictions on the disclosure of data / information continue after a staff member has left the FIU. FIU staff are also required to comply the RBF's secrecy provisions as provided for in Section 19 of the RBF Act which states that staff are not permitted to disclose except by order of the court or in pursuance of their duties, any material relating to the affairs of the RBF which has been obtained in the course of their duties. The sanction for breaching the regulation is a fine of F\$200 (USD125).

220. **Periodic Reports (c. 26.8)** The FIU is required under Section 25(1)(i) of the FTR Act to compile statistics and records and to circulate these within Fiji or overseas. Prior to the introduction of the FTR Act, the FIU was authorized, but not required, to compile statistics and records. The FIU did compile an annual report for 2004, however the report was only circulated to the signatories to the Memorandum of Agreement which set up the FIU, namely RBF, the Commissioner of Police, Director of Public Prosecutions and the Ministry of Justice. The report outlined some of the work conducted by the FIU, the developments in the AML/CFT regime, details of the training activities conducted and statistics on the number of STRs received. The assessors were advised that an annual report was being prepared concerning its operations for 2005.

221. The FIU does make press releases on its activities and only general statistics on the reporting regime are provided.

222. **Egmont Group (c. 26.9-10)** In drafting the FTR Act, consideration was given to the Egmont Group Statement of Purpose and its principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases. The FIU is currently working with AUSTRAC to seek membership of the Egmont Group through Outreach Group, with the New Zealand FIU acting as its sponsor.

223. **Structure, funding, staff, technical and other resources for FIU (c. 30.1)** The FIU is currently housed in an office of the RBF and is staffed by three persons, two from RBF and one police officer seconded from FPF. The accommodation is small in size and has very limited capacity for either staff expansion or further document storage.

224. Due to staff limitations, the functions of the FIU, as described in the Memorandum of Agreement of 2003 to setup the FIU, were not fully preformed in 2005. This extended to the core functions of receipt, analysis and dissemination of STRs as evidenced by the backlog in the finalizing of STRs as well as the recording of statistics to the same standard as was performed in 2004. Replacements for the officer seconded from FPF will be provided whenever possible, if the seconded officer is on leave.

225. The FTR Act expands substantially the functions of the FIU: **First:** Section 28 of the FTR Act provides the Director of the FIU or any person authorized by him, to examine the reporting institutions to ensure compliance with the FTR Act requirements. While this authority was also provided for in the Memorandum of Agreement, the FTR Act has expanded the scope of AML/CFT requirements to many new sectors and institutions. Considering that many of these new sectors are not supervised by government authorities, the responsibility will fall solely upon the FIU. The FTR Act has only been in effect from January 2006, and these

supervisory responsibilities have not yet been carried out. However, three inspections were conducted by FIU staff under the Memorandum of Agreement. It is difficult to estimate the burden that this supervisory function will impose upon the FIU and its staff. The resource demands of the role to effectively monitor the compliance of all the institutions are anticipated to be significant.

226. **Second:** Section 25(1)(m) empowers the FIU to conduct due diligence checks and other inquiries as requested by a government department or authority. To date, these checks have been for several agencies including the FPF, FIRCA and the Fiji Islands Trade and Investment Bureau. The Fiji Islands Trade and Investment Bureau has requested checks to be conducted concerning applications for investment certificates which are required for certain types or size of investments within Fiji.

227. **Third:** The FTR Act provides for additional reporting beyond suspicious transaction reporting. However, the respective sections in the legislation are yet to come into force though the private sector indicated it was believed that some of the additional reporting would commence by end of 2006. The additional reports are :

- Cash transactions exceeding F\$10,000 (USD6,250);
- Electronic Funds Transfers in to and out of Fiji of amounts exceeding F\$10,000 (USD6,250); and,
- Cross Border currency declarations of amounts exceeding F\$10,000 (USD6, 250).

The respective number of reports anticipated to be received are :

- 1,000 per day;
- 500 per day; and,
- 2 per day

228. Plans have been drawn up to increase the manpower of the FIU to 11 by 2008 with a secondee from each of FPF and FIRCA to cover the increased tasks that the FIU is to conduct following the introduction of the FTR Act. The FPF secondee has been working with the FIU since 2003. It is not known when the FIRCA secondment will begin. In 2006, it is proposed to recruit two FIU officers who will be responsible for analysis and database management and one senior FIU officer whose responsibilities include policy, coordination and training. The senior FIU officer will oversee the administrative work. The Director of FIU will continue to be responsible for analysis and intelligence management. The proposed organization structure of the FIU by 2008 provides for one officer to cover compliance. Whilst the authorities have indicated that the supervisory work will be conducted with the existing supervisory authorities; the assessors consider that the increased staff will not be sufficient given the broad spectrum of institutions which will come within the FIU's competence.

229. The FIU highlighted a concern of the challenges of recruiting staff with the right experience and background. In addition, the increased manpower will require alternative accommodation for the FIU. Preliminary steps have been taken to identify larger premises.

230. There is no evidence to demonstrate whether a review has been conducted to establish the resources required to conduct the full duties of the FIU, once all the relative sections of the legislation have come into force.

231. A work plan for the FIU has been prepared for 2006. The plan is highly ambitious and was based upon the FIU having the full complement of the staff proposed for 2006 i.e. six staff, throughout the year, despite that the new staff will not join until mid-2006 at the earliest.

232. The FIU has computers with internet access as provided by the RBF. It currently uses a simple Excel database to maintain details of the STRs. As a result of the constraints of the program, only limited analysis and preparation of statistics can be conducted.

233. AUSTRAC has agreed to assist Fiji concerning the IT aspects of the FIU and, in conjunction with donor aid for Fiji, will provide a comprehensive FIU IT solution to handle all the reports that will become reportable under the FTR Act. The system will enable STRs to be filed electronically and the on-line reporting of threshold transactions by the financial institutions will facilitate detailed analysis of the reports and the creation of statistics. It is anticipated the provision of the FIU IT solution will be completed within 2006.

234. **Integrity and Professional Standards (c.30.2)** All FIU staff, and the IT administrator (ho has access to FIU data by virtue of the provision of IT support to the FIU) undergo criminal records checks and need to take

the RBF oath of office which requires them to comply with the code of conduct. Failure to comply with the oath of office can be sanctioned.

235. **Training (c. 30.3)** The current staff of the FIU have undergone significant AML/CFT training within the past two years, including secondment with other FIUs, taking the financial investigation course held by the FPF and attending the APG Mutual Evaluator's course. Several donor agencies including the IMF, UNODC and Pacific Islands Forum Secretariat have conducted AML/CFT training within Fiji, which the FIU staff has attended. The FIU budget for 2006 includes provision for training of new staff.

236. **Review of Effectiveness of AML/CFT Systems (c. 32.1)** Fiji underwent a mutual evaluation by the APG in 2002. It is apparent that Fiji has utilized the recommendations of the report as a basis to enhance its AML/CFT regime; this included the revision of its legislation, in particular the amendments to POC Act and the introduction of the FTR Act, and the creation of a centralized national body to receive, analyze and disseminate STRs. The Fiji government has also been assisted through donor agencies and bi-lateral arrangements to enhance its regime. The National Anti-Money Laundering Officials Committee has also continued to monitor the work of the FIU and the reporting institutions. The operation of the system was also considered in the context of revising the legislative framework. However, there is no evidence of a regular systematic review of the day-to-day operations of the FIU and reporting regime.

237. **Statistics created by the FIU (c.32.2)** The FIU produces the following statistics relating to ML and FT:

- a) The numbers of STRs received
- b) Breakdown of STRS analyzed and disseminated
- c) Breakdown of STRs received by reporting institution and institution type
- d) Details of Due Diligence Checks conducted
- e) Requests for assistance from foreign FIUs and other agencies
- f) Awareness-raising and training programs

238. The numbers of STRs received were included the 2004 annual report which was disseminated to the Governor of the RBF, the Director of Public Prosecutions, the Commissioner of FPF and the Ministry of Justice.

Year	2000	2001	2002	2003	2004	2005	Total
No. of STRs	5	81	126	221	432	280	1,145

239. The breakdown of the total number of STRs received by reporting institution type is as follows : Commercial banks – 1,136; Credit Institutions – 5; Foreign Exchange Dealers – 3; and, Financial Sector Supervisory Authority - 1

240. While there has been an increase in the number of STRs received, the increase was not continuous with a significant peak in the number of reports in 2004. The general increase since the reporting regime began is understood to be due to the increased awareness of the reporting requirement. The assessors were advised that the reduction in the number between 2004 and 2005 was due to improvements in the quality of the compliance units within banks, which contribute the majority of reports, and this led to reduction in the number of poor quality reports. The assessors were unable to test this explanation.

241. Of the STRs reported since 2003, one report was suspected to be related to TF. The report concerned a foreign jurisdiction and was disseminated and filed away for future FIU reference accordingly.

242. From the statistics available for 2004 and 2005, there has been a 15% increase in the actual number of reports disseminated to the authorities. This represents a rise from 15% of STRs received being disseminated to 26%. This could support the authorities comment on the improvement in the quality of the reports but may also be explained by an increased effort to disseminate the reports. An increased likelihood of dissemination is suggested by the increased number of agencies that received the disseminated reports in 2005.

243. Given the size of the financial sector which was required to report STRs prior to the introduction of the FTR Act in 2006, the assessors consider the total number of STRs submitted to the FIU in 2005 would tend to indicate slight under-reporting by the sector as a whole.

244. There have been 3 reports disseminated from the FIU to foreign FIUs and one report received from other FIUs since the centralized FIU was setup. During the same period, the FIU has made no requests for information from foreign FIUs and has received only one request for information. Records are kept on the

number of requests to and from domestic and foreign law enforcement agencies though the compilation of statistics is not efficient. In 2005, 28 due diligence checks were conducted for domestic and foreign law enforcement and regulatory agencies. The FIU also received and analyzed 44 requests for assistance from domestic and foreign law enforcement agencies.

245. The FIU currently produces limited statistics, many of which have to be compiled manually and for which there do not seem to be formulated processes for their recording and creation. This limitation is due in large part to limited human resources within the FIU, and the limited IT capability.

Analysis of Effectiveness

246. This section provides a general statement on effectiveness of the FIU. More detailed discussion of effectiveness is also included on criteria-by-criteria basis in this section of the Report. The interim FIU, which has been operating since 2003, is tasked with conducting the core functions of a FIU, namely the centralized receipt, analysis and dissemination of STRs. It has been performing this role with a significant number of STRs being disseminated to competent authorities, which have led to one successful prosecution. Significant capacity issues, both in terms of human and technical resources, have led the FIU to fall short of the expectations for a FIU. This is demonstrated by the backlog of approximately 500 STRs, which still need to be finalized. Whilst each of the STRs received by the FIU has been screened with analysis performed on the most obviously suspicious reports and dissemination being conducted where considered appropriate, the failure to determine if further analysis is required, and then to conduct further work on the outstanding STRs, compromises the FIU's effectiveness to fully perform its task. It is acknowledged that the FIU staff has been conducting other essential tasks including undergoing training, conducting outreach to the reporting institutions and provision of training to law enforcement, however, this goes to further demonstrate the inadequacy of the resources available to the FIU.

247. The introduction of the FTR Act from January 1, 2006 creates a formal FIU which has significantly expanded responsibilities. Prior to the appointment of the Director on May 1, the FIU continued to perform as the interim FIU. Given the difficulties faced to date in performing its tasks and without a substantial increase in resources in the near future, the FIU is highly likely to continue being not effective in its responsibilities.

Recommendations and comments

248. Fiji has a functioning FIU since 2003, which is currently in transition. The FTR Act came into force in January 2006 and established the FIU on legislative basis thus replacing the interim arrangement that existed since 2003. The Director was appointed under the Act in May 2006. The FIU has adequate powers to access information and has taken reasonable measures to ensure the security of information. The Act contains measures that aim at ensuring the independence of the FIU and there is no evidence of interference with its functions. The main concern with the current arrangement is the lack of resources compounded by an extended range of functions, including supervisory functions, which go beyond the international standard. These additional functions, under current resources, will undermine the core functions of the FIU. The FIU has issued only limited guidance to the reporting institution. While the FIU has a track record of receipt, analysis and dissemination, there is a backlog in the analysis of STRs. There is a good level of feedback provided to the reporting institutions especially with regard to STRs that has been disseminated.

249. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Reviewing the operations of the FIU to determine the reasons for the build-up of un-finalized STRs and implementing measures to address the backlog and to prevent re-occurrence
- b) Issuing guidance on the basis of current legislation for all institutions that are subject to the FTR Act.
- c) Procuring secure new accommodations in a timely fashion in preparation for additional staff.
- d) Determining the FIU's IT requirements to ensure that these requirements are fully met by the proposed IT system.
- e) Formally establishing the funding of the FIU budget and the RBF's commitment to provide financial, technical and administrative support for the FIU with a view to ensuring it is adequately and independently resourced.
- f) Instituting procedures to facilitate the collection and recording of detailed statistics which will enable an effective review to be conducted of the operations of the FIU and the reporting regime
- g) Establishing a mechanism to regularly review the effectiveness of the operations of the FIU and the

reporting regime.		
h) Conducting an independent review of the implications of the FTR Act for the FIU. The aspects to be considered should include: (i) the current and anticipated capacity to handle the increased number of reports, which will be received once the relative sections of the FTR Act have been implemented; and (ii) the manpower and related resource requirements to effectively conduct compliance testing of the reporting institutions covered by the FTR Act. Removing the seven-year mandatory deletion of STRs under Section 25(1)(g) of the FTR Act.		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 1.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • The FIU suffers from resource constraints, which undermine the effectiveness of its functions. • No guidelines have been issued to the institutions that are required to report suspicious transactions. • No strategic analysis is currently being conducted.
R.30	PC	<ul style="list-style-type: none"> • The FIU is not resourced to handle the number of STRs which it is currently receiving. • FTR Act mandates the FIU to conduct a significant number of non-core FIU functions. The proposed increased staffing of the unit is not expected to be sufficient to perform these tasks effectively without seriously detracting from the core functions of the FIU. • There are limited technical resources available for the FIU to allow it to effectively analyze STRs.
R.32	PC	<ul style="list-style-type: none"> • There is no evidence of a regular systematic review of the day-to-day operations of the FIU and the reporting regime • The FIU does not routinely produce statistics that facilitate a detailed assessment of the reporting regime. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
1.6 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)		
Description and analysis		
<p>250. Designated Law Enforcement Authorities (c. 27.1) Fiji has three agencies, responsible for the investigation and prosecution of ML and TF cases the Office of the Director of Public Prosecutions, the Fiji Police Force, and the Fiji Islands Revenue and Customs Authority. The Transnational Crime Unit also conducts financial investigations but does not bring prosecutions, which will be done by the FPF.</p> <p><i>Office of the Director of Public Prosecutions</i></p> <p>251. The position of the Director of Public Prosecutions (DPP) is created by virtue of Section 114 of the Constitution (Amendment) Act 1997. The DPP has the authority to institute criminal proceedings, take over prosecutions instituted by another person or authority, and discontinue any criminal proceedings, prior to any judgment being delivered.</p> <p>252. Whilst the Office of the DPP does not get involved with the investigation of criminal offences, it is able to provide advice to the law enforcement agencies at an early stage of an investigation. To this end, a Memorandum of Understanding was signed with the FPF to enable early advice to be sought in complex cases. Cases referred to the office of the DPP are examined to determine the sufficiency of evidence and the appropriate charges, if any, to be brought.</p> <p>253. The Office of the DPP recently took over responsibility of 90 police prosecutors, which used to conduct prosecutions before the Magistrates Court to create a centralized National Prosecution Service. A two-year training program has been launched to provide proper legal training to these prosecutors. The legally trained staff of the office of the DPP is divided into four specialized teams: i) International Assistance and Asset Recovery; ii) Commercial Crime and Anti-Corruption; iii) Serious Offences Unit; and iv) Outer Islands. Whilst there is specialisation, the staff conducts general prosecutions. General prosecution work represents about 50%</p>		

of the workload. The Staff from the Commercial Crime and International Assistance and Asset Recovery units handle ML and TF related cases.

Fiji Police Force

254. FPF has a current strength of 2,653 officers with a further 1,542 Police Support officers. There are 32 police stations located across Fiji. It is commanded by the Commissioner of Police, which is a position created under Section 11 of the Constitution (Amendment) Act 1997. The operations of the Force are divided into four departments, each of which is headed by an Assistant Commissioner of Police: Crime; Operations; Administration; and Professional Standards. The Crime Department is presently staffed by 517 personnel, which cover three areas; Operations; Special Branch; and Support Services. Within Support Services, there is the Money Laundering Unit and the Interpol Office.

255. The Money Laundering Unit is headed by a Senior Superintendent of Police with two Detective Sergeants. A Corporal is also seconded to the Unit. The unit technically has access to forensic accountancy support through the Serious Fraud Office, however, two forensic accountant positions have been created, but have never been filled.

256. The Crime Department is scheduled to undergo a restructuring in June 2006 and would be re-titled Crime and Intelligence. A National Intelligence Service will be created which will consolidate the current criminal intelligence capability with Special Branch. An Economic Crime section would be formed which will be responsible to handle all fraud cases with forensic IT and accountancy support. The Operations section would comprise of three divisions; Divisional Crime; Major Crime and Organized Crime. The Money Laundering Unit would come under the Organized Crime Unit, and increase in size to one inspector, three sergeants and two corporals.

Fiji Islands Revenue and Customs Authority

257. The Fiji Islands Revenue and Customs Authority (FIRCA) was setup in 1999 as a result of a merger of the Inland Revenue and the Customs & Excise Departments. The authority has over 700 staff, with over 600 of these staff being within the operations section. It is responsible for the implementation of tax and customs legislation within Fiji. The authority also works with the RBF on certain aspects of the enforcement of the Exchange Control Act. Within the Risk and Compliance Division is the Fraud and Evasion Unit. This unit is responsible for conducting tax audits and investigations into allegations of tax fraud and evasion. The team also conducts money laundering investigations involving these types of offences. The Customs Investigations Unit investigates customs fraud.

Immigration

258. The Immigration Department is responsible for the administration and enforcement of the Immigration, Citizenship and Passport Acts, which includes the implementation of policies relating to immigration, travel movements through all ports of entry, and the issuance of visa, permits, citizenship and passports.

259. The Compliance Investigations Unit has responsibility to conduct investigations into, amongst other things, allegations of human smuggling, use of forged travel documents, and suspicious applications for visas, citizenship, passport and permit. Financial investigation techniques are utilized in the investigation of the above offences, especially in cases involving applications for immigrant investment visas.

Joint Agencies - Transnational Crime Units

260. In response to the need to handle international criminal cases throughout the Pacific region, the Australian Federal Police (AFP) developed the Pacific Transnational Crimes Network. The network which covers Australia, New Zealand, Fiji, Samoa, Tonga, Vanuatu and Papua New Guinea, is resourced by the AFP with staff coming from all the countries in the network. The central unit, the Pacific Transnational Crime Coordination Centre (PTCCC) is based in Fiji, with each of the countries having a Transnational Crime Unit (TCU). The Fiji TCU was formed in July 2002. The unit has a mandate to conduct both intelligence and investigative operations. Intelligence operations may be conducted upon the basis of information provided by FIRCA or FPF, or as a result of TCU developed intelligence. The unit reports jointly to the Commissioner of Police and the Chief Executive Officer of the FIRCA, as well as the PTCCC. A meeting is held every six weeks to discuss the unit and its operations. The unit has assisted in law enforcement operations involving money

laundering.

261. The capability of the unit was demonstrated in the 2004 investigation of 'Operation Outrigger'; i2004 which concerned the neutralization of a methamphetamine factory that had been set up in Fiji. The case involved Asian criminal gangs, with simultaneous law enforcement operations being conducted in multiple jurisdictions across the Asia-Pacific region.

262. **Ability to Postpone or Waive Arrest to Facilitate Evidence Gathering (c. 27.2)** Law Enforcement authorities have the authority to delay or waive the arrest or seizure of property for the purposes of evidence gathering or identification of other persons. This authority is implicit in the absence of any restriction on the authorities' discretion to time arrest and seizure measures. This was evidenced during Operation Outrigger in 2004 when the methamphetamine factory under investigation was permitted to continue whilst evidence was gathered and other associates were identified.

Additional Elements

263. **Use of Special Investigative Techniques (c. 27.3-4)** The use of special investigative techniques such as the interception of telecommunications, use of tracking devices and controlled deliveries are permitted under Sections 12-14 of the Illicit Drugs Control Act. Despite the provision for the use of these investigative techniques is only found under the aforementioned act, the techniques have been used as evidence in other cases, not involving charges under the Illicit Dug Control Act. Undercover operations have been conducted on numerous occasions in the investigation of a wide range of criminal offences. The assessors were advised such techniques have not been used in ML or TF investigations to date.

264. **Mechanisms for Cooperative / Multi-Agency Investigation Teams (c. 27.5)** Whilst the TCU is not specifically formed to conduct multi-agency investigations concerning the proceeds of crime, the unit has assisted in investigations concerning the proceeds of crime. The unit is part of the Pacific Transnational Crime Network which concentrates on multi-jurisdictional investigations within the Pacific and the team has the capacity to utilize special investigation techniques.

265. **Powers to Compel Production of, Search, and Seizure and Obtain Financial Records (c. 28.1)** The powers to compel production of, search, seize and obtain financial records pursuant to the POC Act is covered under Section 1.3 – Power to identify and trace property, which is discussed in section 1.3 of this Report.

266. Section 103 of the Criminal Procedure Act provides the power for search warrants to be issued by a judge or a justice of the peace to a police officer or other person named in the warrant to enter any place to retrieve any article which is necessary to conduct an investigation into an offence which is known or is reasonably suspected to have occurred. This section can be utilized by the police or any other competent authority to search premises and to obtain any record that would assist in any ML or TF investigation. Any items seized following the execution of a search warrant need be brought before the court which issued the warrant and the items can then be retained pending the conclusion of the investigation.

267. In respect of the retrieval of documents from FIRCA, Section 4 of the Income Tax Act sets out secrecy provisions for items graded as Secret or Confidential by the Head of FIRCA. Subsection 7 of the same act, which was introduced by the Income Tax (Amendment) Act of 2005, enables the release of such material to the Police, Director of Immigration or Governor of the Fiji Reserve Bank in order to initiate a prosecution in relation to tax.

268. Section 14(3) of the FTR Act provides the FIU with the power to request for any further information about the transaction or attempted transaction referred to in a STR or the parties to the transaction. The information may be provided to either the FIU or the law enforcement agency that is conducting an investigation into a matter arising from a STR. This power does not require an application to the court, but does provide law enforcement agencies with an avenue to procure records pertaining to an STR.

269. The assessors were advised that when FIRCA conducts searches after nightfall, legislation mandated the need for the police to be in attendance. This clearly has a potential consequence on resources and the ability of FIRCA to effectively conduct investigations. A review of the legislation revealed that this provision only applied in limited conditions when utilizing powers under the Customs Act and did not affect searches conducted using a search warrant obtained under the Criminal Procedure Code, which is the likely power to be used in an ML/TF investigation.

270. **Taking of Witness Statements (c. 28.2)** Officers from the Police, FIRCA and the Immigration

Department can obtain witness statements in any matter when a witness is prepared to provide a statement, but they do not have the power to compel a witness to answer questions or provide a statement. There are no situations when witnesses can be compelled to answer questions. A witness statement is not admissible as evidence in criminal proceedings, unless the defense agrees to the contents of the statement.

Structure, funding, staff, technical and other resources (c. 30.1)

Office of the Director of Public Prosecution

271. The office of the DPP is constitutionally established (s.114) and has total staff of 52; of which 32 are professional staff and 25 are support staff. The office is headed by the Director of Public Prosecution. While the position of Deputy DPP is approved, it has not yet been filled. The Office is organized into three units: International Assistance and Asset Recovery Unit (3-4 staff), Commercial Crime and Anti-Corruption Unit (4-5 staff), and Serious Offences Unit. (10-12 staff). In addition to their specialised areas of practice, prosecutors also practice in other areas depending on the work demand. On average, staff spends 50% of their time on the area of their specialization and the other 50% on other areas of practice.

272. The DPP faces the problem of retaining qualified staff and training senior staff. The average annual turnover of professional staff is 10%. This is often concentrated at the higher more experienced level. Staff is often lost to the private sector, which offers more attractive employment packages or to immigration. Discussions with the Police have revealed that the constant change of staff at the ODPP makes difficult to establish stable and on-going coordination on cases.

273. The DPP is currently undergoing restructuring aimed at establishing the National Prosecution Service (NPS). The NPS will comprise of the ODPP and 90 officers of the Fiji Police Force, who conduct prosecution before the Magistrates Court. The DPP will head the newly formed NPS.

274. Despite limited IT capabilities, the ODPP relies on IT to facilitate the judicial process and to expedite mutual legal assistance. One of the key strategic goals is for the ODPP to develop a sector-wide IT and communications strategy to achieve efficiencies in all aspects of the criminal justice sector.

275. The ML Unit currently has 31 ML investigations. The recruitment freeze by the Government is also affecting the FPF's ability to allocate an appropriate level of staff to its areas of responsibilities, of which ML and TF investigation is only one. The manpower of the ML team is expected to increase in June 2006 with the unit having a total staff of one Inspector, one Detective Sergeant and two Corporals. It is unclear if this increase in manpower will be sufficient to handle the current workload, particularly given that the ML investigation team is required to conduct other work, which takes about 50% of its time. It is also a concern going forward given the expected increase in the number of referrals from the FIU, once all the various types of reports are received.

276. The ML investigation team suffers from general resource inadequacy such as office accommodation, computers and vehicles. In respect of vehicles, the team does not have one for their work which significantly undermines its effectiveness. It is understood that this has been a long-term problem for the whole of the FPF, despite requests being made to Central Government. Efforts are being made to resolve the problem but this involves the reallocation of resources from other work conducted by the FPF, which also compete for resources.

277. On technical resources, whilst positions for two forensic accountants have been created within the fraud unit of the FPF, to be also used by ML team, these positions have never been filled. This lack of skills is significantly undermining their effectiveness to handle complex investigations.

Fiji Islands Revenue & Customs Authority

278. FIRCA has a current establishment of 705 officers. The Fraud and Evasion Unit within the Risk and Compliance Division, is manned by 5 officers with accounting and tax audit backgrounds. The team members are all qualified accounting professionals engaged in auditing and investigating tax fraud and evasion. The unit is currently handling 21 cases which include the cases derived from STRs disseminated to FIRCA. The unit cited issues such as a lack of vehicles and computers as ones which affect their effectiveness. Concerning technical resources, the unit is able to access some technical resources such as accountants, from other units within FIRCA if needed.

Joint Agencies - Transnational Crime Unit

279. The PTCCC is funded by the Australian Federal Police which also provides technical equipment to the TCUs in the various countries. Fiji's unit is staffed by five police officers and three customs officers, and is housed in FIRCA accommodation with the administrative support including vehicles being provided by FIRCA.

280. **Integrity and Professional Standards (c.30.2)** All government employees are required to adhere to the Public Service Commission's Code of Conduct. There are a variety of sanctions available for breaches of the Code of Conduct including dismissal.

281. The Office of the DPP, the FPF and FIRCA have all issued their own Codes of Conduct. Furthermore, adherence to the Codes of Conduct is monitored by the Professional Standards Unit for the FPF and the Ethical Standards Units for FIRCA. The Ombudsman also has authority to investigate complaints involving government departments.

282. The Auditor General has the authority to conduct audits on all government departments. Both FPF and FIRCA also have units that conduct internal audits.

283. **Training (c. 30.3)** Staff from all three authorities, the Office of the DPP, FPF and FIRCA have attended respective training concerning the investigation and prosecution of ML and TF investigations. This training has been provided by numerous agencies, both international and bi-lateral. The FPF also conducts an investigation training course in which staff from the FIU present on the subject of ML and TF. Staff from FPF and FIRCA has also been on secondments with organizations, such as AUSTRAC.

284. The UNODC Computer Based Training Course on Money Laundering was also conducted within Fiji in 2004. As well as staff from commercial banks, foreign exchange houses, Fiji Post, 29 staff from FPF, 3 from the Office of the DPP and 9 from FIRCA attended the training.

285. No documented training program for the staff of the agencies to ensure a consistent level in the skills of the investigations was seen

286. **Review of Effectiveness of AML/CFT Systems (c. 32.1)** Whilst ad-hoc reviews are conducted on the performance of the units, these reviews are often done for the purpose of an organizational review rather than in determining the effectiveness of the AML/CFT regime.

287. **Statistics – Investigations, Prosecutions and Convictions (c.32.2)** At present, the FPF and FIRCA are conducting 31 and 21 investigations, respectively, which have been derived from STRs referred by the FIU.

288. There has been no TF investigations to-date.

289. No figures were available concerning the number of production orders issued, number of restraining and confiscation orders obtained.

290. At the time of the assessment, there has been one conviction in the only money laundering case that had been prosecuted in Court. The trial of the second accused was still underway.

291. Adequate systematic generation or collection of statistics was not established.

Analysis of Effectiveness

292. The legal framework for the investigation and prosecution of offences and any related confiscation and freezing is in place. The primary concerns for the investigation and prosecution of cases are capacity issues, both in terms of resources (human and equipment) to conduct the actual investigations and for some areas, technical skills. Adequate resources are not available to handle the number of reports disseminated by the FIU, which may provide some explanation for the number of prosecutions being so low.

Recommendations and comments

293.	In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:
a)	Examining the reasons for the lack of detection and pursuit of money laundering.
b)	Conducting an independent detailed review of the resources available to investigate and prosecute ML and TF cases.
c)	Addressing the key resource constraints and building the capacity of the investigative agencies to conduct money laundering and terrorist financing investigations
d)	Amending the legislation to permit use of the POC Act by other law enforcement agencies.
e)	Instituting procedures to facilitate the collection of detailed statistics relating to money laundering and terrorist financing investigations conducted by law enforcement agencies and on the use of the powers under the POC Act.
f)	Establishing a mechanism to regularly review the effectiveness of the law enforcement agencies in conducting money laundering investigations.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 1.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Fiji designates specific units for ML/TF investigation and prosecution. • The designated agencies suffer serious technical and material resource constraints, which undermine their ability to conduct financial investigations.
R.28	C	<ul style="list-style-type: none"> • POC Act and other laws provide sufficient powers to investigate money laundering and terrorist financing.
R.30	PC	<ul style="list-style-type: none"> • Significant resource issues, both on staffing, general resources and technical resources limit the investigating and prosecuting authorities capabilities to effectively investigate and prosecute ML and TF cases • Staff of the investigating and prosecuting authorities has received some relevant training. • There are mechanisms for maintaining professional and ethical standards of the investigating and prosecuting authorities
R.32	PC	<ul style="list-style-type: none"> • The authorities keep general crime statistics. • There is no systematic maintenance of statistics on investigations and prosecutions of ML and TF or of the use of powers under POC Act with regard to asset recovery. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.

1.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

Description and analysis

294. **Legal Framework:** Exchange Control Act: s. 2 (Interpretation); Part V (Import and Export); Fifth Schedule (Enforcement) especially part III (Import and Export), Exchange Control (Import and Export) Order (1980), Customs Act, and FTR Act Part 5 (Currency Reporting at the Border). Part 5 of the FTR Act has not yet entered into force.

295. **General:** Fiji imposes a system of exchange control for monetary purposes under the Exchange Control Act (1985). Part V of the Act restricts the import and export of currency and some negotiable instruments, unless prior Ministerial authorization is obtained. Restrictions on imports are limited under s. 23 of the Exchange Control Act to Fiji currency, certificate of title to any security, gold coins and treasury bills. Except for treasury bills, all restrictions on imports were suspended in 1980 by virtue of s. 2 of Exchange Control (Import and Export) Order.

296. Export restrictions under s. 24 of the Exchange Control Act remain in place. The scope of s. 24 prohibition is broad and it covers: Fiji currency or any foreign currency, postal orders, gold, certificate of title to a security, coupon, policy of assurance, bill of exchange or promissory note expressed in foreign currency, and treasury bills.

297. For the purposes of enforcing Part V of the Exchange Control Act, Part III, s. 1 of the Fifth Schedule to the Act extends the scope of Customs Act to anything that is prohibited for export or import under the Act. Thus

making the enforcement powers under the Customs Act available for the enforcement of Part V of the Exchange Control Act.

298. Part 5 of the FTR Act establishes a system of monitoring cross-border movement of cash specifically for the purposes of fighting money laundering and terrorist financing. The system established by Part 5 extends to any currency, local or foreign, and to all negotiable instruments.

299. **Declaration/ Disclosure of Cross Border Transportation of Currency and Bearer Negotiable Instruments (c. IX.1)** Part III, s. 4 of the Fifth Schedule to the Exchange Control Act requires any traveler to disclose whether he is carrying anything prohibited under sections 23 and 24 if he is asked to do so by a customs or immigration officer.

300. All arriving travelers are required to fill in the inbound customs declaration form, which contains identification data and required persons to report if they are carrying cash in excess of F\$500 and USD10,000 or equivalent in foreign currency. This is required in exercise of the general powers of the customs authorities under the Customs Act.

301. Outbound travelers are not required to declare the amount of currency they are carrying. There is, however, a notice on the departure section of the immigration form declaring it an offence under the Exchange Control Act to take out of the country over F\$500 cash or the equivalent of F\$5,000 in foreign currency or negotiable instruments.

302. Section 32 of the FTR Act, when it comes to effect, imposes on any person entering or leaving Fiji with more than F\$10,000 in currency or negotiable instruments an obligation to make a declaration to that effect to FIRCA. Section 32 permits the Minister of Justice to alter the threshold for declaration by regulations.

303. **Authority to Obtain Further Information on Origin and Intended Use (c. IX.2).** There is no explicit power to request further information on the origin and intended use of the transported funds and negotiable instruments.

304. **Power to Stop or Restrain (c. IX.3):** Part III Para. 4 of the Fifth Schedule to the Exchange Control Act authorizes customs officers to seize anything being exported or imported in contravention of ss.23&24 of Exchange Control Act. This power to seize does not exist for cases of suspicious of money laundering or terrorist financing.

305. Upon entry into force of s. 33 of the FTR Act, any authorized officer will have the power to seize and to detain any imported or exported currency or negotiable instrument upon suspicion of money laundering or terrorist financing or suspicion of link to any serious offence either by origin or intended use. An authorized officer will include: police officer, customs officer, an officer of the immigration department or an employee of the Unit.

306. **Recordkeeping (c. IX. 4)** Currently, Inbound Customs declaration forms are retained by FIRCA at its offices at the point of entry. Under the powers of FTR Act, the FIU is entitled to have access to these records; however, there is currently no active sharing of the records. It may also be noted that the forms are maintained in paper form, so locating records concerning specific travel movements is difficult. There is no recordkeeping system of date on outbound shipments of currency and other negotiable instruments.

307. To date, limited detailed discussion has been held between the FIU, the FIRCA and the Immigration Department concerning the implementation of the reporting framework and an information sharing mechanism, which is required for the effective implementation of reporting a regime for cross border transportation of currency/negotiable instruments. The assessors were advised that a disclosure mechanism would be introduced.

308. **Coordination (c. IX.5)** In discussions with some of the authorities, it was stated that there was no provision for the monitoring of cross border movements of currency and bearer negotiable instruments. This appears to be a misunderstanding of the laws available and indicates the absence of any coordination in relation to such monitoring. However, it is clear that the legislation is aimed at controlling cross-border transportation of currency and instruments, rather than the monitoring of them. There was anecdotal evidence, which indicated that unreported movement of physical currency did occur by either couriers or shipments.

309. **Sanctions, (c. IX.8-9):** Breaches of Section 23 & 24 are punishable upon summary conviction of imprisonment for not more than 3 months and a fine, or upon conviction on indictment, imprisonment for not

more than 2 years and a fine. Failure to disclose is punishable under s. 116 of the Customs Act by a fine not exceeding F\$1,000 or treble the value of the thing not declared, whichever is greater. Transporting funds falls within the definition of money laundering under POCA. It may not, however, fall within the scope of TF offences under POCA, due to the narrow definition of the offence.

310. No statistics are available on the number of searches and seizures conducted under these sections of the Exchange Control Act.

311. Section 32 of the FTR Act sets out the offence for any person leaving from or arriving in Fiji carrying in excess F\$10,000 (USD6,250) in currency or negotiable bearer instruments on their person or in their baggage without first reporting the fact to the FIRCA. The sanctions for non-compliance is a fine of up to F\$60,000 and imprisonment up to 10 years.

312. **Confiscation and Provisional Measures (c. IX.9-11)** The forfeiture, recovery and provisional measures provided under POC Act will apply to any physical cross border transportation of currency and bearer negotiable instruments that meet the definition under the act. See Section 1.3 above.

313. To date, there is no record of any seizures of currency being transported across borders, pursuant to Section 28 of the POC Act. In a recent case involving USD85,000 cash, which was one freighter that was about to leave Fiji, the cash was seized under the Exchange Control Act.

314. **International Cooperation (c. IX.7,12)** FIRCA has entered into regional arrangements for the sharing of customs information as an arrangement to be of the World Customs Association. These arrangements enable the sharing of information on all customs related matters, including the information pertaining to the transportation of currency and other items.

315. **Statistics (c. 32.2)** Statistics are kept on the movement of currency for monetary purposes. The AML/CFT declaration system has not yet come into force and therefore this requirement is currently not applicable.

Analysis of Effectiveness

316. The current regulations are aimed at identifying attempted breaches of the Exchange Control Act, which is concerned with the prevention of the outflow of funds from Fiji. Information on the inward movement of physical currency is collected at the entry points, but is not easily accessible to the competent authorities. At present, several types of bearer negotiable instrument are not included in the regulations. In all, there is limited monitoring of the cross-border movement of currency and all types of negotiable instruments.

Recommendations and comments

317. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Developing an action plan in consultation with the relevant authorities for the effective implementation of the reporting regime provided for under Part 5 of the FTR Act.
- b) Bringing Part 5 of the FTR Act into force once the implementation plan has been put in place.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
SR.IX	PC	<ul style="list-style-type: none"> • There are provisions concerning the monitoring of physical cross border movement of currency and some forms of negotiable instruments. However, there are significant deficiencies in the system. • Part 5 of the FTR Act provides a reporting regime, which would meet Special Recommendation IX. This Part has not yet been brought into force.
R.32	PC	<ul style="list-style-type: none"> • The AML/CFT declaration system has not yet come into force and therefore this requirement is currently not applicable. . • The rating in this box is an aggregate rating of R.32 across the various parts of the report.

2. Preventive Measures–Financial Institutions

2.1 Risk of money laundering or terrorist financing	
Description and analysis	
318.	As noted previously in the section on approach concerning risk, in several important respects, the Fiji regime exceeds the FATF standards. The FTR Act uses a very broad definition of financial institution, which includes Designated Non-Financial Businesses and Professions (DNFBPs) as defined under the international standard, as well as other categories of businesses and professions as explained in sections 3.1 and 3.4 of the Report below. The FTR Act does not exclude any category of financial institutions or DNFBPs, as defined by FATF, from the scope of AML/CFT measures. Furthermore, while the Act authorizes the Minister to prescribe other businesses and activities as “financial institutions” under the Act, there is no general authorization under the Act for the Minister to exclude categories of businesses or activities from the scope of the Act.
319.	Section 4(4) of the FTR Act gives the Minister the power to prescribe the threshold, or the circumstances, under which a certain financial institution or a class of financial institutions should exercise the obligations to verify customers’ identity according to section 4(1) of the Act. Section 4(9) gives the Minister similar power to exempt certain categories of transactions. These powers to use a risk-based approach are, however, very limited and do not authorize the Minister to exclude a sector or a particular type of institution from the full range of obligations under the Act on a risk basis.
320.	A proposed Draft Regulation is undergoing consultation. This Draft proposes to use s. 4(9) powers to exclude certain transactions below a prescribed threshold, such as “money lender transactions where the total loan is less than \$500. This threshold seems to be based on average value of transaction and aims to exclude transactions of negligible value. The average value of transactions is not necessarily a proxy for ML/TF risk. Assessors’ discussion with the registrar of money-lenders revealed that these are typically small scale operations run by elderly people and housewives as a way of supplementing their income. Extending the full-range of AML/CFT measures to this sector at this low threshold is, in the view of the assessors, an evidence of lack of adequate risk-assessment underpinning authorities’ AML/CFT strategy.
321.	Apart from these limited exemptions, the Draft Regulations confirm the trend of overall inclusion by establishing a set of detailed requirements applicable to all covered institutions without distinction.
322.	Another element of a risk-based approach is reflected in the Ministerial power to prescribe the threshold that triggers the obligations of certain categories of DNFBPs and other designated categories of businesses and professions as set out in the Schedule to the Act. As explained in section 3.1 and 3.4 below, no threshold has yet been prescribed for any of these categories and, therefore, their obligations have not yet come into effect. Discussions with authorities suggested that refraining from prescribing a threshold in these cases is an exercise of risk-based discretion that aims at excluding these categories from the scope of the Act on the basis of low level of risk, while allowing the Minister to bring their obligations into effect as soon as such risk is determined. The authorities have not, however, provided any basis for this risk-analysis. The proposed Draft Regulations does not propose to prescribe a threshold for any of the categories listed in the Schedule.

Customer Due Diligence & Record Keeping

2.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	
Description and analysis	
323.	Legal Framework: Part 2 of the FTR Act.
324.	After the on-site mission, the authorities provided the assessors with proposed Draft Regulations “Financial Transactions Reporting (Customer Identification, Record Keeping, Reporting Obligations and Internal Controls) Regulations (2006), hereinafter: Draft Regulations). The provisions of these regulations will be referred to as necessary in the relevant sections of this Report. Considering that this instrument is still in draft, its content will have no impact on the ratings of compliance.
325.	Note on the Scope: Prior to the entry into force of the FTR Act on 1 January 2006, only banks and credit institutions were required by virtue of RBF Banking Supervision Policy Statement No. 6 that was issued

on 30 July 1999 (hereinafter, Policy 6), to carry out identification procedures of customers for AML purposes. The FTR Act has recently come into force. Its implementation by the relevant FIs and government authorities remains limited. Policy 6 (1999) is still in effect and remains the only instrument imposing AML CDD requirements that is being implemented by the institutions covered by it. Taking into consideration these particularities of the transition period, this section will cover CDD requirements both under the FTR Act and under Policy 6. The FTR Act constitutes the current legal framework. Policy 6, in legal terms, has been superseded by the FTR Act. It is analyzed here as part of the analysis of implementation and considered as indicative of the practice of financial institutions.

326. Because only banks and credit institutions were required to implement AML-specific CDD requirements prior to the introduction of the FTR Act in 2006, any discussion of practice and implementation in the industry will refer only to these two categories of institutions. Other categories of financial institutions only conduct CDD for their business purposes and this will not be analyzed here. It is also important to note that only banks have been actively implementing AML requirements under Policy 6, RBF confirmed that supervision of credit institutions practices was limited and the only institution that was inspected proved to be in breach. This is also confirmed by the very limited number of STRs received from credit institutions over the past three years.

327. Since the rating of compliance with the recommendations is an aggregate rating for all financial institutions, the absence of AML/CFT implementation outside the banking sector will be reflected in the ratings across all recommendations. Particular weight will be given to the absence of AML/CFT measures in the foreign exchange sector due to the relative size of this sector. Less weight will be given to the weaknesses in the securities and insurance sectors because of the limited significance of their operations.

328. This description of the scope and approach to rating applies across the entire Chapter on preventive measures for financial institutions.

329. **Definition of Financial Institutions:** The FTR Act applies the term “financial institutions” to all the categories of institutions covered by the Act. The term “financial institutions” under the Act, therefore, includes both the institutions referred to as “financial institutions” under the Recommendations as well as those referred to as DNFBPs. This section of the Report, consistent with the approach adopted throughout this Report and with the intended scope of the section, will only discuss the institutions that fall within the definition of “financial institutions” under the FATF Recommendations.

330. The FTR Act adopts a functional definition that defines financial institutions on basis of the type of business or activity that they carry out. The definition includes all the categories covered by the Recommendations and uses language very similar to the one used in the Recommendations. The FTR Act goes beyond the FATF definition by including: (1) all types of insurance including property and casualty insurance that have no investment aspect; and (2) superannuation funds and trustees and investment managers thereof. These activities are carried out by a variety of institutions in Fiji as described in Part C of this Report.

331. **Anonymous Accounts (c. 5.1)** Subsections 9 (1) and (2) of the FTR Act prohibit a financial institution from opening or maintaining any anonymous, numbered only, or fictitious account and require that accounts be maintained in the true name of the account holder. In addition, section 38 of the FTR Act prohibits a person from opening, operating or authorizing the opening of any anonymous, numbered only or fictitious account. Violation of either provision is subject to a significant fine and/or prison term. Apart from the FTR Act, the general legislative and regulatory requirements with regard to banking activities do not include a prohibition on the opening of anonymous accounts or accounts in fictitious names. RBF has not issued any guidelines or orders with regard to the opening of accounts. Therefore, prior to the FTR Act, Policy 6 was the only source of obligation upon banks and credit institutions to identify customers. While it did not contain explicit prohibition, Para. 2.5.1 of Policy 6 and Part III of that Policy clearly required the identification of customers and, as such, precluded the opening of anonymous accounts or accounts in fictitious names. This was confirmed by RBF.

332. In practice, even prior to the enactment of the FTR Act and the issuance of Policy 6, the assessors were satisfied through interviews with a sample of the relevant institutions that banks, insurance companies,

securities firms and other types of financial institutions in Fiji did not maintain anonymous accounts or accounts in fictitious names.

333. **When CDD Is Required (c. 5.2)** Section 4 (1 & 9) of the FTR Act requires financial institutions to conduct customer due diligence (CDD) when: (1) Entering into a continuing business relationship; (2) Conducting any transaction in the absence of a continuing relationship, i. e., an occasional transaction, of a value above F\$1000; (3) Carrying out an electronic funds transfer (other than certain exempted transfers); (4) Suspecting money laundering or terrorist financing; and (4) There are questions about the veracity or adequacy of customer identity or information previously submitted. Section 4(9) sets the threshold for CDD in the case of occasional transactions at F\$1000, but authorizes another other threshold to be prescribed by regulations.

334. Policy 6 requires customer identification when establishing any business relationship or conducting any one-off transaction (paras. 2.5.1 & 5.1). Policy 6 does not exclude any occasional transactions below a certain threshold. In general banks indicated that they require customer identification in order to perform any service for a potential customer. RBF confirmed that, in its examinations of Banks for AML/CFT purposes, it did not identify any weaknesses in their CDD systems. RBF did, however, indicate that the single examination that was conducted of a credit institution to-date revealed that the institution did not meet its AML obligations under Policy 6 and was given instructions to carry out remedial action.

335. The FTR Act therefore requires CDD in all the instances defined under the Recommendations. The threshold for occasional transactions has been set lower than the threshold set in the Recommendations to reflect the nature and typical size of transactions in Fiji. It is however important to note that the Act does not address the situation where a transaction has been divided into transactions of smaller value to evade the CDD requirements (structuring). This is a loophole that may be exploited in a manner that undermines the effectiveness of the CDD provisions.

336. **Required CDD Measures for Natural Persons (c. 5.3)** In identifying customers that are natural persons, the institution must identify the name, address and occupation on the basis of official or other identifying documents *and* verify the identity of the customer on the basis of reliable and independent source documents or other evidence that is reasonably capable of verifying the identity of the customer. Section 4(4) of the Act gives the competent authority the power to issue regulations prescribing any official or identifying documents required for the verification of any customer or class of customers. The authorities have not yet issued such regulations. There is a draft regulation at consultation stage.

337. Paragraph 8 of Policy 6 (2005) as a general principle, financial institutions to obtain evidence of identity that is reasonably capable of establishing that the applicant is the person he claims to be and the person who obtains the evidence is so satisfied. In order to achieve satisfactory evidence of identity they must adopt the following procedures: Obtain information about name, permanent address, date of birth and occupation; rely on documents that are either official or otherwise issued by reputable sources such as passport or driver's license; verify the address of the applicant by appropriate means such as utility bills; seek testimonials from referees; and check the authenticity of an identification document with the police.

338. The practice of banks and credit institutions covered by Policy 6 has been to obtain a driver's license, a passport, a FNPF Card, or an ID card issued by the employer. Banks have indicated that they do not have problems obtaining a reliable document of identification. That is despite the fact that Fiji has no national ID system and the offence of forging passports is widespread based on local press reports and discussions with the authorities. It is important to note that the rural parts of Fiji are not well serviced by banks and credit institutions. The question of identification is certainly more challenging once identification requirements are imposed by the FTR Act on institutions that provide services outside the urban centers. It is also the practice of banks and credit institutions under Policy 6 to obtain letters of employment and pay slips as evidence of occupation. This will also be a challenge once CDD requirements extend to customers that work in the rural or informal sector.

339. Banks further confirmed that in order to establish a business relationship they almost always require reference from an existing client. This is, however, of little bearing on the quality of CDD. In fact, over reliance on this method may result in weakening the system because it creates a false sense of certainty about the identity of the customers and the nature of their business and may expose the bank to abuse by launderers and criminals acting in concert.

340. **Required CDD Measures for Legal Persons or Arrangements (c. 5.4)** Section 4(2) of the FTR Act

requires a financial institution to verify the legal existence and structure of a customer that is a legal entity, including:

- Name, address, legal form and control structure,
- Principal owners, directors and beneficiaries,
- Provisions regulating the power to bind the entity, and
- If the person purporting to act on behalf of the customer is authorized to do so and to identify that person.

The requirements of section 4 (2) are generally consistent with FATF Rec. 5 with respect to legal persons. The Act does not define legal entity. By not including trusts in the concept of legal entity, the Act remains silent on the identification requirements for trusts.

341. Policy 6 requires banks and credit institutions in identifying corporate customers to obtain the certificate of incorporation and business registration certificate as well as the Memorandum and Articles of Associations. The Policy places special emphasis on verification of information by requiring banks and credit institutions to verify that the company has not been or is not in the process of being dissolved; to conduct checks once they become aware that there is a change to the company structure or ownership, and to search the file of the registrar. The main difference between the scope of the FTR Act and the scope of Policy 6 is that the FTR Act specifically requires financial institutions to obtain information on the directors of the legal person. This is not required under Policy 6.

342. Unlike the FTR Act, Policy 6 sets specific requirements in dealing with trustees and requires the identification of the trustee and obtaining a copy of the trust deed. (para. 7.3)

343. With regard to legal persons, banks' practiced CDD for account opening went into some detail with regard to identifying the shareholders and directors as well as companies' memorandum and articles of association. Interviewed banks' also confirmed that they check directly with the registrar of companies and one bank indicated that its officers physically visit the registrar to inspect the applicant's registration records. They did not cite any problems of access to information. Note however the problems identified with the registrar of company's in section 4 of this Report. The practices of credit institutions are less rigorous in this regard.

344. While exact figures were not available, both the interviewed banks and the RBF confirmed that the number of trust accounts is limited in Fiji. Discussions with banks and reading of one bank's procedural manual revealed limited understanding of the requirements for proper CDD for trusts.

345. **Beneficial Ownership (c. 5.5)** Section 4 (7) of the FTR Act provides that "if a person conducts a transaction through a financial institution and that financial institution has reasonable grounds to believe a person is undertaking a transaction on behalf of another person or persons," the financial institution must then also verify the identity of the other person or persons. Read literally, this requirement would apply to both transactions for business relationship customers and occasional customers. According to s. 2 of the FTR Act, a transaction includes opening an account.

346. With regard to a legal entity, section 4 (2) of the FTR Act requires financial institutions to verify adequately its legal existence and structure, including its legal form and control structure, principal owners, directors and beneficiaries.

347. It is unclear what is intended by "principal owners", or what constitutes the "beneficiaries" of a legal entity. Neither of these terms is defined in the FTR Act. The FTR Act should extend CDD to beneficial ownership and effective control of legal persons. The FTR Act could have benefited from the concepts established in the Fiji's Companies Act, which extend the meaning of a director to someone upon whose directions the directors of the company are accustomed to act, and extend the definition of a "person who has interest in a share" beyond legal title to include any person who instructs others in the exercise of their rights with regard to the share and they are accustomed to act upon such instructions. See section 4.1. for details

348. Sections 4(7) and 4(2) of the FTR Act do not require financial institutions to identify the beneficial owner as "the *natural* person" who ultimately owns or controls a customer or a legal person." This is inconsistent with FATF Rec. 5. Section 10(7) of the proposed Draft Regulations, which were submitted to the assessors after the on-site mission, purport to impose on financial institutions the obligation to "identify the natural person who ultimately owns or controls a legal person, entity or arrangement."

349. FATF Rec. 5 requires financial institutions to identify beneficial owners on an affirmative basis

during the course of establishing the business relationship or conducting transactions for occasional customers. Section 4 (7) of the FTR Act imposes a duty only when the financial institution has reasonable grounds to believe there is a beneficial owner involved in a given transaction, rather than impose an affirmative duty to find out if there is a beneficial owner involved with a business relationship. Thus, the provisions of section 4 (7) do not completely satisfy the FATF standard contained in Rec. 5 on this issue. Section 11 of the proposed Draft Regulations purports to rectify this inconsistency by imposing on financial institutions the obligation to take reasonable measures to determine if a customer is acting on behalf of another person or persons including on behalf of a beneficial owner or controller. The term “controller” does not have a defined meaning in the Draft and seems ambiguous.

350. Paragraph 7.2 of Policy 6 (1999) imposes similar requirements on banks and credit institutions with regard to establishing the identity of any person on whose behalf an “applicant for a business” is acting. Like the FTR Act, the institutions covered by this Policy are not required to take any active measures to establish whether any person is acting on behalf of another or to identify the ultimate *natural* person on whose behalf transactions are being conducted. Policy 6 is inconsistent with Rec. 5.5 in the same manner as the Act.

351. While the RBF did not identify any weaknesses with banks’ practices under Policy 6 in this regard, discussions with banks during the on-site mission revealed that there was lack of understanding of the requirement to identify beneficial ownership. Overall, examining the beneficial ownership was very limited with regard to natural persons.

352. Despite the details required for identification of legal persons, discussions with banks suggested that this was done with the objective of establishing the identity of the person acting on behalf of the legal person and that he/she is so authorized and not with a view to identifying the natural person who is in ultimate control.

353. Under the Exchange Control Act, banks and other businesses that provide fund transfer services are required to ensure that the originator is acting on his/her own behalf. The objective of this requirement is to ensure compliance with the maximum amounts of cross-border transfers that a person may make under the Act. Banks and other service providers, require customers to sign a declaration indicating that they are conducting these transactions on their own personal behalf. This is the only measure that is taken to examine beneficial ownership. The assessors took some steps to assess the effective enforcement of the Exchange Control Act because of the relevance of some of its measures to AML/CFT, such as with regard to beneficial ownership. It was concluded that enforcement was limited.

354. The concept of legal entity does not extend to trusts. The Act does not have any explicit requirement to identify the beneficial ownership of a customer who is a trust.

355. **Purpose and Nature of Business Relationship (c. 5.6)** Section 10(4)) of the FTR requires financial institutions to examine as far as possible the background and purpose of the *transaction* or the business relationship and to document their findings. In addition, section 4 (6) requires financial institutions to take reasonable measures *to ascertain* the purpose of any transaction and the origin and ultimate destination of the funds involved in the transaction. This imposes a significantly higher standard on all financial institutions than is required by FATF Rec. 5, which merely requires financial institutions to *obtain information* on the purpose and intended nature of the business relationship rather than individual transactions. . First, FATF deals only with the business relationship, not individual transactions. Second, Fiji imposes the standard on the financial institution to examine “as far as possible” the background and purpose of “any transaction.” Depending upon how this provision is interpreted, this could impose a significant burden on financial institutions in order to comply. This burden is particularly unjustified and impracticable if one takes into consideration the broad scope of the definition of financial institutions and the uniform rules applied to all institutions covered under the Act.

356. Policy 6 does not impose any similar obligations. Some of the banks interviewed revealed that documenting this information at account opening stage as part of their business practice. This is not, however, the practice of all the banks interviewed. This requirement is therefore not systematically implemented.

357. **Ongoing Due Diligence (c. 5.7)** Section 11 of the FTR Act requires financial institutions to conduct continuous due diligence of business relationships with the customers; and pay special attention to transactions to ensure that they are consistent with its knowledge of the customer, the customer’s business, type of business and source of funds. This requirement is not, however, consistent with Recommendation 5 and criteria 5.7.2 of the Methodology also require financial institutions to keep the CDD process up-to-date by undertaking regular reviews of records, particularly for high risk categories of customers. There is no similar requirement under the

FTR Act or any other law or regulation.

358. Policy 6 does not impose an on-going due diligence requirement. Discussions with banks revealed that two out of the three banks interviewed did not carry out this type of on-going due diligence.

359. **Enhanced Due Diligence for High Risk Categories (c. 5.8)** Neither the FTR Act nor Policy 6 require financial institutions to identify higher risk categories of customers, business relationships or transactions or to conduct enhanced due diligence on such categories, as is required by FATF Rec. 5 and criteria 5.8 of the Methodology. The proposed Draft Regulations seek to fill this gap by requiring financial institutions to undertake enhanced due diligence with regard to customers or transactions that the FIs determine are of higher risk of ML and TF. The Draft Regulations, however, fall short because they do not impose on financial institutions an obligation to implement risk assessment mechanisms to identify higher risk categories of customers.

360. **Reduced or Simplified CDD for Low Risks (c. 5.9-5.11)** Neither Policy 6 nor the FTR Act specify any reduced or simplified CD requirements for any low risk categories of customers, although there is authority under the FTR Act for the MoJ to issue regulations that could provide for such reduced or simplified procedures and other exemptions. There have been no such regulations issued to date. Section 4 (9) of the FTR Act specifically exempts certain electronic transfers between financial institutions and certain others involving credit or debit cards. As discussed under FATF Special Recommendation (SR) VII, these two categories of exemptions are specifically authorized by SR VII and other complete exemptions are consistent with FATF standards. The proposed Draft Regulations aim to introduce simplified due diligence for lower risk customers (s. 16(2) and 17).

361. **Risk Sensitive CDD Measures (c. 5.12)** Banks apply customer identification and verification on an undifferentiated basis; they do not currently apply any risk-based approach.

362. **Timing of Verification (c. 5.13-5.14)** The FTR Act is not clear on the timing of identification or verification. Section 7 on failure to identify and section 8(3)(a) on record keeping suggest that identification may be subsequent to carrying out a transaction without any guidance on managing the risk. Section 4(4)(b) provides without mandating that regulations may prescribe the timing of identification and verification. To date, such regulations have not been issued. The Act therefore does not satisfy the international standard allows for risky practices by covered institutions.

363. Section 12 of the proposed Draft Regulations permits financial institutions to delay verification of customer identity with regard to certain categories of customers subject to certain risk management procedures that are consistent with the international standard. The Draft seems to permit delay of verification until after the execution of a transaction for an occasional customer. This would be inconsistent with the international standard, which only allows delay of verification with regard to customers that are entering into a business relationship and not with regard to occasional customers.

364. Policy 6 requires identification and verification as soon as reasonably practicable after initial contact with the customer and specifies that where evidence is not obtained the transaction should not be encouraged to proceed. Policy 6 is one step ahead of the Act but it fails in that it does not distinguish between identification and verification and therefore allows for identification to be delayed. It also does not prescribe risk mitigation measures where the transaction is commenced prior to the verification of identity.

365. Based on discussions with banks operating in Fiji, the assessors formed the view that timing of verification especially with regard to occasional transactions is not always applied strictly. Banks are inclined to perform occasional transactions based on identification without verification if the needs of the customer so required. While banks confirmed that they do not encourage transactions with non-account holders, competitive rates for certain types of transactions such as fund transfers and foreign exchange mean that account holders do not necessarily conduct these transactions through their account institutions. Instead, they conduct them, as walk-in customers, through the institution offering the best rate. Banks indicated that they prefer to require payment in by check, but cash transactions are also accepted. Banks did not indicate that they observe prior verification requirements in these cases with any more rigor than in the case of transactions paid by checks.

366. **Failure to Satisfy Completion of CDD (c. 5.15-5.16)** Section 7 of the FTR Act provides that, if satisfactory evidence verifying customer identity is not obtained, the financial institution must not proceed further with the transaction, unless directed to do so by the FIU, and must report the transaction as a suspicious

transaction. This provision is consistent with FATF standard.

367. Paragraph 2.5.1 (c) of Policy 6 currently provides that no significant business transactions should be conducted for customers that do not provide adequate evidence of their identity.

368. It is bank practice, based on interviews, to require identification prior to conducting a transaction. Note, however, what was indicated in paragraph. 341 above regarding the conduct of occasional transactions without adequate verification. It is the assessors' views that the practice of banks in this regard needs to be more rigorous.

369. **CDD for Existing Customers (c. 5.17)** Neither the FTR Act nor Policy 6 require financial institutions to perform CDD procedures on existing clients on the basis of materiality and risk, as is provided under the international standard. Banks have not adopted any measures to update the CDD information of customers that opened accounts prior to the entry into force of Policy 6.

370. **CDD for Numbered Account Customers (c. 5.18)** As noted previously, section 9 of the FTR Act requires that all accounts be maintained in the true name of the account holder and banks, securities firms, insurance companies and other types of financial institutions in Fiji do not maintain or offer any anonymous or numbered accounts.

371. **Risk Management Systems for PEPs (c. 6.1-6.6)** under section 4 (3) of the FTR Act, financial institutions must have risk management systems capable of determining whether a customer is a politically exposed person (PEP). The Act adopts a definition of PEP consistent with international standards. The notion of a customer as defined in s. 2 of the Act does not include beneficial owners as required under the standard. The Act, however, authorizes the Minister to add by regulation other categories of persons to the definition of customer. In the event that the customer is determined to be a PEP, the financial institution must (a) obtain senior management approval before establishing a business relationship with the PEP; (b) take reasonable measures to establish the source of wealth and source of funds involved; and (c) conduct regular and enhanced monitoring of that business relationship. Inconsistently with R. 6 and criteria 6.2 of the Methodology, the provisions of the Act do not impose any obligations with regard to existing customers.

372. The requirement for financial institutions to institute risk management systems for PEPs is consistent with the FATF standard. Also, Fiji has not signed or ratified the U. N. Convention against Corruption.

373. Policy 6 does not address the issue of instituting risk management systems for PEPs. This obligation is entirely newly introduced by the Act and there is currently no bank practice in this area.

374. **Cross-Border Correspondent Banking (c. 7.1-7.4)** Section 5 of the FTR Act provides that, with respect to cross-border correspondent banking relationships, financial institutions must:

- identify and verify the person with whom it conducts a business relationship;
- gather information about the business of the person and understand the nature of the person's business;
- determine from publicly available information the reputation of the person and the quality of supervision which the person is subject;
- assess the person's anti-money laundering and combating terrorist financing controls;
- obtain approval by senior management before establishing a new cross-border correspondent banking relationship; and
- document the responsibilities of the financial institution and the person.

This provision is entirely consistent with the FATF standard.

375. Paragraph 7.4.1 of Policy 6 imposes some obligations with regard to opening accounts for intermediaries without specifying the cross border nature of the intermediary. The due diligence obligations under Policy 6 are ambiguous.

376. Discussions with banks suggest that while they receive correspondence banking services from foreign institutions, they do not offer such services to any foreign intermediaries.

377. **Payable-Through Accounts (c. 7.5)** Section 4(5) of the FTR Act provides that, where the correspondent banking relationship involves a payable-through account, financial institutions must ensure that the person with whom it has established the relationship: (a) has verified the identity of and performed on-going

due diligence on that person's customers that have direct access to accounts of the financial institution; and (b) is able to provide the relevant customer identification data upon request to the reporting entity. This provision is entirely consistent with FATF Rec. 7 and criteria 7.5 of the Methodology.

378. Paragraph 7.4.1 of Policy 6 considers the due diligence obligations of financial institutions with regard to payable-through-accounts to be satisfied if the institution receives a written assurance from the "intermediary" that "evidence of the underlying principals has been obtained, recorded and retained and that the applicant is satisfied as to the sources of funds." Such procedure should not be applied formalistically and should not replace taking reasonable measures to be satisfied that the customer has actually performed such CDD requirements.

379. **Non-Face-to-Face Business (c. 8.1-8.2)** Fiji statutes or regulations do not specifically require that financial institutions must be required to have policies in place to prevent the misuse of technological developments in money laundering or terrorist financing. However, to date, banks have interpreted customer identification requirements under Policy 6 as precluding the opening of accounts on a non-face-to-face basis. Some Banks however do provide non-face-to face banking services for account holders. With the increase of technological developments and the possibilities for non-face-to-face transactions, there is a need to impose an explicit obligation on financial institutions to adopt policies and procedures to manage the ML/TF risks and to ensure effective CDD and monitoring. The proposed Draft Regulations purport to fill this gap in s. 10(13).

Analysis of Effectiveness

380. In addition to the criteria-by-criteria analysis of effectiveness above, the following general points may be summarized. The assessors were satisfied that financial institutions in Fiji do not offer anonymous accounts or accounts in fictitious names. The detailed CDD requirements of the FTR Act have recently entered into force and are not yet implemented. Only banks carry out AML-specific CDD requirements on basis of Policy 6. Other financial institutions do not yet implement AML-specific CDD requirements; Securities firms and insurance companies, in particular, conduct identification procedures for business purposes and the sectors are of very limited size. While the absence of AML/CFT CDD measures in those two sectors is taken into consideration in the rating of compliance, it is given relatively low weighting.

381. Areas where effectiveness is particularly weak include: completion of verification for occasional transactions, beneficial ownership due diligence, and on-going due diligence. It is important to note that the majority of banks operating in Fiji are branches of foreign banks, and as such some of them apply CDD measures that go beyond the requirements of Policy 6.

382. Some aspects of the Act impose excessive requirements and extend indiscriminately to all covered institutions. This may undermine the effectiveness of the Act by undermining the commitment of the covered institutions to comply with the Act or by over-burdening the compliance resources of the covered institutions in such a way that undermines their ability to comply with the essential requirements.

Recommendations and comments

383. With some exceptions, the FTR Act puts in place a comprehensive set of CDD requirements applicable to all financial institutions as defined in the Act without differentiation. In addition to the specific weaknesses identified in the analysis above, the overall concern of the assessors lies in the trend of AML/CFT policy in Fiji to go beyond the international standard without adequate assessment of the risks and vulnerabilities as well as the compliance and enforcement capacity. The proposed Draft Regulations attempt to exclude some insurance activities and consumer lending activities on basis of vulnerability. This is a commendable approach and should be further developed.

384. In order to bring the CDD framework into full compliance with international standards and to achieve effective implementation, the authorities should consider the following recommendations. While, the recommendations are made in order to address all the deficiencies identified above, they are presented in sequence of priority:

- a) Conducting a proper vulnerability assessment and adopting the necessary measures to exclude less vulnerable and non-prudentially regulated sectors from the scope of AML/CFT measures. Examples could include the money lenders sector and the credit unions sectors.
- b) Ensuring that non-bank foreign exchange and fund transfer service providers are implementing

<p>adequately their AML/CFT obligations under the Act.</p> <p>c) Clarifying the definition of an occasional transaction above a certain threshold to include a series of transactions that are linked and exceed the prescribed threshold.</p> <p>d) Specifying the rules on the timing of conducting CDD, the circumstances under which it may be deferred beyond the commencement of the relationship, and the action to be taken upon failure to complete CDD after the commencement of the relationship in the case of deferral.</p> <p>e) Clarifying the requirements to identify the “beneficial owner.” In particular: Provide a definition for “beneficial owner,” which emphasizes that it should be the <i>natural</i> person that is ultimately behind a transaction or a relationship.</p> <p>f) Impose an affirmative obligation on financial institutions to determine whether the customer is acting on his own behalf.</p> <p>g) Revising the requirement to ascertain the purpose, origin of fund and source of fund for all transactions as prescribed in s. 10(4) of the FTR Act and restrict it to business relationships as required by the standard.</p> <p>h) Requiring financial institutions to conduct risk assessment of their clients and requiring them to vary their measures on risk basis. Financial institutions should be allowed to apply reduced CDD measures in relation to low-risk clients. This should be introduced by regulations under the Act.</p> <p>i) Expanding the obligations with regard to PEPs to include beneficial owners and existing customers.</p> <p>j) Requiring the CDD measures to be instituted for existing customers on a risk and materiality basis. This should however be imposed with caution and with due consideration to the burden it may impose on financial institutions.</p> <p>k) Imposing adequate obligations for conducting CDD in relation to trusts.</p> <p>l) Imposing upon financial institutions an explicit obligation to adopt policies and procedures to manage the risks of misuse of technological developments and non-face-to-face transactions.</p> <p>m) Taking more active measures to ensure that credit institutions, the securities sector, and the insurance sectors are implementing adequately their AML/CFT measures.</p>
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Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> • The FTR Act was entered into force very recently and is not yet implemented except to the extent that it overlaps with current Policy 6 requirements. . • Financial institutions do not open anonymous accounts or accounts in fictitious names. • AML/CFT specific CDD requirements, albeit only partially in line with international standards, are currently only implemented by banks in accordance with a RBF supervisory policy which came into effect in 2001. There is therefore no practice of AML/CFT CDD measures in all non-bank financial institutions. • The requirements to identify beneficial ownership under the FTR Act, as well as under Policy 6, are only partially consistent with the international standard. • The rules on timing of verification and the practice of banks in this area are inconsistent with international standards. • There are no specific CDD measures for trusts in line with international standards. • Financial institutions are not required under the FTR Act to conduct enhanced due diligence with regard to higher risk customers.
R.6	PC	<ul style="list-style-type: none"> • The FTR Act’s provisions on PEPs do not extend to beneficial owners and existing customers. • The relevant provisions have not been implemented to-date. • The framework under Policy 6 currently implemented by banks does not require enhanced due diligence in relation to PEPs.
R.7	PC	<ul style="list-style-type: none"> • The FTR Act provides a framework for CDD with regard to correspondent banking, which is consistent with international standards. • Banks do not currently offer correspondent banking services to foreign

		intermediaries. <ul style="list-style-type: none"> The due diligence obligations that may apply to correspondent banking under policy 6 are ambiguous and do not meet the international standards.
R.8	NC	<ul style="list-style-type: none"> None of the financial institutions in Fiji open accounts or establish a business relationship with non-face-to-face customers. Some banks do however offer non-face-to-face services to account holders. There is currently no requirement upon financial institutions to establish policies and procedures to manage the risks of misuse of technological developments for ML/TF and of non-face-to-face transactions.
2.3 Third parties and introduced business (R.9)		
Description and analysis		
<p>385. Introduced Business (c. 9.1-9.5) – Section 6 of the FTR Act permits financial institutions to rely on an intermediary or third party to undertake its CDD obligations. Where a financial institution relies on an intermediary or third party to undertake its CDD obligations, the FTR Act provides that the financial institution must:</p> <ul style="list-style-type: none"> (a) immediately obtain the information required by all the CDD provisions (ss. 4 and 5); (b) ensure that copies of identification details and other relevant documents required under section 4 are readily available upon request; (c) satisfy itself that the intermediary or third party is regulated and supervised, and able to comply with the CDD requirements. <p>386. Fiji has not issued guidance with regard to which countries the introducer may be based in as long as it is adequately supervised. Applying geographic restrictions based on known level of compliance with AML/CFT standards is a matter for the discretion of the authorities under the Recommendations.</p> <p>387. These provisions of the FTR Act are entirely consistent with the FATF standard.</p> <p>Analysis of Effectiveness</p> <p>388. This is a new requirement and, as such, there is no basis to assess its effectiveness, banks and other financial institutions do not currently utilize introduced business, without conducting their own customer identification and CDD. One Bank in Fiji that is part of a conglomerate is considering relying on introduced business from other entities within the conglomerate as a future business strategy.</p>		
Recommendations and comments		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.9	C	<ul style="list-style-type: none"> The FTR Act imposes an adequate set of obligations that fully comply with the international standard. Financial institutions do not currently rely on third parties for CDD.
2.4 Financial institution secrecy or confidentiality (R.4)		
Description and analysis		
<p>389. Legal Framework: FTR Act s. 37 and Banking Act s. 71. ,</p> <p>390. Override of Bank Secrecy Provisions (c. 4.1) – Section 71(1) of the Banking Act prohibits all directors, managers, employees and agents of any licensed financial institution (i.e., banks and credit institutions) from disclosing any customer information obtained by virtue of their capacity or in the performance of their functions except in a limited number of circumstances defined in the section. This includes when the person is lawfully required to disclose such information under the provisions of any written law.</p> <p>391. Section 71(3) imposes a more general obligation of secrecy with regard to all directors, managers, employees, and agents for all matters relating to the affairs of the institution and of its clients. This is an active obligation to preserve and aid in preserving the secrecy. The only exception to this general obligation is a disclosure in the performance of their duties under the Banking Act.</p> <p>392. Subsection 71(3) seems too broad and it is not clear how it relates to subsection 71(1).</p> <p>393. There are no similar confidentiality requirements under the Insurance Act, the CMDA Act or the</p>		

Credit Unions Act.		
394. Section 37 of the FTR Act provides that a financial institution must comply with the FTR Act regardless of any other provision of law to the contrary. This provision gives precedence to all the disclosure and reporting obligations under the FTR Act over and any law or obligation to the contrary.		
395. The relationship between this provision and s. 71(3) of the Banking Act, which, unlike s.71(3), does not seem to allow for exceptions sanctioned by other written laws, is unclear. Considering the newness of the FTR Act, this relationship has not yet been tested in courts.		
Analysis of Effectiveness		
396. It should be noted that, while the FTR Act overriding provision is untested, there have not been problems in the performance of reporting obligations and responding to FIU requests for additional information under the procedures of Policy 6.		
397. The authorities also did not raise any issues regarding access to information held by financial institutions.		
398. One bank indicated that it includes in the account opening agreement a clause that authorizes the bank to disclose any information in response to request from government authorities.		
Recommendations and comments		
The assessors were satisfied that financial secrecy as implemented in Fiji does not prevent the effective implementation of the AML/CFT requirements. The FTR Act confirms this with a broadly worded provision overriding any secrecy obligation whatever its source.		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.4	C	• The Recommendation is fully met.
2.5 Record keeping and wire transfer rules (R.10 & SR.VII)		
Description and analysis		
Record Keeping (R. 10)		
399. Legal Framework: FTR Act s. 9 (Financial Institutions Maintain Records) and Policy 6 Part IV (Record Keeping Procedures).		
400. Record Keeping Rules (c. 10.1-10.3) Section 8 of the FTR Act provides that a financial institution must establish and maintain records of : <ul style="list-style-type: none"> (a) all transactions carried out by it and correspondence relating to the transactions; (b) a person's identity required under the FTR Act's CDD requirements; (c) all reports made to the Unit (FIU); and (d) all inquiries relating to money laundering and the financing of terrorism made to it by the Unit or a law enforcement agency. 		
401. The records required to be maintained must be sufficient to enable the transaction to be readily reconstructed at any time by the FIU or a law enforcement agency, and in particular must contain: <ul style="list-style-type: none"> (a) name, address and occupation (or, where appropriate, business or principal activity) of the person who <ul style="list-style-type: none"> (i) conducted the transaction; and (ii) if applicable, on whose behalf the transaction was conducted; (b) the documents used by the financial institution to verify the identity of the person; (c) the nature and date of the transaction; (d) the type and amount of currency involved; (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, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of any payee, the amount and date of the instrument, any number of the instrument and details of any endorsements appearing on 		

the instrument; and
 (g) name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the record.

402. The records must be kept for a minimum period of 7 years from the date of:

- (a) obtaining evidence of a person's identity;
 - (b) any transaction or correspondence;
 - (c) the account closing or business relationship cessation,
- whichever is the later.

403. Any record required to be kept must be maintained in a manner and form that enables the financial institution to comply as soon as practicable with requests for information from the FIU or a law enforcement agency.

404. The Act does not give any authority the power to instruct FIs to maintain certain records for longer periods of time.

405. The record keeping requirements of the FTR Act are entirely consistent with FATF Rec.10

406. Policy 6, Part IV (Record Keeping Procedures) imposes two recordkeeping obligations upon Banks and Credit Institutions: (1) to keep record of the obtained evidence of a person's identity; and (2) to record details relating to all transactions carried out by the institution in the course of its business. The Policy allows the covered institutions a degree of flexibility in meeting their first obligation. Accordingly, a covered institution must keep the original documents obtained in evidence of identity unless this is not practical. In which case, the Institution may either keep record of how such evidence may be re-obtained or how the information contained within it maybe re-obtained.

407. The requirements of Policy 6 fall short of the international standard in that they do not require retention of account files and business correspondence. The terms of recordkeeping are elaborated in the Policy and they go beyond the standard by requiring a retention period of 7 years. This is in line with the new FTR Act provisions as discussed above. The Policy does not address explicitly the need for timely access to the maintained records.

Wire Transfer Rules (SR VII)

408. **Legal Framework:** FTR Act: s. 4(1)(b)& (9), s. 12, and para. (a) and (f) of the Schedule. Policy 6 did not have special rules for electronic funds transfers. Electronic funds transfers were subject to the general identification and recordkeeping requirements.

409. **Covered Transfers:** The rules relating to electronic funds transfer under the FTR Act apply to both domestic and international funds transfers without distinction. It is also important to note, that these rules apply to any institution that carries out this type of activity, whether a bank or any other type of financial institution.

410. Section 4(9) of the FTR Act exempts from the scope of the relevant obligations the following two types of wire transfers:

- Certain transfers between financial institutions acting on their own behalf; and
- Certain transfers effected through the use of a credit or debit card, both pursuant to section 12 (2).

The conditions prescribed in the Act for these two exempted categories are consistent with the FATF standard.

411. Whether the FTR Act excludes certain wire transfer transactions below a certain threshold from the scope of the relevant obligations is not entirely clear. Under s.4(9)(d) of the Act occasional transactions that do not exceed \$1000 are not subject to CDD requirements and consequently to recordkeeping requirements of identification information. The Act includes electronic funds transfers in the definition of transaction under s. 1. Read together, it suggests that occasional electronic funds transfers not exceeding \$1000 would not require obtaining, verifying and maintaining "originator information." This is matter that requires clarification under the Act.

412. Policy 6 exempted from the scope of identification requirements funds transfers by account holders that are debited through their accounts held by other than the ordering financial institution. This is a practice that

is followed by financial institutions and constitutes reliance on a third party in carrying out CDD. Policy 6 did not impose on banks any due diligence requirements in this regard and banks do not implement any measures such as those required under the standard when relying on third parties for these purposes.

413. **Originator Information (c. VII)** Section 4(1) requires FIs to conduct full CDD measures whenever they carry out a fund transfer above \$1000 except in the two cases referred to above. This includes obtaining and verifying the name and address of the customer, which in this case is the originator. As explained above, the general record keeping rules under the FTR Act would mean that all identification information relating to the originator will be kept on record thus meeting the requirement of SRVII in this regard as far as wire transfers above \$1000 are concerned. The FTR Act in defining “originator information” include the originator’s account number and in the absence of an account, the Act requires the FI to give the transaction a unique reference number and requires that originator information should accompany all transfers regardless of the threshold.

414. As described in paragraph 393 above, there is some ambiguity regarding the CDD requirements for wire transfers below \$1000. If the FTR Act provisions are to be interpreted as excluding from all CDD wire transfers below \$1000, then these provisions will be inconsistent with SRVII, which requires identification and verification of the name, address and account number of the originator regardless of the value of the transfer.

415. **Maintaining “Originator Information” with the Transfer (cc. VII.2-4)** Section 12 of the FTR Act requires FIs to include accurate originator information with the electronic transfer. The Act does not distinguish between domestic and cross-border transfers in this regard. It also does not provide any special rules for batch transfers, which means that full originator information must accompany each transfer in the batch. This requirement applies to any financial institution, including any intermediary institution in the payment chain in Fiji.

416. Policy 6 did not have any rules on maintaining originator information with the transfer.

417. **Obligations of Beneficiary Institutions (c. VII.7)** Section 10 of the FTR Act requires financial institutions to pay special attention to electronic funds transfers that do not contain complete originator information. While it does not explicitly require FIs to adopt effective risk-based procedures to identify and handle wire transfers that do not contain complete originator information, this requirement is in the view of the assessors implicit in the enhanced due diligence requirement and as such it meets the international standard.

418. **Monitoring Compliance and Supervision (cc. VII.8-9)** The rules relating to wire transfers are subject to the same sanctioning and supervision scheme established by the FTR Act and suffer from the same weaknesses identified with regard to this regime as discussed in section 2.10 of this Report.

Analysis of Effectiveness

419. There does not appear to be a problem with banks being able to satisfy the seven-year recordkeeping requirement. RBF did not identify any problems with the recordkeeping measures of banks. Furthermore, discussions with banks showed that there is a general business practice of retaining records indefinitely. Currently, other types of financial institutions keep records only for their own business purposes and, therefore, would have to put procedures in place in order to comply.

420. The requirements to include originator information with the wire transfer and to exercise enhanced due diligence in relation to wire transfers that do not include full originator information are newly introduced under the FTR Act. Bank practice accordingly could not be confirmed as it has never been examined by RBF.

421. Banks indicated that the standard set by the SWIFT system used for wire transfers as well as recipient institutions’ requirements make it necessary for them to include originator information to avoid failure of the transfer. They did also indicate that transfers are sometimes rejected because of insufficient originator information, which suggests that these requirements may not be systematically implemented.

- Of more concern is the fact that banks do not always verify the identification information of occasional customers prior to carrying out a transfer.
- The practice of non-bank financial institutions could not be ascertained.

Recommendations and comments

422. In order to achieve compliance with international standards and effective AML/CFT measures, the

authorities should consider:		
<p>a) Reviewing the capacity of all the covered sectors to meet the extensive recordkeeping requirements imposed by the Act, and make sure that non-prudentially regulated financial institutions, which do not pose ML/TF risk are exempted from the scope of the Act or subjected to simplified recordkeeping requirements. .</p> <p>b) Taking adequate measures to ensure that covered financial institutions perform effectively the recordkeeping requirements under the Act taking into consideration the first recommendation above.</p> <p>c) Clarifying the rules with regard to occasional electronic funds transfers below the \$1000 threshold.</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • The FTR Act imposes upon financial institutions detailed requirements with regard to the records to be kept and the methods of retention. The provisions are consistent with best practices in this regard. • Currently only banks are implementing relatively detailed AML/CFT recordkeeping requirements under Policy 6 (1999). • Other covered financial institutions have not yet implemented the provisions of the FTR Act on recordkeeping. The effectiveness of the recordkeeping provisions is therefore not yet achieved.
SR.VII	PC	<ul style="list-style-type: none"> • The legal requirements under the Act are largely consistent with the elements of SRVII. • The CDD rules on wire transfers below \$1000 are unclear. • The practice of financial institutions is not fully consistent with the FTR Act. • The weaknesses identified with regard to the sanctioning and supervision system under the FTR Act undermine the framework of rules relating to wire transfers to the same extent.

Unusual and Suspicious Transactions

2.6 Monitoring of transactions and relationships (R.11 & 21)
Description and analysis
<p>423. Legal Framework: FTR Act s. 10</p> <p>424. Special Attention for Unusual Transactions (11.1) Prior to January 1, 2006, there was no requirement for financial institutions to monitor unusual transactions. The introduction of section 10(1) of the FTR Act requires financial institutions to pay special attention to the following types of transactions:</p> <p>(a) any complex, unusual or large transactions that have no apparent economic or lawful purpose; or</p> <p>(b) any unusual patterns of transactions that have no apparent economic or lawful purpose;</p> <p>425. Failure to conduct such monitoring is an offence and could lead to imprisonment of not more than 5 years and a fine of FJ\$30,000, for a individual, and-, a fine of FJ\$150,000, for a corporate entity</p> <p>426. In meetings with banks, the assessors were advised that the banking industry have introduced processes to identify large value transactions which are then compared with the background of the customer to determine if the transactions require further scrutiny. The threshold for scrutiny is determined at branch level and based on the average value of transactions conducted through the bank. Some banks also have internal guidelines for staff to review an account's history to determine if transactions are conducted, which do not match the customer's profile.</p> <p>427. Banks also indicated that the relatively limited number of transactions that take place through each branch on daily basis (e.g., 600 transactions in one branch) makes detection of unusual patterns relatively easy.</p> <p>428. The draft regulations proposed by the authorities provide guidance on the type of monitoring which a financial institution is expected to undertake.</p>

429. **Examination of Unusual Transactions (11.2)** : Section 10(4) of the FTR Act requires that financial institutions must :

- Examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
- Upon request, make available such findings to the FIU or to a law enforcement agency, to assist the FIU or the law enforcement agency in any investigation relating to a serious offence, a money laundering offence or an offence of the financing of terrorism

430. Banks indicated that they had internal processes where the examination of unusual transactions would be conducted by a centralised unit or specific member of staff. The results of the examinations would be recorded in writing and were filed away.

431. **Requirement to maintain findings (11.3)**: Section 8 of the FTR Act sets out the conditions under which a financial institution is required to maintain records for the purposes of the Act. The section requires the records to be maintained when (i) the financial institution makes a report to the FIU or (ii) there is an enquiry by the FIU or a law enforcement agency with the financial institution relating to money laundering or the financing of terrorism. In respect of the written findings of the examination of unusual transactions, this means there is a requirement to keep the records only when a report is made to the FIU or information is provided upon request. If no report is made to the FIU or no request is made, there is no requirement to keep the record.

432. The assessors were advised that, as a matter of practice, banks maintain the findings of an examination of an unusual transaction.

433. **Special Attention for Countries which Insufficiently Apply FATF Recommendations (c. 21.1-21.2)**: Prior to the introduction of the FTR Act, there was no requirement to pay special attention to issues relating to countries that did not or insufficiently applied the FATF standards.

434. Section 10(1)(c) of the FTR Act requires financial institutions to pay special attention to business relations and transactions with persons in a country that does not have adequate systems in place to prevent or deter money laundering or the financing of terrorism. Contrary to the international standard, there is no requirement for special attention to be paid transactions and business relationships with persons *from* such countries, as is set out in Rec. 21.

435. Section 10(4) further requires that such transactions or business relationships should be examined and the findings recorded in writing and be made available, upon request, to the FIU or law enforcement agency when investigating money laundering or terrorist financing. This means that all relationships or transactions are required to be examined. This mandatory examination of all transactions and business relationships exceeds the FATF standard, which only requires scrutiny when the transaction or business relations are those which have no apparent economic or visible lawful purpose. At present, there is no mechanism for the financial institutions to be advised of concerns about weaknesses in the AML/CFT systems of other countries. The Draft Regulations proposed by the authorities do provide guidance on the action which the financial institutions are expected to conduct in order to identify whether countries adequately apply the FATF standards.

436. **Application of Counter-Measures (c. 21.3)**: The FTR Act does not specifically provide for a mechanism to enable Fiji to apply countermeasures against a country which continues not to apply or insufficiently apply the FATF Recommendations. There is, however, sufficient flexibility in the Act to allow financial institutions upon their own initiatives or upon instructions from the FIU to impose any of the countermeasures envisioned by the R. 21.

The Draft Regulations proposed by the authorities establish a mechanism through which the supervisory authority, in consultation with the FIU, can specify the factors that a financial institution should take into account when determining whether a customer is of a higher risk.

Analysis of Effectiveness

437. There is no specific requirement to maintain the results of the examinations of issues of concern. This undermines the effectiveness of the monitoring requirements and the utility to competent authorities. It should be noted however that the banks indicate that they keep such records as a matter of prudence.

438. The requirement to only pay special attention to transactions and business relationships *in* countries

which do not adequately apply the FATF recommendations, rather those *from* such countries, does mean that persons, which may pose higher risk, are not fully covered and, therefore, has implications for effectiveness.

439. Banks, that are branches of foreign banks, have indicated that they receive lists of high risk countries from their head offices and they act upon head office instructions on how to handle transactions involving such countries, including restricting the scope of business involving the identified jurisdiction. Local authorities do not currently provide any guidance of this issue.

440. Despite the reporting of banks that they have already introduced some measure of on-going monitoring, enhanced due diligence of unusual transactions, and enhanced due diligence with regard to some jurisdictions, it is too soon to confirm the effectiveness of the FTR Act requirements. Banks rely primarily on unusual value of transactions, as opposed to other indicators of unusual pattern. This potentially leaves undetected transactions that should be treated as unusual.

441. All non-bank financial institutions do not yet implement such enhanced due diligence measures. Even the practices of banks have not yet been verified by independent supervisory inspection or examination.

442. With regard to Fiji's AML/CFT evident policy, the Act goes beyond the international standard and imposes on all covered institutions the onerous obligation of exercising enhanced due diligence on *all* transactions involving jurisdictions that do not meet the international standard and to document their examination in writing. While the international standard is a minimum standard that Fiji has the prerogative to expand when this is done without due consideration to compliance and supervisory capacity, it may undermine the effectiveness of the overall system.

423. These extensive enhanced due diligence requirements are applied, at the risk of penal sanction, to all covered financial institutions including micro-credit institutions and institutions that are small in size and may pose very limited risk. This is impractical and unjustified. It can undermine the effectiveness of the system. The authorities have the option to exclude non-prudentially regulated sectors from the scope of the Act on risk-basis or to simplify the obligations imposed upon them.

Recommendations and comments

443. The requirements and the authority provided by the FTR Act is sufficient to implement an enhanced due diligence system that is consistent with international standards. While there is anecdotal evidence that some of the measures imposed by the Act are already practiced by banks, effectiveness is yet to be achieved and verified. All non-bank financial institutions are yet to implement their obligations under the Act.

444. The more stringent obligations imposed by the FTR Act in this area as described above and analyzed for effectiveness in para 420 and 421, may have negative implications for small businesses and for access to finance without necessarily serving any AML/CFT objective.

445. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Taking measures to exempt non-prudentially regulated sectors that do not pose ML/TF risk from the obligations to conduct enhanced due diligence under s. 10 of the FTR Act, or to simplify their obligations in this regard.
- b) Setting the duration for the retention of records relating to unusual transactions as required under s.10 of the FTR Act for a minimum of five years.
- c) Extending the requirement to pay special attention to transactions and business relationships with persons *in* a country that does not sufficiently apply FATF Recommendations under s.10 of the FTR Act to include persons that are *from* such countries even when they are operating from outside that specific jurisdiction.
- d) Revising the mandatory requirement to examine all transactions with persons in countries which do not or insufficiently apply the FATF recommendations to restrict it to situations where such transactions have no apparent economic or lawful purpose.
- e) Putting measures in place to advise financial institutions of countries that have weak AML/CFT measures in place.
- f) Ensuring that non-bank financial institutions implement adequately their obligations under s. 10 with due regard to the first recommendation offered in this paragraph.

Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none"> • FTR Act requirements to pay special attention to unusual transactions are largely consistent with FATF Rec. 11. • While there is a requirement to document findings in writing and to make them available to the authorities when requested, there is no requirement to retain the records of examination of unusual transactions for a specified period of 5 years as required by the standard. • The effectiveness of the requirements remains limited. Only banks have adopted some measures. These measures are limited and not verified by supervisory examination. All non-bank financial institutions do not yet implement these requirements.
R.21	PC	<ul style="list-style-type: none"> • FTR Act requirements provide a basis for handling transactions and relationships involving countries which do not sufficiently implement AML/CFT standards. • There are sufficient powers, authority and flexibility in the Act to allow adequate implementation of countermeasures against countries that do not have adequate AML/CFT systems. • Banks receive and implement instructions from their head offices regarding handling transactions with countries with inadequate systems. • Financial institutions are not currently advised of the weaknesses in the AML/CFT systems of other countries. • There is no implementation of the required measures beyond the banking sector.

2.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25 & SR.IV)

Description and analysis

446. **Legal Framework :** FTR Act: ss. 13, 14, 16, 18, 19& 20; POC Act: s. 61.

447. **Reporting of Suspicious Transactions (c. 13.1-4 & VI.1-2):** Prior to the introduction of the FTR Act, the requirement to report suspicious transactions was set out in Section 61 of the POC Act. The requirement to report under the POC Act was referred to in Section 3.3 of the Policy 6.

448. Effective January 1, 2006, the requirement to report suspicious transactions pursuant to the POC Act was repealed. Section 14 of the FTR Act now requires a financial institution to file a report :

(a) where it suspects or has reasonable grounds to suspect that a transaction or attempted transaction may be related to the commission of a serious offense, money laundering offense, financing of terrorism offense or an act preparatory to a financing of terrorism offense; or

(b) has information which it suspects or has reasonable grounds to suspect:

(i) may be relevant to an investigation or prosecution of a person or persons for a serious offense, money laundering offense, or financing of terrorism offense ; or is related to the commission of such offences;

ii) may be of assistance in the enforcement of the POC Act; or,

iii) may be preparatory to a financing of terrorism

449. The definition on the Act of what suspicion should trigger reporting is, in the view of the assessors, sufficiently broad and, with adequate guidance financial institutions should be identifying and reporting transactions that may be linked to financing of terrorism whatever its form.

450. The requirement under section 14(1)(b) to *provide information* that is suspected to be relevant to an investigation or prosecution of a serious offence is a broad requirement. It can be interpreted as requiring financial institutions to provide to the FIU with the personal details or transaction records of persons wanted for criminal offences for which the maximum penalty exceeds 12 months imprisonment. This goes beyond the intention of a suspicious transaction reporting regime and places an inappropriate burden upon the financial institutions. This amounts to instructing financial institutions to go on “fishing expeditions” for law enforcement

authorities to identify material that may be relevant for investigation of offences. This is an unjustified impingement on the confidentiality rights of customers. It also exposes financial institutions to criminal liability when in retrospect they are found to be holding material that may be relevant to an investigation even where such material is unrelated to a suspicious transaction or activity on an account.

451. Institutions are required to report as soon as practicable after forming the suspicion but no later than 2 working days afterwards. Failure to report such information is punishable by FJ\$30,000 fine and up to 5 years imprisonment for an individual and a fine of FJ\$150,000 for a corporate entity.

452. There is no minimum threshold for the reporting of suspicious transactions. The definition of a serious offence is any offence for which the maximum penalty is prescribed by law and exceeds 12 months imprisonment or death. For a money laundering offence, the predicate offences are any acts or omissions, which constitute an offence against a law in Fiji or a foreign country. As such, there is no exemption from reporting because a matter is considered to be related to tax matters.

453. **Additional Elements (c 13.5)** - The reporting requirement includes all offences, which would constitute predicate offences for the offence of money laundering within Fiji

454. The Draft Regulations proposed by the authorities provide further clarification concerning the reporting of suspicious transactions.

455. Financial institutions have been reporting suspicious transactions to either the interim FIU or, prior to its interim FIU's establishment, to the FPF and the DPP. Banks, credit unions and foreign exchange dealers have submitted reports to the FIU pursuant to the POC Act. Following the introduction of the FTR Act, STRs have continued to be submitted. The subject of the STRs has included suspected tax related offences and there has been one STR, which was suspected to be related to terrorist financing.

456. **Protection from Liability for Filing STRs (c. 14.1):** Prior to the introduction of the FTR Act, section 62 of the POC Act did not provide protection from liability for reporting institutions. Under section 20 of the FTR Act, financial institutions; their directors, officers and employees; their auditors and their supervisory authorities are protected from civil, criminal and disciplinary proceedings for filing a report in good faith or in compliance with an instruction from the FIU.

457. **Tipping Off Provision (c. 14.2):** Section 18 of the FTR Act introduces the prohibition of a financial institution and its officers, employees, agents and any other person from disclosing to any person that a suspicious transaction report has been filed with the FIU, that the financial institution has formed the suspicion concerning a transaction or any other information from which a person could reasonably infer that suspicion had been formed or a report had been made. Contravention of the section is punishable with a fine of FJ\$12,000 or imprisonment up to 2 years for an individual or a fine of FJ\$60,000 for a corporate body though if the contravention is done with the intent to prejudice an investigation into a serious offence or a money laundering or terrorist financing offence, the punishments are increased by a factor of 2.5

458. **Additional Elements (c.14.3) :** Section 19 of the FTR Act make it an offence to disclose information that will identify or that is likely to identify any person who has handled a transaction, which is the subject of a report or a person who has prepared or made the report. It is also an offence to disclose information that reveals or that is likely to reveal the information contained in the report. The exception to these offences is when the information is revealed in the course of an investigation or prosecution of a serious offence, money laundering or terrorist financing offence and the enforcement of the POC Act.

459. **Threshold Reporting (c. 19.1) :** In accordance with section 13(1) of the FTR Act, financial institutions are required to report all cash transactions exceeding FJ\$10,000 or the equivalent in foreign currency to the FIU, unless both the sender and recipient are banks. Section 13(2) further requires that banks or money transmission business must report to the FIU any single transactions into or out of Fiji which exceed FJ\$10,000. For both of the sections, the Minister has the capability to prescribe a different threshold. Failure to report such information is punishable by FJ\$30,000 fine and up to 5 years imprisonment for an individual and a fine of FJ\$150,000 for a corporate entity. These sections have not been brought into force to date.

460. Attempting to circumvent the reporting requirement by structuring the transactions is an offence pursuant to section 13(6) of the FTR Act.

461. The authorities have indicated these sections will be brought into force once the FIU has sufficient IT

capability to process the reports. The draft regulations proposed by the authorities provide further clarification concerning the reporting of such transactions.

462. **Guidelines for Financial Institutions and DNFBPs (c. 25.1):** Section 3.3 of Policy 6, which is entitled “Guidelines for Licensed Financial Institutions to Counter Money Laundering”, cites the requirement to report suspicious transactions in accordance with the now repealed section 61 of the POC Act, and section 11 of the Policy 6 provides guidance in relation to the internal reporting procedures for financial institutions. The document provides no further guidance to institutions on the identification and reporting of suspicious transactions.

463. To date, no guidance has been provided to financial institutions pertaining to the requirements under the FTR Act, although Section 25(1)(j) requires that the FIU, in consultation with the supervisory authority, provide guidelines on reporting institutions on its reporting obligations and identifying suspicious transactions. The draft regulations proposed by the authorities set out the policies and procedures for the reporting of suspicious transactions and threshold reports, including the prescription of reporting forms as well as providing the capability for the relevant supervisory authority to issue guidelines. Currently, reporting is done in writing and submitted physically to the FIU, without following a prescribed format.

464. **Feedback from FIU (c. 25.2) -** Between 2003 and 2004, the FIU provided feedback to reporting institutions on each case that was disseminated by the FIU for further investigation. The institutions were also provided feedback on the reports that were filed without being disseminated. Due to the increased number of reports made and the limited resources available, the FIU revised the feedback procedure in 2005; that feedback is only given for cases that are disseminated to the law enforcement authorities.

465. The financial institutions that were required to make reports to the FIU prior to the introduction of the FTR Act confirmed the receipt of feedback from the FIU but further commented about the reduction of feedback. They considered further that feedback was required.

466. Section 25(1)(k) of the FTR Act requires that the FIU provide periodic feedback to financial institutions regarding the outcome of the reports made by them. Section 25(1)(i) also requires the FIU to produce statistics, which should be circulated within Fiji. This would include information on the number of reports made to the FIU and the number disseminated. There is also a requirement for the FIU under section 25(1)(n) to conduct research into the trends and developments in the area of ML and TF. This research would also be useful in providing feedback to the reporting institutions.

Analysis of Effectiveness

467. Only banks and credit institutions have been required to report STRs prior to theft Act. Only banks have been consistently implementing their obligations in this regard. The average number of STRs per year is 311 with a peak in 2004 to 432. An average of 68 STRs per year were subsequently disseminated to competent authorities for further action, mostly to FIRCA for tax matters. The FIU indicated satisfaction with the quality of STRs and also confirmed that there has been improvement in the quality of STRs in 2005. An average of 311 STRs per year in a country that has only 5 banks is considered by the assessors to be a functioning system of suspicious transactions reporting, even though there may be slight under reporting.

468. There is very limited reporting from credit institutions and one RBF inspection was triggered by the failure of the credit institution to perform the reporting function and the inspection confirmed that this to be the case.

469. To date, there has been one reporting of suspicion in relation to terrorist financing. In view of the low risk of terrorist financing in Fiji, this should not however be taken as indicative of ineffective implementation.

470. The STR system is not yet implemented beyond the banking sector. It is worth noting as indicated elsewhere in this report, that the FIU has recently received an STR from a law firm which was subsequently disseminated for further investigation.

471. Going beyond the standard to require financial institutions to report any information that is suspected to be relevant to an investigation is too broad and may cause unnecessary compliance burden on reporting entities.

472. Banks' compliance with their reporting obligations under Policy 6 never triggered any liability under any legal or regulatory obligations.

Recommendations and comments		
<p>473. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider :</p> <p>a) Revising the broad requirement in Section 14(1)(b) to report information that does not arise from a suspicious transaction involving the reporting institution. This broad informant function may misdirect the attention of financial institutions away from the underlying purposes of the FTR Act, which is to prevent and detect ML and TF.</p> <p>b) Ensuring that non-bank financial institutions are aware of their STR obligations and are taking measures to implement them effectively.</p> <p>c) Providing financial institutions with guidelines to assist in the implementation of their requirements</p> <p>d) Introducing a mechanism to ensure regular feedback is available to the reporting institutions in respect of current ML and TF trends and the overall reporting regime.</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 2.7 underlying overall rating
R.13	PC	<ul style="list-style-type: none"> The FTR Act in respect of the reporting of suspicious transactions is substantially in compliance with international standards. STR requirements are currently only effectively implemented by banks in accordance with Policy 6. STR requirements have been imposed upon the non-bank financial institutions recently by the FTR Act and are not yet implemented.
R.14	C	<ul style="list-style-type: none"> The Recommendation is fully met.
R.19	C	<ul style="list-style-type: none"> The Recommendation is fully met.
R.25	PC	<ul style="list-style-type: none"> No guidelines have been provided to financial institutions on their reporting obligations and in respect of identifying suspicious transactions. The FTR Act has created a requirement for guidance to be provided to the financial institutions Feedback is given to reporting institutions on reports that are disseminated to the law enforcement authorities and only summaries of STRs that are filed away. The FTR Act has formally introduced the requirement to provide feedback The rating in this box is an aggregate rating of R.25 across the various parts of the report.
SR.IV	PC	<ul style="list-style-type: none"> STR requirements apply in the same manner to suspicion of financing of terrorism. TF related STR requirements have only been introduced by the FTR Act. Therefore evidence of the effectiveness of these provisions is still limited.

Internal Controls and Other Measures

2.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	
Description and analysis	
474.	Legal Framework: Section 21 of the FTR Act, Part V. of Policy 6.
475.	Internal Procedures and Compliance Function (c. 15.1) Section 21 of the FTR Act requires financial institutions to maintain procedures and systems to make their officers and employees aware of the procedures and policies for compliance with AML/CFT. The same section also requires financial institutions, unless it is a sole individual, to appoint a compliance officer. The requirement to appoint a compliance officer was imposed on banks and credit institutions by paragraph 11(a) of Policy 6.
476.	An Independent Audit Function (c.15.2): Section 21(3) of the FTR Act requires FIs to establish an audit function specifically to test AML/CFT compliance. The Act however does not address the resources and

independence of the audit function. No similar requirement was imposed by Policy 6.

477. **On-going Employee Training (c. 15.3):** Section 21(2) of the FTR Act requires financial institutions to train its officers, employees and agents to recognize suspicious transactions. The requirement under the Act is too narrow in that it focuses on suspicious transactions to the exclusion of all other issues, such as CDD and other requirements of the FTR Act.

478. **Screening of Employees:** Section 21(1)(a) of the FTR Act requires FIs to establish and maintain measures to screen potential employees.

Analysis of Effectiveness

479. Currently only banks implement AML/CFT internal controls. All banks in Fiji have AML/CFT internal procedural manuals that set up the institutional procedures for CDD, record-keeping and detection of suspicious transactions. This has been confirmed by RBF, which receives a copy of these manuals for off-site examination purposes. The assessors had access to the manual of one bank, which was of adequate quality. One area of weakness was the lack of guidance on detecting unusual transactions. This is however consistent with the newness of this obligation.

480. All banks have appointed a compliance officer charged with AML/CFT compliance. This is generally performed as part of the overall compliance function.

481. Four of the five banks operating in Fiji are branches of foreign banks. They have all confirmed that they are systematically audited by their head office audit department for compliance with AML/CFT. This was not confirmed by the RBF independently. The same applies to the one locally incorporated bank, which is wholly owned by a foreign holding company.

482. RBF confirmed that banks implement internal training programs on AML/CFT. One bank indicated that AML/CFT training is part of the introductory training package for all new staff that deal with customers or accounts. The view of the assessors is that the training remains of general awareness raising nature as opposed to detailed operational training.

483. Banks, credit institutions, insurance companies, and securities companies all screen their employees on basis of police records.

484. **Foreign Branches (c. 22.1 - 22.2)** Section 21(5) of the statute requires a financial institution in Fiji to apply the same CDD, record keeping, and reporting provisions that applicable to itself to its foreign branches and majority owned subsidiaries. The specific requirements of this provision are entirely consistent with FATF Rec. 22 and the Methodology. It should be noted that four of the five banks operating in Fiji are themselves branches of other foreign banks. Thus, this provision is not applicable to them. The other bank is chartered in Fiji, but does not currently operate any branches outside of Fiji. Other types of financial institutions do not operate branches outside of Fiji.

Recommendations and comments

485. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider :

- a) Providing guidance to financial institutions on developing internal procedures, policies and controls relating to AML/CFT compliance.
- b) Assessing the capacity and nature of business of the newly covered non-bank financial institutions with a view to tailoring the guidelines to their specific business operations.
- c) Ensuring that non-bank financial institutions, especially foreign exchange dealers, credit institutions, securities and insurance companies are adequately implementing internal AML/CFT policies and procedures.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
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R.15	PC	<ul style="list-style-type: none"> • The FTR Act in respect of the procedures, policies and controls pertaining to AML/CFT is in compliance with international standards. • Limited Internal control requirements are currently only implemented by banks in accordance with a Policy 6. • All non-bank financial institutions are not yet implementing AML/CFT internal controls.
R.22	C	<ul style="list-style-type: none"> • The legal requirements of the law are fully consistent with the Recommendation. • None of the financial institutions established in Fiji currently operate foreign branches.
2.9 Shell banks (R.18)		
Description and analysis		
<p>486. Legal Framework: Banking Act (1995) s.3.</p> <p>487. Establishment of Shell Banks (c. 18.1) Section 3 of the Banking Act of 1995 requires that any company engaging in any banking business in Fiji must be a licensed financial institution. The RBF, under the supervisory authority provided in the Banking Act, does not license shell banks. Moreover, there are no shell banks currently operating in the country. Thus, Fiji does not approve the establishment or accept the continued operation of shell banks.</p> <p>488. Correspondent Banking (c. 18.2-18.3) Banks in Fiji represented that they or their head offices conduct due diligence on correspondent banking relationships with regard to shell banks. However, the assessment team was not able to verify that a bank chartered in Fiji is prohibited from having a correspondent banking relationship with a shell bank, even though it appears that none do so. Furthermore, the assessment team was not able to verify that there is a prohibition against a Fiji bank offering correspondent banking services to a foreign institution that permits its accounts to be used by shell banks.</p>		
Recommendations and comments		
<p>489. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider :</p> <p>Instituting prohibitions, which could be done by regulation or enforceable supervisory guidance, against banks chartered by Fiji (1) establishing or maintaining a correspondent banking relationship with any shell bank; and (2) acting as a correspondent bank for any foreign bank that permits its accounts to be used by shell banks</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> • The licensing policies of the RBF preclude the licensing of a shell bank. • Fiji does not have a prohibition against its banks establishing correspondent banking relationships with shell banks, or serving as a correspondent bank for any foreign institution that permits its accounts to be used by shell bank

Regulation, Supervision, Guidance, Monitoring and Sanctions

2.10 The supervisory and oversight system—competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R.17, 23, 25, 29, 30 & 32)		
Description and analysis		
<p>490. Legal Framework: The FTR Act: ss. 4(8), 8(5), 9(3), 10(2), 13(5), 13(6), 14(4), 16(2), 17, 18(6), 19(4), 28(4), 29, 38, 39, and 40 (on Sanctions); s. 25 (Functions, duties and Powers of the FIU); 28 (Power to Examine); 29 (Power to Enforce Compliance); 36 (Obligations of Supervisory Authorities); 42 (Regulations).</p> <p>491. On general licensing and regulations of financial institutions: Banking Act (1995); Insurance Act (1998) as amended (2003); CMDA Act (1996); CMDA (Securities Exchanges and Licensing) Regulations (1997), Credit Unions Act (1954) as amended.</p>		

Sanctions (R.17)

492. **The Quality and Range of Sanctions (R. 17.1 & 17.4)** The FTR Act relies primarily on a penal scheme of sanctions to enforce compliance with the AML/CFT requirements imposed on financial institutions by the Act. Penal sanctions are diffused throughout the Act for various regulatory infringements. In addition, the Act prohibits certain acts that are considered detrimental to the effectiveness of the AML/CFT system and sanctions these prohibitions with criminal penalties.

493. The Act punishes by a fine not more than F\$30,000 and or imprisonment for not more than 5 years in the case of natural persons and by a fine not more than F\$150,000 in the case of a legal person, any of the following acts or breaches:

- Breaching CDD requirements (s.4(1-3) & (6-8))
- Opening, operating or maintaining anonymous or numbered only accounts or accounts with fictitious names (s.9)
- Failing to exercise enhanced due diligence in the situations defined by the Act (Unusual transactions, transactions with weak AML/CFT systems, wire transfers without originator information) (s.10)
- Breach of threshold reporting obligations. (s. 13(1)-(5))
- Structuring transactions to evade reporting obligations. (s. 13(6))
- Breach of suspicious transactions reporting obligations. (s. 14)
- Failure to disclose information relating to property of terrorist groups. (s.16)
- Tipping-off and disclosure of information relating to reporting with intent to prejudice investigation. (s. 18(7))

494. The Act punishes by a fine not more than F\$12,000 and or imprisonment for not more than 2 years in the case of natural persons and by a fine not more than F\$60,000 in the case of a legal person, any of the following acts or breaches:

- Failing to maintain the prescribed records. (s. 8(1-2 & (5))
- Tipping-off and disclosure of information relating to reporting more generally. (s. 18(6))
- Disclosure of information relating to the identity of the person who reports (s.9)

495. In this scheme of penal sanctions, the Act omits to attach any penalty to the infringement of certain regulatory requirements such as:

- Section 5 obligations with regard to cross-border correspondent banking relationships;
- Section 6 obligations with regard to third party or introduced business;
- Section 11 obligations to conduct on-going due diligence;
- Section 12 obligations to include originator information with electronic funds transfers; and
- Section 21 obligations to maintain internal controls.

496. In addition to the penal sanctions provided above, s. 29 of the Act provides an indirect avenue for imposing a civil sanction for failure to comply with the requirements under the Act. According to s. 29, the FIU may direct an institution that failed to comply with any of the obligations under the Act to implement an action plan to ensure compliance. Failure to comply with the directive may result in a court order, upon the request of the attorney-general, compelling the institution or any of its officers or employees to comply at the risk of a court ordered financial penalty for failure to comply with the order. The financial penalty may be ordered against the institution or any of its officers or employees. The size of the penalty to be set by the Court in a manner consistent with the penalties under the Act. Under the Act, this is the only avenue available for sanctioning the breaches listed in the previous paragraph.

497. The Act does not give any supervisory authority the power to use its sanctioning powers to compel compliance with the requirements under the Act.

498. In analyzing the system of sanctions described above, the assessors concluded the following:

- The penal sanctions provided under the Act could be dissuasive.
- Subject to the exercise of appropriate prosecutorial and sentencing discretion, the penal process and penal sanctions could be made to apply proportionately.
- The Act does not provide sufficient variety of sanctions. It is to be noted that while the obligations are

largely regulatory in nature, the Act does not provide for any form of administrative or disciplinary sanction.

- Reliance on a system of sanctions through the courts is unlikely to be effective as it will be undermined by the lack of resources that besets both the penal and the civil sections of the judiciary as discussed in the Section C (General) of this Report above.
- The Act does not provide adequate sanctions for less serious breaches that do not merit a penal process or a directive stipulating an action plan but yet merit some kind of intervention to bring the institution into compliance. For this type of breach, there is no effective, dissuasive and proportionate sanction under the Act. This cannot be mitigated by exercise of supervisory discretion supported by the threat of penal sanction, because in the current context, the role of relevant supervisory authorities in enforcing the Act is unclear and the FIU, which seems to be tasked with the main supervisory function under the Act, is under-resourced.
- The omission referred to in the previous point is significant if one takes into consideration the stage of implementation of the system, the size of the sectors covered and the low risk of money laundering.

499. Policy 6 requirements were supported by criminal offences under repealed section 59-61 of the POC Act. In addition, the RBF established in paragraph. 3.7 that it may use the sanctions available under the Banking Act to sanction breaches under the Policy. RBF has used these powers twice giving directives to inspected institutions, where weaknesses have been identified.

500. **Designated Authorities to Apply the Sanctions (c.17.2)** The penal sanctions under the Act are to be applied by the High Court through public prosecution. It is unclear which authority will instruct the DPP to bring the case to the court. With the vagueness of the statutory mandate to the prudential supervisory authorities to enforce compliance with that Act and the lack of resources available to the FIU, breaches could very well remain unsanctioned. The financial penalty available under s. 29 is also a court ordered penalty upon an application of the Attorney-General. Clearly, the Attorney-General will be alerted by the FIU to the failure to comply with one of the Unit's directives and will then use its power under the Act accordingly.

501. Supervisory authorities are not empowered to use their sanctioning powers to compel compliance with AML/CFT requirements. This understanding was confirmed in discussions with the authorities. It is also confirmed in the proposed Draft Regulations, which makes no reference to the application of sanctions by a relevant supervisory authority.

502. **Liability of Directors and Senior Management (c.17.3)** Section s. 40 of the FTR Act does not only recognizes the liability of directors and managers for breaches attributable to the legal person, It establishes a presumption of guilt if the act or omission constituting the offence "took place with that person's knowledge, authority, permission, or consent."

Analysis of Effectiveness

503. The Act has entered into force recently and it has not yet been enforced. For the reasons discussed in detail above. It is the assessors view that the system of sanctions established by the Act, while of some dissuasive value, is unlikely to be effective.

Regulation and Supervision (R. 23)

504. **Designated Competent Authorities (c. 23.2 & 23.7)** The FTR Act does not designate any particular authority as the authority *responsible* for ensuring compliance with the Act. Instead, the Act gives power to the FIU to examine any covered FI to ensure compliance with the Act and to issue directive for corrective action as discussed above. In addition, s.36 gives any body or agency with relevant regulatory, supervisory, or licensing authority over a financial institution the power to examine and supervise the FIs to ensure compliance with the Act. It does not, however, mandate the relevant supervisory authority to do so.

505. Discussions with the authorities revealed the lack of clarity regarding the framework of supervision set up by the relevant provisions of the FTR Act. On the one hand, the RBF and CMDA did not believe that they were empowered under the Act to exercise any AML/CFT supervision, unless they are designated to do so by the yet to be introduced implementing Ministerial regulations. Also, the authorities held that the Act does not authorize the relevant supervisory authorities to impose any sanctions using their general sanctioning powers for breaches of AML/CFT requirements under the Act.

506. This lack of clear mandate to supervise is reflected in the proposed Draft Regulations, which subjects the power of the relevant supervisory authority to issue guidelines to the approval of the FIU. This contradicts s. 36 of the Act, which gives the relevant supervisory authority the power to issue guidelines on detecting suspicious transactions without requiring approval of the FIU. The Draft Regulations do not address at all the power of the relevant supervisory authority to examine FIs for compliance. It also does not refer at all to the use of the sanctioning power of relevant supervisory authorities to enforce compliance.

507. On the other hand, the Draft Regulations seem to vest all the powers of supervision in the FIU, despite its lack of direct capacity to apply sanctions and its shortages of resources and staff as discussed in detail in s. 1.5 of this Report.

508. It is the analysis of the assessors, that the Act does not provide clear designation of an authority competent and responsible for ensuring compliance with AML/CFT requirements.

509. **Fit and Proper Requirements (c.23.3)** s.36 of the FTR Act authorizes the relevant supervisory authority of a financial institution to adopt any necessary measures “to prevent or avoid any person who is unsuitable from controlling or participating directly or indirectly in the directorship, management or operation of the financial institution.” The provision is general, it does not impose an obligation on the supervisor to take the defined measures, the term “unsuitable person” is not defined, and the provision focuses on control and management and omits to refer to the prevention of ownership of a financial institution by such persons.

510. As shown in section C (General) of this Report, all financial activities are largely carried out by institutions that are governed by specific laws and subject to licensing requirements. While the licensing requirements for the various financial activities vary, they all contain certain “fit and proper” requirements. It can be noted, however, that these requirements tend to be defined narrowly, focusing more on management and control as opposed to legal and beneficial ownership, placing more emphasis on financial safety and soundness as opposed to general integrity concerns. It is also important to note that, as far as prudentially regulated institutions are concerned, the conduct of fit and proper assessments up to normal supervisory standards would typically filter out criminals.

511. **Banks:** RBF’s licensing policy requires disclosure of complete information on incorporators, directors, officers and the ten largest shareholders. Section 9 of the Banking Act on “Investigation of Application for License,” requires the RBF to investigate the integrity and responsibility of the organizers and administrators with a view to assuring the safety of the interests that the public may entrust to them and the meeting the needs and the convenience of the community. This power is general enough, it is clear that it is underpinned more by the logic of financial safety and soundness as opposed to preventing abuse by criminals that may not be necessarily detrimental to the interests of depositors. It also focuses more on management as opposed to ownership of the institutions.

512. Section 19(1) of the Banking Act gives the RBF a general power to review the qualifications of officers and employees of financial institutions and to disqualify any persons found to be unfit. Section 19(7) debar from management any person who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty.

513. **Insurance:** RBF’s licensing policy for insurers, agents, and brokers, requires disclosure of the ownership and organizational structures. For corporate applicants, the policy requires submission of the Articles of Association and Memorandum of Association, which includes information on shareholders. The licensing requirements do not include explicit requirements to investigate to determine beneficial ownership and to ensure that the owners are of good standing.

514. Section 23 of the Insurance Act, disqualifies from acting as a director, principal officer, general manager, secretary or similar officer, any person, who has been convicted of an offence under the Act or has been convicted for a conduct relating to insurance or any dishonest conduct of an offence against any law in the Fiji islands or elsewhere. In addition, Section 25 lists as a condition for granting a license that the RBF be satisfied that the applicant has adequate technical knowledge and expertise and that the directors and other persons concerned with the management of the applicant are fit and proper. Section 43 of the Act imposes similar requirements for the licensing of intermediaries.

515. **Foreign Exchange Companies:** RBF’s licensing policy for Foreign Exchange businesses in Fiji requires disclosure of shareholding and details of the financial structure of the company. While the policy requires CVs

and character references for directors and principal officer or manager, it does not require comparable information and certification for legal and beneficial owners.

516. **Moneylenders:** moneylenders in Fiji must be licensed by the Registrar of Moneylenders in accordance with the Moneylenders Act (1939). Moneylenders licenses are issued for one year term and re-issued annually. Section 9 authorizes the Registrar to refuse a license on the ground that the good character of the applicant was not sufficiently proved. If the applicant is a company, then evidence of the good character of the persons responsible for management must be proved. Again, the Act emphasizes management rather than ownership. In practice, moneylenders in Fiji tend to be individuals and not companies or even partnerships.

517. **Securities Sector:** The CMDA licenses securities exchanges, brokers, dealers, investment advisers, and unit trusts or managed investment schemes. Licensing requires disclosure of ownership. Applicants to operate as brokers or dealers, which have share capital, must disclose the names and addresses of persons entitled to the beneficial interest in all its shares. In addition to these general transparency requirements, s.19 of the CMDA Licensing Regulations requires for a company to be licensed as broker or dealer or as an investment advisor, that it has as shareholders and members of its board of directors persons that the Authority considers fit and proper.

518. **Relevant Prudential Regulations (c.23.4)** Fiji regulates prudentially the banking, insurance and securities sectors. The Banking sector (banks and credit institutions) and the insurance sector (insurance and intermediaries) are regulated by RBF under the Banking Act and the Insurance Act respectively. The securities sector (securities exchanges, brokers, dealers, investment advisers and unit trusts) are regulated by CMDA. The relevant Acts provide RBF and CMDA with powers of licensing, conducting ongoing supervision, and managing risks for prudential purposes. There was no evidence at the time of the on-site visit that RBF, as the only supervisory authority that conducted supervision of AML/CFT compliance, has integrated AML/CFT considerations in the exercise of its general prudential regulation and supervision measures.

519. **Money or Value Transfer Systems (c.23.5-6)** It is illegal to conduct money transfer services without a license issued by the RBF under the Exchange Control Act. The licensing system for these activities is strict. Money and value service providers are “financial institutions” under the FTR Act and subject to all AML/CFT requirements. The requirements of the Act have not yet been implemented in the sector and on-going supervision of compliance has not yet commenced. The informal sector for these services is reported to be limited. For more detail see section 2.11 of this Report.

520. The FTR Act does not distinguish between domestic and international money or value transfer systems in the application of the Act. Currently, the domestic fund transfer sector is dominated by Post Fiji and regulated under the Post and Communication Decree (1989). *See infra* section 2.11 of this Report.

Analysis of Effectiveness (c. 23.1)

521. To date, no supervision of AML/CFT compliance has been conducted under the FTR Act. The ambiguity of the responsibilities of the relevant supervisory authority under the scheme of the FTR Act and the concentration of supervisory responsibilities in an understaffed and under-resourced FIU undermine the possibilities of ensuring adequate and effective regulation and supervision of the AML/CFT regime.

Guidelines (R.25)

522. **Guidelines (c. 25.1)** Section 25(1) of the FTR Act imposes an obligation on the FIU to provide guidelines to financial institutions in relation to customer identification, recordkeeping and reporting obligations and the identification of suspicious transactions. This should be done in consultation with the relevant supervisory authority. Section 36 authorizes the relevant supervisory authority to issue guidelines to detect suspicious patterns of behavior in their customers. No guidelines have yet been issued under the FTR Act.

523. It is worth noting that Policy 6 provides in some detail guidelines on internal control systems.

Supervisory Powers (R.29)

524. **Supervisory Powers to Monitor and Ensure Compliance (c. 29.1)** The FTR Act provides the FIU with powers to examine and to enforce compliance of obligations under the Act vis-à-vis all covered institutions (s. 28). Section 36 of the Act authorizes the relevant supervisory authority to examine and supervise the financial institutions, and regulate and verify, through regular examination, that a financial institution complies with the requirements of the Act. In discussions with the authorities, there was no agreement on the

understanding of the role of the relevant supervisory authorities. RBF and CMDA indicated that they will not be able to exercise supervisory powers in implementation of the Act unless designated to do so by ministerial regulations. They also indicated that the Act does not authorize them to use the scheme of sanctions available under their respective laws to enforce compliance with the Act. See further on this issue the discussion relating to R. 23 above.

525. **Conducting Inspections (c. 29.1)** The FTR Act in s. 28 gives the FIU the power to examine the records and enquire into the business and affairs of any financial institution for the purpose of ensuring compliance with the obligations imposed by the FTR Act. For that purpose, the same provision gives the FIU a very broad power to enter any premises and to gain access to documents and data. This power is available to the FIU “with or without” a warrant. The authority of the FIU under this provision is supported by penal sanctions against any person who obstructs or hinders the exercise of this power or fails to cooperate. This power is described in terms that are more akin to an investigative power of entry and search as opposed to a supervisory power of inspection.

526. **RBF:** The Banking Act gives the RBF a general supervision power over financial institutions licensed under the Act. Supervision is defined to include examination and investigation. While, the powers to examine and investigate are authorized for the purpose of ensuring sound financial practices. The assessors were satisfied that RBF uses these powers to ensure compliance with legislative and regulatory requirements in general. RBF conducts on-site inspection of all banks and credit institutions on annual basis. Out of cycle are sometimes conducted when the RBF has a reason for concern over the soundness of the institution. The RBF also conducts targeted inspections focusing on specific areas. There is nothing in the language of the Banking Act to preclude the use of these powers for AML/CFT purposes. In fact, prior to the FTR Act, the Financial Market Department added to its areas of responsibility monitoring the implementation of AML/CFT. Under Policy 6, the RBF conducted 5 targeted inspections of Banks and of one credit institution. These were conducted jointly with the Interim FIU. The problem arises in the way the FTR Act is being interpreted and the lack of clear mandate in the Act as explained in paragraph. 503 above.

527. The Insurance Act gives RBF the power to conduct an investigation if it suspects that a licensed person has contravened this Act or any direction given to the licensed person. The investigation could be done by any inspector appointed by the RBF. Where it is reasonable and necessary for the conduct of the investigation, the inspector may enter the premises subject to the consent of the occupier or on basis of a court order. The Insurance Act does not give the RBF the power to enter premises and conduct routine supervisory inspections to ensure compliance with laws and regulations. It is however the practice of RBF to conduct on-site examination where it deems it necessary based on adverse findings from the off-site examination. In 2004, RBF conducted 2 on-site examinations of insurance companies. RBF examination of the insurance sector focuses exclusively on financial soundness and safety in the narrow sense. There has been no supervision in relation to AML/CFT.

528. With regard to the foreign exchange and international funds transfers sectors, the RBF has supervisory powers for purposes of implementing the exchange control Act specifically. These powers do not extend to ensuring compliance with other laws. To the extent that the RBF will be considered a relevant supervisory authority of these institutions under s. 36 of the FTR Act, it may be able to extend its powers to ensuring compliance with AML/CFT requirements. The ambiguity of the Act on this issue is even more acute with regard to these sectors in view of the limited original mandate of the RBF with regard to these sectors.

529. **CMDA:** Section 14 of the CMDA Act authorizes the CMDA to conduct inspections of the activities, books and records of any person which the CMDA approved or licensed. Section 15 gives the CMDA the powers it needs to conduct its functions. Section 56 gives the investigating officers the power to enter any place or building in order to conduct an inspection and to inspect and make copies or take extracts from any book, minute book, register or document. There is nothing in the language of the CMDA Act to preclude the use of these powers for AML/CFT purposes. The problem arises in the way the FTR Act is being interpreted and the lack of clear mandate in the Act as explained in paragraph above.

530. **Powers to Compel Production and Access Records (c. 29.3)** Apart from the power to examine described above, the FTR Act does not provide the FIU with any powers to compel production of document or give access to information.

531. **RBF:** Section 26 of the Banking Act gives the RBF the power to require any returns, data or information in implementation of the Banking Act and any other related laws, rules and regulations. This power

is sanctioned by a fine not exceeding \$5000 a day for the period of default. Section 45 of the RBF Act gives the Bank an equally general power to access information and documents relating to the business of any financial institution. The assessors were satisfied that RBF uses these powers to access documents for the purposes of ensuring compliance. There is nothing in the banking Act to preclude the use of these powers for AML/CFT purposes.

532. The RBF also enjoys under the Insurance Act a general power to require a licensed person to provide information or documents relating to the insurance affairs. The Act also gives the RBF the power to require a licensed person to produce any records relevant to the insurance business.

533. **CMDA:** Section 56 (2) gives an Investigative Officer of the CMDA the power to require any person to produce any books, registers or documents that is in his custody or under his control. Failure to comply is supported by a penal fine or a term of imprisonment.

534. **Powers of Sanctions (s.29.4)** The FIU does not have powers to impose sanctions directly on financial institutions. See discussion under R. 17 above for the use of civil fine under s. 29 of the FTR Act to give the FIU an indirect sanctioning power. Analysis of the FTR Act and discussions with the authorities revealed that, under the supervisory scheme of the FTR Act, relevant supervisory authorities may not be empowered to use the sanctions available under their respective laws to compel compliance with the FTR Act.

Resources, Standards and Training (R. 30)

535. **Resources (c. 30.1)** Under the current framework of the FTR Act, as interpreted by FIJI authorities, the FIU is the primary supervisory agency. The resources of the FIU, even when it achieves its full planned capacity, are not sufficient to perform this function. For more details on the resources of the FIU see Section 1.5 of this report.

536. **RBF:** Supervision of the Financial Sector falls within the responsibility of the Financial Market Department. Considering the small size of the banking and insurance sector, the human resources of the Financial Sector Department are deemed sufficient. The Department carries out its on-site and off-site responsibilities. The main problem that be-sits the RBF, like other government agencies in Fiji is staff turnover. Government authorities face the problem of retaining skilled technical staff. Staff turnover at the RBF according to the latest available figures (2004) was 6.1% with immigration and relocation to other institutions being the primary destinations of departing staff. It is worth noting however that the 6.1% turnover in 2004 was a 3.6% improvement on the previous year (10.1% for 2004)

537. The assessment for capacity to monitor the foreign exchange and fund transfer sector is less optimistic this was evidenced by the weaknesses observed by the assessors in the enforcement by the RBF of the Exchange Control Act.

538. **The CMDA:** The CMDA performs its regulatory functions through 13 Board members appointed by the Minister of Finance and a total of eight staff. The CMDA manages to maintain active regulatory function including routine inspections as well as investigations of specific complaints. In 2004 the CMDA concluded a review of its regulatory practices in response to a general perception that the Market was over zealously regulated. Considering the size of the market, it is the assessors' view that CMDA has the capacity to supervise the market for AML/CFT purposes. The CMDA has not exercised any AML/CFT supervision.

539. The Law Society and the Institute of Accountants as the self-regulatory institutions for the law profession and the accounting profession respectively, have very limited supervisory capacity and substantial backlog in investigating their current workload of disciplinary complaints. They carry out their functions through volunteer committees of professionals and without permanent staff.

540. **Code of Ethics:** There is a code of ethics applicable to all public civil servants, which include staff of the FIU, RBF and CMDA. This code is enforced by disciplinary process. In addition, some integrity standards are enshrined in the RBF Act and the CMDA Act and enforced by sanctions in the Act. The Law Society and the Institute of Accountants are the two institutions responsible for implementing the industries' codes of professional ethics.

541. **Training:** To date, Staff of supervisory authorities has not received any systematic training in conducting AML/CFT supervision. The RBF has achieved some understanding of the process through

conducting 6 inspections.		
Statistics (R.32)		
542. The RBF and CMDA maintain good and transparent statistics of regulatory/supervisory actions taken. RBF statistics on the number of AML/CFT inspections conducted were sufficient.		
Analysis of Effectiveness		
543. Prior to coming into force of the FTR Act, the RBF jointly with the FIU conducting three inspections of banks and credit institutions for compliance with Policy 6. The credit institution was found non-compliant and was instructed to implement a remedial action plan. Exercise of supervision by the RBF with regard to the insurance sector is very limited and AML/CFT supervision is not yet conducted. The securities sector is very small, yet the CMDA exercises the range of supervisory powers available to it, including the conduct of inspections. No AML/CFT inspections have been conducted to-date in relation to non-bank financial institutions.		
544. The lack of clarity in the mandate of relevant supervisory authorities to conduct AML/CFT supervision is likely to limit the use of the powers available to the supervisors for that purpose.		
545. The current structure, which relies primarily on the FIU for supervision, cannot function effectively. The FIU does not have the resources to conduct such a broad supervisory function.		
546. The extensive scope of the FTR Act and the lack of differentiation between the various sectors in requirements and method of supervision make it difficult to envision a system of supervision that can operate effectively.		
547. Domestic training capacity on AML/CFT supervision is very limited.		
Recommendations and comments		
548. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:		
<ol style="list-style-type: none"> a) Clarifying the provisions of the FTR Act with regard to the supervisory authorities' ability to use their sanctioning powers to enforce compliance with AML/CFT standards. b) Using, as a matter of urgency, the Ministerial power available under the Act to designate supervisory authorities for the various sectors covered with a view to creating a better sharing of the supervisory burden in a manner that ensures effective supervision for AML/CFT. Designation should not mean only naming a supervisory as relevant for a specific sector, but should also delineate its powers and responsibilities for supervising the sector. c) Placing the power to supervise the banking, insurance and securities sectors squarely with the relevant supervisors; i.e., the RBF and CMDA. The FIU should not play a duplicative role in this area. Any identified weaknesses by the FIU through its function to receive STRs should be referred to the relevant supervisor. d) Clarifying the AML/CFT supervisory responsibilities over the foreign exchange and wire transfer sectors. e) Ensuring the availability of a wider range of sanctions for failures to comply with the Act's requirements that include administrative and disciplinary sanctions. f) Using risk-based approach to exclude low-risk sectors from the coverage of the FTR Act. g) Using a risk-based approach to determine the type of supervision or monitoring necessary for various sectors to ensure effective allocation of limited resources. h) Identifying agencies that are suitable for conducting supervision/monitoring over non-prudentially regulated sectors and building their capacity sequentially in this area. The various registries as well as FIRCA are possible candidates for supervisory role over different sectors. i) Seeking technical assistance in developing AML/CFT supervisory capacity. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 2.10 underlying overall rating
R.17	PC	<ul style="list-style-type: none"> • It is not clear under the FTR Act whether supervisory authorities may use their sanctioning powers to enforce compliance with AML/CFT obligations. • In this context, the FTR Act is left to rely entirely on a system of penal

		<p>sanctions for infringements that are often administrative in nature. In general, there is no scheme of administrative sanctions to enforce the implementation of the Act. This approach is lacking in both proportionality and effectiveness.</p> <ul style="list-style-type: none"> • Considering the over-taxed resources of the criminal justice system in Fiji, relying on this system as nearly the sole mechanism for enforcing AML/CFT obligations is unlikely to be effective. • Some of the sanctions imposed are draconian in a manner that is likely to undermine the effectiveness of the overall AML/CFT regime by, for example, triggering defensive reporting.
R.23	PC	<ul style="list-style-type: none"> • The FTR Act creates an unclear AML/CFT supervisory framework: • The Act seems to vest the FIU with the power to supervise compliance with AML/CFT across all covered institutions. • The Act does not give the existing supervisory authorities a definite role in implementing and enforcing AML/CFT requirements. • The framework defined in the Act creates opportunity for conflict of jurisdiction and overlapping responsibilities. • There are fit and proper principles and measures under the FTR Act, Policy 6 (1999), the Banking Act and related licensing guidelines, the Insurance Act and the CMDA Act. There are also some limited measures with regard to other financial institutions. The effectiveness of these measures is limited by capacity and supervisory practices across non-prudentially regulated sectors. • The supervisory authorities for prudentially regulated sectors do not yet apply prudential regulations with due consideration of their relevance to fighting money laundering and terrorist financing. • There are measures in place for licensing, regulating and supervising money transfer and changing services. • The informal money and value transfer services are criminalized albeit with some limitations in enforcement.
R.25	PC	<ul style="list-style-type: none"> • To date, competent authorities have not issued guidelines to assist financial institutions in implementing their AML/CFT obligations. • The rating in this box is an aggregate rating of R.25 across the various parts of the report.
R.29	PC	<ul style="list-style-type: none"> • The FTR Act seems to vest all AML/CFT supervisory functions with the FIU and gives it full powers to conduct inspections, compel production of records and obtain access to records without procedural impediments. • The FIU, however, does not have adequate resources to carry out these supervisory obligations. • With the exception of the insurance sector, the supervisors of the other prudentially regulated financial institutions have adequate inspection, access to records powers under their respective acts, i.e.; the Banking Act, the Insurance Act and the CMDA Act. The RBF conducts inspections of the insurance sector. These supervisory authorities are however not definitively vested under the FTR Act with the authority to use such powers for the purposes of enforcing AML/CFT requirements. • The system of supervision as it is currently structured cannot be implemented effectively.
R.30	PC	<ul style="list-style-type: none"> • Under the FTR Act, the FIU seems to be the only authority vested with definite AML/CFT supervisory role with regard to an extensive range of institutions. The FIU is however not at all adequately resourced to perform this vast function. • The rating in this box is an aggregate rating of R.30 across the various parts of the report.

R.32	PC	<ul style="list-style-type: none"> • The supervisory framework is not yet in place. Implementing statistical requirements is therefore not possible at this stage. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
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Money or Value Transfer Services

2.11 Money or value transfer services (SR.VI)		
Description and analysis		
549.	Legal Framework:	The Exchange Control Act and related regulations, and the FTR Act.
550.	Requirement to Register or License MVT Services and Listing of Agents (c. VI.1 and & VI.4)	The transfer of funds into and out of Fiji is governed by the Exchange Control Act. The Act states that, other than with the permission of the Minister of Finance, no person in Fiji shall make any payment to or for the credit of a person outside of Fiji and no person outside of Fiji shall make any payment to or for the credit of a person inside Fiji. It further states that, except with the permission of the Minister of Finance, no person other than an authorized dealer, shall, in Fiji, buy or sell gold or foreign currency. To be authorized, a dealer must be licensed by the Minister of Finance. The powers under the Exchange Control Act have subsequently been delegated to the Reserve Bank of Fiji.
551.		The act also provides for an offence in relation to compensation payments conducted without the permission of the Minister which are defined as any payment or credit to a person in Fiji as consideration for the receipt by any person of a payment outside of Fiji, or the acquisition of property outside of Fiji.
552.		The RBF issues guidelines annually on the amounts and frequency of payments below which permission is automatically granted. These limits have been relaxed in the recent years, though the RBF is able to restrict them at any time.
553.		The licensing, monitoring and supervision of foreign exchange dealers is conducted by the Financial Market Group of the Reserve Bank of Fiji. At present, there are 13 dealers, other than commercial banks, which are authorized to deal in foreign exchange.
554.		There was anecdotal evidence to the effect that there was remittance operators operating outside of foreign exchange dealers though these were operating within a close circle of friends and family.
555.	Applicability of AML/CFT Regulations to MVT Services (c. VI.2)	The FTR Act designates any person or company conducting money transmission services, which includes exchanging or remitting funds or the value of money on behalf of other persons as a financial institution. All financial institutions defined in the FTR Act are required to comply with the FTR Act including the requirement to conduct CDD, retain records and report suspicious transactions.
556.		These subjects are discussed under the relevant sections of Section 2 – Preventative Measures – Financial Institutions. In discussions with the private sector, it was apparent implementation of the requirements under the FTR Act has not yet begun.
557.		Foreign exchange currency dealers have reported 3 STRs since the reporting requirement in POC Act was introduced in 1999.
558.		The FTR Act does not distinguish between domestic transfers and foreign transfers in the definition of activities covered by the Act. Currently, the domestic money transfer system is not supervised for AML/CFT purposes. The domestic money transfer system is largely serviced by Post Fiji. Post Fiji offers three types of products for domestic money transfers: Ordinary Money Orders (by mail), Telegraphic Money Orders (Tele/fax), Fiji Postal Notes. The table below shows the statistics on the use of these products.
Product	Number of Transactions	Value

Ordinary Money Order	2104	F\$109,888.67
Telegraphic Money Order	256,471	F\$45,726,946.36
Fiji Postal Notes	4445	F\$5,709.55
Total	263,020	F\$45,842,54.58

559. The money transfer services of Post Fiji are regulated by the Posts and Telecommunications Decree (1989) and the regulations issued under the Act. The current regulations contain basic obligations to obtain the remitters full name and address at minimum as well as any other information that may be required by the postmaster.

560. While Post Fiji is covered by the FTR Act in its supply of these financial services, they were not aware of their obligations at the time of the mission. It is however important to note, that some of the transactions are of very small value and the extension of the requirements of the Act should, therefore, be conducted on a risk basis. Discussions with staff of the Post Fiji revealed that they have KYC practices in place.

561. **The Monitoring of MVT Services (c. VI.3)** All foreign exchange dealers are required to provide details of all transactions conducted each month to the RBF, as well as their annual accounts. They may also be subject to an audit by the RBF. Despite the importance attached to exchange control measures in Fiji, the evaluation team was informed that the RBF was unable to match payments conducted by the same person at different institutions or banks to determine if the person had exceeded the limit for which permission from the RBF is required. This is indicative of limitations in the supervisory capacity in relation to this sector.

562. These monitoring powers are only available for the purposes of implementing the Exchange Control Act. Extending them to the implementation of AML/CFT measures will require a clearer mandate under the FTR Act.

563. **Measures to Deter Money Laundering and Terrorist Financing (c. VI.5)** In reference to the measures available under the FTR Act, these are discussed in Section 2.10 - The supervisory and oversight system of this report

Analysis of Effectiveness

564. The Exchange Control Act provides for the licensing of persons conducting international money transfer businesses. Under the FTR Act, any business providing money or value transfer service, whether domestic or international, is classified as a "financial institution" and is subject to the all the AML/CFT requirements prescribed in the Act. The requirements of the Act have not yet been implemented by the sector. It is important to note, that 3 STRs were filed by foreign exchange currency dealers.

565. There was anecdotal evidence that there are informal remittance service providers operating in Fiji. These operations are however limited and typically within a close circle of friends and family. There were also indications that compensation payments occasionally took place.

Recommendations and comments

566. Fiji has a regime which meets the international standards in terms of the money or value transfer. Implementation is however still at an early stage.

567. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Conducting a review to determine the magnitude of flows into and out of Fiji using the unregulated market and the methods used to transfer the funds, so that steps can be introduced to ensure that these operations are not abused for ML/TF.
- b) Ensuring effective supervision or monitoring of the sector, both domestic and international, for compliance with AML/CFT standards.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
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SR.VI	PC	<ul style="list-style-type: none"> • Fiji has a strict licensing requirement for foreign money transfer services under the Exchange Control Act. • Money transfer services are subject to AML/CFT requirements under the FTR Act. • AML/CFT requirements have not yet been implemented in the sector. • Supervision and sanctions suffer from the weaknesses identified in s. 2.10 above in relation to R.17 and R. 23.
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3. Preventive Measures–Designated Non-Financial Businesses and Professions

3.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11,)

Description and analysis
<p>568. Legal Framework : Part 2 of the FTRA Act (Obligations to keep Records and Verify Identity) and Schedule of the FTRA (Interpretation of “financial Institution”). Prior to the introduction of the FTR Act, no non-financial business or profession was subject to AML/CFT regulations.</p> <p>569. Covered Businesses and Professions (c. 12.1): The FTR Act imposes AML/CFT obligations on “financial institutions” defined functionally and very broadly to include “designated non-financial businesses and professions.” The list of non-financial activities covered by the Act is consistent with the Recommendations in that it includes the following businesses and professions and defines their covered activities in manner consistent with the Recommendations:</p> <ul style="list-style-type: none"> • Trust or company service providers (TCSPs); • A legal practitioner or accountant; • A real estate agent; • A dealer in bullion; • A common gaming house, a casino or lottery; and • Dealer in precious metal or precious stones or jewels <p>570. The FTR Act only applies AML/CFT obligations to legal practitioners, accountants, real estate agents and TCSPs when they carry out certain types of transactions that are defined in a manner consistent with the Recommendations.</p> <p>571. It is important to note that the FTR Act does not exclude “internal” or “in-house” legal practitioners and accountants. As the provisions are currently drafted, they seem to extend the scope of obligations to this category of practitioners, which raises enforcement and effectiveness issues.</p> <p>572. The notary function is performed by legal practitioners appointed by the Chief Justice as Notary Public in accordance with Part XI of the Legal Practitioners Act. Notaries are therefore covered as legal practitioners under the FTR Act.</p> <p>573. With the exception of trust and company service providers, legal practitioners and accountants, and real estate agents, all the other designated categories of businesses and professions are only subject to AML/CFT obligations “in relation to transactions above the prescribed threshold.” Setting a threshold as trigger for the obligation to conduct CDD or to keep records is generally consistent with international standards provided that the threshold should not exceed US\$3000 for casinos and US\$15,000 for dealers in precious metals and precious stones. It is important to note that the threshold envisioned by FTR Act relates to the value of the transaction regardless of whether it is in cash or in other means. No threshold has been set to-date, which means that the obligations of these designated categories are not yet in force.</p> <p>574. CDD, Recordkeeping, Risk Management and Unusual Transactions Monitoring (12.1-12.2) The Act does not distinguish between DNFBPs and “financial institutions” in the FATF sense. In fact, the FTR Act has a single category of covered institutions referred to as “financial institutions.” DNFBPs are therefore subject to the full range of obligations as described under sections 2.2, 2.3 and 2.5 of this Report. The Act therefore does not exclude from application to non-financial businesses and professions requirements such as enhanced due diligence for higher risk customers or the strict requirements on the timing of verification which could have been relaxed for DNFBPs without breach of the international standard. Furthermore, this umbrella</p>

approach, if maintained at the regulatory level may result in requirements that do not reflect the nature and size of business of some of designated categories.

575. **Sanctions (c. 12.3)** the sanctions prescribed under the FTR Act for breaches of obligations under the Act are equally applicable to DNFBPs. The same concerns relating to the sanctioning scheme under the Act, as described in section 2.10 above, are also applicable to DNFBPs.

Analysis of Effectiveness

576. In Fiji, trust and company services tend to be provided by lawyers and accountants. To-date, lawyers and accountants have not yet started implementing their CDD and record-keeping requirements under the Act. Lawyers and accountants, however, conduct CDD and keep records as part of standard business practices. The Larger law firms and accounting firms have begun to think about adapting their standard business practices to the requirements of the Act. This is, however, at a very early stage and does not reflect the situation of the large majority of small practitioners.

577. Real estate agents were less aware of their obligations under the Act and less accepting of these obligations.

578. For all the remaining businesses and professions, the threshold to be prescribed by regulations has not yet been set and therefore their obligations are not yet in force.

Recommendations and comments

579. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider :

- a) Where relevant, conducting a detailed risk assessment of the respective businesses to enable an appropriate threshold to be set.
- b) Excluding from the scope of application of the Act “internal” or “in-house” legal practitioners and accountants.
- c) Raising the awareness of the covered institutions of their obligation under the Act.
- d) Tailoring the regulations that detail the obligations of DNFBPs to the nature and size of their operations in order not to overburden the relevant sector and not to overwhelm the capacity of small businesses.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 3.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> • DNFBPs’ obligations under the FTR Act are substantially in line with the requirements of Recommendations 5, 6 & 8-11 and are applicable to all categories of DNFBPs. • The obligations of dealers in precious metal and stones are not yet in force. This is contingent on prescribing a minimum threshold for transactions to be covered. • The obligations have been imposed upon DNFBPs recently by the FTR Act and are not yet implemented. The provisions of the Act are therefore not yet effective. • The sanctions prescribed under the FTR Act for breaches of obligations under the Act are equally applicable to DNFBPs. The same concerns relating to the sanctioning scheme under the Act, as described in section 2.10 above, are also applicable to DNFBPs.

3.2 Suspicious transactions reporting (R.16) (applying R.13 to 15 & 21)

Description and analysis

580. **Legal Framework:** FTR Act: Part 3 (Obligations to Report), s. 37 (Overriding Secrecy), s. 15 (Supervisory Authority or Auditor to Report Suspicion) and Schedule to the Act (Interpretation of “financial Institution”). Prior to the introduction of the FTR Act, non-financial business or profession were not subject to reporting requirements.

581. **Covered Businesses and Professions (c. 16.1)** The FTR Act applies the reporting obligations to the same categories of businesses and professions as described in section 3.1 above. The FTR Act’s obligation to report covers adequately trust and company service providers, legal practitioners, accountants, and real estate

<p>agents. With regard to legal practitioners' privilege, s. 37 of the Act overrides completely any obligation of secrecy and any other restriction on the disclosure of information. This section leaves no scope for legal privilege as long as the transaction conducted by the legal practitioner or accountant falls within the categories defined by the Act.</p> <p>582. With regard to the other categories of businesses and professions, the obligation to report will not enter into force until the thresholds are prescribed by regulations.</p> <p>583. Submission of STRs (c. 16.2) The FTR Act requires all businesses and professions to submit STRs directly to the FIU.</p> <p>584. Applicability of Rec. 14, 15 and 21 (c. 16.3) The FTR Act does not distinguish between the FIs and DNFBPs. All the obligations defined under sections 2.7 and 2.8 of the Report are applicable to DNFBPs and the same shortcomings apply.</p> <p>585. Sanctions (c. 16.4) The sanctions prescribed under the FTR Act for breaches of obligations under the Act are equally applicable to DNFBPs. The same concerns relating to the sanctioning scheme under the Act, as described in section 2.10 above, are also applicable to DNFBPs.</p> <p>Additional Elements</p> <p>586. Other Professional Activities of Accountants (c. 16.5) Section 15 of the FTR Act imposes on auditors of financial institutions an obligation to report suspicious transactions.</p> <p>587. Reporting Suspicion that Funds are the Proceeds of a Predicate Offence (c. 16.6) The reporting obligation under s. 14 of the Act is broad and it encompasses suspicion that a transaction relates to the commission of a serious offence. This obligation is applicable to DNFBPs under the FTR Act.</p> <p>Analysis of Effectiveness</p> <p>588. DNFBPs have not yet set-up systems to implement their obligations under the Act. It is however important to note that the assessors were advised that in April 2006, a law firm reported suspicion to the FIU and this report has resulted in dissemination to the law enforcement authorities.</p>
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Recommendations and comments	
589.	In addition to any relevant recommendations under sections 2.7 and 2.8 above, the authorities should consider: <ul style="list-style-type: none"> a) Prescribing the threshold necessary for the obligations to enter into force in a sequential manner and subject to adequate and realistic risk assessment. b) Raising awareness of the obligations under the Act as well as training in understanding money laundering typologies and detecting suspicious transactions.

Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 3.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> • The STR requirements in the FTR Act, which are substantially in line with international standards, are applicable to all categories of DNFBPs. • The STR obligations of dealers in precious metal and stones are not yet in force. This is contingent on prescribing a minimum threshold for transactions to be covered. • STR requirements have been imposed upon DNFBPs recently by the FTR Act and are not yet implemented. The effectiveness of the provisions of the Act has therefore not been tested.

3.3 Regulation, supervision, guidance, monitoring and sanctions (R.17 & 24-25)	
Description and analysis	
Legal Framework: FTR Act, Legal Practitioners Act, Fiji Institute of Accountants Act.	
Sanctions (R. 17)	
DNFBPs are subject to the same system of sanctions applicable to financial institutions as described above in	

section 2.10 above. Therefore, the same shortcomings of the system apply.

Supervision and Monitoring (R. 24)

Casinos (c. 24.1) While casinos are covered under the FTR Act, casinos are currently prohibited in Fiji.

Other DNFBPs (c. 24.2) The FTR Act subjects all DNFBPs to the same supervisory framework as the one applicable to financial institutions. With the exception of lawyers and accountants, none of the other DNFBPs in Fiji are subject to any type of regulation or supervision. The Law Society and the Institute of Accountants have not assumed any supervisory function in relation to AML/CFT. Their role suffers from capacity issues as well as the same constraints derived from the ambiguity of the FTR Act. The strategy of the authorities is to give the FIU the primary role of supervising the full spectrum of DNFBPs under the Act. As indicated repeatedly in this Report, the FIU is not sufficiently resourced to conduct effective supervision of this scale.

Guidance (c. 25.1): No guidance has yet been issued to DNFBPs with regard to their obligations under the Act.

Recommendations and comments

590. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

Adopting a risk-based approach to determining the method and degree of monitoring to apply to each of the covered sectors of DNFBPs. In sequencing the implementation of the Act, the authorities should take all possible measures to ensure that DNFBPs are not exposed to criminal liability under the Act at a time when they are not in a position to achieve compliance with the regulatory requirements because of the lack of guidance and the absence of sector-specific implementing regulations.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 3.3 underlying overall rating
R. 17	PC	<ul style="list-style-type: none"> • See factors above under Section 2.10 • The rating in this box is an aggregate rating of R.17 across the various parts of the report.
R.24	PC	<ul style="list-style-type: none"> • Fiji prohibits casinos. • The supervisory framework envisioned by the Act does not have sufficient resources to achieve effectiveness.
R.25	PC	<ul style="list-style-type: none"> • No guidance was issued to DNFBPs to assist them in complying with their obligations. • The rating in this box is an aggregate rating of R.25 across the various parts of the report.

3.4 Other non-financial businesses and professions—Modern secure transaction techniques (R.20)

Description and analysis

591. **Other Non-Financial Businesses and Professions (r 20.1):** The Schedule to the FTR Act brings several activities beyond the DNFBPs as defined by FATF within the scope of coverage of the Act. Coverage is triggered when these entities engage in transactions above a set threshold. In such circumstances, they are considered to be financial institutions for the purposes of the act. The activities are as follows:

- Collecting money, or holding currency collected on behalf of another person, preparing payrolls on behalf of another person in whole or in part from currency collected on behalf of another person, and delivering currency, including credit union, check cashier or payrolls
- Common gaming house or lottery
- Bookmaker
- Art and antiques dealers
- Travel agency
- Motor vehicle, aircraft or other vessel dealers

592. In relation to the transactions conducted when classified as a financial institution, the entities become subject to the full requirements of the FTR Act. See Section 2 for analysis of the FTR Act.

593.	The authorities stated the entities engaging in those activities were included because they were considered either high risk or had featured in previous money laundering investigations.	
594.	At present, no threshold has been set for these entities.	
595.	Modern Secure Transactions (c 20.2) - Fiji has unique issues with regard to providing banking services to its residents. It is primarily a cash-based economy, due in large part to the wide distribution of its population. There are only two cities, Suva and Lautoka, both of which are located on the main island of Viti Levu. Banking services are available in population centers such as the cities and Nadi. However, most residents are located on numerous different islands, separated from Viti Levu and the other large island of Vanua Levu, or when located on these two main islands, many residents live in small villages in remote locations. More than half of Fiji's residents do not have a bank account. Other types of financial institutions, such as credit unions and credit institutions do not offer checking or transaction-type accounts.	
596.	In order to address this issue, Fiji has initiated two efforts to make banking services available to its more rural inhabitants. First, it has utilized the Postal Service to offer money transmission and savings services. Second, Fiji worked with the United Nations Development Program and ANZ bank to bring banking services to rural areas through the use of mobile banking offices.	
Analysis of Effectiveness		
597.	The government authorities have stated the absence of a threshold means that these designated entities are not currently subject to the FTR Act.	
Recommendations and comments		
598.	Other DNFBPs - In respect of the implementation of the AML/CFT regime for businesses and professions other than DNFBPs, the authorities should consider : <ul style="list-style-type: none"> a) Conducting careful risk and resource assessment to determine the appropriate timeframe for introducing a threshold that will bring the obligations of these additional sectors into effect. b) Identifying and designating a suitable supervisory authority and provide adequate resources for the performance of its functions as a prelude to implementing the provisions of the Act. c) Setting a realistic framework of supervision or monitoring based on an understanding of risk. 	
599.	Modern Secure Transactions - Fiji has made substantial efforts to make banking services available to more of its population. Continued efforts in this area should produce more progress.	
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.20	C	<ul style="list-style-type: none"> • The Recommendation is fully met.

4. Legal Persons and Arrangements & Nonprofit Organizations

4.1 Legal Persons—Access to beneficial ownership and control information (R.33)
Description and analysis
600. Legal Framework: Companies Act (1985), POC Act, and the FTR Act. Other legal persons such as co-operatives, credit unions, religious bodies and friendly societies are discussed in the sections relating to financial institutions and NPOs on basis of relevance.
601. For an understanding of the legal persons existing in Fiji, see section C. (General) of this Report.
602. Transparency Mechanisms (c. 33.1) Fiji laws contain various mechanisms that may intended ensure the transparency of ownership and control of legal persons. These mechanisms include: (1) a system of central registration; (2) recordkeeping requirements; (3) a variety of investigative and access to information powers available to various relevant authorities. The laws in Fiji do not directly require lawyers and accountants that provide company formation services to retain information on beneficial ownership and control. It is important to note however that investigative powers given by the Companies Act to the registrar and to special inspectors appointed under the Act permit them to compel information from such providers on these issues as discussed

below.

Central Registration System

603. Section 3 of the Companies Act creates “the Register of Companies” as a central registry that contains all the information prescribed by the Act. The information required by the Act to be submitted to the registrar include:

- (1) The memorandum of association;
- (2) The articles of association where applicable;
- (3) The full name, occupation, address and number of shares of each subscriber to the shares of a limited company having share capital;
- (4) The number of members of unlimited companies and limited companies not having shares, the number of members. For these types of companies, there is no requirement to register the members’ information separately. The name, occupation and postal address are available for each subscriber as part of the memorandum of association. Companies are also required to keep an up-to-date register of members including the same set of information;
- (5) A registered office and a registered postal address;
- (6) The particulars of the company’s secretaries;
- (7) For each director, which must be a natural person: present and former forename and surname, postal address, nationality, business occupation, particulars of all other directorships and in certain cases the date of birth. It is important to note that s. 203 of the Act deems to be director any person “in accordance with whose directions or instructions the directors of a company are accustomed to act.” This interpretation means that such indirect control of the company should also be disclosed; and
- (8) Foreign companies wishing to establish a place of business in Fiji must also submit to the registrar directors’ particulars similar to that defined in point (7) above, as well as full address of the registered or principal office of the company.

604. The Companies Act contains several requirements to file returns updating the above information both annually and within specified deadlines of any changes to the any of the above information.

605. While this set of required information is relatively broad and fairly standard in company laws, the information required does not probe into the issue of beneficial ownership. For example, there is no requirement to identify whether the member is acting as principal or on behalf of another. The Act specifically prohibits any entry of notice of trust on the register of members held by the company or on the central “Register of Companies.” There are also no specific requirements with regard to the entry into register of members that are themselves companies. The Companies Act with regard to the transparency of ownership of companies clearly relies on the investigative powers that it grants to the registrar under Part V, Division 9 as discussed below.

Recordkeeping requirements

606. The Companies Act requires companies to maintain a register of members that contains the name and postal address of members, and in the case of shareholders the number of the shares held by each member and each share’s ID number where applicable. The register should also include the date each member became a member and the date he ceased to be a member. The register must be kept at the registered office or where it is kept at any other place permitted by the Act, the registrar must be informed of the place where the register is kept.

607. The Companies Act also requires companies to maintain a register of all directors and secretaries that contain the same particulars as the one required to be submitted to the registrar and described by point (7) above.

608. The register must be regularly updated and returned in a manner that ensures security against falsification.

609. In addition to these recordkeeping requirements under the Companies Act, the FTR Act requires a wide range of entities to conduct extensive CDD when dealing with legal persons and to retain the relevant records as discussed in sections 2.2 and 2.5 of this report.

Investigative and other Access to Information Powers

610. Part V, Division 9 of the Act gives the registrar extensive investigation powers, these powers include

the following:

- (1) The power to order the company to furnish any books of the company or any information or explanation that he may specify in cases where the registrar suspects failure to comply with the Companies Act or suspects the accuracy of any information submitted to him.
- (2) The power to seek a court order appointing one or more inspector to investigate the affairs of a company. The court may appoint an inspector in cases where it appears to the court that the company was formed or is conducting its business for a fraudulent or unlawful purpose.
- (3) The power, upon having good reason to do so, to appoint one or more inspector to investigate ownership of a company for the purpose of determining “the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to influence the policy of the company.”

The appointed inspectors under points (2) and (3) have broad powers to compel the company’s agents or officers to produce documents and to examine them on oath. The company’s officers and agents include current or former officers and agents and a company’s agents include the company’s bankers, barristers, solicitors and auditors. (s. 171(5))

- (4) The power to investigate the ownership of any shares in or debentures of a company to compel production of information relating to the present and past interests in those shares and debentures, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures. The registrar can require this information from any person whom he has reasonable cause to believe to be or have been interested in those shares or debentures or to act or to have acted to in relation to them.

611. In defining the “person who has interest in a share or debenture” the Act aims at identifying the beneficial owner by extending the scope of the definition to any person who instructs others in the exercise of their rights with regard to the shares and debentures and they are accustomed to act upon these instructions even of this person does not have any apparent legal title or interest in the shares or debentures.

612. In addition to these specific investigative powers, the FTR Act grants the competent authorities powers to access the CCD related records, which include ownership and control relating to legal persons, to the FIU and a range of competent authorities as discussed in section 1.6 of this report. The POC Act also provides investigative authorities with a set of powers to enable them to obtain documents and pierce the corporate veil for the purpose of recovering the proceeds of crime as discussed above in section 1.3 of this report.

613. **Access to Information (c. 33.2)** The Companies Act makes the information held centrally by the office of the registrar to be accessible to the public both for inspection and by obtaining copies from the office. The Act also requires companies to make their registers of members and directors to be accessible to the public for inspection for a fee prescribed by the Act.

614. The current system of registration has certain flaws that affect its reliability as a source of timely, adequate and accurate information on beneficial ownership and control for the competent authorities:

- (1) The information is submitted and stored largely manually, the level of computerization is very low and does not provide the ability to conduct comprehensive searches or cross checks.
- (2) The storage of information is unsecured often leading to loss of documents.
- (3) There is no enforcement of the laws and regulations requiring updating of information relating to ownership and control. Filing of returns is therefore sporadic and the information held by the registrar does not necessarily reflect the current status of the company.

615. In the absence of enforcement by the registrar, the reliability, adequacy and accuracy of the registers held by the companies themselves can not be guaranteed.

616. These limitations on the effectiveness of the system of central registration also undermine the ability of financial institutions to meet their obligations under the FTR Act and verify the CDD information submitted to them by their client companies. It is also relevant to note, that as discussed in section 2 of this report, the FTR Act is in force but not yet in full effect. This means that reliance on information gathered and verified by financial institutions on the ownership and structure of legal persons does not provide yet an adequate source for such information.

617. **Bearer Shares (c. 33.3)** The Companies Act by s. 87 allows the issue of a “share warrant” to bearer, which entitles the bearer thereof to the shares specified therein. In terms of information on the ownership of the shares that could be transferred in this manner, companies are required, once a “share warrant” has been issued, to remove the name of the holder of the shares from the register of members as if he has ceased to be a member. Instead the company must enter into the register: the fact that a warrant has been issued, a statement of the shares included in the warrant, and the date of the issue of the warrant. Nothing in the Act restricts the rights or powers of the bearer of a “share warrant.” Subject to the company’s articles of association, the bearer of a “share warrant” can exercise full membership rights. Apart from ensuring the disclosure of the fact that bearer shares do form part of the ownership structure of the company and the size of this type of ownership, the transparency obligations imposed by the Act do not guarantee the transparency of beneficial ownership for bearer shares.

Analysis of Effectiveness

618. While the set of transparency mechanisms established in the Act could be made operational to ensure the transparency of ownership and control of legal persons, the implementation of this set of mechanisms has not been effective. As discussed above, the enforcement of the disclosure and recordkeeping requirements under the Act has been weak. This has resulted in information that is inaccurate.

619. The registrar’s system of information retrieval and retention is largely manual and unsecured. This results in missing files and documents within files. It also results in inability to conduct most basic searches and cross-checks.

620. Interviews with various government agencies and private sector representatives including lawyers, accountants and bankers confirmed that access to information at the Register of Companies has been unreliable and slow. Their main concerns were the lack of security for documents that resulted in missing filing and parts of files. They were also concerned that the lack of enforcement of disclosure requirements meant that the information was not up-to-date. These findings were also confirmed by a review of the operations of the office of the registrar, which was conducted by experts sponsored by multi-donors upon the request of the Government. The report of the experts was provided to the assessors by the Ministry of Justice.

621. Interviews confirmed that there is limited use of bearer shares. Exact data was not available.

622. Reliance on investigative powers is limited by the capacity of the competent authorities. The office of the registrar lacks the capacity to use these powers and the assessors did not see any evidence that they have been previously used to investigate the ownership of a company. Also, the police and other enforcement agencies have limited technical capacity to investigate corporate crime and use the powers available for that purpose as discussed in section 1.3 and 1.6 of this report. This limits the effectiveness of using these powers as mechanism for ensuring the transparency of legal person.

623. Some financial institutions retain records relating to CDD of their customers that are legal persons. This is either part of their normal business practice or in compliance with their AML obligation under RBF Policy Statement 6. POC Act and FTR Act give the competent authorities adequate powers to access this information. The effectiveness of this mechanism is however limited by various factors: (1) implementation and enforcement of CDD requirements with regard to beneficial ownership and control of legal persons remains limited as discussed in section 2 of this report; and (2) in the absence of reliable independent sources to verify the information submitted by the client, the information retained may not be sufficiently reliable.

624. The wide use of shelf-companies accompanied by weak enforcement of the Companies Act’s requirements to update the registrar’s information and file returns further reduces the reliability and accuracy of the registrar’s information.

Recommendations and comments

625. The Government of Fiji is now implementing a project that aims at reforming the Registrar of Companies with a view to: (1) meeting the international best practice of one day registration of a company; and (2) providing private sector and government users with secure, timely and low cost access to registry. The project uses the expertise of consultants from Norway Registers Development and sponsored by the World Bank and Government of Norway. The project on simplifying the process of registration, computerizing the office to ensure reliable and efficient access to information, building the technical skills of the staff of the registrar. The Cabinet has endorsed the recommendations of the consultants on 12 June 2005. According to the Government, it

is expected that the implementation is to be completed by the end of 2006. This project will go a long way towards ensuring the transparency of legal persons in Fiji.

626. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:

- a) Requiring disclosure of nominee members and shareholders without prejudice to the standard rules of liability of members to the company and vice versa.
- b) Requiring the same information about members of unlimited companies and limited companies not having shares as is required for shareholders of limited companies with shares.
- c) Reviewing the use of “share warrants” and introducing rules and restrictions that is likely to ensure the transparency of ownership in cases where “share warrants” are issued.
- d) Enhancing the ability of the office of the registrar to use the investigative powers given to it by the Companies Act

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> • The Companies Act creates a registration system and a set of recordkeeping obligations and gives the registrar very useful powers that could be used to ensure the transparency of legal persons operating in Fiji, • The implementation of the transparency rules under the Companies Act has been ineffective with the result that access to beneficial ownership and control is impaired.

4.2 Legal Arrangements—Access to beneficial ownership and control information (R.34)

Description and analysis

627. **Legal Framework:** The Trustee Act (1966) is the main legislation that regulates the powers, duties, rights and safeguards of trustees. The provisions of the Act apply to the extent that they do not contradict the terms of the agreement between the parties. In addition to the Trustee Act, the Charitable Trusts Act, the Trustee Corporations Act and the Unit Trusts Act regulate certain types of trusts that have certain special features either by virtue of the nature of the trustee (a corporation), or by virtue of the nature of the purposes of the trust (charitable or investment trust).

628. Fiji law recognizes and permits the formation of trust including: express, implicit and constructive trusts. Trusts under Fiji law remain common law arrangements that are created and regulated according to the will of the parties. The provisions of the Trustee Act apply only in the absence of contrary agreement between the parties.

629. **Transparency Mechanisms:** A Trust remains a relationship between the parties that is generally not subject to any system of upfront disclosure. For all practical purposes and under general circumstances, a trust may not become known until a conflict arises involving the trust. The Trustee Act does not impose any disclosure or registration requirements that may ensure the transparency of trusts arrangements in Fiji.

630. Section 8 of the Trustee Act allows corporations to act as trustee. Under the Trustee Corporations Act, a corporation wishing to act as a trustee must register as such according to the procedure set out in section 3(2) of the Act.

631. According to the Unit Trusts Act, unit trusts are investment vehicles whose establishment must be set out expressly in a trust deed and subject to ministerial approval (s. 3). The manager of each unit trust must lodge an authenticated copy of the trust deed with the Registrar of Companies. Unit trusts are regulated by the CMDA.

632. According to s.121 of the Companies Act, trusts are not to be entered into the register of members or disclosed to the Registrar.

Analysis of Effectiveness

633. According to interviews with law firms, accountant firms and banks, the use of trusts is limited in Fiji. They are used as asset protection vehicles by professionals working in partnerships. This is due to the fact that partnerships do not have a separate legal status and cannot enjoy limited liability. The authorities noted that there is an increase use of trusts for tax avoidance purposes as well as instruments for investments for indigenous

Fijians.		
Recommendations and comments		
In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:		
a) Clarifying the rules on customer due diligence in relation to express trusts and ensuring their effective implementation by all TCSPs.		
b) Adopting rules and practices that enhance the transparency of trusts.		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.34	PC	<ul style="list-style-type: none"> • The FTR Act imposes recordkeeping and CDD obligations on TCSP. Once implemented, this may render express trusts more transparent. • Apart from the FTR Act requirements, There are no other rules or principles that may ensure the transparency of trusts and similar arrangements. • The FTR Act provisions in relation to TCSPs are not yet implemented or enforced.
4.3 Nonprofit organizations (SR.VIII)		
Description and analysis		
<p>634. Legal Framework: Non-profit activity in Fiji is governed by various acts: Charitable Trusts Act (1965), Friendly Societies Act (1945), Religious Bodies Registration Act (1881), and Co-operatives Act (1996). In addition to the aforementioned, charitable activity could also be exercised by a company registered under of the Company Act. Section 23 provides special provisions for the registration of this type of company.</p> <p>635. Types of NPOs: A charitable trust is a trust with a charitable purpose as defined in s. 2 of the Charitable Trust Act. Charitable purposes include scientific, educational, religious, reformist and poverty alleviation purposes. A <u>friendly society</u> is a mutual society registered under the Friendly Societies Act that aims at providing a limited insurance to the benefit of the members or their nominees to face unforeseen calamities such as death. A co-operative is an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organization, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate, which is registered under the Co-operatives Act. <u>Religious bodies</u> are bodies registered under the Religious Bodies Act.</p> <p>636. Reviewing the Adequacy of laws and Regulations (c. VIII.1): Fiji has not yet conducted a formal review of the adequacy of laws and regulations governing the non-profit sector. The Cabinet has however instructed the Law Reform Commission of Fiji to conduct such a review as a matter of priority. This review is due to be concluded during 2006.</p> <p>637. Preventing abuse by terrorist organizations (c. VIII. 2): Fiji has not yet taken specific measures to prevent the abuse of the non-profit sector by terrorist organizations posing as legitimate non-profit organizations. Existing laws provide some transparency mechanisms including central registration systems, recordkeeping requirements and some inspection powers in the various Acts that govern the sector. It is important to note however that with regard to Charitable Trusts, which is the sector most likely to be abused because of their broad scope of operations, registration is optional and not a pre-requisite for carrying out their operations.</p> <p>638. Preventing the diversion of funds (c. VIII.3): There are currently no measures in Fiji to monitor the collection and disposition of funds by non-profit organizations.</p> <p>Analysis of Effectiveness</p> <p>639. The current legal framework governing the NPO sector does not guarantee the transparency of the sector or any monitoring of the collection and disposition of funds for charitable and other non-profit purposes. In examining the capacity of the relevant registrars through, the assessors became of serious capacity limitations of the registrars: staffing is limited and recordkeeping is manual and paper-based. The registrars could not provide information on the size, composition and the sources of funding of the sector.</p>		
Recommendations and comments		

<p>640. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:</p> <ol style="list-style-type: none"> Gathering information on the activities, size and other relevant features of the sector in the context of conducting the review of the legal framework for the NPO sector; Conducting a risk assessment to determine the segment of the NPO sector that is more vulnerable to abuse for terrorist purposes; Implementing an outreach campaign to the sector that promote the value of transparency and integrity and raises the awareness of the sector with regard to the vulnerabilities of the sector to terrorist abuse; Implementing a supervisory or monitoring system that ensures the transparency of the sector in terms of ownership structures and disposition of funds; Enhancing the powers and capacity of the competent authorities to investigate NPOs and to obtain information on the administration and management of NPOs; Developing capacity to respond to international requests for cooperation in this regard; Implementing the full range of measures introduced by the Interpretative Note to SRVIII, which was adopted by FATF in February 2006. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> The authorities are currently conducting a review of the non-profit sector. The objective of the review is to implement an overall revision of the laws governing the sector. Fiji has not yet introduced measures to prevent the abuse of the non-profit sector by terrorist organizations. Fiji has not yet introduced measures to monitor the disposition of funds by non-profit organizations. In reaching this rating the assessors' took into account the priority attached to the review currently underway.

5. National and International Cooperation

5.1 National cooperation and coordination (R.31 & 32) (criteria 32.1 only)

Description and analysis

641. Legal Framework - FTR Act and Combined Law Agency Group Memorandum of Understanding

Domestic Cooperation (c 31.1)

642. The Anti-Money Laundering Officials Committee (AMLOC) is the national coordinating committee for the enforcement of anti-money laundering laws and regulations. It is chaired by the CEO for Justice, with the FIU acting as secretariat. The Committee has broad representation from all agencies that have role to play in combating ML and FT. It has also been used to informally coordinate specific actions in ML/TF enforcement. The Committee meets regularly, which is normally on a monthly basis. Whilst there is no documented AML/CFT strategy, the committee has been responsible for enhancing Fiji's AML/CFT regime. In this role, the Committee was the driving force behind the recent development and introduction of legislation such as the FTR Act and revisions to POC Act and the MACMA.

643. Part 6 of the FTR Act establishes the National Anti-Money Laundering Council (NAMLC). The council is chaired by the CEO for Justice with its members being, the Director of the FIU, the Director of Public prosecutions, the Commissioner of Police, the Governor of RBF and the CEO of FIRCA though other persons may be invited to attend. The Council is mandated to :

- Advise and make recommendations to the Minister for Justice and the FIU on matters pertaining to AML/CFT;
- Assist the Minister for Justice and the FIU in the formulation of AML/CFT policies or strategies; and,
- Assist the FIU in coordinating with the Government departments and statutory bodies

644. The assessment team was advised that the Council would meet regularly though since the introduction

of the FTR Act on January 1, 2006, the Council has not yet met.

645. Prior to the introduction of FTR Act, all the institutions that were subject to AML/CFT regulation were under the supervision of the RBF. The housing of the FIU within the RBF facilitated close coordination of work between the supervisor and the FI. With the broadening of the institutions subject to AML/CFT regulation under FTR Act, there is an increase in the number of supervisory authorities with which the FIU will need to coordinate work. Liaison has been conducted with these supervisory authorities and they have been involved with AMLOC.

646. Fiji utilizes a Combined Law Agency Group (CLAG) to coordinate enforcement action in serious criminal matters. The group, which was created in July 2002 by a memorandum of understanding, has 25 bodies or organizations as members which include the Attorney General's Chambers, Ministry of Justice, Ministry of Home Affairs & Immigration, FPF, FIRCA, the Republic of Fiji Military Forces, Immigration Department and Pacific Islands Forum Secretariat as well as 8 other Ministries and 5 private organizations involved with border entry points. It was formed to address a concern of increase complex criminal activities affecting Fiji. The parties to the MoU agree to :

- Share information to facilitate investigations into national and transnational crimes;
- Facilitate the sharing of resources; and
- Improve communication and coordinate efforts.

647. The CLAG secretariat is hosted by FPF and there are operating guidelines concerning how the CLAG will respond to "matters of concern," which include cases involving organized crime. The scope of criminal conduct for which the CLAG can operate includes money laundering cases.

648. When it is determined that a joint operation will be conducted, the agencies which have a statutory, investigative or advisory role in relation to the "matter of concern," will conduct the operation with support and direction from senior Government officials and assist in the judicial and administrative proceedings arising from the operation.

649. Notable incidents in which investigations have been conducted utilizing the CLAG was the neutralization of a methamphetamine factory which had been set up in Fiji and the interception of 360 kg of heroin which was being repackaged for transit to Sydney. Both of these cases had money laundering associated with them and this was investigated as part of the overall investigation.

650. For more routine enforcement action, cooperation is conducted on an informal basis. From anecdotal evidence, resource constraints can affect the effectiveness of this cooperation.

651. In addition to the work of the above bodies, there is regular informal coordination of work both on a policy and operational level. This informal coordination benefits from the limited size of the governmental sector where ministries and agencies meet on a variety of issues, of which AML and CFT is only one.

Review of Effectiveness of the AML/CFT Systems (c. 32.1)

652. Some reviews have been conducted of Fiji's system in terms of compliance with international standards, such as the APG Mutual Evaluation in 2002, and the preceding self-assessment conducted in 2001. Fiji has also conducted reviews of the legal framework in the context of introducing legislative reforms. Fiji has not however conducted any overall review of the operational side of the system to identify weaknesses that hinder the pursuit of ML. The authorities have indicated commitment to implementing such reviews in the future.

Analysis of Effectiveness

653. The formalized mechanisms have generally been effective to facilitate the development and implementation of policies. For enforcement cooperation and coordination in serious cases, there is evidence that cooperation between the investigative agencies and the FIU has been effective. For the informal mechanism which is used in respect of more routine cases, this can be adversely affected by resource constraints.

Recommendations and comments

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.31	C	<ul style="list-style-type: none"> • The Recommendation is fully met
R.32	PC	<ul style="list-style-type: none"> • There has been no overall operational review of the AML/CFT system. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
5.2 The Conventions and UN Special Resolutions (R.35 & SR.I)		
Description and analysis		
<p>Legal Framework POC Act, FTR Act, Extradition Act (2003), Mutual Legal Assistance Act (1997).</p> <p>654. UN Conventions Fiji has ratified the Vienna Convention on 15 March 1993. Fiji has not yet signed or ratified the Palermo Convention or the Terrorist Financing Convention. There is no timeframe at the moment for the ratification of these two conventions. Due to the cost implications involved in treaty ratifications, Fiji Ministry of Foreign Affairs prioritizes treaty ratification consistent with the state's strategy and primary and the issues that are primary concern to its security and development. The authorities indicated that Fiji's approach is also to implement the measures prescribed in international conventions to which the state wishes to become a party prior to ratification. In this vein, and as evident from the analysis in this Report: Sections 1.1 (Criminalization of money laundering), 1.2 (Criminalization of terrorist financing), 1.3 (Confiscation, freezing and seizing of proceeds of crime), 1.4 (Freezing of funds used for terrorist financing), 2 (Preventive measures – Financial institutions) and 5.3-5.4 (Mutual Legal Assistance and Extradition), Fiji has made substantial progress in introducing legal frameworks, as listed in the introduction to this section, necessary for implementing the provisions of Vienna, Palermo and CFT Conventions. While the effectiveness of the introduced legal and regulatory frameworks is till to be fully manifested, progress is being made.</p> <p>655. UN Special Resolutions As analyzed in Section 1.4 of this Report. (Freezing of funds used for terrorist), Fiji does not yet fully implement UN Security Council Resolutions 1267, 1373 and related resolutions. Fiji is also adopts a dualist system. International law is not part of domestic law unless incorporated by domestic legislative instruments.</p>		
Recommendations and comments		
<p>656. Fiji's policy is to prioritize ratification of international conventions in a manner that takes into consideration state priorities and resource constraints. Fiji also prefers to implement the measures prescribed by a convention prior to ratification thereof. With the exception of Vienna Convention, Fiji is yet to sign and ratify Palermo and CFT Conventions. It is also yet to fully implement UN Special Resolutions. Fiji has however incorporated into national law many of the measures required by the said instruments.</p> <p>657. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider:</p> <ol style="list-style-type: none"> a) Ratifying Palermo and CFT Conventions and implementing them into domestic law. b) Fully implementing the UN Special Resolutions. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Fiji has not yet ratified either of the Palermo and CFT Conventions • In reaching this rating, the assessors attached particular significance to the progressive legal framework on mutual legal assistance and extradition adopted by the relevant acts, as well as the comprehensive framework for tackling the proceeds of crime established by the POC Act. This framework was considered by the assessors to be a serious step towards implementing the provisions and objectives of the Vienna and Palermo conventions.
SR.I	NC	<ul style="list-style-type: none"> • Fiji has not yet fully implemented the CFT measures required by the UN Security Council Resolutions.
5.3 Mutual Legal Assistance (R.32, 36, 37, 38, SR.V)		
Description and analysis		

658. **Legal Framework:** Mutual legal assistance procedures and requirements are regulated by the Mutual Assistance in Criminal Matters Act (MACM), which came into force in 1997 and was amended in 2005. POC Act (sections: 19, 27, 33, 45-49, and 56) extend the rules with regard to forfeiture, search and seizure, restraining orders and production orders to such warrants and orders when issued with regard to a foreign serious offence pursuant to the powers provided for under the MACM Act. The Act applies to mutual assistance with any country regardless of the existence of a mutual legal assistance treaty (s. 5). In this regard, the Act supersedes the provisions of MLA treaties to which Fiji is a party. In view of the facilitative approach of the Act, applying the Act to treaty country removes restrictions on mutual legal assistance that are typical of outdated of MLA treaties.

659. **Range of MLA Possible (c. 36.1)** MACM Act allows for a wide range of assistance, this includes:

- a) Taking of evidence and production of documents (Part II)
- b) Search and seizure (Part III)
- c) Arrangements for prisoners to give evidence or assist investigation (Part IV)
- d) Issuance of search warrants for tainted property; a restraining order, and a production order or a search warrant in respect of a property-tracking documents (s. 30)
- e) Enforcement of foreign forfeiture order or a foreign restraining order (s. 31)
- f) Assistance in serving documents (Part IVA)

660. MACM Act (s. 4) further extends the scope of mutual assistance in criminal matters by providing that the Act does not limit “the power of the Attorney-General, apart from this Act, to make requests to foreign countries or act on requests from foreign countries for assistance in investigations or proceedings in criminal matters;” or “the nature or extent of assistance in criminal matters which Fiji may lawfully give or receive from foreign countries.”

661. **Timely, Constructive and Effective Manner (c. 36.1.1)** To facilitate mutual assistance, the MACM Act designates the Attorney-General as the central authority for the coordination of mutual assistance requests. The Office of the DPP, has established a team called “International Assistance and Asset Recovery Unit” tasked specifically to facilitate requests for MLA. The Head of CID coordinates the police response to MLA that requires police action. He indicated to the assessors that he typically gives the officers one-week “turn-around time” for the execution of requests. The Act also permits certain measures that are geared towards expediting the process of MLA. For example, s. 31 allows, for the purposes of registering a foreign forfeiture or restraining order, the use of a facsimile copy of a sealed or authenticated copy of an order pending the arrival of the original. Discussions with the authorities revealed that some delays do occur at the Ministry of Foreign Affairs in the delivery of responses to MLA requests, and also with regard to the execution of the MLA requests. The authorities could not provide statistics on MLA requests to be able to make concrete assessment of the effectiveness and timeliness of MLA process. The APG Secretariat circulated an e-mail to members requesting information on their experience with Fiji on international cooperation in penal matters. No issues were raised by the members in this regard.

662. It is important to note in this context that Fiji authorities expressed dissatisfaction with the cost and timeliness of responses for mutual legal assistance that they receive from their main counterparts, namely Australia and the United States. Their experience to date suggests that the procedures for processing their MLA requests are often slow, cumbersome and costly. At least one official indicated that this is sometimes acts as a disincentive for Fiji authorities when it comes to committing resources to the MLA process.

663. **Conditions for Assistance (c. 36.2)** The MACM Act adopts a liberal approach to rendering assistance, there are no requirements of reciprocity or dual criminality. The only grounds for refusal of assistance permitted by the Act are set in s. 6 of the Act and restricted to situations where “the assistance would prejudice the national, essential or public interests of Fiji or would result in manifest unfairness or denial of human rights[.]” The 2005 amendment to s. 6 repealed “or it is otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted” as basis for denying a request. This clearly reveals the intent of the legislator to preclude arbitrary denial of assistance and to request refusal to strictly substantive grounds.

664. MACM also allows the provision of assistance at the stage of investigating an offence as well as at the stage of criminal proceedings. “Criminal proceeding” is defined broadly to include not only trials but also pre-trial court proceedings.

665. **Process for Executing MLA requests (c. 36.3)** MACM designates the Attorney General as the central authority responsible for receiving MLA requests. MLA requests may be made directly to the Attorney General or any other person authorized by the AG to receive such requests. The AG authorizes the relevant authority to take the necessary action. The DPP’s office confirmed that MLA requests are passed to the DPP for execution and “where execution requires the performance by another agency the ODPP assists and monitors execution.” There is a team within the office of the DPP (ODPP) that is dedicated to international assistance issues.

666. The 2005 amendment to s. 9 of MACM further simplified the process by allowing requests to be submitted in other than writing by deleting the requirement that requests should be in writing.

667. According to the MACM Act, responses are to be sent through the AG. The authorities confirmed that responses may be sent directly by the relevant authority to the requesting agency depending on the urgency of the matter. This new procedure avoids the diplomatic channels and is likely to address the question of delays in delivering responses through the Ministry of Foreign Affairs, which was identified during the assessment. Involvement of the Ministry of Foreign Affairs remains only in special cases and as a facilitator of communication.

668. **Fiscal Matters (c. 36.4)** MACM Act does not preclude assistance in cases involving fiscal matters.

669. **Production, Search and Seizure (c. 36.6)** Parts II and III of the POC Act make all the powers of compelling production, search and seizure available in response to MLA requests from foreign countries upon the authorization of the AG and in the same way as these powers may be exercised for the purposes of investigations and proceedings initiated within Fiji under the Criminal Procedure Code.

670. **Conflicts of Jurisdiction (c. 36.7)** Fiji is not currently part of any arrangement that deals with the question of best venue for prosecution in the case of conflict of jurisdiction.

Additional Elements

671. **Dual Criminality in MLA (c. 37.1)** MACM Act does not require dual criminality for the purposes of mutual assistance regardless of reciprocity.

672. **MLA in Confiscation and Related Measures (c. 38.1-2)** Part VI of the MACM Act deals specifically with MLA in matters relating to proceeds of crime. This part provides a wide range of MLA including:

- Enforcement of foreign orders, i.e., forfeiture orders, pecuniary penalty orders, and restraining orders.
- Issuing of search warrants upon the request of a foreign country in respect of tainted property in relation to a serious offence in a foreign country
- Issuing of restraining orders upon the request of a foreign country in respect of property located in Fiji that may be made subject to a foreign restraining order.
- Issuing of production orders upon the request of a foreign country with respect to property-tracking document reasonably believed to be located in Fiji.

673. The MACM Act allows cooperation in relation to confiscation and provisional measures with regard to property, “tainted property” and “property-tracking documents” as defined in the POC Act, under the same conditions and in the same manner as prescribed for taking such measures domestically in the context of domestic investigation or proceeding. MACM Act. The provisions of the Act therefore allow MLA with regard to confiscation and provisional measures against the full spectrum of “property subject to confiscation as defined in R. 3 and R. 38.

674. **Coordination of Seizure and Confiscation Measures (c. 38.3)** Fiji does not currently have formal coordination arrangements with other countries in this area.

675. **Asset Forfeiture Fund (cc. 38. 4-5)** Part VA of the POC Act, which was introduced by the 2005 amendment, established the “Forfeited assets Fund” in which all assets recovered using POC Act powers or paid

to Fiji by a foreign country in the context MLA should be deposited. Section 71E allows the use of the assets credited to the Fund for law enforcement and crime prevention purposes.

676. Section 71C of POC Act authorizes the AG to enter into an arrangement with the competent authorities of a foreign country for the reciprocal sharing with that country of any property realized as a result of cooperation and MLA between that country and Fiji. Entering into such arrangements is deferred to the discretion of the AG.

677. Section 71D permits payment to foreign countries out of the Fund in the context of any approved program in relation to that country or in satisfaction of Fiji's obligations in respect of a registered foreign forfeiture or pecuniary penalty order.

678. Fiji has not yet entered into asset sharing agreements or arrangements with foreign countries. This has been detrimental to Fiji in one incident where rendering assistance in circumventing a cross-border drug trafficking information did not lead to sharing of recovered assets, which were located abroad, with Fiji.

Additional Elements

679. **Powers Available in Cases of Requests between Law Enforcement and Judicial Counterparts (c. 36.8)** The process of MLA established by MACM Act is not a diplomatic process in that requests go through the AG. This makes the range of MLA the Fiji can provide, including the power to compel production, search and seize, more immediately available to foreign judicial and law enforcement authorities. The Act also does not designate the foreign authority that may submit an MLA request to the AG.

680. Section 4 of MACM Act further liberalizes the process by providing that the Act does not limit "the power of a person or court, apart from this Act, to make requests to foreign countries or act on requests from foreign countries for forms of international assistance.

681. **MLA in Relation to Civil Forfeiture (c. 38.6)** The 2005 Amendment to s. 31 of MACM Act repealed the requirement that AG be satisfied that "a person has been convicted of the offence" as a pre-requisite to rendering assistance in confiscation and provisional measures. This amendment is in line with the adoption of civil forfeiture measures under POC Act Division 2A, which was introduced by a 2005 amendment to POC Act. By repealing s.31 conviction requirement, the amendment extended the range of MLA provided by the MACM Act and the POC Act to civil confiscation orders (or non-criminal confiscation orders as referred to under c. 38.6).

682. **MLA Measures for TF (c. V.1-V.3 & V.)** MACM Act extends the scope of assistance to all foreign serious offences and to any property that may be subject to foreign confiscation or restraining order. The POC Act extends recovery and provisional measures under the Act to terrorist property. It is therefore concluded that all the measures described under R. 36 and R. 38 above are also available for TF in accordance with SR V.

683. **Statistics (c. 32.2)** The authorities did not provide satisfactory statistics on the MLA requests. The following information was provided as a partial picture of MLA requests for the past three years based on available information. This information is not specific to ML/TF or POC cases. The DPP has however indicated to the team that the number of MLA request range from 10-12 annually. This was confirmed by the Police, which indicated that MLA requests are sometimes used instead of less formal means in cases where the latter could have been appropriate.

MLA Requests	In	Out
2004	NZ (Granted)	
2005	Tonga (Granted)	
	USA (Refused)	NZ (Refused)
2006	Hong Kong (Being processed)	

Analysis of Effectiveness

684. The assessors were satisfied that nothing in the legal framework for MLA would undermine the ability of Fiji to engage in effective and efficient cooperation with foreign countries. In the absence of statistical data it is not possible to give concrete assessment of the effectiveness and the use of the process of MLA to date. Anecdotal evidence suggested that Fiji does engage in MLA with other countries and that this process is not

restrictive or arduous. When asked by APG Secretariat, APG members did not raise concerns with regard to the process of seeking and receiving assistance from Fiji. Fiji's authorities raised concern with regard to the costliness and lengthiness of seeking MLA from some of their counterparts in the region. This could act as a disincentive to the commitment of resources by Fiji for the purposes of MLA.		
Recommendations and comments		
685. The MLA legal framework in Fiji is structured to allow the widest range of assistance in a flexible and efficient manner. By excluding reciprocity and dual criminality as pre-requisites for assistance, Fiji has adopted a best practices approach to international cooperation in this field. In order to ensure the effective use of this enabling framework the authorities should consider:		
<ul style="list-style-type: none"> a) Compiling and maintaining statistics systematically on the flow of MLA requests, the nature of the requests and the disposal of the requests. Such data should be analyzed to establish any obstacles effective execution of MLA. b) Activate the "Forfeited Assets Fund." c) Enter into asset sharing arrangements with key jurisdictions, i.e.; jurisdictions with whom MLA is most likely or most frequent. d) Review existing MLA treaties and ensure that Fiji has current and up-to-date MLA treaties with key jurisdictions whose laws require bilateral treaties as a condition for providing assistance. This will ensure that Fiji can secure legal assistance from such jurisdictions when it requires for its own domestic investigations and proceedings. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 5.3 underlying overall rating
R.32	PC	<ul style="list-style-type: none"> • The authorities did not provide satisfactory statistics on MLA requests. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
R.36	LC	<ul style="list-style-type: none"> • Fiji has an enabling legal framework that permits a wide range of assistance on very reasonable and permissive basis. • The data necessary to assess the effectiveness of the system were not sufficiently provided so assessors could not reach concrete conclusion on the effectiveness of the MLA process.
R.37	LC	<ul style="list-style-type: none"> • Fiji does not require dual criminality for MLA. This is also not conditional on any reciprocity. • The rating in this box is an aggregate rating of R.37 across the various parts of the report.
R.38	LC	<ul style="list-style-type: none"> • Fiji has an enabling legal framework that permits a wide range of assistance on very reasonable and permissive basis with regards to confiscation and related measures. • The data necessary to assess the effectiveness of the system were not sufficiently provided so assessors could not reach concrete conclusion on the effectiveness of the MLA process. • Overall assessment of the investigative capacity in Fiji and the domestic use of the POC Act suggest that capacity to provide MLA in relation to confiscation and related measures may be restricted by technical constraints.
SR.V	PC	<ul style="list-style-type: none"> • All the range of assistance available for ML and predicate offences is also available for TF. • The data necessary to assess the effectiveness of the system was not sufficient to permit assessors to reach a concrete conclusion on the effectiveness of the MLA process. • The rating in this box is an aggregate rating of SR.V across the various parts of the report.
5.4 Extradition (R.32, 37 & 39, & SR.V)		
Description and analysis		

686. **Legal Framework:** Extradition of persons from Fiji is regulated by the Extradition Act 2003 as well as existing extradition treaties with regard to treaty countries as defined in the Act. It is important to note that the framework of the Extradition Act applies only to “Commonwealth countries” and to “Pacific Islands Forum Countries” This adds up to a total of 72 countries. While these two lists cover a large number of countries with whom Fiji is most likely to engage in cooperation in penal matters, other jurisdictions that anecdotal evidence suggests to be important partners in this context remain outside this web. For example, China and the United States. In this context, the Act extends its provisions with qualification to “treaty countries” and to “comity countries.”

687. “Comity countries” under the Act are countries other than “commonwealth countries,” “Pacific Forum countries” and “treaty countries.” “Comity countries” are to be prescribed by ministerial regulations. The applicability of the extradition framework established by the Act to “comity countries” is subject to Ministerial discretion. The assessors are not aware of the use of this power or of the incidence of extradition with “comity countries.”

688. “Treaty country” is defined by s. 2 of the Act as a “country listed in Schedule 3 with which the Fiji Islands has an extradition treaty.” Section 2 defines “extradition treaty” very broadly to include both bilateral and multilateral treaties and treaties that are entirely dedicated to extradition as well as treaties that only cover extradition partially. Under Part 5 of the Act, extradition to “treaty countries” is governed by the general provisions of the Act subject to any “limitations, conditions, exceptions or qualifications” established by the treaty. Schedule 3 referred to in s. 2 is currently blank. It was not clear to the assessors whether Fiji currently has any extradition treaties in force and effect with any countries.

689. **Dual Criminality (c. 37.2)** The dual criminality requirement established by s. 3 definition of “extradition offence” is a flexible one. It does not require similarity of the designation of the offences or even comparability of penalty. Section 3(2) further provides that “in determining whether conduct constitutes an offence, regard may be had to only some of the acts or omissions that make up the conduct. It is important to note that for “treaty countries” dual criminality maybe more restrictive under the relevant treaty. This aspect was not assessed by the assessors due to the lack of information.

690. **Money Laundering Offence (c. 39.1)** The Extradition Act considers as an “extradition offence” any offence that is punishable by a maximum penalty of no less than 12 months. According to this criteria, both knowing money laundering and negligent money laundering, as discussed in Section 1.2 above, qualify as extraditable offences. It is important to note that with regard to “treaty countries” money laundering may not be an extraditable offence. This aspect was not assessed by the assessors due to the lack of information.

691. **Extradition of own Nationals (c. 39.2)** Section 18(2)(b) of the Extradition Act gives a Judge of the High Court the authority to refuse extradition of a citizen of Fiji Islands. Section 61 provides that when a Judge refuses to extradite a citizen, this person may be prosecuted and punished in Fiji for the offence subject to the DPP’s consent. This is subject to the requirement of dual criminality at the time the act was committed and subject to the DPP’s satisfaction that there is sufficient evidence in Fiji to justify prosecuting the person for the offence.” This arrangement is consistent with the international standard provided that the requirement that evidence should be available in Fiji is not restrictively interpreted and that use is made of MLA mechanisms and other forms of cooperation in evidentiary matters are utilized to secure evidence from the requesting country

692. **Cooperation on Procedural and Evidentiary Aspects (c. 39.3)** Section 62 of the Extradition Act addresses the situation where a country refuses to extradite to Fiji a person but stands ready to prosecute the person instead. The provision requires the Minister of Justice to give to the other country all available evidence to enable it to prosecute the person.

693. **Procedures for Extradition (c. 39.4)** The Extradition Act, with regard to the extradition requests to which it applies, establishes judicial procedures for determining the surrender of persons. A request is submitted to the Minister of Justice who considers the request and issues an “authority to proceed” to a magistrate who conducts proceedings to determine whether the person should be surrendered. Extradition proceedings are conducted in the same manner as criminal proceedings. The magistrate reports the decision to a High Court Judge who must make the final determination on whether the person should be surrendered. The Act allows the magistrate’s decisions to be reviewed by High Court Judge within 15 days after the day of the order. The Judge’s determination is not reviewable. In reviewing the magistrate’s decision, the Judge must have regard only to the material that was before the magistrate. Once the determination to surrender is made, it should be executed

through the process of issuing a surrender warrant.

694. **Extradition in TF Cases (SR. V)** The offences of “financing of terrorism” created by section 70A of POC Act qualify as “extradition offences” under the Extradition Act. Therefore, the overall framework described above will be equally applicable to extradition proceedings in TF cases. It is important to note that with regard to “treaty countries” financing of terrorism may not be an extraditable offence. This aspect was not assessed by the assessors due to the lack of information. It is also important to note that if a TF case should arise involving a citizen of Fiji, the Court has the power to deny extradition. The ambiguous status of s.70A of POC Act, as discussed in Section 1.2 of this Report may mean that the citizen cannot be prosecuted domestically for the acts committed abroad.

695. **Statistics (R. 32)** Statistics on the extradition requests and proceedings were not available.

Additional Elements

696. **Simplified Procedures (c. 39.5)** The Extradition Act does not specify the foreign authority in the country concerned that may submit to Fiji a request for extradition. Extradition requests are to be submitted to the Minister for Justice who is the central authority responsible for coordinating the extradition process. The procedures prescribed by the Act therefore avoid lengthy diplomatic channels. Section 12 of the Act sets up a simplified process for surrendering consenting persons.

Analysis of Effectiveness

697. The Extradition Act establishes an enabling framework for conducting extradition proceedings. Discussions with the authorities suggested that there was incidence of extensive delays in some cases of extradition arising from appeals against the decision to extradite. The authorities did not provide statistics or sufficient case data for the assessors’ to be able to make a concrete assessment of the effectiveness of the extradition framework and the operation of the Extradition Act or of extradition under treaty arrangements. The authorities expressed concerns over the complexity high cost of the extradition proceedings applied by some of the countries from which they seek cooperation. Fiji’s inability to secure the extradition of persons requested from foreign jurisdictions negates the benefits of the system to Fiji.

Recommendations and comments

698. The Extradition Act provides an enabling legal framework for conducting effective and efficient extradition proceedings. The Act does not however override the conditions of existing extradition treaties and therefore its applicability is constrained by the limitations and conditions set up in extradition treaties in cases involving “treaty countries.” The lack of statistics and case data restricted the ability of the assessors to assess the effectiveness of the current framework.

699. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider

- a) Revising the current treaty framework for extradition to ensure that it is up-to-date and reflective of the best practices endorsed by the Extradition Act.
- b) Examining the operation of the Extradition Act and compiling and maintaining gather statistics on extradition requests and their execution to identify any bottlenecks and obstacles.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 5. 4 underlying overall rating
R.32	PC	<ul style="list-style-type: none"> • The authorities did not provide statistics on the operation of the extradition system. • The rating in this box is an aggregate rating of R.32 across the various parts of the report
R.37	LC	<ul style="list-style-type: none"> • The Extradition Act establishes an adequately flexible definition of dual criminality for the purposes of extradition. • Existing extradition treaties remain applicable with regard to “treaty countries.” There was no information on the rules governing this issue for “treaty countries” or on the effectiveness of this flexible definition in actual extradition proceedings.

		<ul style="list-style-type: none"> • The rating in this box is an aggregate rating of R.37 across the various parts of the report.
R.39	LC	<ul style="list-style-type: none"> • The Extradition Act creates an adequate legal framework for extradition that meets the international standard set by R. 39. • Existing extradition treaties remain applicable with regard to “treaty countries.” Under old extradition treaties money laundering may not be an extraditable offence. • In the absence of information on the rules governing extradition for “treaty countries” and on the effectiveness of the system as a whole, the assessors could not be fully satisfied that the extradition system is fully compliant with international standards
SR.V	PC	<ul style="list-style-type: none"> • The legal framework of the Extradition Act applies equally to financing of terrorism cases. • POC Act criminalizes a range of TF activities that should be sufficient to meet the requirements of dual criminality. • The ambiguity surrounding the enforceability of TF offences under the POC Act means that a citizen of Fiji who is not extradited may not be prosecuted in Fiji for the Act committed abroad. The assessors are of the view that this ambiguity would not affect the satisfaction of the dual criminality requirements. • To date there has been no extradition requests with regard financing of terrorism cases. • Existing extradition treaties remain applicable with regard to “treaty countries.” Old extradition treaties may not include financing of terrorism as an extraditable offence. • In the absence of information on the rules governing extradition for “treaty countries” and on the effectiveness of the system as a whole, the assessors could not be fully satisfied that the extradition system is fully compliant with international standards. • The rating in this box is an aggregate rating of SR.V across the various parts of the report.

5.5 Other Forms of International Cooperation (R.32, 40, & SR.V)

Description and analysis

Recommendation 40 and SR V.

Law Enforcement Authorities

700. **Range and Mechanisms for Cooperation (cc. 40.1-40.4):** The FPF is able to cooperate through normal police-to-police information exchange channels. There is an Interpol unit within the Crime Department, which is manned by a Sergeant and a Corporal. The unit receives over 600 requests per annum from overseas jurisdictions with the majority of the requests involving the Pacific Islands, Australia, New Zealand, the United States, Hong Kong, Beijing and Pakistan, and transmits approximately 200 requests per annum from Fiji.

701. The Trans-national Crime Unit (TCU), which is a joint intelligence unit for FPF and FIRCA, is part of the Pacific Trans-national Crime Coordination Network. The network consists of corresponding TCUs in six other countries within the Pacific, which develop intelligence on transnational crimes and breaches of border protection within their jurisdictions and if a matter involves multiple jurisdictions, intelligence is exchanged with the other TCUs through the Pacific Trans-national Crime Coordination Centre. The Crime Department of FPF seconds five officers to the Trans-National Crime Unit.

702. FIRCA is able to exchange information on revenue matters with the revenue administration body of another foreign jurisdiction provided there is double taxation agreement with the jurisdiction. There are currently double taxation agreements in place with 6 countries. In relation to customs matters, FIRCA has entered into regional arrangements for the sharing of sharing of information on all customs related matters. Fiji is also a member of the World Customs Association.

703. Through these mechanisms, law enforcement authorities corporately broadly with their foreign counterparts. This includes responding to specific enquiries, conducting joint operations, developing strategies on handling transnational crime, and sharing experience through training.

704. The assessors were satisfied through discussions with the authorities that exchange of information occurs both spontaneously and upon request and that the process is carried out in a constructive and rapid manner, limited only by lack of resources.

705. As indicated in Section 5.3 of this Report, Parts II and III of the POC Act make all the powers of search and seizure available in response to MLA requests from foreign countries upon the authorization of the AG and in the same way as these powers may be exercised for the purposes of investigations and proceedings initiated within Fiji under the Criminal Procedure Code. While there is no similar provision with regard to informal requests between counterparts, discussions with the authorities indicated that this is the practice and that there is nothing in the law to prohibit them from using their powers in this way.

706. **Restrictions (c. 40.6-40.8)** Exchange of information between law enforcement authorities and their counterparts is not subject to any legislative conditions. Discussions with the authorities indicated that this is done regularly in an unrestrictive manner. Fiji does not give fiscal matters any special treatment in this context. This is consistent with its approach to the use of AML laws to enforce fiscal laws domestically. Secrecy provisions are limited, as discussed in relation to R.4 in this Report. The authorities did not identify secrecy as a constraint to their powers in international cooperation.

707. **Handling of Information (c. 40.9)** There is no clear privacy framework that governs the handling of information. Information received in the context of investigations is governed by standard internal rules and codes of the FPF. Exchange of information between competent authorities domestically was evident unrestricted. There is a need for clarity on the rules for handling information received from counterparts largely because of the implications that this may have on the willingness of foreign counterparts to share information with Fiji's authorities.

708. **International Cooperation in TF Matters (c. V.5)** The same analysis discussed above applies equally to TF matters. There are no special procedures or restrictions for TF.

Financial Intelligence Unit

709. **Process and Mechanisms for Cooperation (c.40.1.1-40.2):** Prior to the introduction of the FTR Act, the FIU was authorized under the Memorandum of Agreement of its establishment to enter into a written agreement or arrangement for exchange information with any institution or agency which is established by a foreign state or international organization and which has "powers and duties similar to the FIU." No such agreements or arrangements were entered into following a decision to await the formal creation of the FIU.

710. In the absence of arrangements, the FIU has been conducting some information exchange with other FIUs:

Spontaneous dissemination	
To foreign FIUs	4
By foreign FIU	1
Requests for Information	
To foreign FIUs	0
By foreign FIU	1

711. Sections 25(p) and 27(2) of the FTR Act enables the FIU to disclose information any institution or agency which is established by another country or international organization and which has powers and duties similar to the FIU. Without any bilateral agreement or arrangement if the FIU has reasonable grounds to suspect that the information would be relevant to an investigation or prosecution of a ML offence, TF offence, or a serious offence.

712. The FIU is empowered, with the approval of the Minister for Justice, to enter into any arrangement or agreement with any institution or agency of another foreign state or international organization and which has powers and duties similar to the FIU to facilitate information exchange with some limitations relating to the information to be disclosed and the terms of disclosure as discussed below. The FIU is currently in discussions

with two FIUs to establish Memoranda of Understanding on information exchange.

713. Fiji is a member of the APG and representatives from the FIU have regularly attended the meetings. In fact, Fiji hosted the APG Typologies Workshop in October 2005. The FIU is currently preparing to make an application for membership to the Egmont Group through the Group's outreach program and with sponsorship from the New Zealand FIU.

714. The process of cooperation, based on meetings with the FIU and discussion of the incidents of cooperation, is carried out in a constructive and expeditious manner. This is the qualitative assessment of the team; there are no figures on the duration that it takes to respond to request information.

715. **Range of Cooperation and Restrictions (c. 40.1 & 40.3-40.8)** Under the FTR Act, the information that may be disclosed to foreign counterparts is the information that the FIU has reasonable grounds to suspect maybe relevant to "investigation or prosecution" of ML, TF or any serious offence. Section 27(1) seemed to expand the definition of the information to be exchanged beyond this narrow scope. However, exchanges under s. 27(1) powers cannot be carried out without a bilateral agreement or arrangement with the foreign counterpart and any such agreement or arrangement must, according to s. 26(2)(a), be "restricted to information that the [...] Unit [...] has reasonable grounds to suspect would be relevant to *investigation or prosecution*[".]"

716. Based on the above description an investigation or prosecution in the foreign jurisdiction is a statutory prerequisite to an exchange of information by the FIU. This is too restrictive. FIU-to-FIU exchange of information should be able to support the analysis function of the FIUs. Analysis typically precedes the opening of an investigation.

717. The above is a description and analysis of the wording of the Act. The practice of the FIU to date has proved more liberal. There is no evidence that actual commencement of an investigation was required by the FIU to exchange information with counterparts.

718. As indicated in the table above, the FIU cooperates both spontaneously and upon request. There is nothing in the FTR Act to restrict this ability.

719. The Act allows the FIU to use its powers to collect information relating to serious offences, and ML and TF offences from all available databases for the purposes of the Act without restrictions. This would include providing information to foreign counterparts for those purposes. Practice confirms that the FIU uses those powers to provide information to foreign counterparts.

720. So far, exchanges of information have not been subjected to any restrictive conditions. Under the FTR Act, any exchange of information should be subject to the condition that it shall only be used for the purposes of investigating or prosecuting a serious offence, or ML/TF offence. This condition is too restrictive. Exchange of information between FIUs should not be predicated on the initiation of an investigation or a prosecution. This undermines the analysis function of FIUs.

721. While the FIU continues to disregard this condition in practice, and to cooperate constructively and freely, it is a practice that is in clear contravention of the express language of the Act. This does not provide a stable framework for cooperation. It also undermines the credibility of the legal system in the eyes of counterpart, who may wish to rely on the guarantees provided by the law, for example, in relation to the confidentiality of information.

722. There is no restriction on the FIU's exchange of information in cases involving fiscal matters. Also, confidentiality provisions are limited and completely overridden by the FTR Act. They do not pose an obstacle to the FIU's exchange of information.

723. (2) that it shall be treated as confidential and not further disseminated without the consent of the FIU. (s. 26(2)). Consent must be in writing if it is carried out under s. 27(2) powers without a bilateral arrangement or agreement, or expressly and not necessarily in writing if it is done on basis of an agreement or arrangement that permits that.

724. **Handling of Information (c. 40.9)** Any information received by the FIU is subject to the general obligation of confidentiality imposed by s. 30(1) of the FTR Act. The Act does not, however, impose upon the FIU an obligation to use the information received from a foreign counterpart to the purposes for which this disclosure was made. So any information received from a foreign counterpart could be used for any of the

purposes of the Act, including the detection, investigation and prosecution of any ML, TF or serious offence or the enforcement of the POC Act.

725. The FIU may also use this information for the purposes of exercising its supervisory functions or for the purposes of responding to a due diligence check or enquiry directed to it from any government agency, such as the Foreign Investment Bureau.

726. Of course, the disclosure of information received from foreign counterparts will be subject to the terms agreed with the foreign counterpart for the exchange of information. These terms, however, will not be supported by the sanctions available under s. 30 for breach disclosure. This means that there is a need to create operational and regulatory mechanisms to guarantee the confidentiality obligations that arise from any agreement with counterparts.

727. **International Cooperation in TF Matters (c. V.5)** The same analysis discussed above applies equally to TF matters. There are no special procedures or restrictions for TF.

Additional Elements

728. **Requesting Information from Non-Counterparts (c. 40.10)** the FIU has been conducting information exchange with foreign law enforcement agencies both spontaneously and upon request. The figures for the information exchange with the foreign law enforcement agencies were not available to the assessment team.

729. **Obtaining Information on Behalf of a Foreign Counterpart (c. 40.10):** The provisions of the FTR Act do not grant the FIU the power to seek information from financial institutions for the purposes of responding to a foreign request for cooperation. This is not required by international standards.

730. The Act allows the FIU to use its powers to request information from government agencies for the purposes of the Act without restrictions. This would include providing information to foreign counterparts for those purposes. Practice confirms that the FIU uses those powers to provide information to foreign counterparts.

731. **International Cooperation in TF Matters (c. V.9)** The same analysis discussed above applies equally to TF matters. There are no special procedures or restrictions for TF.

732. **Supervisory Authorities**

733. **Mechanisms and Range of Cooperation (c. 40.1-40.8)** The supervisory departments of RBF, and the CMDA have no agreements or arrangements with foreign counterparts for international cooperation.

734. The Banking Act and the Insurance Act do not impose a requirement to have a bilateral agreement or arrangement to exchange information and do not restrict the RBF from sharing information with other supervisory authorities for supervisory purposes. The permission to share such information with counterparts is to be inferred from s. 27(1) (f) of the Banking Act and 159(1)(f) of the Insurance Act, which permit disclosure of information, otherwise held in confidence by the RBF, to “a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Reserve Bank” under the respective Acts. This disclosure is subject to treating the information as confidential by the recipient agency.

735. Discussions with the RBF suggest that there has not been to date any sharing of information with foreign supervisors.

736. The CMDA does not have similar powers.

737. The FIU as a supervisory authority under the FTR Act does not have any power to exchange information for supervisory purposes or to enter into arrangements for that purpose. For detailed analysis of restrictions on exchange of information by FIU, see the discussion in this Section of the Report above.

738. **International Cooperation in TF Matters (c. V.5)** The same analysis discussed above applies equally to TF matters. There are no special procedures or restrictions for TF.

Recommendation 32 (Statistics related to other forms of international cooperation)

739. The FPF and FIU kept statistics on the total number of cases of international cooperation though no annual statistics were available to the assessment team. There were no reviews conducted to determine the effectiveness of the framework for other forms of international cooperation

Analysis of Effectiveness		
740. Law Enforcement: The mechanisms for appropriate international cooperation outside of the mutual legal assistance framework are working effectively		
741. FIU: The FIU has conducted some information exchange with international agencies. It has the appropriate authority to perform international cooperation. A decision to await the implementation of the FTR Act on January 1, 2006, before entering into agreements with foreign FIUs, has limited the extent to information exchange has been conducted to date.		
Recommendations and comments		
742. In order to achieve compliance with international standards and effective AML/CFT measures, the authorities should consider :		
<ul style="list-style-type: none"> a) Conducting outreach to FIUs in jurisdictions which have significant financial flows with Fiji, to initiate discussions on entering into an arrangement to facilitate FIU to FIU information exchange b) Entering into memorandum of understanding with foreign supervisors where necessary for the effective supervision of the domestic of foreign banks that operate in Fiji. c) If the FIU's supervisory powers are to be maintained, emending the Act to allow the FIU to exchange information with foreign supervisory authorities and to enter into agreements and arrangements with such authorities for that purpose. d) Introducing operational safeguards and statutory safeguards to ensure the proper handling of information received by the FIU from foreign counterparts. This should include procedures that ensure that the information is maintained in a manner that ensures it is not to be inadvertently used for any other than its specified purposes. It should also include introducing sanctions for breach of confidentiality imposed by exchange of information arrangements that are commensurate with the sanctions available for breach of confidentiality under the FTR Act in general. e) Amending the FR Act to remove restricting the sharing of information to cases where there is investigation or prosecution underway. Instead, the amendment should ensure that the FIU can exchange information relating to the detection or of ML, TF, or other serious offences or to the analysis of financial transactions or other information that may be relevant to ML, TF or other serious offences. f) Conducting reviews to determine the effectiveness of the framework for other forms of international cooperation. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 5.5 underlying overall rating
R.32	PC	<ul style="list-style-type: none"> • Total statistics in respect of international cooperation are maintained though not in an annual format • Reviews were not conducted to determine the effectiveness of the framework for other forms of international cooperation. • The rating in this box is an aggregate rating of R.32 across the various parts of the report
R.40	PC	<ul style="list-style-type: none"> • Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework • The FIU has conducted some international cooperation. It is currently in discussion with two other FIUs to establish formal information exchange channels; • The supervisory authorities have no arrangements for international cooperation. • An investigation or a prosecution is a statutory prerequisite for sharing of information by the FIU. This is too restrictive. In practice, the FIU does not impose this requirement. • The FIU as a supervisory authority does not have any power to exchange information with foreign AML/CFT supervisory authorities or to enter into bilateral arrangements for that purpose. • The operational and statutory safeguards for handling the information shared by other FIUs are not clear.

SR.V	PC	<ul style="list-style-type: none"> • Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework • The FIU has conducted some international cooperation. It is currently in discussion with two other FIUs to establish formal information exchange channels. • The supervisory authorities have no arrangements for international cooperation. • The FIU as a supervisory authority does not have any power to exchange information with foreign AML/CFT supervisory authorities or to enter into bilateral arrangements for that purpose. • The rating in this box is an aggregate rating of SR.V across the various parts of the report.
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6. Other Issues

743. **Proof of Identity.** Fiji does not have a national identity document scheme though for the working population, the Fiji Provident Fund card, which does contain a photograph, is the document which is commonly used as the proof of identity. For many people working in the rural areas, the only proof of identity is a birth certificate. In the past, however, the registration of births, especially in these areas, has not been fully adhered to so a person may not have any government issued proof of identity. In recent times, the authorities have been encouraging registration of children by making it a requirement for birth certificates to be produced in the application process for schooling.

744. A further issue on identity concerns a person, legitimately, having two names. This raises difficulties in practice. The authorities are aware of these issues and discussions are being held on how address the subject. Purporting to address this issue, the FTR Act requires any person who is commonly known by two or more names to disclose these names to the financial institution when opening an account. It also requires the financial institution to keep record of all the customer's names disclosed to it, even if they are different from the name that the customer uses in his dealing with the institution.

745. **Fiji is largely a cash-based economy.** This is due mainly to Fiji's the rather unique geographic area, being some 330 islands, half of which are not uninhabited, and the wide distribution of its population throughout those islands. There are only two cities, Suva and Lautoka, both of which are located on the main island of Viti Levu. Banking services are available in population centers such as the cities, urban areas and tourist areas. However, many residents are located on numerous different islands, separated from Viti Levu and the other large island of Vanua Levu, or, when residents are located on the two large islands, many live in small villages in remote locations.

746. There are a total of 106 offices of the five banks. These are comprised of 50 branches and 56 agencies. Whilst the vast majority of branches are found on the two larger islands, Vanua Levu and Viti Levu, the 56 agencies are spread out across the country and can be found on the smaller islands. Forty of these offices are located on Viti Levu, seven are located on Vanua Levu, with the remaining nine on other islands. In addition, the banks offer services through automated teller machines at their office locations and elsewhere. They also offer electronic point-of-sale services. These electronic mechanisms tend to be limited to population concentrations and tourist

locations. The distribution is not, however, such that all residents have easy access to banking facilities. More than half of Fiji's residents do not even have bank accounts. Other types of financial institutions, such as credit unions and credit institutions do not offer checking or transaction-type accounts. Efforts have been made to make banking services available to more of the population, including using the Postal System for money transfers and mobile bank facilities that travel on routes with regular periodic visits to villages. Nonetheless, given the low population density in many areas, it can be expected that Fiji will remain largely a cash-based economy for some time.

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TABLES

Table 2. 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).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> • The criminalization of money laundering under POC Act is largely in line with international standards. • The effectiveness of the criminalization remains to be sufficiently tested in the courts. • A number of investigations are currently underway. • Many penal laws in Fiji are outdated. This may create obstacles to international cooperation where the outdated definition of the predicate offence is not considered to satisfy requirements of dual criminality in some jurisdictions. The CPC and the PC are currently being reviewed. This should not however have an impact on the effectiveness of the system domestically. It may have an impact on Fiji's ability to receive international cooperation. • In reaching this rating, the assessors took into consideration the conviction achieved, the number of investigations currently underway, and the small scale of profiteering crime in general.
2. ML offence–mental element and corporate liability	LC	<ul style="list-style-type: none"> • Fiji law establishes the mental element of the ML offences and the criminal liability of legal persons in a manner consistent with international standards. • The prescribed sanctions are proportionate and should be dissuasive. • In the single conviction secured to date, the court was willing to exercise the sanctioning power available to it effectively. • Some investigations are currently underway. • The effectiveness of the criminalization remains to be sufficiently tested in the courts. • In reaching this rating, the assessors took into consideration the conviction achieved, the number of investigations currently underway, and the small scale of profiteering crime in general.

3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • The legal framework is adequate and consistent with international standards. • Implementation has been weak. The resources and technical capacity necessary for the effective implementation of the system are lacking. • The restrictive timeframe imposed for the release of seized property if no forfeiture order was made within 14 days may prove too impractical in complex cases.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> • The Recommendation is fully met.
5. Customer due diligence	PC	<ul style="list-style-type: none"> • The FTR Act was entered into force very recently and is not yet implemented except to the extent that it overlaps with current Policy 6 requirements. . • Financial institutions do not open anonymous accounts or accounts in fictitious names. • AML/CFT specific CDD requirements, albeit only partially in line with international standards, are currently only implemented by banks in accordance with a RBF supervisory policy which came into effect in 2001. There is therefore no practice of AML/CFT CDD measures in all non-bank financial institutions. • The requirements to identify beneficial ownership under the FTR Act, as well as under Policy 6, are only partially consistent with the international standard. • The rules on timing of verification and the practice of banks in this area are inconsistent with international standards. • There are no specific CDD measures for trusts in line with international standards. • Financial institutions are not required under the FTR Act to conduct enhanced due diligence with regard to higher risk customers.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • The FTR Act's provisions on PEPs do not extend to beneficial owners and existing customers. • The relevant provisions have not been implemented to-date. • The framework under Policy 6 currently implemented by banks does not require enhanced due diligence in relation to PEPs.
7. Correspondent banking	PC	<ul style="list-style-type: none"> • The FTR Act provides a framework for CDD with regard to correspondent banking, which is consistent with international standards. • Banks do not currently offer correspondent banking services to foreign intermediaries. • The due diligence obligations that may apply to correspondent banking under policy 6 are ambiguous and do not meet the international standards.

8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • None of the financial institutions in Fiji open accounts or establish a business relationship with non-face-to-face customers. Some banks do however offer non-face-to-face services to account holders. • There is currently no requirement upon financial institutions to establish policies and procedures to manage the risks of misuse of technological developments for ML/TF and of non-face-to-face transactions.
9. Third parties and introducers	C	<ul style="list-style-type: none"> • The FTR Act imposes an adequate set of obligations that fully comply with the international standard. • Financial institutions do not currently rely on third parties for CDD.
10. Record keeping	PC	<ul style="list-style-type: none"> • The FTR Act imposes upon financial institutions detailed requirements with regard to the records to be kept and the methods of retention. The provisions are consistent with best practices in this regard. • Currently only banks are implementing relatively detailed AML/CFT recordkeeping requirements under Policy 6 (1999). • Other covered financial institutions have not yet implemented the provisions of the FTR Act on recordkeeping. The effectiveness of the recordkeeping provisions is therefore not yet achieved.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • FTR Act requirements to pay special attention to unusual transactions are largely consistent with FATF Rec. 11. • While there is a requirement to document findings in writing and to make them available to the authorities when requested, there is no requirement to retain the records of examination of unusual transactions for a specified period of 5 years as required by the standard. • The effectiveness of the requirements remains limited. Only banks have adopted some measures. These measures are limited and not verified by supervisory examination. All non-bank financial institutions do not yet implement these requirements.

12. DNFBP–R.5, 6, 8–11	PC	<ul style="list-style-type: none"> • DNFBPs’ obligations under the FTR Act, are substantially in line with the requirements of Recommendations 5, 6 & 8-11 and are applicable to all categories of DNFBPs. • The obligations of dealers in precious metal and stones are not yet in force. This is contingent on prescribing a minimum threshold for transactions to be covered. • The obligations have been imposed upon DNFBPs recently by the FTR Act and are not yet implemented. The provisions of the Act are therefore not yet effective. • The sanctions prescribed under the FTR Act for breaches of obligations under the Act are equally applicable to DNFBPs. The same concerns relating to the sanctioning scheme under the Act, as described in section 2.10 above, are also applicable to DNFBPs.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • The FTR Act in respect of the reporting of suspicious transactions is substantially in compliance with international standards. • STR requirements are currently only effectively implemented by banks in accordance with Policy 6. • STR requirements have been imposed upon the non-bank financial institutions recently by the FTR Act and are not yet implemented.
14. Protection & no tipping-off	C	<ul style="list-style-type: none"> • The Recommendation is fully met.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • The FTR Act in respect of the procedures, policies and controls pertaining to AML/CFT is in compliance with international standards. • Limited Internal control requirements are currently only implemented by banks in accordance with a Policy 6. • All non-bank financial institutions are not yet implementing AML/CFT internal controls.
16. DNFBP – R.13–15 & 21	PC	<ul style="list-style-type: none"> • The STR requirements in the FTR Act, which are substantially in line with international standards, are applicable to all categories of DNFBPs. • The STR obligations of dealers in precious metal and stones are not yet in force. This is contingent on prescribing a minimum threshold for transactions to be covered. • STR requirements have been imposed upon DNFBPs recently by the FTR Act and are not yet implemented. The effectiveness of the provisions of the Act has therefore not been tested.

17. Sanctions	PC	<ul style="list-style-type: none"> • It is not clear under the FTR Act whether supervisory authorities may use their sanctioning powers to enforce compliance with AML/CFT obligations. • In this context, the FTR Act is left to rely entirely on a system of penal sanctions for infringements that are often administrative in nature. In general, there is no scheme of administrative sanctions to enforce the implementation of the Act. This approach is lacking in both proportionality and effectiveness. • Considering the over-taxed resources of the criminal justice system in Fiji, relying on this system as nearly the sole mechanism for enforcing AML/CFT obligations is unlikely to be effective. • Some of the sanctions imposed are draconian in a manner that is likely to undermine the effectiveness of the overall AML/CFT regime by, for example, triggering defensive reporting.
18. Shell banks	PC	<ul style="list-style-type: none"> • The licensing policies of the RBF preclude the licensing of a shell bank. • Fiji does not have a prohibition against its banks establishing correspondent banking relationships with shell banks, or serving as a correspondent bank for any foreign institution that permits its accounts to be used by shell bank
19. Other forms of reporting	C	<ul style="list-style-type: none"> • The Recommendation is fully met.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • The Recommendation is fully met.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • FTR Act requirements provide a basis for handling transactions and relationships involving countries which do not sufficiently implement AML/CFT standards. • There are sufficient powers, authority and flexibility in the Act to allow adequate implementation of countermeasures against countries that do not have adequate AML/CFT systems. • Banks receive and implement instructions from their head offices regarding handling transactions with countries with inadequate systems. • Financial institutions are not currently advised of the weaknesses in the AML/CFT systems of other countries. • There is no implementation of the required measures beyond the banking sector.
22. Foreign branches & subsidiaries	C	<ul style="list-style-type: none"> • The legal requirements of the law are fully consistent with the Recommendation. • None of the financial institutions established in Fiji currently operate foreign branches.

23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • The FTR Act creates an unclear AML/CFT supervisory framework: • The Act seems to vest the FIU with the power to supervise compliance with AML/CFT across all covered institutions. • The Act does not give the existing supervisory authorities a definite role in implementing and enforcing AML/CFT requirements. • The framework defined in the Act creates opportunity for conflict of jurisdiction and overlapping responsibilities. • There are fit and proper principles and measures under the FTR Act, Policy 6 (1999), the Banking Act and related licensing guidelines, the Insurance Act and the CMDA Act. There are also some limited measures with regard to other financial institutions. The effectiveness of these measures is limited by capacity and supervisory practices across non-prudentially regulated sectors. • The supervisory authorities for prudentially regulated sectors do not yet apply prudential regulations with due consideration of their relevance to fighting money laundering and terrorist financing. • There are measures in place for licensing, regulating and supervising money transfer and changing services. • The informal money and value transfer services are criminalized albeit with some limitations in enforcement.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Fiji prohibits casinos. • The supervisory framework envisioned by the Act does not have sufficient resources to achieve effectiveness.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • No guidelines have been provided to financial institutions on their reporting obligations and in respect of identifying suspicious transactions. • The FTR Act has created a requirement for guidance to be provided to the financial institutions • Feedback is given to reporting institutions on reports that are disseminated to the law enforcement authorities and only summaries of STRs that are filed away. • The FTR Act has formally introduced the requirement to provide feedback and statistics. Detailed statistics on the reporting regime are not regularly circulated to financial institutions. • No guidance was issued to DNFBPs to assist them in complying with their obligations.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> • The FIU suffers from resource constraints, which undermine the effectiveness of its functions. • No guidelines have been issued to the institutions that are required to report suspicious transactions. • No strategic analysis is currently being conducted.

27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • Fiji designates specific agencies for ML/TF investigation and prosecution. • The designated agencies suffer serious technical and material resource constraints, which undermine their ability to conduct financial investigations.
28. Powers of competent authorities	C	<ul style="list-style-type: none"> • The Recommendation is fully met. POC Act and other laws provide sufficient powers to investigate money laundering and terrorist financing.
29. Supervisors	PC	<ul style="list-style-type: none"> • The FTR Act seems to vest all AML/CFT supervisory functions with the FIU and gives it full powers to conduct inspections, compel production of records and obtain access to records without procedural impediments. • The FIU, however, does not have adequate resources to carry out these supervisory obligations. • With the exception of the insurance sector, the supervisors of the other prudentially regulated financial institutions have adequate inspection, access to records powers under their respective acts, i.e.; the Banking Act, the Insurance Act and the CMDA Act. The RBF conducts inspections of the insurance sector. These supervisory authorities are however not definitively vested under the FTR Act with the authority to use such powers for the purposes of enforcing AML/CFT requirements. • The system of supervision as it is currently structured cannot be implemented effectively.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • The FIU is not resourced to handle the number of STRs which it is currently receiving. • FTR Act mandates the FIU to conduct a significant number of non-core FIU functions. The proposed increased staffing of the unit is not expected to be sufficient to perform these tasks effectively without seriously detracting from the core functions of the FIU. • There are limited technical resources available for the FIU to allow it to effectively analyze STRs. • Under the FTR Act, the FIU seems to be the only authority vested with definite AML/CFT supervisory role with regard to an extensive range of institutions. The FIU is however not at all adequately resourced to perform this vast function. • Significant resource issues, both on staffing, general resources and technical resources limit the investigating and prosecuting authorities capabilities to effectively investigate and prosecute ML and TF cases • Staff of the investigating and prosecuting authorities has received some relevant training. • There are ethical and confidentiality standards across the public sector with supporting enforcement mechanisms. There is however a problem of corruption in the public sector that the authorities are dealing with.

31. National co-operation	C	<ul style="list-style-type: none"> • The Recommendation is fully met
32. Statistics	PC	<ul style="list-style-type: none"> • There is no mechanism to collect statistics on the number of orders sought, the number of orders denied and granted, or on the value of assets seized, restrained or forfeited. • There is no systematic overall operational review of the AML/CFT system as a whole or of its individual components. • The FIU does not routinely produce statistics, which facilitate a detailed assessment of the reporting regime. • There is no systematic maintenance of statistics on investigations and prosecutions of ML and TF or of the use of powers under POC Act with regard to asset recovery. • The authorities did not provide satisfactory statistics on MLA requests • The authorities did not provide statistics on the operation of the extradition system.
33. Legal persons – Beneficial Owners	PC	<ul style="list-style-type: none"> • The Companies Act creates a registration system and a set of recordkeeping obligations and gives the registrar very useful powers that could be used to ensure the transparency of legal persons operating in Fiji, • The implementation of the transparency rules under the Companies Act has been ineffective with the result that access to beneficial ownership and control is impaired.
34. Legal Arrangements – Beneficial Owners	PC	<ul style="list-style-type: none"> • The FTR Act imposes recordkeeping and CDD obligations on TCSP. Once implemented, this may render express trusts more transparent. • Apart from the FTR Act requirements, There are no other rules or principles that may ensure the transparency of trusts and similar arrangements. • The FTR Act provisions in relation to TCSPs are not yet implemented or enforced.
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Fiji has not yet ratified either of the Palermo and CFT Conventions • In reaching this rating, the assessors attached particular significance to the progressive legal framework on mutual legal assistance and extradition adopted by the relevant acts, as well as the comprehensive framework for tackling the proceeds of crime established by the POC Act. This framework was considered by the assessors to be a serious step towards implementing the provisions and objectives of the Vienna and Palermo conventions.

36. Mutual Legal Assistance (MLA)	LC	<ul style="list-style-type: none"> • Fiji has an enabling legal framework that permits a wide range of assistance on very reasonable and permissive basis. • The data necessary to assess the effectiveness of the system were not sufficiently provided so assessors could not reach concrete conclusion on the effectiveness of the MLA process.
37. Dual criminality	LC	<ul style="list-style-type: none"> • Fiji does not require dual criminality for MLA. This is also not conditional on any reciprocity. • The Extradition Act establishes an adequately flexible definition of dual criminality for the purposes of extradition. • Existing extradition treaties remain applicable with regard to “treaty countries.” There was no information on the rules governing this issue for “treaty countries” or on the effectiveness of this flexible definition in actual extradition proceedings. • Fiji does not require dual criminality for MLA. This is also not conditional on any reciprocity
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Fiji has an enabling legal framework that permits a wide range of assistance on very reasonable and permissive basis with regards to confiscation and related measures. • The data necessary to assess the effectiveness of the system were not sufficiently provided so assessors could not reach concrete conclusion on the effectiveness of the MLA process. • Overall assessment of the investigative capacity in Fiji and the domestic use of the POC Act suggest that capacity to provide MLA in relation to confiscation and related measures may be restricted by technical constraints.
39. Extradition	LC	<ul style="list-style-type: none"> • The Extradition Act creates an adequate legal framework for extradition that meets the international standard set by R. 39. • Existing extradition treaties remain applicable with regard to “treaty countries.” Under old extradition treaties money laundering may not be an extraditable offence. • In the absence of information on the rules governing extradition for “treaty countries” and on the effectiveness of the system as a whole, the assessors could not be fully satisfied that the extradition system is fully compliant with international standards

40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework • The FIU has conducted some international cooperation. It is currently in discussion with two other FIUs to establish formal information exchange channels; • The supervisory authorities have no arrangements for international cooperation. • An investigation or a prosecution is a statutory prerequisite for sharing of information by the FIU. This is too restrictive. In practice, the FIU does not impose this requirement. • The FIU as a supervisory authority does not have any power to exchange information with foreign AML/CFT supervisory authorities or to enter into bilateral arrangements for that purpose. • The operational and statutory safeguards for handling the information shared by other FIUs are not clear.
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • Fiji has not yet fully implemented the CFT measures required by the UN Security Council Resolutions.
SR.II Criminalize terrorist financing	PC	<ul style="list-style-type: none"> • Fiji criminalizes the financing of terrorism in a manner that is partially in line with the international standard. • The offence of financing of terrorism does not extend to the core act of “collecting and providing” funds to terrorist groups and to individual terrorists. • The authorities indicated that the full use of the offence is contingent on passing a comprehensive anti-terrorism act. This interpretation has not been tested because no TF acts have been detected to date. • In reaching this rating the assessors took into consideration that the presence of the offences on the books would be sufficient for the purposes of international cooperation in many instances. The assessors also took vulnerability into account.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The FTR Act and POC Act include some legal provisions that could be used to give effect to the UN Security Council Resolutions. No steps have yet been taken to use these mechanisms to implement the Resolutions. • While POC Act creates a legal framework with regard to restraining and forfeiting of terrorist assets, the authorities confirmed that this system is not going to enter into force until a comprehensive anti-terrorism law is put in place.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • STR requirements apply in the same manner to suspicion of financing of terrorism. • TF related STR requirements have only been introduced by the FTR Act. Therefore evidence of the effectiveness of these provisions is still limited.

SR.V International cooperation	PC	<ul style="list-style-type: none"> • All the range of assistance available for ML and predicate offences is also available for TF. • The data necessary to assess the effectiveness of the system were not sufficiently provided so assessors could not reach concrete conclusion on the effectiveness of the MLA process. • The legal framework of the Extradition Act applies equally to financing of terrorism cases. • POC Act criminalizes a range of TF activities that should be sufficient to meet the requirements of dual criminality. • The ambiguity surrounding the enforceability of TF offences under the POC Act means that a citizen of Fiji who is not extradited may not be prosecuted in Fiji for the Act committed abroad. The assessors are of the view that this ambiguity would not affect the satisfaction of the dual criminality requirements. • To date there has been no extradition requests with regard financing of terrorism cases. • Existing extradition treaties remain applicable with regard to “treaty countries.” Old extradition treaties may not include financing of terrorism as an extraditable offence. • In the absence of information on the rules governing extradition for “treaty countries” and on the effectiveness of the system as a whole, the assessors could not be fully satisfied that the extradition system is fully compliant with international standards. • Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework • The FIU has conducted some international cooperation. It is currently in discussion with two other FIUs to establish formal information exchange channels. • The supervisory authorities have no arrangements for international cooperation • An investigation or a prosecution is a statutory prerequisite for sharing of information by the FIU. This is too restrictive. In practice, the FIU does not impose this requirement. • The FIU as a supervisory authority does not have any power to exchange information with foreign AML/CFT supervisory authorities or to enter into bilateral arrangements for that purpose. • The operational and statutory safeguards for handling the information shared by other FIUs are not clear
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SR.VI AML/CFT requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • Fiji has a strict licensing requirement for foreign money transfer services under the Exchange Control Act. • Money transfer services are subject to AML/CFT requirements under the FTR Act. • AML/CFT requirements have not yet been implemented in the sector. • Supervision and sanctions suffer from the weaknesses identified in s. 2.10 above in relation to R.17 and R. 23.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • The legal requirements under the Act are largely consistent with the elements of SRVII. • The CDD rules on wire transfers below \$1000 are unclear. • The practice of financial institutions is not fully consistent with the FTR Act. • The weaknesses identified with regard to the sanctioning and supervision system under the FTR Act undermine the framework of rules relating to wire transfers to the same extent.
SR.VIII Nonprofit organizations	PC	<ul style="list-style-type: none"> • The authorities are currently conducting a review of the non-profit sector. The objective of the review is to implement an overall revision of the laws governing the sector. • Fiji has not yet introduced measures to prevent the abuse of the non-profit sector by terrorist organizations. • Fiji has not yet introduced measures to monitor the disposition of funds by non-profit organizations. • In reaching this rating the assessors' tool into account the priority attached to the review currently underway.
SR.IX Cash Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> • There are provisions concerning the monitoring of physical cross border movement of currency and some forms of negotiable instruments. However, there are significant deficiencies in the system. • Part 5 of the FTR Act provides a reporting regime, which would meet Special Recommendation IX. This Part has not yet been brought into force.

Table 3: Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2 & 32)	<ul style="list-style-type: none"> • Examining the system to determine the reasons for the lack of detection and pursuit of money laundering. . • Revising the laws to criminalize acts falling within the “designated categories of offences” to ensure that they reflect current criminal practices and correspond to the criminalization provisions in other countries. This could be useful in preventing possible obstacles to international cooperation arising from the application of the principle of dual criminality. • Keeping detailed statistics on the ML investigations and the outcome of these investigations for the purposes of analyzing the effectiveness of the system and determining areas of vulnerability.
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • Expediting the enactment of a comprehensive anti-terrorism act that takes into consideration existing provisions under POC Act and FTR Act and ensures harmony and consistency between the various laws. • Amending the s.70A(2) offences to explicitly criminalize “collecting and providing” property to terrorist groups and to individual terrorists in the same manner prescribed in s. 70A(1). • Establishing a mechanism to regularly review the effectiveness of the criminalization of the offence of terrorist financing.
Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> • Activating the “Forfeited Assets Fund” and setting up the protocols that allow appropriate management of seized assets and disposal of forfeited assets. • Building the capacity of the police and the DPP’s Office in using the powers available under POC Act in a timely manner. • Establishing a mechanism to collect statistics on the number of orders sought, the number of orders denied and granted, or on the value of assets seized, restrained or forfeited.
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> • Expanding the definition of “terrorist property” to include jointly held property and property of individual terrorists and those who finance terrorism. • Revisiting the available mechanisms for prescribing organizations to clarify them and to ensure that they allow for designation of individuals as well as groups. • Using the prescription mechanism available to implement S/RES/1267 and 1373 as soon as possible. • Establishing adequate systems to disseminate the lists of designated entities and individuals to financial institutions to ensure that they do not hold assets in Fiji’s financial sector. • Providing guidance to financial institutions on the implementation of their obligations with regard to freezing of terrorist property. • Establishing clear, effective and publicly known mechanisms for de-listing, unfreezing, challenging and reviewing of listing and freezing decisions, and measures to access restrained funds for necessary categories of expenses.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Reviewing the operations of the FIU to determine the reasons for the build-up of un-finalized STRs and implementing measures to address the backlog and to prevent re-occurrence • Issuing guidance on the basis of current legislation for all institutions

	<p>that are subject to the FTR Act.</p> <ul style="list-style-type: none"> • Procuring secure new accommodations in a timely fashion in preparation for additional staff. • Determining the FIU's IT requirements to ensure that these requirements are fully met by the proposed IT system. • Formally establishing the funding of the FIU budget and the RBF's commitment to provide financial, technical and administrative support for the FIU with a view to ensuring it is adequately and independently resourced. • Instituting procedures to facilitate the collection and recording of detailed statistics which will enable an effective review to be conducted of the operations of the FIU and the reporting regime • Establishing a mechanism to regularly review the effectiveness of the operations of the FIU and the reporting regime. • Conducting an independent review of the implications of the FTR Act for the FIU. The aspects to be considered should include: (i) the current and anticipated capacity to handle the increased number of reports, which will be received once the relative sections of the FTR Act have been implemented; and (ii) the manpower and related resource requirements to effectively conduct compliance testing of the reporting institutions covered by the FTR Act. Removing the seven-year mandatory deletion of STRs under Section 25(1)(g) of the FTR Act. Act.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • Examining the reasons for the lack of detection and pursuit of money laundering. • Conducting an independent detailed review of the resources available to investigate and prosecute ML and TF cases. • Addressing the key resource constraints and building the capacity of the investigative agencies to conduct money laundering and terrorist financing investigations • Amending the legislation to permit use of the POC Act by other law enforcement agencies. • Instituting procedures to facilitate the collection of detailed statistics relating to money laundering and terrorist financing investigations conducted by law enforcement agencies and on the use of the powers under the POC Act. • Establishing a mechanism to regularly review the effectiveness of the law enforcement agencies in conducting money laundering investigations.
Cross Border Declaration and Disclosure (SRIX)	<ul style="list-style-type: none"> • Developing an action plan in consultation with the relevant authorities for the effective implementation of the reporting regime provided for under Part 5 of the FTR Act. • Bringing Part 5 of the FTR Act into force once the implementation plan has been put in place.
2. Preventive Measures–Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5– 8)	<ul style="list-style-type: none"> • Conducting a proper vulnerability assessment and adopting the necessary measures to exclude less vulnerable and non-prudentially regulated sectors from the scope of AML/CFT measures. Examples could include the money lenders sector and the credit unions sectors. • Ensuring that non-bank foreign exchange and fund transfer service providers are implementing adequately their AML/CFT obligations under the Act. • Clarifying the definition of an occasional transaction above a certain

	<p>threshold to include a series of transactions that are linked and exceed the prescribed threshold.</p> <ul style="list-style-type: none"> • Specifying the rules on the timing of conducting CDD, the circumstances under which it may be deferred beyond the commencement of the relationship, and the action to be taken upon failure to complete CDD after the commencement of the relationship in the case of deferral. • Clarifying the requirements to identify the “beneficial owner.” In particular: Provide a definition for “beneficial owner,” which emphasizes that it should be the <i>natural</i> person that is ultimately behind a transaction or a relationship. • Impose an affirmative obligation on financial institutions to determine whether the customer is acting on his own behalf. • Revising the requirement to ascertain the purpose, origin of fund and source of fund for all transactions as prescribed in s. 10(4) of the FTR Act and restrict it to business relationships as required by the standard. • Requiring financial institutions to conduct risk assessment of their clients and requiring them to vary their measures on risk basis. Financial institutions should be allowed to apply reduced CDD measures in relation to low-risk clients. This should be introduced by regulations under the Act. • Expanding the obligations with regard to PEPs to include beneficial owners and existing customers. • Requiring the CDD measures to be instituted for existing customers on a risk and materiality basis. This should however be imposed with caution and with due consideration to the burden it may impose on financial institutions. • Imposing adequate obligations for conducting CDD in relation to trusts. • Imposing upon financial institutions an explicit obligation to adopt policies and procedures to manage the risks of misuse of technological developments and non-face-to-face transactions. • Taking more active measures to ensure that credit institutions, the securities sector, and the insurance sectors are implementing adequately their AML/CFT measures.
Third parties and introduced business (R.9)	No Recommendations
Financial institution secrecy or confidentiality (R.4)	No Recommendations.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Reviewing the capacity of all the covered sectors to meet the extensive recordkeeping requirements imposed by the Act, and make sure that non-prudentially regulated financial institutions, which do not pose ML/TF risk are exempted from the scope of the Act or subjected to simplified recordkeeping requirements. . • Taking adequate measures to ensure that covered financial institutions perform effectively the recordkeeping requirements under the Act taking into consideration the first recommendation above. • Clarifying the rules with regard to occasional electronic funds transfers below the \$1000 threshold
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Taking measure to exempt non-prudentially regulated sectors that do not pose ML/TF risk from the obligations to conduct enhanced due diligence under s. 10 of the FTR Act, or to simplify their obligations

	<p>in this regard.</p> <ul style="list-style-type: none"> • Setting the duration for the retention of records relating to unusual transactions as required under s.10 of the FTR Act for a minimum of five years. • Extending the requirement to pay special attention to transactions and business relationships with persons <i>in</i> a country that does not sufficiently apply FATF Recommendations under s.10 of the FTR Act to include persons that are <i>from</i> such countries even when they are operating from outside that specific jurisdiction. • Revising the mandatory requirement to examine all transactions with persons in countries which do not or insufficiently apply the FATF recommendations to restrict it to situations where such transactions have no apparent economic or lawful purpose . • Putting measures in place to advise financial institutions of countries that have weak AML/CFT measures in place. • Ensuring that non-bank financial institutions implement adequately their obligations under s. 10 with due regard to the first recommendation offered in this paragraph.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • Revising the broad requirement in Section 14(1)(b) to report information that does not arise from a suspicious transaction involving the reporting institution. This broad informant function may misdirect the attention of financial institutions away from the underlying purposes of the FTR Act, which is to prevent and detect ML and TF. • Ensuring that non-bank financial institutions are aware of their STR obligations and are taking measures to implement them effectively. • Providing financial institutions with guidelines to assist in the implementation of their requirements • Introducing a mechanism to ensure regular feedback is available to the reporting institutions in respect of current ML and TF trends and the overall reporting regime.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Providing guidance to financial institutions on developing internal procedures, policies and controls relating to AML/CFT compliance. • Assessing the capacity and nature of business of the newly covered non-bank financial institutions with a view to tailoring the guidelines to their specific business operations. • Ensuring that non-bank financial institutions, especially foreign exchange dealers, credit institutions, securities and insurance companies are adequately implementing internal AML/CFT policies and procedures. ,
Shell banks (R.18)	<ul style="list-style-type: none"> • Instituting prohibitions, which could be done by regulation or enforceable supervisory guidance, against banks chartered by Fiji (1) establishing or maintaining a correspondent banking relationship with any shell bank; and (2) acting as a correspondent bank for any foreign bank that permits its accounts to be used by shell banks
The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25 & 32)	<ul style="list-style-type: none"> • Clarifying the provisions of the FTR Act with regard to the supervisory authorities' ability to use their sanctioning powers to enforce compliance with AML/CFT standards. • Using as a matter of urgency, the Ministerial power available under the Act to designate supervisory authorities for the various sectors covered with a view to creating a better sharing of the supervisory burden in a manner that ensures effective supervision for AML/CFT. Designation should not mean only naming a supervisory as relevant for a specific sector, but should also delineate its powers and responsibilities for supervising the sector.

	<ul style="list-style-type: none"> • Placing the power to supervise the banking, insurance and securities sectors squarely with the relevant supervisors; i.e., RBF and CMDA. The FIU should not play a duplicative role in this area. Any identified weaknesses by the FIU through its function to receive STRs should be referred to the relevant supervisor. • Clarifying the AML/CFT supervisory responsibilities over the foreign exchange and wire transfer sectors. • Ensuring the availability of a wider range of sanctions for failures to comply with the Act's requirements that include administrative and disciplinary sanctions. • Using risk-based approach to exclude low-risk sectors from the scope of the FTR Act. • Using a risk-based approach to determine the type of supervision or monitoring necessary for various sectors to ensure effective allocation of limited resources. • Identifying agencies that are suitable for conducting supervision/monitoring over non-prudentially regulated sectors and building their capacity sequentially in this area. The various registries as well as FIRCA are possible candidates for supervisory role over different sectors. • Seeking technical assistance in developing AML/CFT supervisory capacity.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • Conducting a review to determine the magnitude of flows into and out of Fiji using the unregulated market and the methods used to transfer the funds, so that steps can be introduced to ensure that these operations are not abused for ML/TF. • Ensuring effective supervision or monitoring of the sector, both domestic and international, for compliance with AML/CFT standards.
4. Preventive Measures– Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Where relevant, conducting a detailed risk assessment of the respective businesses to enable an appropriate threshold to be set. • Excluding from the scope of application of the Act “internal” or “in-house” legal practitioners and accountants. • Raising the awareness of the covered institutions of their obligation under the Act. • Tailoring the regulations that detail the obligations of DNFBPs to the nature and size of their operations in order not to overburden the relevant sector and not to overwhelm the capacity of small businesses.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Prescribing the threshold necessary for the obligations to enter into force in a sequential manner and subject to adequate and realistic risk assessment. • Raising awareness of the obligations under the Act as well as training in understanding money laundering typologies and detecting suspicious transactions.
Regulation, supervision, monitoring, and sanctions (R.17, 24 & 25)	<ul style="list-style-type: none"> • adopting a risk-based approach to determining the method and degree of monitoring to apply to each of the covered sectors of DNFBPs. In sequencing the implementation of the Act, the authorities should take all possible measures to ensure that DNFBPs are not exposed to criminal liability under the Act at a time when they are not in a position to achieve compliance with the regulatory

	requirements because of the lack of guidance and the absence of sector-specific implementing regulations
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Conducting careful risk and resource assessment to determine the appropriate timeframe for introducing a threshold that will bring the obligations of these additional sectors into effect. • Identifying and designating a suitable supervisory authority and provide adequate resources for the performance of its functions as a prelude to implementing the provisions of the Act. • Setting a realistic framework of supervision or monitoring based on an understanding of risk.
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Requiring disclosure of nominee members and shareholders without prejudice to the standard rules of liability of members to the company and vice versa. • Requiring the same information about members of unlimited companies and limited companies not having shares as is required for shareholders of limited companies with shares. • Reviewing the use of “share warrants” and introducing rules and restrictions that is likely to ensure the transparency of ownership in cases where “share warrants” are issued. • Enhancing the ability of the office of the registrar to use the investigative powers given to it by the Companies Act
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Clarifying the rules on customer due diligence in relation to express trusts and ensuring their effective implementation by all TCSPs. • Adopting rules and practices that enhance the transparency of trusts.
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> • Gathering information on the activities, size and other relevant features of the sector in the context of conducting the review of the legal framework for the NPO sector; • Conducting a risk assessment to determine the segment of the NPO sector that is more vulnerable to abuse for terrorist purposes; • Implementing an outreach campaign to the sector that promote the value of transparency and integrity and raises the awareness of the sector with regard to the vulnerabilities of the sector to terrorist abuse; • Implementing a supervisory or monitoring system that ensures the transparency of the sector in terms of ownership structures and disposition of funds; • Enhancing the powers and capacity of the competent authorities to investigate NPOs and to obtain information on the administration and management of NPOs; • Developing capacity to respond to international requests for cooperation in this regard; • Implementing the full range of measures introduced by the Interpretative Note to SRVIII, which was adopted by FATF in February 2006.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	
The Conventions and UN Special	<ul style="list-style-type: none"> • Ratifying Palermo and CFT Conventions and implementing them

Resolutions (R.35 & SR.I)	<p>into domestic law.</p> <ul style="list-style-type: none"> • Fully implementing the UN Special Resolutions.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> • Compiling and maintaining statistics systematically on the flow of MLA requests, the nature of the requests and the disposal of the requests. Such data should be analyzed to establish any obstacles effective execution of MLA. • Activate the “Forfeited Assets Fund.” • Enter into asset sharing arrangements with key jurisdictions, i.e.; jurisdictions with whom MLA is most likely or most frequent. • Review existing MLA treaties and ensure that Fiji has current and up-to-date MLA treaties with key jurisdictions whose laws require bilateral treaties as a condition for providing assistance. This will ensure that Fiji can secure legal assistance from such jurisdictions when it requires for its own domestic investigations and proceedings.
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> • Revising the current treaty framework for extradition to ensure that it is up-to-date and reflective of the best practices endorsed by the Extradition Act. • Examining the operation of the Extradition Act and gather statistics on extradition requests and their execution to identify any bottlenecks and obstacles.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> • Conducting outreach to FIUs in jurisdictions which have significant financial flows with Fiji, to initiate discussions on entering into an arrangement to facilitate FIU to FIU information exchange • Entering into memorandum of understanding with foreign supervisors where necessary for the effective supervision of the domestic of foreign banks that operate in Fiji. • If the FIU’s supervisory powers be maintained, emending the Act to allow the FIU to exchange information with foreign supervisory authorities and to enter into agreements and arrangements with such authorities for that purpose. • Introducing operational safeguards and statutory safeguards to ensure the proper handling of information received by the FIU from foreign counterparts. This should include procedures that ensure that the information is maintained in a manner that ensures it is not to be inadvertently used for any other than its specified purposes. It should also include introducing sanctions for breach of confidentiality imposed by exchange of information arrangements that are commensurate with the sanctions available for breach of confidentiality under the FTR Act in general. • Amending the FR act to remove restricting the sharing of information to cases where there is investigation or prosecution underway. Instead, the amendment should ensure that the FIU can exchange information relating to the detection or of ML, TF, or other serious offences or to the analysis of financial transactions or other information that may be relevant to ML, TF or other serious offences. • Conducting reviews to determine the effectiveness of the framework for other forms of international cooperation e
7. Other Issues	
Other relevant AML/CFT measures or issues	

E. AUTHORITIES' RESPONSE TO THE ASSESSMENT

World Bank Assessment of Fiji's AML/CFT Framework

Fiji Response

Session III 4 July 2006

APG Annual Meeting, Manila, Philippines

1. Introductory Remarks

Co-Chair, Thank you.

Let me first of all take this opportunity to thank the Government of the Republic of Philippines and the Central Bank of Philippines for the warm hospitality and arrangements made for this Meeting. I also thank the APG Secretariat for their hard work in all the arrangements for this meeting.

[Introduce Fiji delegation to the APG Annual Plenary].

The detailed assessment report that is now before the Plenary has been extensively discussed between the World Bank Assessment Team and the Government of Fiji led by the Director of the Financial Intelligence Unit. This is second evaluation. The first evaluation was done in 2002 by APG.

I would like to also take this opportunity to thank the World Bank Team, Ms Heba Shams, Mr Allan Schott and Mr Mark Butler for their work in preparing this comprehensive assessment of Fiji.

Government of Fiji is agreeable to the detailed assessment report. We have no disagreements on the compliance ratings. 3 "Non-Compliant" and 32 "Partially Complaint" compliance ratings reflect the practical situation in Fiji.

We have made significant progress in updating our legislative framework and we are currently in the early stages of implementing the new requirements. Therefore, the World Bank Assessment has been a timely one. We agree with the comprehensive set of recommendations that will form an important basis for the authorities in Fiji to take us towards full compliance with the international standards.

2. General Comments

Co-Chair and members, Fiji is fully committed as a global partner in the fight against money laundering, terrorist financing and other serious criminal activities. In this regard, Government of Fiji is mindful of the international obligations and therefore will progressively enhance its systems and procedures for full compliance with international standards.

As reflected in World Bank Assessment Report, relevant authorities in Fiji have committed substantial resources towards building an AML/CFT culture and

bringing the AML/CFT system to where it is now. Government of Fiji has taken a number of proactive initiatives over the last 10 years. We have also implemented additional measures since APG's first round mutual evaluation in 2002. Fiji has a comprehensive AML/CFT framework that includes a comprehensive legislative regime and effective institutional machinery. I do not wish to describe these initiatives in detail as these have been incorporated in the World Bank Assessment Report.

As an active member of the APG, Fiji will continue to support the work of the APG in ensuring that the region has a uniform plan to protect our countries and our citizens from serious crimes such as money laundering and the financing of terrorism.

3. Conclusion

As I mentioned earlier, the World Bank Assessment of Fiji's AML/CFT regime is a timely one. The assessment findings, compliance ratings and recommendations are being seriously considered by all relevant authorities in Fiji and several measures have been identified for implementation to further strengthen Fiji's AML/CFT compliance.

When Fiji meets the donor agencies later this week, the World Bank Assessment Report and its recommendations will be very useful in our discussions for possible technical assistance and training for Fiji. Our Technical Assistance and Training paper incorporates a number of issues identified in the World Bank Assessment Report and we hope the international organisations and other developed APG members and observers will see the need for assistance in meeting the short comings identified in the Assessment Report.

Fiji and other smaller APG member jurisdictions are faced with practical difficulties in capacity building, technical expertise, infrastructure needs, training, etc. Timely assistance will therefore allow us to move towards full compliance with global standards in the future.

I would like to thank the various assistance we have received from donors who are present here. I wish to specially thank the Australian Government and the Australian FIU, AUSTRAC, for its tremendous support to Fiji's FIU to develop an IT system that will provide an online reporting and data management capabilities. With this assistance we are confident of rapidly moving towards full implementation of our FTR Act.

Fiji's future AML/CFT strategies and priorities include timely implementation of the new FTR Act and amendments to the Proceeds of Crime Act and Mutual Assistance in Criminal Matters Act. The new FIU will be staffed and resourced as a matter of highest priority. Regulations and guidelines are being developed and are currently undergoing industry consultation. A number of legislative reforms led by the Fiji Law Reform are underway. This includes a review of the NPO

sector, review of the Penal Code and the Criminal Procedure Code, and Anti Corruption Reforms. Fiji FIU is seeking to join the Egmont Group in 2007.

In conclusion, I would like to again thank the World Bank Assessment Team for the assessment report. I wish to assure the APG that in a few years from now and when Fiji undergoes third round of evaluation, the 32 “Partially Compliant” ratings will be moved to either “Largely Compliant” or “Compliant” rating. I look forward to healthy deliberations on intervener questions and discussions by members.

Thank you.

Fiji's response to the World Bank Assessment Report was presented by Mr. Sada Reddy, Deputy Governor, Reserve Bank of Fiji, at the 9th Annual Meeting of the APG that was held in Manila, Philippines in July, 2004. Other delegates from Fiji were Mr. Razim Buksh, Director Financial Intelligence Unit and Mr. Parmod Achary, Deputy General Manager Development Services, Fiji Islands Revenue and Customs Authority.

ANNEXES

Annex 1: List of all laws, regulations and other material received

Laws	
1.	Arms and Ammunition Act and amendments
2.	Audit Act and Amendments
3.	Banking Act 1995
4.	Capital Markets Development Authority Act
5.	Charitable Trusts Act
6.	Civil Aviation (Security) Act, 1994
7.	Civil Aviation Act, 1994
8.	Civil Aviation Reform Act, 1999
9.	Companies Act
10.	Constitution (Amendment) Act 1997
11.	Co-operatives Act, 1996
12.	Credit Unions Act
13.	Criminal Procedure Code
14.	Customs Act
15.	Customs Tariff Act
16.	Dangerous Drugs Act and amendments
17.	Evidence Act
18.	Exchange Control Act
19.	Excise Act 1986 and amendments
20.	Explosives Act
21.	Extradition Act and amendments
22.	Fiji Development Bank Act
23.	Fiji Institute of Accountants Act
24.	Fiji Law Reform Commission Act
25.	Fiji National Provident Fund
26.	Financial Management Act 2004
27.	Financial Transactions Reporting Act, 2004
28.	Fisheries Act
29.	Foreign Investment Act
30.	Gaming Act
31.	Illicit Drugs Control Act 2004
32.	Immigration Act and amendments
33.	Insurance Act
34.	Interpretation Act
35.	Legal Practitioners Act and amendments
36.	Moneylenders Act
37.	Mutual Assistance in Criminal Matters (Amendment) Act, 2005
38.	Mutual Assistance in Criminal Matters Act, 1997

39.	Partnership Act
40.	Penal Code
41.	Pharmacy and Poisons Act
42.	Police Act, 1966 and amendments
43.	Proceeds of Crime (Amendment) Act, 2004
44.	Proceeds of Crime Act 1997
45.	Public Order Act and amendments
46.	Religious Bodies Registration Act
47.	Reserve Bank of Fiji Act
48.	Trust Accounts Act
49.	Trustee Act
50.	Unit Trusts Act

Draft Legislation	
1.	Real Estate Agents Bill 2005

Other Documents		
	Subject	Description
2.	AML/CFT Assessment - Fiji's Response	Response to the Detailed Assessment Questionnaire
3.	AML/CFT Assessment - Fiji's Response	Ministry of Justice-Additional contribution to Summary of Assessment Report of Fiji AML/CFT Framework (March 2, 2006)
4.	AML/CFT Assessment - Fiji's Response	Questionnaire on Insurance Companies
5.	Anti-Corruption	Government's Anti-Corruption Initiatives - Briefing Notes For the World Bank and IMF (March 28, 2006)
6.	Anti-Corruption	Fiji Law Reform Commission - Bribery and Corruption Report 2003
7.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee – Joint Meeting with World Bank AML/CFT Assessment Team (March 3, 2006)
8.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (April 29, 2003)
9.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (Sep. 29, 2005)
10.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (July 21, 2005)
11.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (June 23, 2005)
12.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (April 14, 2005)
13.	Anti-Money Laundering	Minutes of Anti-Money Laundering Officials Committee

	Officials Committee	(March 10, 2005)
14.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (Feb. 10, 2005)
15.	Anti-Money Laundering Officials Committee	Minutes of Anti-Money Laundering Officials Committee (Sept. 29, 2005)
16.	ANZ Bank	Record of Identification
17.	APG-Fiji Assessment	Standard Mutual Evaluation Questionnaire Response
18.	APG-Fiji Assessment	APG-Mutual Evaluation Report on the Republic of Fiji Islands (June 2002)
19.	Capital Markets Development Authority	2004 Annual Report
20.	Case Reports	Restraint Order (1 Case)
21.	Case Reports	Forfeiture Order (2 Cases)
22.	Case Reports	Case Judgments (11 Cases)
23.	Charitable Trust Application	Charitable Trusts Act (Cap. 67) – Certificate of Incorporation
24.	Combined Law Agency Group	Memorandum of Understanding
25.	Combined Law Agency Group	Guidelines for Operation of the Combined Law Agency Group
26.	Economist Intelligence Unit	Fiji-Country Report
27.	Economist Intelligence Unit	Fiji-Country Profile
28.	Exchange and Finance (Fiji) Pty. Ltd.	Anti-Money Laundering Large Transaction Report
29.	Fiji Country Information	CIA World Factbook - Fiji
30.	Fiji Country Information	US State Department Background Note - Fiji
31.	Fiji Country Information	Fiji Today 2005 / 2006 – Government Website
32.	Fiji Development Bank	Annual Report 2005
33.	Fiji Immigration Department	Organization Chart
34.	Fiji Institute of Accountants	Annual Report 2004
35.	Fiji Institute of Accountants	List of Members
36.	Fiji Islands Trade and Investment Bureau	Application Form for Foreign Investment Registration Certificate
37.	Fiji Law Reform Commission	Newsletter of the FLRC-Issue 11, February 2005
38.	Fiji Law Reform Commission	Newsletter of the FLRC-Issue 13, December 2005
39.	Fiji National Provident Fund	Annual Report 2005
40.	Fiji Parliament-Budget Speeches	2003 Budget Address
41.	Fiji Parliament-Budget Speeches	2004 Budget Address
42.	Fiji Parliament-Budget Speeches	2005 Budget Address
43.	Fiji Police Force	Fiji Crime Statistics-Annual Report 2004
44.	Fiji Police Force	Annual Corporate Plan 2006-Phase Two of the Five Year Strategic Plan 2005-2009
45.	Fiji Police Force	Crime and Intelligence Organization Structure

46.	Financial Intelligence Unit	Memorandum of Agreement (MoJ, RBF, DPP, and Police Force) to Establish Financial Intelligence Unit
47.	Financial Intelligence Unit	Suspicious Transaction Report
48.	Financial Intelligence Unit	Standard Operating Procedures for the FIU in Fiji
49.	Financial Intelligence Unit	2004 Annual Report-Financial Intelligence Unit
50.	Financial Intelligence Unit	Financial Intelligence Unit-2006 Work Program
51.	Financial Intelligence Unit	Organization Chart
52.	Financial Intelligence Unit	Reserve Bank of Fiji Financial Intelligence Unit Checklist for Suspicious Transaction Reports
53.	Financial Intelligence Unit	FIU Statistics
54.	Financial Intelligence Unit	Press Release- Financial Assistance from the Australian Government to the FIU (April 2004)
55.	Financial Intelligence Unit	Press Release-Signing of Memorandum of Agreement to Establish the Financial Intelligence Unit as an Administrative Office (July 14, 2003)
56.	Financial Intelligence Unit	Press Release-Fiji Hosts New United Nations Computer Based Anti-Money Laundering Training Course
57.	Government Gazette	Legal Notice 7 of 1998 - Trust Account Act – Commencement Notice
58.	Government Gazette	Legal Notice 8 of 1998 – Exchange Control Act – Exchange Control (Authorized Dealers) Order 1998
59.	Government Gazette	Legal Notice 70 of 2005 – Proceeds of Crime (Amendment) Act 2005 - Commencement Notice (Gov. Gazette Notice No. 36)
60.	Government Gazette	Legal Notice 71 of 2005 - Financial Transactions Reporting Act – Delegation of Powers (Gov. Gazette Notice No. 36)
61.	Government Gazette	Legal Notice 72 of 2005 - Financial Transactions Reporting Act – Commencement Notice (Gov. Gazette Notice No. 36)
62.	Government Gazette	Legal Notice 73 of 2004-Financial Transactions Reporting Act – Delegation of Powers (Gov. Gazette Notice No. 36)
63.	Government Gazette	Legal Notice 43 of 2005 - Mutual Assistance in Criminal Matters Act 2005 – Commencement Notice (Gov. Gazette Notice No. 24)
64.	Government Gazette	Legal Notice 44 of 2005 - Proceeds of Crime (Amendment) Act 2005 – Commencement Notice (Gov. Gazette Notice No. 24)
65.	Government Gazette	Legal Notice 52 of 1997 – The Capital Markets Development Authority (Securities Exchanges and Licensing) Regulations Act 1997 – Table of Regulations (Gov. Gazette No. 21)
66.	Government Gazette	Legal Notice 47 of 2005 – High Court Act - High Court (Amendment) Rules 2005 – (Gov. Gazette Notice No. 26)

67.	Government Gazette	Legal Notice 57 of 1995 – Banking Act, 1995 – Banking (Submissions of Information) Regulations, 1995
68.	Government Gazette	Legal Notice 58 of 1995 – Banking Act, 1995 – Banking (Amount of Nomination) Regulations, 1995
69.	Government Gazette	Suspicious Transaction Report Form – Proceeds of Crime Act 1997
70.	Government Gazette	Legal Notice 7 of 1998 – Exchange Control (Authorized Dealers) Order 1998 – Commencement Notice
71.	Life Insurance Corporation of India	General Information
72.	Life Insurance Corporation of India	Quotation for the Endowment Assurance Plan
73.	Life Insurance Corporation of India	Quotation for the Whole Life LTD Assurance Plan
74.	Life Insurance Corporation of India	Quotation for the Smart Life 2 Plan
75.	Life Insurance Corporation of India	Proposal for Insurance on Own Life
76.	Money Laundering and Terrorist Financing Training Courses	‘Prosecuting Money Laundering and Terrorist Financing:’ a Training Workshop for Fiji & Pacific Island Prosecutors- July 2004
77.	Money Laundering and Terrorist Financing Training Courses	‘Prosecuting Money Laundering and Terrorist Financing:’ a Training Workshop for Fiji & Pacific Island Prosecutors- November 2005
78.	News Articles	<i>Immigration Boss Demoted</i> – Fiji Times (Feb. 23, 2006)
79.	News Articles	<i>High Court to Cut Backlog</i> – Fiji Times (Jan. 1, 2006)
80.	News Articles	<i>RBF Unit Audit Money Scam</i> – Fiji Times (Feb. 25, 2004)
81.	News Articles	<i>Reserve Bank of Fiji Employment Opportunities</i> – Fiji Times (March 4, 2006)
82.	News Articles	<i>US State Report Highlights Fiji Police Shortcomings</i> – Pacific News Agency Service (Feb. 9, 2006)
83.	News Articles	<i>Cabinet Approves Fiji Law Reform Commission 2006 Work Programme</i> – Fiji Law Reform Commission (Jan. 17, 2006)
84.	News Articles	<i>“Asian Crime Syndicates” Defrauding Fiji Tax Authorities</i> – BBC (Jan. 29, 2006)
85.	News Articles	<i>Fiji Taskforce Set Up to Crack Down on Illegal Foreign Investors</i> – BBC (Feb. 18, 2006)
86.	News Articles	<i>Hope Sinks in Fraud on the South Seas</i> – The Newcastle Herald (Jan. 27, 2006)
87.	News Articles	<i>Taxman Hunts Illegal Joints</i> – Fiji Times (Feb. 2, 2006)
88.	News Articles	<i>Asian Gangs Owe \$10m</i> – Fiji Times (Jan. 29, 2006)
89.	Office of the Attorney General	2005-2007 Corporate and Strategic Plan
90.	Office of the Registrar of	Executive Summary-About the Review of Fiji’s Business

	Companies	Registration Processes and Registries
91.	Office of the Registrar of Companies	Improving the System for Lodging, Processing, Storing and Providing Business Registration Information in the Fiji Islands-Final Report (Aug. 16, 2005)
92.	Registrar of Money Lenders	Procedure for Obtaining a Money Lenders License
93.	Reserve Bank of Fiji	Insurance Annual Report 2004
94.	Reserve Bank of Fiji/FIRCA Legal Advisor	Email from Michael Scott re Revenue Secrecy
95.	Reserve Bank of Fiji/FIRCA Legal Advisor	Letter from Michael Scott (Legal Consultant-Fiji Islands Revenue and Customs Authority) (Feb. 23, 2006)
96.	Reserve Bank of Fiji-Banking Supervision	Reserve Bank of Fiji Examination Manual
97.	Reserve Bank of Fiji-Banking Supervision	Commercial Bank ATM Statistics
98.	Reserve Bank of Fiji-Banking Supervision	Declaration of Compliance
99.	Reserve Bank of Fiji-Banking Supervision	Memorandum to Deputy Governor from the Governor
100.	Reserve Bank of Fiji-Banking Supervision	Banking Supervision Statistics
101.	Reserve Bank of Fiji-Banking Supervision	Procedure of Obtaining a Moneylenders License
102.	Reserve Bank of Fiji-Banking Supervision Policy Statements	Policy Statement 1 - Types of Businesses Permitted for Restricted Foreign Exchange Dealers
103.	Reserve Bank of Fiji-Banking Supervision Policy Statements	Policy Statement 2 - Restricted Foreign Exchange Dealers and Money Changers - Operational Guidelines
104.	Reserve Bank of Fiji-Banking Supervision Policy Statements	Policy Statement 3 - Restricted Foreign Exchange Dealers and Money Changers - Minimum Guidelines to Counter Money Laundering
105.	Reserve Bank of Fiji-Banking Supervision Policy Statements	Policy Statement 4 - Guidelines on Corporate Governance for Insurance Companies
106.	Reserve Bank of Fiji-Banking Supervision Policy Statements	Policy Statement 6 - Guidelines for Licensed Financial Institutions to Counter Money Laundering
107.	Reserve Bank of Fiji-Exchange Control	Consolidated-Commercial Banks Payment Statistics
108.	Reserve Bank of Fiji-Exchange Control	Consolidated-FX Dealers Statistics
109.	Reserve Bank of Fiji-Exchange Control	Consolidated-Banks/FX Dealers Payment Statistics
110.	Reserve Bank of Fiji-Exchange Control	Pamphlet on Exchange Control in Fiji
111.	Reserve Bank of Fiji-Exchange Control	Import and Export of Currency Notes, Bills of Exchange Etc.
112.	Reserve Bank of Fiji-General Documents	Reserve Bank of Fiji Economic Focus – Importance of Non-Bank Financial Institutions in Fiji

113.	Reserve Bank of Fiji-General Documents	Reserve Bank of Fiji's Supervisory Responsibilities
114.	Reserve Bank of Fiji-General Documents	Organization Structure
115.	Reserve Bank of Fiji-General Documents	Leaflet on History of Reserve Bank of Fiji
116.	Reserve Bank of Fiji-Insurance Supervision	Insurance Annual Report 2004
117.	Reserve Bank of Fiji-Press Release	Workshop on Rural Banking (July 4, 2003)
118.	United Nations Security Council Reports	United Nations Security Council Reports - 2002
119.	United Nations Security Council Reports	United Nations Security Council Reports - 2003
120.	Western Union	Western Union CDD forms
121.	Western Union	Compliance Sheet