



ASIA/PACIFIC GROUP ON MONEY
LAUNDERING

Niue ME2

Mutual Evaluation Report

Anti-Money Laundering and Combating the
Financing of Terrorism

Niue

July 2012

Niue is a member of the Asia/Pacific Group on Money Laundering (APG). This evaluation was conducted by the APG and was adopted as a 2nd mutual evaluation by its Plenary on 19 July 2012.

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CONTENTS

Page

Acronyms and Abbreviations	5
Executive Summary	6
1. GENERAL	13
1.1. General Information on Niue	13
Structural Elements for Ensuring an Effective Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) System	15
1.2. General Situation of Money Laundering and Financing of Terrorism	17
1.3. Overview of the Financial Sector and DNFBPs	19
1.5. Overview of strategy to prevent money laundering and terrorist financing	22
a. AML/CFT Strategies and Priorities	22
b. The Institutional Framework for Combating Money Laundering and Terrorist Financing	23
c. Approach Concerning Risk.....	25
d. Progress since the last APG Mutual Evaluation	26
2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES	27
2.1 Criminalisation of Money Laundering (R.1 & 2)	27
2.2. Criminalisation of Terrorist Financing (SR.II)	36
2.3. Confiscation, freezing and seizing of proceeds of crime (R.3).....	39
2.4 Freezing of funds used for terrorist financing (SR.III)	46
2.5. The Financial Intelligence Unit and its Functions (R.26).....	52
2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28).....	59
2.7. Cross-Border Declaration or Disclosure (SR.IX)	65
3. PREVENTATIVE MEASURES —FINANCIAL INSTITUTIONS	73
3.1. Risk of money laundering or terrorist financing.....	74
3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)	75
3.3. Third Parties and Introduced Business (R.9)	83
3.4. Financial Institution Secrecy or Confidentiality (R.4).....	84
3.5. Record keeping and wire transfer rules (R.10 & SR.VII).....	85
3.6. Monitoring of Transactions and Relationships (R.11 & 21).....	89
3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV) ...	91
3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22).....	97
3.9. Shell Banks (R.18).....	100
3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25) ...	101
3.11. Money or Value Transfer Services (SR.VI)	110
4. PREVENTATIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS	113
4.1. Customer Due Diligence and Record-keeping (R.12)	113
4.2. Monitoring Transactions and other Issues (R.16).....	116
4.3. Regulation, Supervision, and Monitoring (R.24-25)	118
4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20).....	119
5. LEGAL PERSONS & ARRANGEMENTS AND NON-PROFIT ORGANISATIONS	121
5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33) .	121

5.2.	Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)	125
5.3.	Non-Profit Organisations (SR.VIII).....	127
6.	NATIONAL AND INTERNATIONAL COOPERATION	133
6.1.	National Cooperation and Coordination (R.31).....	133
6.2.	The Conventions and UN Special Resolutions (R.35 & SR.I)	134
6.3.	Mutual Legal Assistance (R.36-38, SR.V)	136
6.4.	Extradition (R.37, 39, SR.V)	144
6.5.	Other Forms of International Cooperation (R.40 & SR.V).....	148
7.	OTHER ISSUES	154
7.1.	Resources and Statistics	154
7.2.	Other relevant AML/CFT Measures or Issues	154
Table 1: Ratings of Compliance with FATF Recommendations		155
Table 2: Recommended Action Plan to Improve the AML/CFT System		166
Annex 1: Authorities' Response to the Assessment		179
Annex 2: Details of All Bodies Met During the Onsite Visit		182
Annex 3: List of All Laws, Regulations, and Other Material Received		183

ACRONYMS AND ABBREVIATIONS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ATM	Automatic Teller Machine
BSP	Bank of the South Pacific
CDD	Customer Due Diligence
CRO	Companies Registrar Office
DNFBPs	Designated Non-Financial Businesses and Professions
EEZ	Exclusive Economic Zone
EFTPOS	Electronic Funds Transfer/Point Of Sale
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSRB	FATF-style Regional Body
FT	Financing of terrorism
FTRA	<i>Financial Transactions Reporting Act 2006</i>
IBC	International Business Company
MACMA	<i>Mutual Assistance in Criminal Matters Act 2006</i>
ME	Mutual Evaluation
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
FIU	Niue Financial Intelligence Unit
NCC	National Coordination Committee
NPO	Non-profit organization
NZD	New Zealand Dollar
OCO	Oceania Customs Organisation
Palermo Convention	<i>United Nations Convention against Transnational Organised Crime</i>
PEP	Politically-exposed person
POCA	<i>Proceeds of Crime Act 1998</i>
PSC	Public Service Commission
RHC	Registrar of the High Court
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TIEA	Tax Information Exchange Agreement
TSTCA	<i>Terrorism Suppression and Transnational Crimes Act 2006</i>
UN	United Nations
UNSCR	United Nations Security Council Resolution
Vienna Convention	<i>United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</i>
WCO	World Customs Organisation

Preface

Information and methodology used for the evaluation of Niue

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Niue was based on the Financial Action Task Force (FATF) Forty Recommendations 2003 and Nine Special Recommendations of 2001, and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied

by Niue, and information obtained by the evaluation team during its onsite visit to Niue from 18 – 25 November 2011 and subsequently.

2. During the onsite visit the evaluation 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 mutual evaluation report.

3. The evaluation was conducted by a team of assessors composed of experts in criminal law, law enforcement and regulatory issues, and the APG Secretariat. The Evaluation Team consisted of member experts from the APG, the Group of International Finance Centre Supervisors and the APG Secretariat.

Legal expert

- Hari Kumar Nepal, Assistant Director FIU, Nepal Rastra Bank, Nepal

Financial experts

- Hamish Armstrong, Adviser, Reserve Bank of New Zealand, New Zealand
- Sylvia Sirett, Deputy Director, Policy and International Affairs, Guernsey Financial Services Commission, representing the Group of International Finance Centre Supervisors

Law enforcement experts

- Bob Williams, Head of Financial Intelligence Unit, Cook Islands Financial Intelligence Unit, Cook Islands

APG Secretariat

- Sisilia Eteuati, Director, Technical Assistance and Training
- Jennifer Ford, Project Officer

4. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

EXECUTIVE SUMMARY

Key Findings

1. **Niue has a low risk of money laundering and terrorist financing.**

2. **Niue has a very limited financial sector.** There is one commercial bank, one development bank and two money remitters (a Western Union, which operates within the commercial bank and a travel agency) for a population of 1500 people. While there is law in place that provides for financial

institutions and cash dealers to be regulated for AML/CFT, very little AML/CFT regulation occurs in practice.

3. **There has been no comprehensive assessment of money laundering (ML) and financing of terrorism (FT) vulnerabilities in Niue but the main vulnerability appears to be that there is no oversight of any financial institutions including remittance services.**

4. **The Financial Intelligence Unit is the lead agency for AML/CFT in Niue.** The *Financial Transaction Reporting Act 2006* (FTRA) provides a range of statutory powers to the financial intelligence unit (FIU), but those powers have not been exercised.

5. **Overall, Niue has legislated reasonably sound measures concerning ML/FT criminalisation, confiscation and international co-operation, and the preventive measures for the financial sector, but technical and implementation deficiencies remain.** There are deficiencies in the following: elements of the ML and FT offences; criminalisation of a number of predicate offences for ML, mechanisms for freezing FT funds without delay and domestic designation; administrative sanctions for breach of FTRA, obligations and powers under the FTRA, controls on movement of cash across borders; implementation of the entire AML/CFT system.

6. **The Government of Niue closed down their International Business Companies (IBC) Register in 2006.** A small number of companies from the IBC re-registered under the *Niue Companies Act 2006*; four remain active.

7. **There is no express provision against shell banks and companies do not have to identify the ultimate beneficiaries of shares.**

8. **There has been no prosecution or conviction for ML and FT.** Opportunities for possible ML prosecution were not pursued either due to lack of resources or expertise, and the view (by some authorities) that ML is more of an international rather than a domestic concern. The authorities consider terrorism and FT as very low risk, and there has never been a case of either event.

9. **There is one lawyer and one accountant in Niue and neither are currently subject to AML/CFT supervision.** The accountant does assist with company formation. It is not clear what the lawyer is doing as they were unable to meet with the mutual evaluation team.

10. **Key recommendations made to Niue include:**

- Continue to develop a national risk assessment, with more structured integration of the assessment into the national AML/CFT strategy
- Criminalise all 20 categories of predicate offences and address remaining legal deficiencies in the ML and FT offences
- Amend legislation to provide for designation under UNSCR 1267 and then designate under that provision
- Clarifying and identifying the financial institutions as described in the FTRA, including, for example, the Niue Development Bank falls under the definition but is not currently treated as such by the FIU as AML Supervisor
- Commence supervision of financial institutions against provisions of the FTRA, including STR and CTR reporting
- Commence outreach, guidance, training and awareness for both financial institutions and law enforcement on provisions of the FTRA

- Agencies to develop policies and procedures to implement the FTRA, proceeds of crime, mutual legal assistance and extradition
- Use available powers to investigate and prosecute the ML offence
- Use the powers available under the *Proceeds of Crime Act 1998* to restrain and confiscate the proceeds of crime
- Provide mechanisms/procedures for freezing terrorist property without delay
- Distribute the UNSCR 1267 list to financial institutions and law enforcement
- Designate ‘specified entities’ under UNSCR 1373 and then distribute to financial institutions and law enforcement
- Amend the *Extradition Act 2007* to overcome the fact that the law cannot be used in its current form as there are no bilateral agreements and Niue cannot make use of multilateral conventions as a basis for extradition
- Establish a strategic plan for the FIU to support prioritized implementation
- Consolidate the cross-border declaration regime and ensure reports are spontaneously shared with the FIU
- Prioritise ensuring that IBCs are de-registered
- Develop a national AML/CFT strategy commensurate with the resources available to the government
- Become a party to the *United Nations Convention against Transnational Organised Crime* (the “Palermo Convention”), and the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Vienna Convention).
- Implement the requirement in the law whereby incorporated societies and companies are to provide an annual report to their respective registrar.

Legal Systems and Related Institutional Measures

11. **Niue has criminalised money laundering through the *Proceeds of Crime Act 1998* (POCA).**

12. **The ML offence defined by the POCA provides a broad definition of the physical elements, but the range of domestic predicate offences remains too narrow.** The coverage of proceeds of foreign ‘unlawful activities’ may be interpreted to provide broad coverage of foreign predicate offences. The law does not contain any requirements that mandate prior conviction for a predicate offence.

13. **The POCA extends criminal liability to legal persons both incorporated and unincorporated.** Both the corporation and those who act on the corporation’s behalf are held liable. There is no experience in Niue of prosecuting legal persons.

14. **Niue criminalises terrorism financing in the *Terrorism Suppression and Transnational Crime Act 2006* (TSTCA), and has ratified the UN Convention on the Suppression of Terrorism Financing.** The provision and collection of funds for the purposes of terrorist acts is sufficiently covered by criminalisation. Criminalisation of financing terrorist organisations is limited to those organisations gazetted by the Minister. At the time of the onsite visit no terrorist organisations or individuals were designated rendering the relevant provisions inactive. The financing of an individual terrorist is not criminalised.

15. **The proceeds-of-crime regime is set out in POCA, which provide conviction-based proceeds of crime recovery regime.** No investigation has ever been launched and no application has ever been made to confiscate property under this regime.

16. **Niue lacks a legal basis to comprehensively implement UNSCR 1267.** Freezing pursuant to UNSCR 1267 may be enabled in part by the *United Nations Act 1946* and the *United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2004* which makes it an offence to deal with Al Qaida, Taliban and their related entities and Usama bin Laden. No financial institution has ever used, or been directed to, use these regulations to freeze and neither the Niuean authorities nor the financial institutions had considered use of the regulations in any manner.

17. **Niue's ability to implement UNSCR 1373 is limited.** Freezing pursuant to UNSCR 1373 is enabled by the TSTCA; however it is limited to the government seeking a court order to freeze terrorist property, which would result in significant delays. In addition, the provision is reliant on the Minister gazetting before it can have effect in Niue. This has not been done. There are no powers for any regulatory authority to give instructions to entities which may be holding terrorist property to check for matches with the list and freeze without delay.

18. **The FIU has not yet received STRs.** Processes to analyse information received from reporting institutions have not been used. The operational independence is currently not sufficiently guaranteed, notably on staffing and budget.

19. **The Niue Police Force is designated by POCA and TSTCA to investigate ML and TF.** It is not clear that there is a close awareness of either law, in part because of the rarity of transnational crime cases or profit driven crimes in Niue.

20. **Capacity constraints with the Solicitor General (SG) may give rise to practical difficulties in implementation.**

21. **Niue's regime to cover cross-border transportation of currency and bearer negotiable instruments is set out in the FTRA.** This does not provide for automatic sharing of cash border reporting declaration with the FIU, although the FIU can access them on request. Customs detected at least one incidence of undeclared cash, but a BCR was not completed, because of lack of familiarity with the FTRA obligations.

Preventive Measures—Financial Institutions

22. **AML/CFT preventive obligations are set out in the FTRA.** FTRA also creates rule-making powers for the Cabinet to implement requirements under the FTRA, but these have not been used. Unenforceable guidelines were issued under the FTRA on STR reporting and CDD in 2007 but none of the financial institutions had any corporate memory of the guidelines being issued, nor had they maintained a copy. The commercial bank was reissued with the guidelines in the two weeks prior to the onsite visit.

23. **The CDD requirements cover the key building blocks of the preventive measures, although gaps include weakness with beneficial ownership requirements, ensuring existing accounts are bona fide, and enhanced CDD for high risk customers.**

24. **The FTRA establishes enhanced due diligence requirements for foreign politically exposed persons (PEPs), although the definition of a PEP is not in line with the FATF definition.**

There is no requirement for senior management approval to continue a business relationship with an existing customer who becomes a PEP and there is no obligation to check on beneficial owners being PEPs. Although correspondent banking relationships do not exist at present there is no legal provision to prohibit the use of such relationships. Similarly although there is no non-face-to-face business conducted in Niue financial institutions at present, there are no legal provisions or other enforceable means in place to require financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business and transactions, or to prevent the misuse of technological developments. Measures to manage both of these provisions have been effectively achieved at present as the use of technology such as electronic banking, ATMs and EFTPOS has not reached Niue and all business is currently undertaken on a face-to-face basis.

25. Financial institution secrecy is not an impediment to the effective implementation of the AML/CFT regime.

26. The FTRA includes generally satisfactory record-keeping requirements, in particular allowing for the reconstruction of individual transactions.

27. Remitters are required to maintain full originator information for both domestic and cross-border wire transfers regardless of the amount. There is a need for guidance on what should be included as originator information.

28. There are generally comprehensive obligations in relation to paying attention to unusual transactions.

29. Niue requires financial institutions to pay specific attention to business relationships and transactions with counterparts from or in countries not sufficiently applying the FATF Recommendations. No guidance has been given to assist financial institutions to apply these provisions.

30. FTRA creates obligations to report STRs for money laundering and terrorist financing to the FIU, however no STRs have been filed to date. The scope of the STR reporting obligation under FTRA is limited by the narrow range of predicate offences. There is no definition on what constitutes “reasonable grounds to suspect”.

31. FTRA provides for satisfactory safe harbour and tipping-off provisions.

32. Niue issued guidelines for reporting. A standard STR reporting form was issued in 2007. These were circulated by the FIU to all regulated institutions; however, the financial institutions the onsite team met with were unaware of this guidance (having not maintained a copy).

33. FTRA defines generally satisfactory requirements for financial institutions on internal controls, although more is needed in relation to audit. There is a requirement to appoint compliance officers, although not at management level, whose duties must encompass AML/CFT requirements. In practice no compliance officers had been appointed. Independent auditing and auditors is not a requirement.

34. Niue does not yet have a prudential regulator or supervisor. Banking legislation is limited in relation to its coverage of core principles.

35. **Monitoring, supervision and enforcement of compliance with AML/CFT requirements is the responsibility of the FIU.** The FIU has the authority to conduct offsite and onsite inspections and to review and access policies, books and records. It can access all relevant records, documents and information without a court order. At present, there are no procedures or capacity to conduct supervision of the financial institutions.

36. **Niue has no requirements for fit and proper (banking and corporations) at market entry to ensure criminals cannot control financial institutions.**

37. **There are criminal sanctions under the FTRA, although it is not clear that this extends to directors and senior management.** There are no administrative sanctions.

Preventive Measures – Designated Non-Financial Businesses and Professions

38. **All Designated Non-Financial Businesses and Professions (DNFBPs) are subject to the full range of AML/CFT obligations under the FTRA.** The strengths and weaknesses with preventative measures would apply equally to controls over DNFBPs.

39. **The only DNFBPs presently active in Niue are a lawyer and an accountant.** No STRs have been provided by any DNFBP in Niue.

40. **AML/CFT supervision of DNFBPs is the responsibility of the FIU.** In practice the FIU is not supervising DNFBPs.

Legal Persons and Arrangements & Non-Profit Organisations

41. **Niue's legal framework for corporate entities requires the registration of corporations, but the data available with the Registrar is limited to formal ownership and does not require beneficial ownership information to be included.** The requirement for yearly renewal of incorporation, including identifying owners and directors is verified by the Registrar. This information is available to law enforcement as needed. However, its value to law enforcement is undermined by the absence of beneficial ownership information.

42. **The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership.** Niue recognises trusts through the *Trusts Act 1994*. At the time of the onsite visit no trust has registered under that Act. In any event, the value to the FIU and law enforcement of trust licensee information is undermined by the absence of beneficial ownership information.

43. **Incorporation of non-profit organisations is governed by the *Incorporated Societies Act 1908*.** NPOs are not required to be registered or licensed under this Act.

International Cooperation

44. **Niue has ratified the *United Nations International Convention for the Suppression of the Financing of Terrorism* but is not a party to the Palermo or Vienna Convention.** Niue has not implemented UNSCR 1267 or 1373.

45. **Statutory provisions for mutual legal assistance are broadly comprehensive, although their complexity may impede implementation.** The gaps in coverage of domestic predicate offence may impede mutual legal assistance. Niue has never received or made an MLA request.

46. **The Extradition law includes ML and TF as a basis for extradition.** Niue can only extradite to countries designated in the law. No countries are designated. Niue would need to expedite a process of designating a country before an extradition request could be met.

47. **FIU-to-FIU international cooperation is supported in statute.** Niue has a Memorandum of Agreement with the NZ FIU and has a Memorandum of Understanding with ten other Pacific Island countries.

1. GENERAL

1.1. General Information on Niue

Geography and demography

1. Niue comprises of a land area of 260sq km being one single raised coral atoll and occupies an Exclusive Economic Zone (EEZ) of approximately 390,000sq km¹. According to the Niue Census of Population and Households 2011 the population of Niue is 1460. The official languages are Niuean and English. The capital of Niue is Alofi. Niue uses the New Zealand dollar for currency.

2. Niue is in the centre of a triangle of Polynesian islands, made up of Tonga to the east, Samoa to the North and the Cook Islands (to the south west). Niue is located 2400 km north-east of New Zealand.

3. All Niueans are New Zealand citizens with the right of free access to New Zealand. Since the 1960s Niue has experienced steady population decline as Niueans moved freely to New Zealand. Authorities advise that more than 20,000 Niueans live in New Zealand.

Economy

4. Niue's GDP was estimated to be NZD17.2 million in 2003. A breakdown of the economy is given below:

GDP breakdown:	Government non-market 40%, formal cash economy 25%
GDP per capita:	NZD10,048 (2003)
Exports:	NZD0.264 million for year ended December 2006
Imports:	NZD9.935 million for year ended December 2006
Main exports:	Fish, taro, coconut crabs, noni, honey, vanilla
Current account:	N/A
Inflation:	0.38% (2005)
Gross external debt:	N/A

5. In addition to exports, further income is derived from: fishing access licences, philatelics and numismatics (collectable stamps and coins), a government bond store, airspace fees, landing rights primarily from New Zealand but also Australia.

6. The economic challenges that Niue experiences are common to other micro-states within the region that have a small population, small land area and proportionate economic base. The Government's economic development pillars² aim to maximise the benefits from Niue's resources in a sustainable manner focusing on the private sector development targeting tourism, fisheries and agriculture, and utilising sovereign assets, such as Niue's EEZ.

7. Under the constitutional arrangement with New Zealand, Niue receives substantial economic and administrative assistance from New Zealand. Economic assistance is provided in the form of both direct budget support and project-related aid. In 2004 Niue established the Niue International Trust Fund with its trustees being Niue, New Zealand and Australia.

¹ Retrieved 26 October 2011 from <http://www.mfat.govt.nz/Countries/Pacific/Niue.php>

² *Niue National Strategic Plan 2009 - 2013*

Government and Political System

8. Niue was included within the boundaries of New Zealand by British Royal Order in Council in 1901. On 19 October 1974 Niue became a self-governing state in free association with New Zealand. The Head of State is Queen Elizabeth II represented by the Niue Cabinet of Ministers. The Governor-General and Commander-in-Chief of the Realm of New Zealand is also the representative of Her Majesty the Queen in relation to Niue. In recognition of constraints imposed by its size and isolation, the Niue Constitution states that New Zealand has a continuing responsibility to support Niue in matters of external affairs and defence of Niue. These responsibilities confer no rights to the New Zealand Government and can only be acted on at the request of and on behalf of the Government of Niue. The Niue Constitution also commits New Zealand to provide "necessary economic and administrative assistance to Niue".³

9. The *Niue Constitution Act of 1974* allows for a 20 member Legislative Assembly. Fourteen members are elected to represent each village and a remaining six members are elected from the National Register called a Common Roll. A Premier, to lead the Government, is elected by the Legislative Assembly who in turn selects three associates making a four-member Cabinet. A Speaker of the Assembly is selected from outside the ranks of the Legislative Assembly members. All local residents over 18 years of age are eligible to vote.

10. Niue's most prominent foreign relations tie is with New Zealand, where Niue maintains its only overseas diplomatic office. Niue has also established diplomatic relations with the Peoples' Republic of China and is considering diplomatic relations with other countries.

11. Niue's ties with other Pacific countries and Australia are primarily built on its membership of regional organisations, including the Pacific Islands Forum, the Pacific Community, the Forum Fisheries Agency, Pacific Islands Law enforcement Officer Network, Pacific Islands Maritime Law Association, South Regional Environment Programme, Pacific Islands Chiefs of Police, Oceania Customs Organisation, Pacific Immigration Directors Conference, the World Health Organisation, United Nations Development Program, Food and Agriculture Organisation and United Nations Educational, Scientific and Cultural Organisation.

Legal system (including courts)

12. The *Interpretation Act 2004* at section 4 sets out the hierarchy of laws in order of priority as follows:

- (a) The Constitution
- (b) Acts of the Assembly
- (c) Regulations
- (d) Niuean custom
- (e) Common law of Niue.

13. Under section 5 of the Interpretation Act, "Constitution" means "the Constitution of Niue, and includes the Act of the Parliament of New Zealand intituled the *Niue Constitution Act 1974*, and also includes any constitutional amendment, as that term is used in article 35 of the Constitution, when that constitutional amendment has come into force."

³ Niue Constitution Act 1974, s.7

14. “Regulation” means “any enactment other than an Act, but does not include regulations made by an authority which has jurisdiction limited to a district or village.” The *Village Council Act 1967* enables the Council to make by-laws.

15. The Niue Constitution came into force 19 October 1974 when both the Niue and New Zealand Parliaments passed the *Niue Constitution Act 1974*. The statutes that apply in Niue include Acts of the New Zealand Parliament, extended to Niue before 1974 that have not been repealed by the Niue Assembly since 1974, Niue ordinances (pre-1974), and Acts of the Niue Assembly (post-1974).

16. The High Court of Niue is the court of general jurisdiction for Niue. The High Court consists of the Chief Justice and other judges and commissioners. The present Chief Justice for Niue is based in New Zealand and is a legally qualified person with professional judicial experience in New Zealand’s Maori Land Court. The Niue Court of Appeal has five judges who also have professional judicial experience in New Zealand (both current and former judges). The commissioners of the High Court are local lay persons. The High Court is the court of general jurisdiction for Niue and is presided over by Commissioners that sit once monthly depending on the number of criminal cases and its jurisdictional limits. All civil matters are listed for the Chief Justice. The remaining cases are heard in the High Court that sits biannually. Urgent matters are discussed via teleconference as appropriate. Niue uses the Judicial Committee of the Privy Council (JCPC) as the highest court of appeal. The JCPC is the court of final appeal for the United Kingdom’s overseas territories and Crown dependencies and is located in London, UK.

Structural Elements for Ensuring an Effective Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) System

Transparency and good governance

17. Niue has a democratic and accountable system of government with an independent judicial system and a free media⁴. There have been a number of elections since Niue became independent of New Zealand in 1974, and in general democracy has functioned well.

18. Niue’s most recent general elections were held on 7 May 2011. The election process is managed and controlled by the Chief Electoral Officer, who is also the Secretary to Justice, Registrar of the High Court and Head or Director of the Department of Justice, Lands and Survey.

19. The Transparency International Overview Report of Pacific Islands 2005 cites cultural traditions, family solidarity and non-partisan politics as issues of concern in affecting transparency and democratic processes. As provided by article 60 of the Niue Constitution, the Audit Office of New Zealand is the auditor of Niue.

20. Niue is not listed amongst the 183 countries on the Transparency International 2011 Corruption Perceptions Index.⁶ The 2004 Transparency International report on Niue was not part of the Perceptions Index process.

Culture of AML/CFT Compliance

⁴ A statutory body, the Broadcasting Corporation of Niue, owns and operates Television Niue and Radio Sunshine. A privately owned outlet, the Niue Star, is a weekly paper for which the owner/editor/contributors reside in both Niue and New Zealand and the paper is printed and published in New Zealand.

⁵ National Integrity Systems, Transparency International Country Study Report, Niue 2004, from http://www.transparency.org/policy_research/nis/nis_reports_by_country

⁶ <http://cpi.transparency.org/cpi2011/results/>

21. The risk of ML in Niue is quite low as proportionate to its crime rates. The risk of TF, or terrorist activities in general, is virtually non-existent is even lower. There is an AML/CFT framework in the Niue however it is rarely utilised and general awareness of AML/CFT measures is low. AML/CFT measures are not consistently implemented in both sectors. The authorities have some plans to strengthen AML/CFT legal framework, but resource limitations hamper their ability to devote discrete resources to the overarching system.

22. Designated non-financial businesses and professions (DNFBPs) are included in Niue's AML/CFT requirements.

Anti-Corruption Measures

23. The legal definition of corruption is limited to bribery, and corrupt use of official information for pecuniary gain. The definition is provided only for the public sector and is in the *Niue Act 1966*, section 180. It includes corruption and bribery of judicial officers, Ministers, members of Assembly, law enforcement officers, and officials. The Transparency International National Integrity Systems 2004 report on Niue advised that this means that "outside of the official sphere then, there is no legal definition of corruption. Instead, it is expected that fair play must prevail and more so by those holding positions of trust in matters concerning land, church, and the extended family in the community."

24. The appointment of assembly members and public servants is detailed in Niue's Constitution and is transparent in nature. The Constitution allows for the Public Service Commission (PSC) to devise its own public service regulations, which it has done. The Niue *Public Service Regulations 2004* detail the expectations of ethical behaviour and the PSC advises that any criminal matter is handled by the relevant enforcement agency in the first instance, before any disciplinary measures are undertaken by the PSC.

Efficiency of court systems and enforcement of judicial decisions

25. A Judge from New Zealand is appointed to the High Court of Niue, and that Court is convened twice a year. In the interim, injunctive matters can be heard via telephone.

26. Due to the low-level nature of crimes in general in Niue, the court system is adequate. The majority of non-civil matters are heard by the Commissioners of the High Court. However, while some urgent criminal matters are heard via teleconference most of the cases are held until the period during which the Court is convened, which is twice a year depending on demand, and the judge is present in Alofi, which may cause delays in process and judgement and affect the efficiency of matters being heard in a timely manner.

Ethical requirements for police, judges, etc.

27. The *Constitution of Niue 1974*, Article 42, provides for the appointment of the Chief Justice and Judges of the High Court of Niue, as is the appointment of Chief Judge and Commissioners of the land court. Conditions of appointments and removal from the judiciary are clearly set out in the Constitution in Article 45.

Article 42 provides that:

- (a) The Chief Justice of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Premier;

- (b) The other Judges of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Chief Justice of the High Court and the Minister of Justice.

Article 45 provides that the same approval process is required for removal and a judge can only be removed if they are unable to discharge the function of their office.

28. There is not a discrete code of conduct for the police and no discrete police act or legislation. All police officers are public servants, and in addition to the *Public Service Regulations 2004*, section 228A of the Niue Act, are subject to the Niue Public Service Code of Conduct. Police officers are employed on public service contracts which includes, amongst other ethical requirements, privacy and confidentiality. Police powers are described in the *Niue Act 1966* in the section on criminal procedure. In addition to national requirements and expectations, the appointment of a New Zealand police officer to be the Niue Chief of Police, along with Niue Police's recent involvement in the Transnational Crime Unit in Samoa, adds an extra element of rigour to ethical policing in Niue.

Systems for professional standards of accountants, lawyers, auditors

29. Niue has one small private law firm and one small private accounting firm. While there are no self-regulatory organisations or other explicit systems for professional standards of accountants, lawyers and auditors in Niue other laws and associations assist in regulating these professions in Niue.

30. The practising lawyer and the practising accountant are both New Zealand trained.

31. Barristers and solicitors must be admitted to practice in New Zealand, Australia or Fiji in order to practise in Niue.

32. There are also local public defenders that represent criminal cases and generally do a certificate in law through the University of the South Pacific.

33. Lawyers are required in order to represent any party in the High Court under Section 80 of the *Niue Act 1966*, and are entitled represent a party in the courts during the appeal process. These legislated requirements and entitlements infer some responsibility for the professional standards of lawyers on the High Court of Niue.

Niue Act 1966:

80 Right of audience in the High Court

In any proceedings in the High Court, whether civil or criminal, any party may be represented either by a barrister or solicitor of the High Court of New Zealand, or, with the leave of the Court, by any other agent, but any such leave may be at any time withdrawn.

122 Right of audience on appeal

On every case stated for the Court of Appeal and in every appeal to that Court, the parties may either appear in person or be represented by a person who has right of audience in the High Court, or may submit their arguments to the Court of Appeal in writing.

1.2. General Situation of Money Laundering and Financing of Terrorism

34. Niue's domestic economy and infrastructure, reflective of its small population, limits the ability of criminals and terrorists to operate and to generate funds. The financial sector is very small

and the authorities state that it would be difficult to use these services to launder money or finance terrorism without drawing attention. There have never been any cases investigated for money laundering or terrorist financing and there has been no known or suspected terrorist activity or criminal activity that have generated large amounts of money. Niue has not submitted any typologies reports to the APG. Niue authorities do not foresee any significant change in criminal activity in Niue.

35. No enforcement or requests for international cooperation in AML/CFT matters have been made or received.

36. An overview of the criminal activity on Niue for 2008-2011 is provided below:

Criminal Court stats

Application	Jul 08 - Jun 09	Jul 09 - Jun 10	Jul 10 - Jul 11
NIUE ACT 1966			
Break & Enter	1	-	-
Theft	-	2	1
Fraud	2	-	1
Party to an Offence	-	1	1
Unlawful possession of firearm	-	1	-
Possession of firearm without lawful purpose	-	1	1
Application for a Search warrant	-	1	1

Source: Justice Department annual report 2010-2011

37. The abbreviated table above is an indication of the more serious and the proceeds-generating crimes dealt with by the courts from 2008 to 2011; the misdemeanours and felonies listed are not related to proceeds-generating activities. During 2008 – 2011 the criminal courts dealt with a total of 231 cases that represented an array of crimes under the *Transport Act 1965*, *Niue Act 1966*, *Dogs Act 1966* and the *Pig Control Act 1988*. During that same period, the civil courts dealt with 54 matters in total, the most numerous cases being claims for unpaid goods/services (20 cases) and motion for direction to service (11 cases).

38. Niue’s low crime occurrence is also reflected in the Pacific Islands Forum Secretariat *Pacific Transnational Crime Assessment 2010*.

Terrorist financing

39. There are no known terrorists groups operating in Niue and in general an apparently low threat of terrorism or terrorist activities. There have been no cases in relation to terrorist financing or suspected terrorist financing.

1.3. Overview of the Financial Sector and DNFBPs

40. The Niue Financial Intelligence Unit (Niue FIU) regulates and supervises those financial institutions and DNFBPs that fall within the regulatory framework. There is no Central Bank and the country uses New Zealand currency. There are no securities or insurance sectors in Niue; the size of the Niuean economy does not attract a viable need for these services.

41. Cash is the main form of currency in Niue. Most payments are made by cash or cheque although some with some retailers, such as Bank of South Pacific (BSP), the travel agency and hotels, offer credit card services. There is no electronic funds transfer at point of sale (EFTPOS), and electronic transactions are made at the bank. The movement to a cashless economy is slow due to the high costs associated with the necessary technology and the small size of the economy. The government is considering installing an ATM, and the domestic bank has considered electronic banking, however the infrastructure set-up costs are high in proportion to Niue's small economy.

42. Due to the small size of Niue, not all the types of financial activity that are covered by the FATF Recommendations operate there. The following table sets out the types of financial institutions that carry out the activities listed in the Glossary to the 40 Recommendations.

Table 1: Financial Institutions in Niue

Financial Activity (based on the Glossary for the 40 Recommendations)	Description
Acceptance of deposits and other repayable funds from the public	– Bank
Lending, including consumer credit, mortgage credit, factoring and the finance of commercial transactions	– Banks – Money remitter
Financial leasing	– Nil
The transfer of money or value, both in the formal and informal sector	– Bank – Money remitter
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	– Banks – Money remitter
Financial guarantees and commitments	– Banks
Trading in: (a) money market instruments (cheques, bills, CD, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	– Nil
Participation in securities issues and the provision of financial services related to such issues.	– Nil

Individual and collective portfolio management	– Nil
Safekeeping and administration of cash or liquid securities on behalf of other persons	– Banks
Otherwise investing, administering or managing funds or money on behalf of other persons	– Nil
Underwriting and placement of life insurance and other investment related insurance, including insurance undertakings and the operations of insurance intermediaries	– Nil
Money and currency changing	– Bank

Banking sector

43. Niue has one commercial bank, a branch of BSP from Papua New Guinea which is licensed and supervised by the Niue FIU and offers purely domestic facilities on the island. This bank is licensed and acts under an MOU with the Niue Government. There is also a government-owned development bank, which provides both consumer and business loans but does not take deposits.

Money remitter

44. There are two money exchange/remittance businesses, one that is part of the global chain of Western Union services and operates from the BSP, and another that operates out of a local travel agency. Each of these remittance businesses sends and receives normally small amounts to and from overseas, mainly between relatives living in Niue and New Zealand. These businesses are not currently regulated. However, not regulated money exchange/remittance businesses are captured as reporting institutions under the FTRA.

Overview of the DNFBP Sector

45. There are no casinos in Niue (including internet casinos), real estate agents, dealers in precious metals, dealers in precious stones or trust and company service providers. In 2011, a lawyer established a private practice, and an accountancy firm commenced business offering accounting and business consulting services.

46. In December 2006 the Government of Niue closed all its offshore operations. This commenced with the repeal of the *International Banking Act 1997* in 2002 and subsequent closure of the International Banking Registry in 2002 and all licences were revoked. The final act of closure was on 31st December 2006 when, as a result of the repeal of the *International Business Companies Act 1994*, all international business companies (IBC) registered were effectively dissolved. The *Companies Act 2006* established the Niue Companies Registry.

47. The Niue Companies Registry registers Niue resident companies whilst the IBC Registry closed in 2006. However, there is a provision under the *Companies Act 2006* for applications to be made to the Registrar or the High Court for re-registration of companies. In practice the Niue Companies Registrar requires all applications for re-registration to be made to the High Court before the Niue Companies Registrar will accept the applications. The Registrar requires that the application must specify the purpose for which registration is required and upon payment of the annual return fee they will remain on the register until the specified purpose has been achieved. At the time of the visit there were eight companies which were currently re-registered.

48. The Niue *Companies Act 2006* is based on New Zealand's and Samoa's equivalent legislation.

49. All DNFBPs are captured under the FTRA as reporting institutions. At the time of the onsite visit, the Niue FIU had not identified the precise activities being undertaken by the two DNFBPs and therefore it was not clear whether or not they would be subject to the requirements of the FTRA.

Lawyers

50. In 2011, a lawyer established a private legal practice. As required, the lawyer is admitted to practice in the Niue High Court. At the time of the visit it was not possible to meet with the lawyer and therefore it was not possible to establish the specific activities in which the lawyer intended to be involved.

Accountants

51. In 2011, an accountancy firm commenced business offering accounting and business consulting services including the provision of assistance in the setting up of companies.

1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements

52. **Companies:** Company registration is performed by the Company Registrar's Office under the *Companies Act 2006*, which replaced the *International Business Companies Act 199* (section 349). The CRO collects all documents received and sends them to their registry that is located in New Zealand. The Registrar is part of the Treasury Department. There are currently 48 active companies registered with the Registry, primarily small, private domestic companies. Standard arrangements relating to shareholders and directors apply. Records are available for public search.

53. International company registration is permitted under section 292-297 of the *Companies Act 2006*. International business companies may re-registration as offshore companies that were registered under the *International Business Companies Act 1994*. Only 10 international companies re-registered during the transition period to 31 December 2006. Those that did not have ceased legal existence in Niue. Only four IBCs remain on the registry. There is no information available on the activities of companies that did not re-register.

54. **Partnerships:** The *Partnership Act 1908* and the *Partnership Application Act 1994* provide for the registration and establishment of partnership. Partnerships may be registered as a partnership, a limited liability partnership or a special partnership for a variety of activities barring banking or insurance.

55. **Trusts:** Niue *Trusts Act 1994* provides for the Registrar of the High Court to maintain a register of trusts. However, the Trusts Act does not make registration of trusts mandatory and at the time of the onsite visit no trusts had been registered. At registration only the names of the trustee, settlor and beneficiary are required, there is no legal provision or measure to identify the beneficial owner.

56. Any person in Niue may act as a trust formation agent and/or company service provider.

57. **Not-for-Profit Organisations (NGOs):** The *Incorporated Societies Act 1908* governs all aspects of incorporated societies seeking to operate as a not-for-profit organisation in Niue. The

Registrar of Incorporated Societies function currently resides with the position of the Secretary to Justice. The *Income Tax Act 1961* provides income tax exemptions for some societies but no societies or institutions are currently registered for that purpose.

58. Niue has a small NPO sector. Most NPO activities are for domestic purposes only though on a few occasions funds are raised to assist countries suffering from natural disasters. The majority of the NPOs are domestic entities, however there are a few international NPOs which operate in Niue; they must register as an incorporated society in order to operate in Niue. There is no evidence to suggest that any NPO in Niue has been used as vehicle for ML or TF.

1.5. Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

59. The Niue *National Strategic Plan 2009-2013* (National Strategic Plan) sets out the broad policy framework to meet the vision of “Niue ke Monuina – A Prosperous Niue”⁷. The Strategic Areas for Implementation for national security relevant to AML/CFT in the National Strategic Plan are:

- Strengthen national justice systems
- Strengthen immigration, maritime surveillance and border control security.

And the targets/indicators are:

- Immigration, and border control and security breaches minimised
- National security legislative frameworks updated as appropriate to combat AML/CFT.

60. Niue’s main AML/CFT policies are carried by the Crown Law Office for whom “AML/CFT legislative framework compliance” and “FIU requirements as provided under the *Financial Transactions Reporting Act 2006*” are two of their six key objectives identified in their *Corporate Plan 2009 to 2013*. The plan further commits Crown Law Office to “ensure compliance with the *Financial Transactions Reporting Act 2006* and international Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) standards and obligations, including legislation”.

61. There are no other official AML/CFT policies defined in Niue.

62. Niue has an AML/CFT national coordination committee that meets on an as-required basis.

63. Since undergoing a mutual evaluation in 2004, the key AML/CFT initiatives have been:

- Enactment of legislation to strengthen the AML/CFT framework
- The establishment of the Niue FIU as a division of the Crown Law Office and issuing the *Best Practice Guidelines for Financial Institutions* and required reporting forms
- Closure of the International Business Companies Registry effecting closure of all offshore operations
- Membership of the Egmont Group (joined in May 2007)
- Membership of the OECD Global Forum.

OECD Global Forum on Tax Transparency

64. Niue is a member of the OECD Global Forum on Tax Transparency entailing a commitment to the OECD standard on transparency and exchange of information for tax purposes. Niue has

⁷ Niue National Strategic Plan 2009-2013, p6

commenced negotiations with various countries with a view to concluding Tax Information Exchange Agreements (TIEAs). Niue is considering legislative amendments that will allow conclusion of, and give full effect to, the TIEAs.

United Nations

65. Niue is giving consideration to ratifying the UN Vienna and Palermo Conventions.

66. In 2009 Niue ratified the following relevant CT Conventions:

- Convention on Offences and certain Other Acts committed on Board Aircraft, Tokyo, 14 September 1963
- Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December 1970
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 23 September 1971
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations, 14 December 1973
- International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations, 17 December 1979
- Convention on the Physical Protection of Nuclear Material, Vienna and New York, 3 March 1980
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 24 February 1988
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 10 March 1988
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988
- Convention on the Marking of Plastic Explosives for the Purposes of Detection, Montreal, 1 March 1991
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations, 15 December 1997
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations, 9 December 1999.

b. The Institutional Framework for Combating Money Laundering and Terrorist Financing

67. The lead agencies for AML/CFT in Niue are: Crown Law, Niue FIU, Police, Immigration, Customs, Niue Bank and Monetary Board.

68. Ministerial responsibility rests with the Minister of Finance who is also the Premier, and the Minister of Justice. The Secretary to Government, Crown Law Office and Police Department have overall responsibility for combating money laundering and terrorist financing in terms of policy making. Due to there being no money laundering activity detected on Niue to date, the current resources are shared by key departments, rather than being devoted full-time to AML activities. Officers from the Niue FIU, Crown Law Office, Police and Customs officers have attended relevant training at regional workshops.

69. Niue's primary AML/CFT focus is compliance with the global AML/CFT standards, as evident with the passage of the AML/CFT legislation since 2004. There has been little practical implementation of AML/CFT measures, reflecting both the focus on legislative issues and the low

threat of ML/TF at the domestic level. The Niue FIU is an operational agency operating on a part-time basis.

70. Any matters relating to AML/CFT would involve the following government agencies, headed by the Secretary to Government:

- Crown Law (includes Niue FIU)
- Police (includes Immigration and the Transnational Crimes liaison post)
- Customs (includes Tax)
- Other departments are called in as appropriate.

Crown Law and Niue FIU

71. Day-to-day responsibility for AML/CFT policy and legislative matters rests with the Crown Law Office a division of the Premier's Department, whose duties are to provide legal advice to the executive and all government agencies. There are two legal professional staff members and an administration officer. Crown Law is under the direction of the Secretary to Government. In AML/CFT matters, the Crown Law Office relies heavily on assistance from New Zealand as well as regional and international organisations.

72. The FIU is established pursuant to the FTRA ("the Act"). The FIU is administrative and operates within the Crown Law Office. The Head of the FIU is responsible for ensuring that the FIU performs its functions properly, efficiently, and effectively.

73. The FIU also has the role of AML/CFT supervisor under the Act.

74. The Head of the FIU is a qualified lawyer, and is the Solicitor-General and Head of the Crown Law Office. The Head of the Premier's Department is the Secretary to Government whose Constitutional role is the Head of the Niue Public Service and the chief advisor to the Cabinet of Ministers.

75. The FIU role is not a full-time position and FIU duties are completed by the Head of the Unit on an "as needed basis". The Head of FIU reports directly to the Secretary of Government, who in turn reports to Niue's Premier.⁸

Police

76. The Police Department is responsible for investigating all offences and matters under the criminal code, the FTRA, and the POCA, including money laundering and terrorist financing offences. The police department has sixteen sworn officers. Skills and experience in investigating financial crime is noted to be limited within the police.

77. At the recently attended Police Chiefs conference in the Federated States of Micronesia Niue's Police Chief presented on the Cyber Crime Pilot Project led by the Australian Federal Police (AFP). Niue was used as pilot country and officers have received training from AFP staff on cybercrime issues such as email scams, fake websites and child pornography. The pilot project has since been adopted by a further four Pacific island over the next year with a view to launching this initiative across the Pacific in 2013. Niue Police staff will partake in assisting with training of the other Pacific Island Police staff.

78. Niue Police Officers have undertaken regional training both in country and overseas. In 2010 Niue gained funding from New Zealand to carry out a 12-month capacity training program for all

⁸ The Premier is also the Minister for Finance.

Police deliver by a New Zealand Police College recruit instructor. The AFP has provided target-based training on Investigation management for senior Police staff as well as providing a position on the Australian Police Institute of management program for 2011-12.

79. The Niue Police Department recently established a Transnational Crimes Unit liaison post. Niue Police staff will have the benefit of being seconded to the larger TCU posts across the Pacific to be mentored on Transnational Crime investigation.

Immigration

80. The Chief Immigration Officer is also the Chief of Police and the office has one senior Immigration Officer. The *Immigration Act 2011* creates a structure for the administration of the Niuean immigration system. Where any person is unlawfully in Niue he or she is liable to be deported. The Act enables the arrest and detention of persons liable for deportation, including provisions to create incentives for complying with the deportation process. There are responsibilities imposed on carriers and craft bringing people to Niue to ensure that immigration requirements are complied with. Individuals bear the responsibilities of complying with immigration requirements on entry and departure and failure to do so can result in them becoming prohibited persons. The Act contains offences against the immigration system to ensure that immigration risks are managed and to deter people from conduct that threatens Niue's immigration processes. These offences meet the threshold of a serious offence as defined by the *Proceeds of Crime Act 1998*.

Customs

81. The Customs Office is a division of the Treasury Department and consists of four officers. Customs' role in an ML investigation is to provide support to the FIU and to Police. Customs is responsible for enforcing a wide range of domestic laws that includes controlling the movements of crafts, cross-border movement of goods and revenue collection at the border.

82. Niue Customs is a member of the Oceania Customs Organisation (OCO), which is affiliated with the World Customs Organisation (WCO). The OCO conducts national and regional trainings which include Niue.

Niue Bank and Monetary Board

83. While the Niue Bank Act provides for the establishment of a central bank as regulator/supervisor of the domestic banking system, the Niue Bank has not been established and there is no current plan to establish the Niue Bank. The Monetary Board, which is also established by the Niue Bank Act, is the Board of Directors of the Niue Bank, has been set up and meets on an as-needed basis.

84. There is currently no domestic prudential supervision of the domestic bank.

c. Approach Concerning Risk

85. The FTRA does not generally provide for CDD to be applied on the basis of risk.

86. There are a number of jurisdiction-specific factors which lead the assessment team to conclude that the domestic financial sector presents a low risk of ML and FT at the present time. These factors include: the small size of the financial sector which is dominated by one domestic bank and one money remitter even though neither of these financial institutions are currently supervised for AML/CFT purposes; accounts at the bank are held for Niuean residents only; the absence of (inward) correspondent banking relationships; no use of third-party intermediaries by the banking sector; and the transfers of funds being made by the money remitter being only to New Zealand.

87. To date Niue has had only one commercial bank and so there is no basis on which to consider adoption of a risk-based approach. Risk-based approach to supervision or to products has not formed an integral part of Niue's regulatory framework and there are no risk-based variations from generally applicable standards. The Niuean authorities recently commenced a formal national risk assessment using templates and guidance provided by APG; the results of this assessment are yet to be implemented within the national framework.

d. Progress since the last APG Mutual Evaluation

88. Progress has been made since the last APG mutual evaluation. Legislative amendments have strengthened the AML/CFT framework, particularly with the enactment of:

- *Aviation Crimes (Amendment) Act 2006*
- *Extradition Act 2007*
- *Financial Transactions Reporting Act 2006*
- *Misuse of Drugs Act 2007*
- *Proceeds of Crime Amendment Act 2007*
- *Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction Act 2007*
- *Terrorism Suppression and Transnational Crimes Act 2006*

89. Further draft bills are being pursued or fill legislative gaps in existing legislation:

- *Mutual Assistance in Criminal Matters (Amendment) Bill*
- *Terrorism Suppression and Transnational Organised Crime (Amendment) Bill*

90. The *Mutual Assistance in Criminal Matters (Amendment) Bill* updates the *Mutual Assistance in Criminal Matters Act 1998*. The *Terrorism Suppression and Transnational Crime (Amendment) Bill* updates the *Terrorism Suppression and Transnational Crime Act 2006* and will form the basis for Niue to be in a position to ratify the remaining four conventions on money laundering and financing of terrorism. The Bill is part of the Legislative Programme 2011-2014 and is on Priority List 2.

91. The Niue FIU has been established under the FTRA and is operational.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1. Description and Analysis

Legal Framework

92. Money laundering in Niue is criminalised under *the Proceeds of Crimes Act 1998* (POCA) as amended in 2007.

93. Money laundering is criminalised under Section 64(3):

“A person shall be taken to engage in money laundering if, and only if – (a) The person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or (b) the person receives, possesses, conceals, disposes of or brings into Niue any money, or other property that is proceeds of crime, and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful act.”

94. Section 64(2) provides that, "A person who engages in money laundering is guilty of an offence punishable, on conviction, by – (a) If the offender is a natural person – a fine not exceeding 1,200 penalty units or imprisonment for period not exceeding 20 years, or both; or (b) If the offender is a body corporate – a fine not exceeding 10,000 penalty units."

95. Section 65, deals with possession of property suspected of being proceeds, as follows:

(1) A person who receives, possesses, conceals, disposes of or brings into Niue any money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence punishable, on conviction, by –

- (a) If the offender is a natural person – a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 2 years, or both; or
- (b) If the offender is a body corporate – a fine not exceeding 1000 penalty units.

96. ‘Proceeds of crime’ is defined in section 4 of the POCA:

“Proceeds of a serious offence, or any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence.”

97. A ‘serious offence’ is defined in the same section as “an offence the maximum penalty for which is death or imprisonment for not less than 12 months”.

98. Responsibility for the investigation of ML offences rests with the Niue Police. Responsibility for prosecution rests with the Attorney General. Attorney-General is defined in the Act as being “the chief legal advisor to the Government of Niue” which is currently the head of Crown Law, the Solicitor-General.

99. Section 67 of POCA states that "unless anything else is in the Act, any question of fact to be decided by the Court in proceedings under this Act is to be decided on the balance of probabilities". Niue authorities advise that they consider this burden of proof would not apply in a criminal case, and they would not proceed with a charge of money laundering unless the elements of the offence could be proven beyond reasonable doubt.

Criminalisation of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):

Conversion or transfer

100. Section 64 of POCA uses the terms “engage” and “transaction” as opposed to the terms of “conversion” or “transfer” that are common to the Vienna and Palermo convention.

101. There is no definition of the terms “engage” or “transaction” in the POCA, but the Niue authorities advise that both terms would have their ordinary meaning, and would be interpreted as extending to the acts of conversion and transfer. It should be noted that there is no legal or judicial interpretation that can confirm this approach.

Concealment or disguise, and acquisition, possession, use

102. The criminalisation of these broad acts is not qualified by any requirement of particular purpose or criminal result. In that way, it seems that this paragraph alone encompasses most of the possible acts of laundering that could take place. Therefore while POCA does not explicitly cover “disguising the illicit origin of” the property, the evaluation team considers that “disguise” would either be covered under the broad act.

The Laundered Property (c. 1.2):

103. Section 4 of POCA provides the definitions of ‘property’, ‘serious offence’ ‘proceeds of crime’, ‘proceeds’, and ‘unlawful activity’. POCA defines property in section 4 as including “money and all other property, real or personal, including things in action and other intangible or incorporeal property”.

104. The definition of property, while very broad, leaves out of the definition ‘moveable or immovable assets’ and ‘legal documents or instruments evidencing title to or interest in such assets’. This is an element that is required to be included by the standard. The Solicitor General indicated that this would be implicit in the broad words of the definition. There is no case law at this stage to show how the courts would approach the issue.

105. The definition does not set any value threshold on what may constitute laundered property. Discussions with the authorities confirmed that property of any value could be the subject of money laundering acts.

106. Money laundering also extends to property derived directly or indirectly from a serious offence as defined by the section 4 of the Act which adopts a broad definition of proceeds of crime that includes: “any property derived or realised directly or indirectly, by any person” of a serious of offence or any property that is derived or realised directly or indirectly, by any person from acts or omissions that occurred outside Niue, and would, if they occurred in Niue, have constituted a serious offence .”

Proving Property is the Proceeds of Crime (c. 1.2.1):

107. There is nothing in POCA that requires prior conviction of a predicate offence to prove that the property is proceeds of crime. There is also no specific provision that states that a conviction is not required in order to proceed on a money laundering charge.

108. Niuean authorities have never charged a person with a money laundering offence, and had not considered the provisions of the POCA in any detail. It was not clear to the evaluation team that the Niuean authorities would proceed with a money laundering charge in the absence of a conviction for a

predicate offence. If they did, it was not clear whether a Court would require a prior conviction to evidence a money laundering charge.

The Scope of the Predicate Offences (c. 1.3-1.4)

109. The POCA extends the scope of the predicate offence to all serious offences and adopts a threshold that defines what constitutes a serious offence. Based on this approach any offence punishable by imprisonment for a maximum term not less than twelve months is a predicate offence to money laundering. This threshold is consistent with the international standard. The relevant offences falling within the FATF designated categories of offences and covered by Niue are set out in the table below:

List of Crimes

FATF Categories of predicates	Provisions under statutes in Niue	Deficits in Coverage as a Predicate Offence (If Any)
Participation in an organised criminal group and racketeering	<ul style="list-style-type: none"> • Section 3 of TSTCA defines “organised criminal group” as a group of at least 3 persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment; • Section 35 criminalises participation in an organised criminal group as "A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who participates (whether as a member, associate member, or prospective member) in an organised criminal group, knowing that it is an organised criminal group; and – <ul style="list-style-type: none"> (a) Knowing that his or her participation contributes to the occurrence of criminal activity; or (b) Reckless as to whether his or her participation contributes to the occurrence of criminal activity." 	
Terrorism, including FT	Terrorist act is defined in section 4 and TF is defined in section 6 of TSTCA. Both constitute serious offence as given in (in detail in SR II and SRII) (TSTCA).	
Trafficking in human beings and migrant smuggling	<ul style="list-style-type: none"> • Part 7, section. 36-39 of TSTCA criminalises trafficking in persons and children. • People smuggling is criminalised in section 40-43 of the TSTCA. 	<ul style="list-style-type: none"> • Migrant smuggling is not specifically criminalised.
Sexual exploitation, including sexual exploitation of children	<ul style="list-style-type: none"> • Part 7, section 36-39 of TSTCA criminalises trafficking in human beings which includes sexual exploitation in the definition of the trafficking in persons. • The <i>Niue Act 1966</i>, section 162 criminalises rape, 163, 164 and 165 criminalise Sexual intercourse or indecency with girl under 15 years of age and of girl or woman of unsound mind. 	<ul style="list-style-type: none"> • It is criminalised in relation to trafficking leading to sexual exploitation, but sexual exploitation is not criminalised as standalone offence. It also does not cover sexual exploitation of children. • The provisions of Niue Act are related with an individual event rather than for such exploitation.
Illicit Trafficking in Narcotic Drugs & Psychotropic Substances	<i>Misuse of Drugs Act 2007</i>	
Illicit arms	<ul style="list-style-type: none"> • Section 70 of the <i>Customs Act 1966</i> requires 	Not criminalised.

trafficking	<p>permission to keep arms and ammunitions.</p> <ul style="list-style-type: none"> Sections 3, 4, 6, 9, 10 and 11 of the Arms Act, 1975 requires any arms and ammunitions to be registered and permitted. Section 33 of TSTCA criminalises possession and transport of plastic explosives but the trafficking. 	The provisions of the Arms Act do not carry penalty as serious offence, though it covers issues of arms registration and licensing. It does not cover offence of illicit arms trafficking. No provisions exist except for getting permission for arms and ammunitions in section 70 of <i>the Customs Act</i> and provisions for imprisonment not exceeding 3 months or to a fine not exceeding 2 penalty units or to both under <i>the Arms Act 1975</i> ,
Illicit trafficking in stolen and other goods	Stealing or theft and possession of such goods are criminalised in sections 188-194 of the Niue Act but not the illicit trafficking of such goods.	Not Criminalised.
Corruption and bribery	Covered under sections 180, 180A – 180H <i>Niue Act 1966</i> .	
Fraud	Touched as elements of theft in section 191 (Obtaining money or goods by false pretences – may be guilty of stealing), 200 (obtaining credit by fraud-may be punished up to 6 months imprisonment) and section 202 (Conspiracy to defraud public or persons-may be punished up to 3 years imprisonment), section 203 (Obtaining execution of valuable security by fraud- may be punished up to 3 years imprisonment) of the <i>Niue Act 1966</i> .	As fraud is related to limited activities, it is partially criminalised.
Counterfeiting currency	Counterfeit of coins and related issues are criminalised in sections 209-211 of the <i>Niue Act 1966</i> , but not the currency or notes.	Not criminalised.
Counterfeiting and piracy of products	Sections 207-211 of the Niue Act are related only with documents and coins not with counterfeiting and piracy of products.	Not criminalised
Environmental Crime	<ul style="list-style-type: none"> Attempts have been made under the <i>Environment Act, 2003</i> but do not stand as a serious offence under section 23. The <i>Domestic Fishing Act, 1995</i> section 24 also does not set out a serious offence. Section 18 of the <i>Territorial Sea and Exclusive Economic Zone Act 1996</i> deals with unauthorised fishing the penalty of which is a fine not exceeding \$10,000 and the court may order the confiscation of fishing gear and again does not constitute a serious offence No provision in Mining Act, 1975 	Not criminalised.
Murder, grievous bodily harm	Murder: section 134, 135, 138 of the <i>Niue Act 1966</i> Grievous Bodily Harm: section 151, 152 the <i>Niue Act 1966</i>	

Kidnapping, illegal restraint and hostage – taking	Hostage taking is covered under the <i>Crimes against Internationally Protected Persons and Hostages Act 1984</i> . However it is concentrated to the effect to the <i>Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973</i> , and the <i>Convention Against the Taking of Hostages 1979</i> , and related issues.	Kidnapping and illegal restraint not criminalised. Hostage taking seems to be limited to internationally protected persons.
Robbery or theft	Covered in the sections 182-195 of the <i>Niue Act 1966</i>	
Smuggling	Except section 70 of the Customs Act for licensing export import, no relevant provisions found.	Not criminalised.
Extortion	-	Not criminalised.
Forgery	Sections 207 and 208 of the <i>Niue Act 1966</i> (may be punished up to 5 years imprisonment)	
Piracy	-	Not criminalised.
Insider trading and market manipulation	No law dealing with insider trading and market manipulation	Not criminalised.

110. Based on the table above, nine of the designated categories of offences are not criminalised and six are partially criminalised which seriously limits the scope of the money laundering offence.

Extraterritorially Committed Predicate Offences (c. 1.5):

111. The charge of money laundering is dependent on the person engaging with proceeds of crime and “proceeds of crime” is defined under section 4 as "(b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence", predicate offences for money laundering extend to conduct that occurred in another country if only that conduct falls under the category of serious offence.

112. The POCA does not require dual criminality. It is sufficient that the act or omission would be an offence in Niue, regardless of whether it constituted an offence in the country where it was committed. The requirement of criminalisation under Niue law of any act committed extraterritorially means that Niue’s failure to criminalise all designated categories of offences would have a knock-on effect, so that if proceeds from another jurisdiction were laundered in Niue and the predicate offence was not covered in Niue, it would not necessarily constitute an offence of money laundering.

Laundering One’s Own Illicit Funds (c. 1.6):

113. The provisions of the POCA do not explicitly extend the ML offence to persons who have also committed the predicate offences. There is no fundamental principle of law in Niue that would prevent the ML offence to include self-laundering and the wording of section 64 does not seem to limit those who have committed the predicated offence from being charged.

Ancillary Offences (c. 1.7):

114. POCA does not contain any specific ancillary offences. The *Niue Act 1966* has covered ancillary offences such as conspiracy (section 228), attempt (section 229), inciting (section 232), being parties – committing, abetting, aiding, counselling, procuring (section 233), common purpose (section 234), counselling and procuring (section 235), accessories to save from legal consequences (section 236).

115. Niuean authorities were unable to point to any cases where ancillary offences in the Niue Act had been applied to offences that were contained in other statutes.

Additional Element—If an act overseas which do not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML (c. 1.8):

116. As set out above the definition of ‘proceeds of crime’ in the POCA means that it is immaterial where the act or omission constituting the predicate offence was committed. It is sufficient that it would constitute a serious offence, had it occurred in Niue.

RECOMMENDATION 2

Liability of Natural Persons (c. 2.1):

117. The offence of money laundering set out in sections 64 and 65 expressly applies to natural persons who “*knows, or ought reasonably to know*, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.”

The Mental Element of the ML Offence (c. 2.2):

118. The mental element is defined broadly here as it is not restricted to actual knowledge instead it is sufficient to “*ought reasonably to know*”.

119. While POCA does not expressly allow or prevent knowledge from being inferred from objective factual circumstances, the words “*ought reasonably to know*” infer that knowledge can be inferred from objective factual circumstance in line with common law principles. This is consistent with the international standard.

Liability of Legal Persons (c. 2.3)

120. The definition of person, in the *Interpretation Act, 2004*, section 5 is extensive and includes a corporation sole, a body corporate, and an unincorporated body. This means that the criminal liability for money laundering extends to legal persons.

121. Sections 64(2) and 65 of POCA specifically impose criminal sanctions on bodies corporate. A body corporate involved in the money laundering may be fined a fine not exceeding NZD1,000,000. The offender may also be subject to proceedings for forfeiture or confiscation to deprive them of the proceeds of, and benefits derived from money laundering. This confirms that the money laundering offence extends to both natural and legal persons.

Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings (c. 2.4):

122. There are no specific provisions that prohibit the possible parallel criminal, civil or administrative proceedings.

123. However the POCA itself does not contain any other non-criminal sanctions to legal persons in relation ML/TF.

124. No other Niue laws have specific provision for parallel civil or administrative proceedings for sanctioning of legal persons in relation to money laundering, and there is no specific prudential regulatory or supervisory agency in operation to implement and enforce such civil or administrative sanctions.

Sanctions for ML (c. 2.5):

125. Sanctions for the criminal offence of money laundering are contained in sections 64(2) and 65. A penalty unit is defined as one hundred New Zealand dollars (NZD100.00) under section 5 of the Interpretation Act. Consequently, maximum sanction for one who engages in money laundering under section 64 is a fine not exceeding NZD120,000 or imprisonment for a period not exceeding 20 years, or both for a natural person; or a fine not exceeding NZD1,000,000 for a body corporate as well as proceedings for forfeiture or confiscation to deprive him of the proceeds of, and benefits derived from money laundering.

126. The sanctions available to the courts are of sufficient range allowing for the application of penalties proportional to the gravity of the acts. They are also of sufficient gravity that should they be applied consistently, they should have a deterrent effect.

127. The table below shows the level of sanctions in the region illustrating that the Niue approach is consistent with the regional trend.

Country	Imprisonment	Fine	Fine to Legal Persons
Australia	12months to 25 years	60 to 1,500 penalty units	same with natural persons
Cook Islands	up to 5 years	up to \$50,000	up to 5 times
Fiji	not exceeding 20 years	not exceeding \$120,000	up to 5 times
New Zealand	up to 7 years		Subject to fine though there is no explicit description.
Palau	not more than 1 year and 1 day	not more than double the amount laundered	An amount equal to two times the fines specified for natural persons.
Samoa	7 years	SAT1 million	Same with natural persons.
Vanuatu	up to 10 years	10 million vatu	50 million vatu

Statistics (applying R.32)

128. There have been no investigations, prosecutions, nor administrative and civil sanctions in relation to money laundering.

Analysis of effectiveness

129. As is set out in section 1, the incidence of acquisitive crime in Niue is extremely low and the threat of money laundering is also very low.

130. While there have only been very limited opportunities to pursue possible ML offences, the evaluation team was made aware of at least one predicate crime involving relatively substantial amounts of proceeds of crime. In the few cases where it might have been possible, Niue authorities have not pursued ML offences due in part to capacity issues in both the Niue Police (in terms of investigative capacity) and the CLO (in terms of the provision of advice as what additional investigations should be conducted and charges laid).

2.1.2. Recommendations and Comments

131. Niue has criminalised money laundering but has not criminalised a number of designated predicate offences.

132. Niue does not have ancillary offences in relation to money laundering.

133. In order to comply with Recommendations 1 and 2, Niue authorities should:

- Amend relevant legislation to ensure coverage of the widest scope of predicate offences.
- Clarify through case law or statutory amendment that the scope of coverage of property in the ML offence is in keeping with the international standards.
- Amend the POCA to include ancillary offences in line with international standards.
- Clarify that a person can be convicted of both the predicate offence and of laundering proceeds of that offending either through successfully prosecuting a self-launderer or through amendment to legislation.
- Clarify that in proving property is the proceeds of crime it is not necessary that a person be convicted of a predicate offence either through the Courts or through amendment to legislation.
- Clarify that knowledge can be inferred from objective factual circumstances.
- Consider money laundering charges in appropriate cases of acquisitive crime.
- Provide greater awareness and training with respect to the nature of the offence of ML, including training of reporting entities, investigators, prosecutors and judicial officers and policy people.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> • There are important gaps in the coverage of domestic predicate offences • There are no ancillary offences for money laundering • It is not clear that the scope of property covered subject to the offence is in keeping with the international standards • Definition of property does not specifically include “moveable or immovable assets” and “legal documents or instruments evidencing title to or interest in such assets”

		<ul style="list-style-type: none"> No implementation of existing legal provisions and available legal powers.
R.2	LC	<ul style="list-style-type: none"> No implementation of existing legal provisions so no evidence of effectiveness.

2.2. Criminalisation of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework

134. Niue enacted *the Terrorism Suppression and Transnational Crimes Act 2006* (TSTCA) to criminalise offences relating to terrorism including the financing of terrorism (FT).

135. Responsibility for investigations of terrorism and terrorism financing primarily rests with the Police, with secondary responsibility carried by other agencies such as Customs and Immigration. The Attorney General (AG) has the responsibility of prosecution.

Criminalisation of Financing of Terrorism (c. II.1):

136. Terrorist financing is set out under section 6 of the TSTCA which provides that:

- “(1) A person who provides or collects, by any means, directly or indirectly, any property, intending, knowing, or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act, commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.
- (2) A person commits an offence who provides or collects, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity.
- (3) In a prosecution for an offence against subsection (1) or subsection (2), it is not necessary for the prosecutor to prove that the property collected or provided were actually used, in full or in part, to carry out a terrorist act.”

137. The offences which are capable of extending to terrorist organisations or entities set out in sub-section 6(2) depart from the requirement that the property be collected or provided with the intention or in the knowledge that the property *will be used* by the (terrorist organisation or terrorist). The sub-section instead requires that the property “*will benefit* an entity that the person knows is a specified entity”.

138. A further offence is created by sub-section 7(1) which involves the provision of more general assistance or services for the benefit of a specified entity. This offence could be utilised where the support is in the nature of a payment for rental of premises or cars on behalf of the group.

139. A specified entity is defined under section 5 as “the entities listed from time to time by the United Nations Security Council (UNSC) as terrorist entities”. However section 5 of the TSTCA requires that “The Minister must, by notice published in the Gazette, give notice of the list of terrorist entities”. The Minister has not given such notice, and this is likely to be fatal to taking action against any person providing or collecting funds for or giving more general assistance to entities listed by the UNSC. This means that a person who provides or collects funds for a terrorist organisation or an individual terrorist is not currently covered. If the Minister were to give such notice, then financing of specified terrorist organisations or individual terrorists so gazetted would be covered but there would be no broad provision.

140. Sections 8 to 11 make it an offence to deal with terrorist property (section 8), harbour persons who has committed or is planning or likely to commit a terrorist act or is a member of a specified entity (section 9), provide weapons to specified entities or their members or to any other person for the benefit of the same (section 10), and recruitments of persons for a terrorist group or to participate in the commission of a terrorist act (section 11). The issue with the failure to list entities as required by section 5 is likely to adversely affect sections 9, 10 and 11.

141. The definition of property in section 3 is wide and includes any property that is used or being used or likely to be used by the terrorist, whether from a legitimate or illegitimate source.

“property” includes –

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible; and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, those assets including, but not limited to, bank credits, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit

142. In line with the TF convention, section 6(3) does not require the prosecutor to prove that the property collected or provided was used, in full or in part, to carry out a terrorist act.

143. There is no specific provision in the TSTCA that criminalises the attempt to commit the offence of terrorist financing. Similarly, there is no specific provision to criminalise participation, organisation, direction or contribution to terrorist act as per Art. 2.5 of the TF convention. While there are ancillary offences in the *Niue Act 1966*, Niue’s authorities advise that those ancillary offences could be used to prosecute attempts to commit offences contained outside the Niue Act but there is no legal or judicial evidence is available to support such applicability.

Predicate Offence for Money Laundering (c. II.2):

144. For an offence to constitute predicate offence for money laundering under the POCA, it must be a “serious offence”, that is, an offence which attracts the death penalty or more than 12 months imprisonment. TF is punishable by imprisonment up to 14 years under section 6 of the TSTCA and as such constitute a predicate offence for money laundering.

Jurisdiction for Terrorist Financing Offence (c. II.3):

145. Section 48 of TSTCA provides that "Proceedings may be brought for an offence under this Act:

- (a) if the act or omission:
 - (i) is committed in Niue; or
 - (ii) is committed on board a ship or aircraft registered in Niue; or
 - (iii) is committed outside Niue by a person who is now in Niue; or
- (b) whether or not the act or omission constituting the offence is committed in or outside Niue, if the act or omission:
 - (i) is committed by a Niuean or permanent resident of Niue or a citizen of any country who is ordinarily resident in Niue; or
 - (ii) is committed in order to compel the Government of Niue to do, or to abstain from doing, any act; or
 - (iii) is committed against a Niuean or a permanent resident of Niue; or
 - (iv) is committed by a person who is, after the commission of the offence, present in Niue; or

- (v) is intended to be committed in Niue; or
- (vi) originates in, or transits, Niue.

146. It is clear that acts or omissions in or outside Niue are covered.

The Mental Element of the TF Offence (applying c. 2.2 in R.2):

147. The mental element that must be made out under section 6 of the TSTC is that the person intended, knew, or had reasonable grounds to believe that

- the property would be used to carry out a terrorist act or
- they will benefit an entity that the person knows is a specified entity.

148. The knowledge element of “reasonable grounds to believe” is an objective standard and the implication is that knowledge can be inferred from objective factual circumstances.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):

149. While section 49 of the TSTCA specifically states that the Act applies to a body corporate in the same way it applies to an individual, it is not clear how a body corporate would be sanctioned as there is no reference to any sanction other than imprisonment.

150. There is no provision for administrative or civil sanctions for legal persons.

Sanctions for FT (applying c. 2.5 in R.2):

151. The sanctions for natural persons convicted for terrorist financing are up to 14 years imprisonment.

Statistics (applying R.32)

152. There have been no investigations, prosecutions, nor administrative and civil sanctions in relation to terrorism and TF, so there is no data available.

Analysis of effectiveness

153. Reflecting the low risks of TF, there have been no cases of terrorist financing in Niue.

154. No specified entities had been gazetted under the TSTCA, so elements in relation to financing an individual terrorist or organisation are not in operation.

155. Authorities set out that they considered the risk of TF in Niue to be extremely low, and no cases have been brought under the TSTCA. Authorities had little understanding of the provisions relating to TF, and it was not clear that should terrorism funds move through Niue authorities would be able to use these provisions effectively given their unfamiliarity.

2.2.2. Recommendations and Comments

- Criminalisation of TF in relation to individual terrorists should be covered.
- It should be clear the range of offences that would apply to a body corporate if it engaged in terrorist financing.
- Niue should take immediate action to gazette specified entities under section 5 to give effect to sections 6 and 7

- Authorities should familiarise themselves with provisions under the TSTCA and receive training on the same.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • Providing or collecting funds for a terrorist organisation or an individual terrorist is not currently covered • No criminalisation of ancillary offences • No dissuasive and proportionate sanctions to legal persons.

2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1. Description and Analysis

Legal framework

156. Confiscation in Niue is currently governed by the *Proceeds of Crime Act 1998* as amended by the *Proceeds of Crime Amendment Act 2007* (POCA). The POCA is a conviction-based regime which provides for the forfeiture of tainted property and assessment of confiscation orders, seizure and restraint of property and creates additional information gathering powers for investigators. All actions are dependent upon the commission of a “serious offence” as defined by the POCA which is defined as offences means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months.

157. The Attorney General (who is defined as the chief legal adviser to the Government of Niue, a position which the current Solicitor General fills) has responsibility for making applications for restraining orders and the Financial Secretary may manage seized and restrained property and to enforce forfeiture and confiscation orders. The Niue Police has responsibility for the conduct of investigations under the POCA.

158. There are also provisions for restraint and forfeiture of terrorist property under the *Terrorism Suppression and Transnational Crime Act 2006* (TSTCA). TSTCA forfeiture is not conviction based, rather it provides for forfeiture where the Court is satisfied on the balance of probabilities that the property is terrorist property. The Attorney General makes applications and the Niue Police has the responsibility to conduct investigations, but in cases of restraint under the TSTCA it is the Registrar of the High Court who takes custody and control of property.

Confiscation

POCA

159. Under the POCA, property can be confiscated where that property falls within the definition of “tainted property”, namely:

- property that is used in, or in connection with, the commission of the offence or intended to be so used by a person convicted of the offence or
- proceeds of the offence;

And when used without reference to a particular offence means tainted property in relation to a serious offence.

160. As such, instruments actually used in the commission of a serious offence (which would include ML or TF having regard to the relevant penalty), may be subject to forfeiture. Instruments intended to be used in an offence are only subject to forfeiture if they are intended to be used by a person convicted of the offence which may limit its application.

161. A serious offence means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months. The Act does not specifically state where the serious offence must take place. The fact that “foreign serious offence” is defined as a serious offence against a law of another country implies that a serious offence would be limited to an offence that occurred in Niue. Niue authorities consider that a ‘serious offence’ could include offences that occurred in other jurisdictions, but this has yet to be tested in court as no action has been taken to confiscate proceeds of crime (whether or not the proceeds were from a foreign offence).

162. “Proceeds” is widely defined as “any property that is derived or realised, directly or indirectly, by any person, from the commission of the offence”. Property “includes money and all other property, real or personal, including things in action and other intangible or incorporeal property.”

163. Where a forfeiture order cannot be made against property for reasons which include that it cannot be found, has been transferred to a legitimate third party, that it is located outside Niue, has been intermingled with other property and cannot be divided without difficulty or is Niuean land, the court may order the payment to the Crown of an amount equivalent to the value of the property which would otherwise have been forfeited.

164. Alternatively, where a person has been convicted of a serious offence and the court is satisfied that that person has benefited from the offence, the court may make an order to confiscate an amount equal to or less than the value of the person’s benefits from the offence.

165. Where, following an application made after conviction for a serious offence, a court is satisfied that property is “tainted property”, the Court has a discretion as to whether it makes a forfeiture order having regard to:

1. The rights and interests, if any, of third parties in the property;
2. The gravity of the offence concerned;
3. Any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
4. The use that is ordinarily made of the property, or the use to which the property was intended to be put.

166. Similarly, where a court is satisfied that a person has derived a benefit from the commission of a serious offence, the court still has discretion as to whether or not to grant the order.

167. Property may be subject to a forfeiture order or be used to satisfy a Court confiscation order (in limited circumstances) regardless of whether the property is property of a third party. Bona fide third parties who purchase for sufficient consideration in circumstance such as not to arouse a reasonable suspicion are protected.

TSTCA

168. Under the TSTCA, if the Court is satisfied on the balance of probabilities that the property is terrorist property, the Court must order the property to be forfeited.

169. “Terrorist property” is defined as

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

Provisional measures

POCA

170. The POCA makes provision for the seizure by warrant of “tainted property” and for the restraint of property. A Police Officer may obtain a warrant which authorises the seizure of tainted property, however he may not retain that property indefinitely. Obligations to return such seized property arise where information has not been laid within 48 hours or within 14 days if a forfeiture order has not been made. The property may be retained where a restraining order is made before the obligation to return arises.

171. The SG may make application to a court for a restraining order in respect of “realisable property” of the defendant or specified “realisable property” held by a person other than the defendant. “Realisable property” is defined as any property of the person convicted of or charged with a serious offence or property of a person to whom a person so convicted or charged has directly or indirectly made a gift caught by the POCA.

172. The application is required to be supported by an affidavit setting out either the serious offence, or the grounds for believing the defendant committed a serious offence with which they are about to be charged within 48 hours and the grounds for belief that the property is “tainted property” or that the defendant derived a benefit from the commission of the offence, and, if the property is property of a person other than the defendant, his suspicions that the property is “tainted property” or under the effective control of the defendant.

173. The court may make the restraining order if satisfied that the person has been convicted, has been charged or is to be charged within 48 hours with a serious offence and that either:

- i. where the property is property of the defendant – that it is tainted property or the defendant has derived a benefit from the commission of the offence; or
- ii. where the property is property of a person other than the defendant – that there are reasonable grounds for believing the property is tainted property or that the property is subject to the effective control of the defendant.

174. Limitations in respect of the restraining order provisions which potentially undermine their effectiveness arise as the definition of “realisable property” does not extend to property effectively controlled by the offender or to property of a person yet to be charged. Realisable property held by a person other than the defendant is limited to property gifted to the person by the defendant after the offence which may or not represent property received in connection with the offence. Whilst the Act

provides that the actual restraining order may be made in respect of property subject to the effective control of the defendant or tainted property of third parties (broader than the operation of the gift provisions), the application for the order cannot.

175. The court may prohibit the defendant or any other person from disposing of or otherwise dealing with the property or an interest in it specified in the order and may direct the Financial Secretary to take custody and assume management of the property. The order may also make provision for payment out of the restrained property of legal expenses, reasonable living expenses (including those of dependants) and reasonable business expenses and of a specified debt incurred in good faith.

176. In addition to payment of expenses, various other ancillary orders may also be made including an order for the examination of a person on oath concerning the affairs of the owner of the restrained property or the defendant. It should be noted that the scope of any such orders would be similarly undermined by the definition of “realisable property” referred to above.

177. Applications for restraining orders may be made *ex parte* and the court is obliged to consider the application without requiring reasonable notice to be given to any person having an interest in the property the subject of the application if requested to do so by the SG. Where a restraining order is made in respect of an *ex parte* application, it ceases to have effect after 14 days unless extended by the Court after hearing an application on notice.

178. Applications for and execution of search warrants to seize tainted property are made without notice to any person.

TSTCA

179. Under section 12 of the TSTCA, the Attorney General (AG) can apply for an order for property in Niue if the AG has reasonable grounds to believe that the property is terrorist property and the Court can order that the Registrar of the High Court take custody and control of property if it is satisfied that there is evidence to support the application. This application can be heard *ex parte*.

Powers to identify and trace property

180. It is expected that investigators will be able to utilise traditional investigative tools such as search warrants as part of their criminal investigation of the predicate or ML offence which may lead to the identification of assets which may be subject to confiscation. The POCA provides additional investigative tools which assist investigators/the Solicitor General in the conduct of investigations and proceedings under the Act (there are no additional investigative tools under the TSTCA).

181. Police officers may apply for search warrants to search for and seize tainted property (which includes an ancillary seizure power and an obligation to return as set out above.) Police officers may also apply to a judge for the issue of a production order requiring the production to them of “property tracking documents”, defined as documents which are, *inter alia*, relevant to identifying locating or quantifying property of a person who committed a serious offence and to identifying locating or quantifying tainted property or any document necessary for the transfer of such property. Such applications are made without notice. Search warrants for property tracking documents are also available on application by a police officer to a judge where the court is satisfied it would not be appropriate to make a production order or the investigation would be seriously prejudiced without immediate access (without notice) to the documents sought.

182. Police officers may make application to the Court for a monitoring order which would require a financial institution to report the details of transactions conducted in respect of an account of a person who has committed or is about to commit a serious offence or is otherwise involved in the commission of a serious offence or has or is to benefit from such offence to police for a specified period (not longer than 3 months).

183. Another important information gathering tool is the examination order which may be made as an ancillary order to a restraining order. Any person may be examined on oath regarding the affairs of the owner of the restrained property or the defendant.

184. The SG may also direct government departments to disclose information held by them to the SG or to an authorised officer if the SG is satisfied that the document or information held is relevant to establishing whether a serious offence has been or is being committed or the making or proposed or possible making of an order under Part 3 of the POCA [s61].

Protection of bona fide third parties

POCA

185. Judges hearing forfeiture applications are entitled to exercise their discretion having regard to various factors including any right or interest of a third party in the property, the gravity of the offence concerned, any hardship that might be caused to any person and the use ordinarily made of the property.

186. Third parties who claim an interest in the subject property may also apply to the Court (before or after the forfeiture order is made) for a declaration as to the nature, extent and value of their interest in the property. They are obliged to satisfy the court that they were not involved in the commission of the serious offence or that they acquired their interest in the property in the same manner as a bona fide purchaser for value without notice. The court may order the return of the property or a part of it to the person or to pay an amount of money equal to the value of the person's declared interest.

187. Third parties whose property is affected by a restraining order may also make application to the Court for an order excluding their interest from the restraining order. They are obliged to satisfy the court of any of the following:

- (a) the property is not tainted property or required to satisfy a confiscation order; or
- (b) the person was not in any way involved in the commission of the serious offence and if they acquired their interest at the time of or after the offence, that it was acquired for sufficient consideration and without knowing or in circumstances which did not arouse a reasonable suspicion that the property was tainted; or
- (c) it is in the public interest to grant the order having regard to all the circumstances including any financial hardship or other consequence.

TSTCA

188. Under the TSTCA a person other than the person who owns or controls, the property that is subject to a custody and control or forfeiture order can apply for relief. If the Court is satisfied the claim is valid and that the person was not knowingly involved in terrorist acts, and acquired their

interest in good faith, then the Court must make an order declaring the nature, extent and value of the third parties interest in the property and declare that the interest is no longer subject to the order and directing the Registrar to transfer the interest to that third party.

Power to void actions

189. Where a person deals with property in contravention of a restraining order, the SG may apply to the court to set aside the dealing. The Court may set aside the dealing if satisfied that it was not for sufficient consideration or not in favour of a person who acted in good faith.

Additional elements

190. The POCA does not make any provision for the confiscation or forfeiture of property of an organised criminal group.

191. Civil forfeiture has not been considered in Niue. Indeed, restraint and confiscation provisions under the existing POCA have not been utilised.

192. The POCA does not contain any reverse onus provisions in respect of forfeiture, however the confiscation order assessment provisions contain certain rebuttable presumptions in respect of the calculation of benefit derived from the commission of serious offences which the person is obliged to disprove.

Statistics/effectiveness

193. The Crown Law Office (CLO) is responsible for administering the POCA and for maintaining statistics on combating ML, TF and confiscation actions.

194. There have been no proceeds of crime investigations conducted in Niue. No domestic proceedings have been conducted and as a result, no statistics have been compiled.

195. In the course of the onsite visit it became apparent that the relevant agencies did not have a well-developed awareness of their functions under, or operation of, the POCA, and that investigations of this nature had not been accorded much consideration.

2.3.2. Recommendations and Comments

196. The POCA provides the framework for conviction-based confiscation; however, its effectiveness is limited by certain definitions and a lack of cohesion or consistency in the various provisions of the Act. In particular, property which may be the subject of an application for restraining order is limited to the definition of “realisable property”, a definition which does not include property of a third party subject to the effective control of the defendant or which is tainted property (unless that property falls within the gift provisions.) The application provisions do not match up with the affidavit requirements or the section which deals with the making of the restraining order. The inability to extend the restraining order to property subject to the effective control of the defendant (which can be lawfully acquired property) will also affect the ability to obtain effective control declarations and enforce confiscation orders.

197. It is recommended that competent authorities:

- Extend coverage to Instruments intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value.

- Should consider reviewing the restraining order and any related provisions to ensure that the property which may be subject to restraint extends to property of the defendant, property of third parties subject to the effective control of the defendant, tainted property and property gifted by the defendant.
- In addition, should ensure that the terminology and operation of the restraining order and related provisions are consistent.
- Should also consider whether the definition of a “serious offence” should be expanded to include a minimum fine to ensure that actions of legal person which may not be subject to imprisonment are captured.
- May also wish to consider extending the monitoring order provisions to enable such an order to be made in respect of accounts of persons other than the defendant or a person who has benefitted from the offence. Under the present provision, an order could not be obtained in circumstances where a corporate account or account of other third party was used where that corporate or third party did not benefit.
- It is also noted that the SG has power to compel disclosure of information from government departments which might be relevant to establishing whether an offence has been committed or to a POCA application or order. As a consequence, the SG is placed in a position of having an active role in a criminal investigation which the SG may later be required to prosecute. Niue may wish to consider whether such a power might be more appropriately exercised by police at an executive level.
- May also wish to consider whether this provision was intended to expressly override taxation secrecy provisions as such information is of invaluable assistance in the conduct of proceeds of crime proceedings where reverse onus provisions apply or where the examination power is actively used.

198. The onsite visit indicated a lack of awareness amongst agencies with responsibilities under the POCA. Whilst it is accepted that the POCA would have limited application in Niue, considering the relatively low levels of criminal activity, the Evaluation Team considers that all relevant agencies need to take steps to ensure that any cases involving proceeds of crime are identified and appropriate action taken. As many matters are prosecuted by the Niue Police, coordination with the CLO is required. It is recommended that the Niue Police and CLO develop a strategy to ensure that appropriate matters are identified and investigated and action taken in a consistent manner.

199. In addition, the POCA provides that the Financial Secretary would manage both restrained and forfeited assets. It was evident that the Acting Financial Secretary was not aware of these provisions and had not considered the scope of this role. It is recommended that in conjunction with CLO and Niue Police, a protocol be developed to ensure as above that action be considered and taken in appropriate. Competent authorities may also wish to consider whether Niue Police should be obliged to consider whether POCA action (or a ML investigation) arises when assessing cases.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • Scope of coverage does not extend coverage to Instruments intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value • The effectiveness of the POCA is limited by the definitions of “proceeds” and “realisable property” and inconsistencies in the provisions

		<ul style="list-style-type: none"> • Agencies do not have a well-developed awareness of the POCA • Some clarification of functions is required • There has been no practical application of the POCA in domestic or foreign matters.
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2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

200. *The Terrorism Suppression and Transnational Crimes Act 2006 (TSTCA)* deals with the control, custody, forfeiture/confiscation of the funds and properties related with terrorist acts and terrorist financing.

201. The *United Nations Act 1946*, and the *UN Sanctions (Terrorism Suppression and Afghanistan Measure) Regulations 2004* under the UN Act, specifies the Al-Qaida and Taliban and prohibit any kind of transaction with them.

Freezing Assets under S/Res/1267 (c. III.1):

202. The *United Nations Act 1946* enables the Cabinet of Niue to make all regulations necessary or expedient to enable Niue to effectively apply UN Security Council resolutions.

203. Section 3 of the *United Nations Act 1946* sets out that every person who commits, or attempts to commit, or does any act with intent to commit, or counsels, procures, aids, abets, or incites any other person to commit any offence against regulations made under this Act shall be liable on summary conviction to 12 months imprisonment or to a fine not exceeding 2 penalty units, or, in the case of a company or other corporation, to a fine not exceeding 20 penalty units.

204. The *UN Sanctions (Terrorism Suppression and Afghanistan Measure) Regulations 2004 (UN Sanctions Regulations)* are regulations which are made under the *United Nations Act 1946* and they set out a regime which forbids persons in dealing with property or funds of entities designated under UNSCR 1267 and successor resolutions. The Regulation does not require the Minister to gazette updated lists of designated entities. The UN Sanctions Regulations designate “specified entities” (every Al-Qaida entity, the Taliban, every Taliban Entity, Usama bin Laden) and indicates that no person may collect or provide funds for, deal with property of, or derived or generated property of, or make property or financial or other related services available to those specified entities, unless permitted to do so by the Minister of Finance by notice in writing. It should be noted that the TSTCA also refers to “specified entities” but the definition of “specified entities” differs in the TSTCA and the UN Sanctions Regulations, the TSTCA will be discussed further below.

205. In addition to forbidding dealing with property, Section 7 of the UN Sanctions Regulations requires a person having reasonable suspicion that property under their possession or control is owned or controlled by a 1267-listed entity, they are obliged to make a report to the police as soon as practicable after forming a suspicion.

206. As it is an offence under section 3 of UN Act to allow the asset to be dealt with or facilitate the use of the asset, this may indirectly require that freezing can occur without prior notification to the persons involved, as such notifications could allow the assets to be used or facilitate the use of the assets.

207. Enforcement of the UN Sanctions Regulation is achieved via the UN Act., under section 3 of the UN Act. These provisions may require that the freezing occur without delay. As it is an offence under section 3 of UN Act to allow the asset to be dealt with or facilitate the use of the asset, this may indirectly require that freezing occur without prior notification to the persons involved, as such notifications could allow the assets to be used or facilitate the use of the assets.

208. Neither Niuean authorities nor Niuean financial institutions (the bank and the two remitters) had considered using these provisions to freeze assets. As such it is unclear how the provision would work in practice.

209. The UN Sanctions Regulation 3(3) sets out that “the Minister of External Affairs may publish a list of names, and any other known identifying details, of entities that are specified entities” and “any additions to, or deletions from the list”. The use of the word “may” indicates that publication is not compulsory and Minister of External Affairs in Niue has not published any such list.

210. While Niue has laws and procedures to freeze terrorist funds or under the TSTCA, these are unable to be used without delay. Part 4 of TSTCA enables the Attorney-General to apply to take control of property where the Attorney-General has reasonable grounds to believe that the property is terrorist property. If the Court is satisfied that there is sufficient evidence to support an order, the Court may direct the Registrar of the High Court to take custody and control of the property. This would not constitute freezing without delay.

211. The definition of “terrorist property” under the TSTCA includes property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity. Specified entities are limited to those terrorist entities designated by the UN Security Council, rather than any domestic designation, so are limited to those designations under 1267. Section 5 of the TSTCA requires the Minister to publish the 1267 list in the gazette before they are considered specified entities. The Minister is required to publish updated lists as a notice in the gazette each time there is a change by the 1267 Committee. No 1267-related entity has been prescribed by the Minister publishing notice in the Gazette as required by section 5.

Freezing Assets under S/Res/1373 (c. III.2):

212. There is no regime available to authorities to give effect to freezing provisions pursuant to UNSCR 1373.

213. Niue does not have any mechanism to ensure that effective cooperation among countries for giving effect to actions initiated that are under the freezing mechanisms of other countries, nor does it have mechanism to ensure that the funds or other assets of the designated person of other countries are frozen without delay.

Freezing Actions Taken by Other Countries (c. III.3):

214. Niue has no specific provisions or procedures to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

215. “Property” is defined in the UN Sanctions Regulation as “real or personal property of any description, whether situated in Niue or elsewhere and whether tangible or intangible and includes an interest in any real or personal property of that kind”.

216. The definition of property in the UN Sanctions Regulation combined with section 6 of those Regulations extends freezing obligations to funds or other assets owned or controlled, directly or indirectly by a specified entity or derived or generated from such assets. The Regulation does not clearly state that funds or assets owned jointly are covered.

217. The definition of property in TSTCA means (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, those assets including, but not limited to, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, hand letters of credit, where the definition of terrorist property means (a) property that has been, is being, or is likely to be, used to commit a terrorist act; or (b) property that has been, is being, or is likely to be, used by a terrorist group; or (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.

218. The definition of property and terrorist property is reasonably comprehensive though it would be useful if the definitions specifically set out that it covered property that is jointly owned or controlled.

Communication to the Financial Sector (c. III.5):

219. Beyond the statutory instruments no systems have been implemented to communicate actions taken under freezing mechanisms. At the time of any action taken to freeze under the UN Sanctions Regulation or TSTCA Niue would be able to communicate actions taken. Section 3(3) provides a basis for the Minister to gazette or publish on the internet additional details about specified entities to whom the regulations apply. In the absence of any actions taken under freezing mechanisms, no communication to the financial sector has taken place.

Guidance to Financial Institutions (c. III.6):

220. Niue FIU has issued *Best Practice Guidelines to Financial Institutions* (date unknown), that refers to terrorism financing. However, while it provides comprehensive guidelines for CDD, STR reporting, it does not provide guidelines any guidance in relation to freezing the funds related to specified entities. No guidance has been issued to any other reporting entities.

221. Niue authorities advised that banks and financial institutions may freeze TF funds designated persons based on their internal policies but this was not substantiated during the evaluation.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

222. Under the definition of specified entity in the UN Sanctions Regulation, once an entity is delisted by the UN, it is no longer listed under the UN Sanctions Regulation. The Regulation does not contemplate unfreezing funds of delisted persons.

223. Under s.5 of TSTCA, once the Minister gazette's an updated UNSCR list, the entity is delisted.

224. There are no other procedures for unfreezing the funds or other assets of delisted unless it is ordered by the Court. The issue of taking such action in a timely manner consistent with international obligations is not able to be qualified as there has never been a list issued.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

225. There is no provision in the UN Sanctions Regulation relating to actions to be taken in cases of persons inadvertently affected by freezing actions.

Any person or entity inadvertently affected by a freezing mechanism under TSTCA can challenge it via the Court and such funds and properties can be released by the order of the court under s.13, 14, 15, 16 and 17, 22 of the TSTCA. There is no provision that requires the state itself to take initiative in such situation upon verification that the person or entity is not a designated person.

Access to frozen funds for expenses and other purposes (c. III.9):

226. Section 8 of the UN Sanctions Regulation sets out provisions for the Minister may authorise access to frozen funds for expenses and other purposes. The Regulation does not tie the procedures to those set out in UNSCR 1267.

227. TSTCA does not include any legal provisions and procedures for authorising access to funds or other assets that were frozen pursuant to UNSCR 1267 for necessary expenses.

Review of Freezing Decisions (c. III.10):

228. Anyone whose funds and properties are restrained can challenge to the court under s.14, 15, 16 and 17 of TSTCA and similar provisions exist in POCA. In some situations the Court itself may hear the affected party before issuing its order. There is no provision to undertake review of the freezing decision under the UN Act or the UN Sanctions Regulation.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

229. The AG may apply to the Court for a forfeiture order under section 19 of the TSTCA, and the Court must order that the property be forfeited if it is satisfied, on the balance of probabilities, that the property is terrorist property.

230. “Terrorist property” is defined under section 2 and includes property that has been, is being, or is likely to be used to commit a terrorist act or by a terrorist group or property derived from property owned or controlled by a specified entity. There is no provision for confiscation of property of corresponding value.

231. Provisional measures to take control of the property are available under section 12 of the TSTCA, and applications for these orders may be made ex parte. Applications can be made to vary or revoke a section 12 order under section 14 of the TSTCA.

232. The TSTCA provides for the controlled delivery of property, but there are no other additional investigative tools.

233. Terrorism financing is a predicate offence and would trigger the POCA and its provisions as are set out at Recommendation 3.

234. Section 34 of the *Mutual Assistance in Criminal Matters Act 1998* (MACMA), provides measures for the Attorney General to apply to the court for a restraining order where a criminal proceeding has commenced or is about to commence. This could not be used to give effect to freezing actions of other countries.

Protection of Rights of Third Parties (c. III.12):

235. Section 22 of TSTCA protects the interests of third parties. Sections 16 and 17 of the Act provide relief to a third party where that party has an interest in property that is subject to an order to take control of the property. POCA also contains protections for the rights of bona fide third parties. Section 11(4) of POCA provides that in making a forfeiture order, the Court may have regard to the rights and interests of third parties in the property. Section 13 sets out the procedures available to third parties in relation to forfeiture orders. The rights of bona fide third parties are also protected in relation to restraining orders under section 36 of POCA. A person who claims an interest in property that is subject to a restraining order may seek by application to the Court to vary the order.

Enforcing the Obligations under SR III (c. III.13):

236. Niue FIU can exercise some powers to monitor the compliance with relevant legislation, rules or regulations governing the obligations for AML/CFT including for SR.III but it has not done so. There are no other provisions for imposing civil, administrative or criminal sanctions for failure to comply with such legislation, rules or regulations, other than what is provided in the FTRA. Niue does not have any other appropriate measures to monitor effectively the compliance of SR.III.

237. Other than the FIU supervision of compliance of KYC and reporting on AML/CFT, Niue does not have any appropriate legal, institutional or procedural measures to monitor effectively the compliance with relevant legislation, rules or regulations governing the obligations under SR.III and to impose civil, administrative or criminal sanctions for failure to comply with the requirements. Although Niue authorities advise that the measures would be undertaken by the appropriate government agencies as appropriate such as by the Niue Police and Crown Law and lead by the Secretary to Government and other agencies as appropriate.

Additional Element — Implementation of Measures in Best Practices Paper for SR III (c. III.14):

Additional elements

238. Niue does not have measures in place set out in the Best Practices Paper for SR.III. The *Best Practice Guidelines for Financial Institutions* issued by the Niue FIU has a section on dealing with property under the section “Terrorist Financing”. However, it does limit to general information.

Additional Element —Implementation of Procedures to Access Frozen Funds (c. III.15):

239. There are no provisions or procedures requiring applying the principles of basic expenses beyond the legal provisions discussed above.

Statistics (applying R.32)

240. No terrorist financing enforcement has ever occurred in Niue so consequently there is no data available. Lack of awareness and training has hampered Niue’s implementation of SR.III.

Analysis of effectiveness

241. Implementation of SR.III is almost nil in Niue. Niue has not made any gazette notification about the designated UNSCR including the list of Taliban and Al-Qaida till the date. Niue has no procedures in place to freeze the property listed designees and associates under UNSCR 1267. Niue does not have its own designation system. Seizing and freezing has serious problems as TSTCA does not have specific freezing provisions and POCA has certain limitation.

2.4.2. Recommendations and Comments

242. There is no implementation of UNSCR 1267 in Niue, no freezing of related assets is in effect, although Niue authorities are legally competent to freeze or seize such assets without prior notice of the designated persons, if the list is gazetted. Niue does not have its own designation system nor can it recognise other jurisdictions' designations, therefore no action can be taken in this regard. Even if gazetted, the process of freezing such property is difficult to do without delay.

243. TSTCA does not have clear provision on freezing except section 12, on taking custody and control, and cannot be interpreted and extended to full-phase freezing. The provisions of POCA are applicable only to proceeds of crimes, not for other such as legitimate income contribution to TF.

244. Niue does not have its own designation system and cannot recognise other jurisdictions' designations. The freezing mechanism for SR.III is not developed nor have any guidelines been issued to reporting institutions to that effect. Niue does not have legal provisions to provide essential expenses. Niue has legal provision for property tracking but it is rarely used.

245. Niue has never exercised its powers in overseeing compliance of AML/CFT reporting including SR.III. Niue does not have appropriate and effective institutional or procedural measures to monitor effectively compliance with relevant legislation, rules or regulations governing the obligations under SR.III and to impose civil, administrative or criminal sanctions for failure to comply such legal norms.

246. Lack of proper knowledge and training on AML/CFT has caused severe problems and inability to work in full compliance against any kind of terrorism and persons involved.

247. In order to comply with Special Recommendation III, Niue authorities are recommended to:

- Publish in gazette notification of UNSCRs immediately and distribute to the reporting and other related agencies for implementation.
- Amend laws to provide clear freezing powers against the funds and assets of any kind of terrorist or related persons.
- Amend law to have its domestic designations system and consider and recognise designation by other countries.
- Consider developing mechanism to ensure that effective cooperation among countries for giving effect to the actions initiated under the freezing mechanisms.
- Provide comprehensive and mandatory guidelines to financial institutions to comply with SR.III requirements.
- Consider providing simplified mechanisms to unfreeze the funds and properties of delisted or innocent third parties
- Niue FIU and other concerned authorities should exercise available powers and monitor compliance.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none">• Only a clear legal basis for elements of UNSCR1267, but not 1373• No implementation of UNSCR 1267 and successor resolutions• No legal system for domestic designations system and considering designation by other countries

		<ul style="list-style-type: none"> • No system for communicating actions taken under freezing mechanisms • Lack of adequate mechanism to ensure effective cooperation among countries for giving effect to the actions initiated under the freezing mechanisms • Lack of comprehensive and mandatory guidelines to financial institutions to comply with SR.III requirements • Lack of simplified mechanisms in place to unfreeze the funds and properties of delisted or innocent third parties • No exercise of available powers or monitoring of compliance • Lack of training and awareness programs on the requirements of SR.III.
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2.5. The Financial Intelligence Unit and its Functions (R.26)

2.5.1. Description and Analysis

Under the *Financial Transactions Reporting Act 2006* the Niue FIU is legislatively required to perform the role of FIU and AML/CFT supervisor. This section of the report examines the FIU functions.

Legal Framework:

248. The Niue FIU is established pursuant to the *Financial Transactions Reporting Act 2006*. Section 20(2) of the FTRA provides that, “The [FIU] operates within the Department. “Department” is defined under section 2 of the Act as “meaning either: a) the Office of the Attorney General; or b) any other Department or Office of the Executive Government of Niue if that other Department or Office is, with the authority of the Premier of Niue, for the time being responsible for hosting and supporting the [FIU].”. The FIU operates within the Crown Law office. In addition to receiving reports, analysing and disseminating intelligence, the FTRA Section 21 1 d (i) also allows the FIU to direct financial institutions or government institutions to take appropriate steps to facilitate any investigation being conducted by the Unit, and includes powers to apply for a search warrant, FTRA Section 23.

Establishment of FIU as National Centre (c. 26.1):

249. The FIU serves as the national centre for the receipt, analysis and dissemination of STR’s and other information to other competent authorities, FTRA, Section 21 (1). The legislated functions of the FIU include to:

- a) Receive and analyse suspicious transaction reports and any other information given to, or obtained by the Unit; and
- b) Disseminate information based financial intelligence reports to the Attorney General for approval for further dissemination
 - (i) to the Department; and
 - (ii) if the Attorney-General considers it appropriate, to the Police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; and
- c) Conduct examinations to ensure compliance with the FTRA 2006 by financial institutions, and
- d) To receive information from, and otherwise assist, the Department, the Police, a law enforcement agency (whether within or outside of Niue), or a supervisory body outside Niue, in relation to –

- (i) the detection, investigation or prosecution of a money laundering offence, terrorist financing, a serious offence or
- (ii) the enforcement of the *Proceeds of Crime Act 1998*.
- e) to issue guidelines to financial institutions in relation to transaction record keeping and reporting obligations and measures to prevent the misuse of the financial institutions; and
- f) provide training programmes for financial institutions about transaction record keeping and reporting obligations; and
- g) prepare and present an annual report to the Niue Assembly.

250. The FIU may also collect, free of charge, and at the FIU's request, any information that the FIU considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government, FTRA, Section 21(2).

251. The FIU has established standard operating procedures for receiving, analysing, disseminating and storing Suspicious Transaction Reports (STR), Suspicious Property Reports (SPR), Border Cash Reports (BCR), Cash Transaction Reports (CTR) and Electronic Funds Transfer Reports (EFTR).

252. Upon receipt of an STR, SPR, CTR, and EFTR from a financial institution, the information is manually entered into an excel spread sheet on a standalone computer that is maintained and only accessed by the Head of FIU. A manual submission of an STR is the only process available to financial institutions. There is no back-up process due to the limited number of reports and no offsite storage; however hard copies of the reports are maintained in a locked store room.

253. When an STR is received, it will be analysed and is legislatively required to be referred to the Head of FIU who also acts as the Attorney-General for approval for dissemination to police, law enforcement agency or supervisory body. While the independence of the FIU is limited by the legislation, in practice the Attorney General position was repealed in 2006. The current Head of FIU also holds the position of Solicitor General and acts as the Attorney-General so in practice there is no consultation external to the FIU prior to dissemination.

254. Information from other government institutions can be obtained by the FIU upon request that is publicly available including information that is collected or maintained in databases to assist with the analysis of an STR.

255. The STR analytical function of the FIU cannot be tested since no STRs have been received by the FIU.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

256. The Niue FIU has developed *Best Practice Guidelines for Financial Institutions* and claims to have issued it to two financial institutions in July 2009. However, one of the two financial institutions confirmed during the onsite that a copy of the guidelines was not sighted during the 11 months that the current manager has been managing the institution, and a copy was made available only two weeks before the onsite. The other financial institution confirmed having no knowledge of having sighted the guideline.

257. The guidelines are reasonably comprehensive and, inter alia, reflect the requirements as set out in the FTRA.

Access to Information on Timely Basis by FIU (c. 26.3):

258. There is no express power for the FIU to have access to information on a timely basis either from financial institutions or government institutions. However, the FIU may under FTRA Section 21 (2) collect, free-of-charge and upon request, any information relevant to ML/TF or serious offences that is held on government databases, public or not. Under 21 (6) (d) the FIU direct any financial institution or government institution to take appropriate steps to facilitate any investigation being conducted by the unit. It is likely that the close working relationships of domestic agencies and of commercial entities would result in information being requested, retrieved and supplied in a timely manner but there is no law to compel it as such.

259. A number of domestic formal and informal relationships exist between the FIU and law enforcement agencies which could allow the timely access and sharing of information on related money laundering, terrorism financing and serious offences investigation or prosecution.

Additional Information from Reporting Parties (c. 26.4):

260. A financial institution under section 8 (4) is required, upon submitting an STR to the FIU, to monitor other transactions undertaken by the customer and also report those transactions to the FIU including the provision of further information that it has in its possession.

261. The FIU may also, under section 21(2) of the FTRA, request any information that it considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, and including information that is collected or maintained in databases of the government. The FIU may also under section 21(6)(d) direct any financial institution or Government institution to take appropriate steps to assist the FIU in any investigation being conducted by the FIU. As no STR has been received by the FIU, the ability of the FIU to request additional information from financial institutions has not been tested.

Dissemination of Information (c. 26.5)

262. The FTRA provides that the FIU has to disseminate an STR to the hosting Department, which at the time of the writing of this report was the Crown Law Office, and if the 'Attorney General' (now Solicitor General) considers it appropriate, to the police, a law enforcement agency, or a supervisory body outside Niue.

263. The Attorney-General's position was repealed in 2006 by the *Correction of Errors and Minor Amendment Act 2006*. It was previously provided for under certain legislations including the FTRA to accommodate the status of former expatriates who have acted in the position. In any case and where the word 'Attorney-General' is used or mentioned in any legislation is deemed to be taken as the 'Solicitor General'. In practice, the AG's role is held by the SG who is also the Head (and sole member) of FIU. This means any STR received by the FIU will, in practice be analysed by the SG/Head of FIU and disseminated if that person considers it appropriate.

264. No STR has been received by the FIU therefore the effectiveness of the STR dissemination process cannot be tested.

265. It is noted that in future should a person outside of the FIU hold the AG's position, it may have detrimental impact to the STR decision-making and dissemination process as currently provided for in the FTRA.

Operational Independence (c. 26.6):

266. The FTRA provides the Niue FIU with a framework to operate independently considering the size of its financial institution and population. The FIU's independence from undue influence or interference is constrained by: the limited number of staff which makes it difficult to avoid situations where there may be a perceived conflict of interest; the limited implementation of the requirements of the FTRA; and, the absence of a legal provision that expressly prohibits the FIU staff members or close family members from operating or being involved in providing business activities that are captured by the FTRA.

267. The FIU is established within the Crown Law Office (CLO). It does not have an independent budget therefore the administrative costs in running the FIU is covered under the CLO budget while the FIU membership fees is covered by the Office of External Affairs, a division of the Premier's Department. Its reporting line to government is through the Secretary to Government. In practice, this reporting takes place by telephone, emails, meetings or monthly report to the Minister of Finance who also is the Premier of Niue.

Protection of Information Held by FIU (c. 26.7):

268. Except within the provisions of the FTRA the FIU may not disclose any information that would directly or indirectly identify an individual who has provided information to the FIU, or a person or entity about whom a report or information was provided under FTRA conditions.

269. Information held by the FIU is maintained in a stand-alone computer, which is only used and accessed by the Head of FIU, and hard copies are kept in a secure strong room. However, the storage is not fire proof and the information held by the FIU is not maintained in electronic form or stored offsite in a secure and fire-proof environment.

Publication of Annual Reports (c. 26.8):

270. The FIU is required under the FTRA to prepare and present an annual report to the Niue Assembly. While a formal annual report of the FIU has not been presented since the FIU's establishment, the organisational aspects of the FIU are included in the Crown Law annual report. Furthermore, the authorities advise that the APG member report Niue, provided for APG annual meetings, is distributed within the government and made available publicly. The APG member report includes information on FIU activities and statistics. It should be noted though that Niue's APG member report is not exclusive to, or a discrete product of, the FIU.

Considering Applying to join the Egmont Group (c. 26.9):

271. Niue FIU was accepted as a member of the Egmont Group in May 2007.

Egmont Principles of Exchange of Information among FIUs (c. 26.10)

272. As a member of the Egmont Group the Niue FIU has regard to the principles of information exchange. The Niue FIU has signed one formal Agreement or Memorandum of Understanding another FIU to share information, being with New Zealand Police FIU.

273. Recently, Niue has signed the Agreement Establishing the Association of Pacific Islands Financial Intelligence Units in India, in July 2011:

Agreement Establishing the Association of Pacific Islands Financial Intelligence Units

- 1) The Heads of the FIUs of Pacific Island Countries Cook Islands, Federated States of Micronesia, Fiji, Nauru, Niue, Papua New Guinea, Kiribati, Marshall Islands, Palau, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu were invited to sign the Agreement Establishing the Association of Pacific Islands Financial Intelligence Units (the Agreement) at Kochi, India in the margins of the APG Annual Meeting.
- 2) Each FIU or organisation has similar problems and concerns related to technical assistance and training; professional staff recruitment and development; and organisational development; and
- 3) There are benefits to be gained by offering mutual support, and therefore, are willing to form an unincorporated association of their FIUs;
- 4) The Agreement expressly states that it is not a legally binding document. The aim of the APIFIU is to strive to achieve, by mutual cooperation, the following objectives:
 - a. To act as a common and regional voice when combating money laundering, financing of terrorism and other serious offences in the member jurisdictions;
 - b. To provide a forum for the sharing and exchange of information, ideas, experiences, and concerns and for identifying solutions which are often unique to the member FIUs;
 - c. To organise relevant training workshops in cooperation and where necessary, in consultation with member FIUs, associations, organisations, Federal agencies, and other institutions in member countries. This may include short term work attachments between member countries;
 - d. To promote public awareness and education on anti-money laundering and counter financing of terrorism within the member countries.

Adequacy of Resources to FIU (c. 30.1):

274. The FIU is staffed by one person who is expected to devote 10% of their time to FIU activities, in practice the time devoted to FIU activities is less. The evaluation team does not consider that one person staffing the FIU is adequate, in that it may affect the perception of operational independence, and having another person designated to work in the FIU would assist with succession planning.

275. The FIU shares office facilities with the Crown Law Office, and has an annual budget of NZD6,000 to cover administrative and operational expenses which is considered by the Mutual Evaluation Team to be inadequate. The annual membership fees for APG, Egmont Group and the OECD Global Forum are included under the External Affairs budget and in the 2010/2011 financial year totalled approximately NZD45,000.

Integrity of FIU Authorities (c. 30.2):

276. The recruitment of FIU staff is bound by the Niue Public Service Regulations. Every public servant of all positions including the Head of FIU is recruited through a transparent and stringent selection process to identify persons that meet the academic, professional and personal qualities required for the role.

277. Criminal background checks are undertaken through the Niue Police for all expatriate public servants including the FIU. Being a small community Niue relies on widely known background

information on local public servants, particularly with senior public servants and the Public Service Commission. All personnel files are held indefinitely and sent to archives when a person dies.

278. The Head of FIU, who also is the Solicitor General, has signed an employment contract with the Public Service Commission which contains secrecy provisions as required by the Niue Public Service Act. A copy of the Employment Contract was not sighted by the ME Team and therefore cannot confirm as to whether or not the requirement is met. As a permanent employee the officer is bound by the provisions of the Public Service Regulations 2004, the Public Service Code of Conduct as well as the provisions of section 228A of the *Niue Act 1966* relating to wrongful communication, retention or copying of official information.

279. The Head of the Niue FIU is a lawyer who has been practising for over 10 years and is aware of the professional and confidential environment that is required under the FTRA.

Training for FIU Staff (c. 30.3):

280. The Head of FIU has attended several international AML/CFT workshops and conferences over the last five years. However, it was apparent during the onsite that further training and capacity enhancement is required for the FIU in relation to analysis of reports.

Statistics (applying R.32)

281. There is no legal provision under the FTRA requiring Niue FIU to maintain or compile statistics of the type of reports that it is mandated to receive under section 6 and 8 of the FTRA. No STR, SPR and EFTR have been received so no statistics have been kept. A total of 8 CTR's were reported to have been received by the FIU between 2008 and 2011.

Number of Cash/threshold reports received and disseminated

Action	2007	2008	2009	2010	2011	Total
Cash / threshold reports received						
Number of CTRs received		2	2	3	1	8
Number of CTRs analysed						0
Number of CTRs disseminated						0

Analysis of effectiveness

282. The FIU has faced difficulties in meeting all its obligations under the FTRA because it is practically under-resourced. The competing roles of its sole staff member hinder their capacity to devote time to FIU matters. At the time of the onsite visit the incumbent Head of FIU was also the Solicitor General/Attorney General, and was Acting Secretary to Government.

283. Authorities have not focussed on receipt, analysis or dissemination of STRs because any changes in behaviour of people, sudden increases in wealth or material possessions, and movements into and out of Niue are almost immediately discovered by other members of the community and ultimately the FIU.

284. Authorities also set out that the 8 CTRs received were not disseminated as an analysis by the FIU determined that there was nothing unusual or suspicious.

285. The FIU issued a copy of the guideline to the two financial institutions in July 2009 but no training was undertaken on STR reporting or on what financial institutions are required to do under the FTRA.

286. The lack of any STRs being submitted to the FIU and the very low level of CTR's received by the FIU means that the FIU is unable to meaningfully undertake its responsibility in ensuring that financial institutions clearly understand the reporting requirements of certain transactions under the FTRA.

2.5.2. Recommendations and Comments

287. In order to comply with Recommendation 26, Niue authorities are recommended to:

- Undertake an assessment of the amount of resources available to, and the placement of, the FIU to maximise its independence.
- Consider appointing a second FIU Officer to be available to undertake some of the FIU function. This would enhance coverage of FIU obligations and assist in mitigating any possible conflict of interest or the perception of conflict of interest, which may discourage reporting from financial institutions.
- Properly identify the reporting institutions covered by the FTRA so as to provide appropriate guidance.
- Undertake awareness training for financial institutions and law enforcement agencies about the form and the manner of STR reporting.
- Amend the FTRA to ensure that the decision making process on the dissemination of an STR rests with the Head of FIU.
- Amend the FTRA to ensure that an STR is only disseminated to domestic authorities for investigation or is acted upon when there are grounds to suspect ML or TF.
- Amend the FTRA to remove all references to the now-redundant term “Attorney-General”, in response to that position having been repealed in 2006.
- Amend the FTRA to provide sanctions against a financial institution when they do not provide information in response to a request for information relating to money laundering, terrorism financing and serious offences.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to section 2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • Lack of clarity on the set-up and legislated functions of the FIU in regards to its additional powers to direct certain third parties in facilitating any investigation • AML/CFT guidance is not widely distributed to all financial institutions captured under the FTRA • No independent budget for the FIU and limited number of FIU staff to ensure the effective delivery of the FIU responsibilities and to address any

		<p>potential perceived conflict of interest situation</p> <ul style="list-style-type: none"> • No backup and offsite storage of FIU information • Lack of engagement and consultation with the relevant agencies responsible for AML/CFT • Lack of clarity on the operational independence of the Head of FIU • As no STRs have been received by the FIU, effectiveness of analysis and dissemination can't be established • Lack of formal and consistent feedback process with financial institutions.
R.30	PC	<ul style="list-style-type: none"> • Effective implementation of the FIU responsibility has been inhibited by the number of staff available to undertake those responsibilities • The FIU use an excel spreadsheet as their IT infrastructure to support both the record-keeping and the analysis function of the FIU • There is no independent budget for the FIU • This is a composite rating.

2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)

2.6.1. Description and Analysis

Legal Framework:

288. Four agencies in Niue enforce the legal framework for the investigation and prosecution of ML, TF and the recovery or confiscation of criminal proceeds, namely:

- the Niue Police – the principal investigating and possible prosecuting agency
- Crown Law Office – prosecuting agency
- Niue Customs – supporting agency to FIU and Police in its investigating roles.

289. As noted in Section 1 of this report, Niue Customs does not have a significant investigative role with respect to ML and TF due to the limited number of air and sea transportation crossing its border. There is only one flight a week to Niue from New Zealand and any unusual passenger travel movement or importation of prohibited goods or unusual increase in wealth or assets will be easily noticed by local authorities. However, any investigation by the Niue Customs that may develop into a money laundering or a serious offence other than the normal customs cases will be referred to the Niue Police for further investigation.

290. There not a dedicated unit or personnel in the Police responsible for ML and TF investigation. The Chief of Police from the New Zealand Police on secondment to the Niue Government has extensive general policing and investigation skills including drugs but there is no officer in the Niue police experienced in ML or TF investigations. As noted in Section 1 of this report, the incidence of acquisitive crime in Niue, and the risk of TF, are extremely low and investigation agencies have subsequently not focussed on investigation and prosecution of ML, TF or confiscation of criminal proceeds.

Designation of Authorities ML/FT Investigations (c. 27.1):

291. The Police Department is the principal investigating agency in Niue for any serious offence, including money laundering and terrorism financing.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):

292. There is no legal provision under the *Niue Act 1966*, the *Customs Act 1966*, the *FTRA 2006*, the *Proceed of Crime 1998* or the *Terrorism Suppression and Transnational Crime Act 2006* to allow law enforcement agencies the ability to postpone, waive the arrest of suspects or seizure of properties. In practice however law enforcement authorities can exercise discretion during any investigation or operation when and if required to allow monitoring and/or surveillance of persons in the commission of an offence.

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):

293. An Authorised Officer is permitted to undertake a controlled delivery of property for the purpose of gathering evidence or facilitating prosecutions of persons under section 26 of the *Terrorism Suppression and Transnational Crimes Act 2006*. However this is only limited to terrorism and people smuggling related offences.

294. The Police and Customs Services employ basic investigative techniques, based on training provided by New Zealand Police, and attendance at forums such as the Asia-Pacific Centre in Hawaii, and regional Law Enforcement Cooperation Programs (LECP). The small size (population 1,500 persons, with annual international passenger movements of some 4662 in 2009 and 6214 in 2010 respectively) of the community means that the police know of, or are related to, almost all of the persons on the island. Any changes in behaviour of people, sudden increases in wealth or material possessions, and movements into and out of Niue are almost immediately discovered by other members of the community and ultimately the Police.

295. The Police and Customs Services conduct business, bona fides, and other checks on individuals and businesses through Interpol in New Zealand. The Police do not conduct controlled delivery operations, and do not have guidelines as to how these should be conducted. However, the current Chief of Police has experience in drug investigations from their career in the New Zealand Police and can initiate investigations, drug control delivery operations, including any legal procedure that could contribute to the success of such investigation, should the situation arise.

Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

296. There is no legal provision to allow law enforcement authorities to use special investigative techniques when investigating money laundering or financing of terrorism offences

Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):

297. There is no special investigation group with a multi-disciplinary character.

298. There is no formal set up of combined law agency group, however, when and if a multi-agency approach is required for any investigation, the Chief of Police has the ability to call in the relevant agencies to deal with the situation. There is an MOU between Customs, Police and Quarantine that would support any activity requiring interaction between those agencies.

299. Cooperation between the Police and Customs on Niue was observed during interviews and at first hand. Police, Customs, and the Crown Law Office hold meetings to review investigations and information which may be relevant to the other agency. No formal agreement or Memorandum of Understanding exists between the Police and Customs Services of Niue. In practice, upon discovery of a suspicious item or person possessing that item, the Customs Service will detain the item or person

and hand them over to the police for further investigation. Where a situation occurs which is beyond the expertise of law enforcement, advice and assistance is sought from the New Zealand Police or Customs.

Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):

300. There has been no review of ML or TF trends undertaken by law enforcement authorities on Niue since the relevant ML & TF legislation been in place. There was a theft of departure tax revenue that was recently investigated and prosecuted by law enforcement authorities which could have been (but was not) considered for a money laundering charge or proceeds of crime action.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

301. The Police can compel the production of documents on application to a Judge in Chambers, under section 47 of the POCA, where a person has been convicted or where the constable has reasonable grounds for suspecting that a person has committed a serious offence, and that person has possession and control of a property-tracking document.

302. Section 47(6) sets out that accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books are exempted from a production order. This prohibition may limit the use of production orders in limited circumstances for banks only and this would relate to instances where the transaction and identification records required are somehow only retained by the bank as part of ledgers, day-books, cash books and account books. This would not seem to be usual banking practice.

303. The police can also obtain a search warrant for property tracking documents under section 52 of the POCA, where a person is convicted of a serious offence of the constable has reasonable grounds for suspecting that a person has committed a serious offence, and there is in any premises, a property-tracking document in relation to the offence. While this is section is broader, the constable must still set out that the property specified in the affidavit is subject to the effective control of the suspect.

304. The ability of the police to compel production of and search for documents and information under the POCA has never been tested in Niue.

305. Police can also apply for a search warrant under the *Niue Act 1966*.

Power to Take Witnesses' Statement (c. 28.2):

306. There is no express legal provision for law enforcement authorities to take witness statements. In practice, police do take witness statements which can be used to proof witnesses or to cross-examine them if they give inconsistent evidence in court.

Recommendation 30 - Resources

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):

307. Niue Police do not have experience of money laundering and terrorist financing investigations. Recently Niue has been invited to hold a liaison position with the Transnational Crimes Unit (TCU) based in Samoa. The advantages of this post are access to the TCU database

across the Pacific, updated software, as well as significant training and mentoring opportunities for local Police staff from the larger TCU bases in Samoa and Fiji.

Crown Law

308. The main day-to-day responsibility for AML/CFT policy and legislative matters rests with the Crown Law Office a division of the Premier's Department, whose duties are to provide legal advice to the executive and all government agencies. There are two legal professional staff members and an administration officer. Under the direction of the Secretary to Government. In AML/CFT matters, the Crown Law Office relies heavily on assistance from New Zealand as well as regional and international organisations.

Police

309. The Police Department is responsible for investigating money laundering and terrorist financing offences. The Police Department has 16 sworn officers and has little or no experience of investigating any type of financial crime due to the low incidence of financial crimes such as fraud. There have been no investigations of ML/TF. The Chief of Police has for the last six years been appointed from the New Zealand Police Force and both appointees have been senior officers. The current Chief has significant experience in criminal investigation, particularly drug trafficking in New Zealand. For any significant investigations technical advisors from the New Zealand Police assist as appropriate, for example forensic matters. In-country training is also provided by New Zealand police officers on a as needs basis.

310. At the recently attended Police Chiefs' conference in the Federated States of Micronesia Niue's Police Chief presented on the Cyber Crime Pilot Project led by the Australian Federal Police. Niue was used for a pilot programme and officers received training from AFP staff on cybercrime issues such as email scams, fake websites and child pornography. The pilot project has since been adopted by a further four Pacific Islands to implement over the next year with a view to launching this initiative across the Pacific in 2013. Niue Police staff will partake in assisting with training of the other Pacific Island Police staff.

311. Niue police officers have undertaken regional training both in-country and overseas. In 2010 Niue successfully sought funding from New Zealand to carry out a 12-month capacity training program for all Police staff. This involved the recruitment of a New Zealand Police College recruit instructor travelling to Niue throughout the year delivering up-to-date training as used by NZ Police recruits. Additionally the Australian Federal Police have been proactive in providing more target-based training on investigation management for senior Police staff as well as providing a position on the Australian Police Institute of management program for 2011-12.

312. The Niue Police Department recently established a Transnational Crimes Unit liaison post. The benefits of this are that Niue Police staff will have the benefit of being seconded to the larger TCU posts across the Pacific to be mentored on transnational crime investigations.

Immigration

The Immigration Office is a division of the Police Department. The Chief Immigration Officer is also the Chief of Police and the office has one senior immigration officer.

Customs

313. The Customs Office is a division of the Treasury Department and consists of 4 officers. It is responsible for enforcing a wide range of domestic laws that includes controlling the movements of crafts, cross-border movement of goods and revenue collection at the border.

314. Niue Customs is a member of the Oceania Customs Organisation (OCO) to represent Niue's interests. The OCO is affiliated with the WCO through a recently signed MOU and has been recognised by the WCO as a partner Customs Organisation. The OCO conducts national and regional trainings to its members according to Customs administrations needs and areas requested by heads of Customs and also recommendations of Forum Leaders after its annual meetings.

Integrity of Competent Authorities (c. 30.2):

315. As a result of the recent attendance of the current Chief of Police at the Police Chiefs conference in FSM there have been several training opportunities open up. The Australian Federal Police has provided investigation management training opportunities year in 2012. They have also offered Niue a position on the Australian Institute of Police Management courses which will be attended by Niue's Senior Police Officer.

316. Currently New Zealand Police have been undergoing a year's "capacity training for the general staff" which has been designed to mirrored a recruit-type course that NZ Police officers would attend in New Zealand. The course consists of 3x3-weeks block courses dispersed over the year with distance learning objectives between these blocks. The course is a pass/fail course with critical assessment at the end of each block.

317. All government departments and agencies are required to maintain a high professional standard in accordance with their professions and the Public Service policies and regulations. These have a constitutional basis and include the *Public Service Regulations 2004* and the Code of Conduct within which the standards of confidentiality are contained. This includes penalties for a breach of confidentiality. In addition the *Niue Act 1966* provides for the use of official information and sanctions for the breach of the confidential requirements.

Training for Competent Authorities (c. 30.3):

318. Niue Police relies upon the New Zealand Police to provide recruit and follow-up training in policing techniques, investigation procedures, forensic procedures, and the like. Two officers have received training in the investigation of fraud offences, conducted in the Cook Islands in 2003. No training has been provided with respect of the procedures to take action under the *Proceeds of Crime Act 1998*. The police were not aware of the existence of the POCA until recently. Niue Police officers have been deployed to Hawaii to take part in the Asia Pacific Centre training course for the investigation of the funding of terrorism, and to Fiji to participate in a workshop on investigation of money laundering.

319. Niue Customs Service officers have received limited training on techniques of money laundering, which was funded by the WTO. All Customs personnel are trained in New Zealand. No training has been provided on investigating proceeds of crime. At least one officer has been sent to New Zealand for further on-the-job training.

320. No training has been carried out in respect of financing of terrorist groups.

321. Training for AML has occurred ad hoc with attendance at regional workshops, and training within their respective fields, such as police, legal, customs and immigration.

Additional Element (R. 30) - Special Training for Judges (c. 30.4):

322. Due to the low threat of money laundering and terrorist financing there is no specific programme in Niue for ML and FT provided for sitting judges from New Zealand. The Niue judges have received external training as part of regional initiatives.

Statistics (applying R.32)

323. There have been no prosecutions or enforcement for ML or FT (including any suspected activities) so there are no statistics to report on those activities. Statistics have been kept on other criminal matters including an application for a search warrant in 2009/10.

Analysis of effectiveness

324. Given the relatively low levels of crime in Niue, opportunities for ML investigations have been limited. There was, however, one investigative opportunity that was not considered in relation to either a possible money laundering charge or the possibility of recovering the proceeds of crime.

325. The low levels of acquisitive crime in Niue, and the low risk of terrorist financing means both Police and Crown Law have not turned their minds to the POCA, TSTCA or FTRA and were generally unfamiliar with the legislative provisions and how they may be employed.

326. The Niue Police, Customs and Crown Law have identified training and resource issues that have limited the effectiveness AML/CFT in Niue. A comprehensive review by all relevant agencies would be required to address the identified issues.

2.6.2. Recommendations and Comments

327. In order to comply with R.27 & R.28, Niue authorities should:

- Assign a police officer or unit within the Police at operational level to be responsible for ML and TF investigations. Have Niue Police and Customs review and amend the *Niue Act 1966* and the *Customs Act 1966* to ensure that it provides the Niue Police and Customs the necessary powers to effectively investigate ML, TF and other serious offences that may generate significant proceeds of crime.
- Formally establish the Combined Law Agency Group to ensure an effective multi-agency approach to any future investigation that would require the involvement of certain government agencies.
- Have Niue Police and Customs to undertake a risk assessment to determine the risks and trends of money laundering or potential trends of ML or TF in Niue.
- Continue to improve capacity and capability of Niue Police with regards to specialist investigative skills development. In particular, the ongoing development of financial investigators needs to be considered. Proceed of crime investigations involve unique income determination investigation technique that have not been developed in the Niue Police, and can enhance the investigation of other predicate offences.
- The Niue Police needs to further develop skills in the area of financial investigation to build a sustainable long term capability in this area.

- A shared understanding or policy in relation to addressing financial crime needs to be developed between the Niue Police, the FIU and CLO so that they are able to work together to respond in a coordinated, timely and effective manner to cases or to suspicious financial activity if and as it occurs.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to section 2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Niue has not considered allowing competent authorities to postpone or waive the arrest of suspected persons and/or seizure of the money • No investigation or consideration of ML charge despite there being at least one opportunity to investigate or consider a charge.
R.28	LC	<ul style="list-style-type: none"> • Some relevant powers are available in various laws but the effectiveness of the powers has not been tested.
R.30	PC	<ul style="list-style-type: none"> • Police are not adequately trained to undertake financial investigations • This is a composite rating.

2.7. Cross-Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Legal Framework:

328. The requirement to make a declaration to Customs arises under the *Financial Transactions Reporting Act 2006 (FTRA)*. It is mandatory for inbound and outbound passengers to complete this declaration when crossing the border.

329. When entering or departing Niue, all persons are required under s.30 of the FTRA to declare if carrying cash or negotiable bearer instruments over NZD10,000, or equivalent in foreign currency across the border. However, the arrival and departure documents do not reflect this requirement. Niuean authorities informed the team that this will be rectified with the next batch of printing of the arrival and departure forms.

330. At both the arrival and departure points at Hanan International Airport, a notice to declare cash was displayed to address the missing declaration requirement on the arrival and departure forms.

331. Niue does have a Border Currency Reporting declaration form (BCR) that could be filled in if the passenger indicated they were travelling with more than NZD10,000. This form details the cash reporting obligation pursuant to the FTRA and must be completed if an individual intends to take into and out of Niue with more than the prescribed sum in cash or negotiable bearer instruments (NBI).

332. The prescribed sum in cash is NZD10,000 as provided under section 30 (2) of the FTRA. Cash is defined under section 2 of the FTRA as any coins or paper money that is designed as legal tender in the country of issue, and includes bearer bonds, traveller's cheques, postal notes and money orders. NBI is defined under section 31 (1) of the FTRA as a document representing ownership of debts or obligations, and includes bill of exchange, promissory note, or certificate of deposit, whether made payable to the bearer or not.

333. A completed BCR form seeks the full passenger's details, identification documents, details of the owner of the funds if they are being carried by the passenger on behalf of another, along with related travel information and the amount of the cash or NBI.

Request Information on Origin and Use of Currency (c. IX.2):

334. There is no express provision that empowers any authorised officer to request information on the origin and the use of the currency.

Restraint of Currency (c. IX.3):

335. Under section 3 of the FTRA an authorised officer may seize and detain cash or NBI if the officer believes on reasonable grounds that it may evidence a ML, FT, an offence under section 30 or a serious offence. The officer must then report the seizure to the FIU. The currency may be detained for 48 hours unless the High Court makes an order for continuing detention for a further 3 months.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):

336. Any declaration of cash or negotiable bearer instruments at the border must be made to an authorised officer. A BCR is available from Customs for completion by the person making the declaration which once completed a copy will be required to be submitted to the FIU, and a copy to be maintained by Customs. No BCRs have been made; therefore no statistics are maintained by either Customs or the FIU. There has been at least one case in 2011 where cash over NZD10,000 in US currency was detected and subsequently declared on a Customs Form, but no BCR was completed or submitted to the FIU.

337. The notices at the airport and the departure area (above the customs desk when completing and providing the departure form) and arrival area (at the immigration arrival desk, and at the quarantine/customs desk) indicate the requirement is to provide the information to a customs officer who has the Cash Border Report form to complete as appropriate.

338. There are plans to have the requirement included in the passenger arrival and departure forms. There was some work undertaken in 2007 however this will be completed by the end of 2011.

Access of Information to FIU (c. IX.5):

339. The FTRA provides that if cash or BNI is seized the FIU must be informed. There is no legislative provision or policy that would require the FIU to be notified about suspicious cross-border transportation incidents or by making declaration information directly available to the FIU.

340. The FIU could require Customs and Immigration Officers to provide all BCR information under section 21(2) of the FTRA, but it has yet to set out a clear policy requiring these agencies to provide reports.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

341. Cooperation and coordination occurs as a matter of process. Memoranda of Agreements (MOAs) have been signed for information sharing and cooperation between the FIU and:

- Police and Immigration
- Treasury (includes Customs and Revenue)
- Justice.

342. There has been cooperation and sharing of information and this has resulted in the signing of an MOU between the three main law enforcement based agencies police, customs and quarantine.

343. However there has been limited cooperation or sharing of information relating to cross-border transportation of currency and no information has been shared that has resulted in effective targeting of passengers or in detection of currency being taken across the borders. To date no BCRs have been filed.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

344. In October 2008, the FIU signed a Memorandum of Arrangement with the New Zealand FIU Concerning cooperation in the exchange of financial intelligence related to money laundering and financing of terrorism

345. The Niue FIU is able to share information where the AG considers it appropriate, with a law enforcement agency outside Niue under section 21(1)(b)(iii). The Niue FIU has assisted other FIUs on an informal basis and continues to assist other organisations where requested.

346. Niue Police have excellent lines of communication with both New Zealand and Australian law enforcement jurisdictions, including Customs agencies, and have utilised these contacts to progress several investigations with enquiries carried out by overseas agencies. There has not been cause to prevail upon these relationships for cooperation on a cross-border currency matter but these established links infer that Niue authorities could easily do so.

Sanctions for Making False Declarations /Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)

347. There is no express provision or sanction for making false declarations or disclosures.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

348. Sanctions against an individual who fails to declare the cross-border physical transportation of the prescribed sum of NZD10,000 cash or NBI is provided under section 30 of the FTRA. Any person who is found guilty of an offence under this section is punishable on conviction by a fine of not more than 20 penalty units.

Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10):

349. Section 33 of the FTRA provides an Authorised Officer with the legal power to seize or detain cash or NBI found in the course of an examination or search under section 31(3) or (4) if the officer believes on reasonable grounds, that the cash or NBI may be evidence of the commission of:

- (a) money laundering offence; or
- (b) financing of terrorism; or
- (c) an offence under section 30 of the FTRA; or
- (d) a serious offence.

350. The POCA could apply to money that had been seized in this process if it related to ML, TF, or some other serious offence. As there has not been a confiscation in Niue the effectiveness of this process has not been tested.

Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):

351. There is no express provision for the confiscation of currency pursuant to UN SCRs list. The UNSCR lists are not published or disseminated in Niue and Customs and Immigration take no steps to check the UNSCR list (which they do not receive) against a manifesto of passengers.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

352. Under section 22 of the FTRA the FIU, with the approval of the Minister, may enter into an agreement or arrangement in writing that relates to the exchange of information between the Unit and any law enforcement agency or supervisory body outside of Niue. However, there is no express provision to allow any local authorities to notify any foreign agency of any unusual movement of precious metal and stones. In practice however, Niue Customs is a member of the Oceania Customs Organisation which such information can be disseminated through that network or from Police to Police intelligence network.

353. Niue has one commercial flight each week using an Airbus A320, with the flight originating and terminating in Auckland, New Zealand. In this respect passengers that may have not made the declarations in Niue would be subject to the laws of New Zealand.

354. For Customs purposes items of value are to be declared and officials may seize items that it considers are being brought in that are imported but not for other purposes. However, the detention and search provisions in Part 8 of the *Customs Act 1966* extend to suspicion that a person has unlawfully secreted about his person any dutiable, restricted, un-customed, or forfeited goods.

Safeguards for Proper Use of Information (c. IX.13):

355. No BCRs have been received since the requirement was publicly notified at Hanan International Airport in 2007. The notice is also on display at the customs office for visitors at the port.

356. Section 22 of the FTRA restricts the use of the any information if exchanged with outside agencies to be relevant to the detection, investigation and prosecution of:

- a. money laundering offence; or
- b. financing of terrorism; or
- c. serious offence; or
- d. an offence that is substantially similar to an offence referred to in any of the paragraphs (a) to (c).

357. Section 22 also requires that any information must be treated in a confidential manner and must not be further disclosed without the express consent of the FIU or the relevant law enforcement agency or supervisory body.

358. All public servants on Niue are required under their employment with any of the Government Departments of Niue are required to keep all information that has come to their knowledge during the performance of their duties and functions confidential.

359. The FIU has signed an agreement with the Niue Police, Customs and Justice for the exchange of information domestically.

Additional Element—Implementation of SR.IX Best Practices (c. IX.14):

360. The SR.IX Best Practice has not been implemented.

Additional Element—Computerisation of Database and Accessible to Competent Authorities (c. IX.15):

361. The FIU uses computer excel spread sheet to store and maintain its statistics and does not have a designed or sophisticated computer database. Competent authorities do not have direct access but relevant information can be exchanged on an ad hoc basis.

Recommendation 30.1

362. The Niue Customs is a department within the Treasury Department. There are five officers in total being headed by the Collector and staffed by an Assistant Collector, a Senior Customs Officer, a Customs Officer and an Administration Officer.

Recommendation 30.2

363. Custom Officers are members of the Niue Public Service and are bound by the recruitment and selection process set by the Niue Government. Everyone employed by the Public Service are also bound by the confidentiality requirements and the code of conduct set by the Niue Public Service.

Recommendation 30.3

364. Some Customs and Police officers have attended regional AML/CFT training. No training on AML/CFT has been provided domestically to Customs and Police.

Statistics (applying R.32)

365. Statistics are not kept due to the non-receipt of reports by the FIU. However during the onsite the ME Team was made aware of a declaration made to Niue Customs in 2011. The declaration was captured on the Customs Form and no BCR was completed due to lack of knowledge and understanding of the requirements provided under the FTRA.

Cross border

Cross border actions	2007	2008	2009	2010	2011	Total
Reports / declarations						
Reports / Declarations made					1	1
Detection of suspicious cash/BNI at the border						

Analysis of effectiveness

366. There are a number of constraints in the form of resources and training which are limiting the effectiveness of the Niue Customs and Police at the border.

367. There is limited equipment at the Hanan International Airport to assist in the detection of cash and illegal activities. Niue Customs is reliant on utilising a baggage x-ray machine for departing passengers. The effectiveness of this is constrained in that Customs Officers and Police have not received any specific training on the interpretation of the images that this machine produces.

368. There is no Customs Clearing House at the Hanan International Airport to store airfreight cargo for proper checking before clearance. Cargo is directly offloaded from the aircraft on to the Travel Agents vehicle and is transported out of the airport to the Travel Agent's office where it is later checked and cleared by Customs.

369. The Currency Declaration Notice posted at the arrival and departure area at Hanan International Airport since 2007 is not very prominent and only applies to cash and does not include NBI. There was no description of what cash or NBI meant and law enforcement officers having no knowledge as to what sorts of financial instruments actually fell within the definitions.

370. The Niue arrival and departure documents does not contain a section for the declaration or disclosure of cash or BNI as required under the FTRA. Niue is planning to address this in future versions of their arrival and departure forms.

2.7.2. Recommendations and Comments

371. In order to comply with Special Recommendation IX Niue should:

- Recognise the need for Niue Customs, Police and Immigration to develop policy and procedures and to acquire specialist equipment to enhance the delivery of service. There is strong desire to improve the effectiveness of the Niue Customs, Police and Immigration to build capacity and capability across a broad range of delivery areas.
- Address identified training deficiencies of Niue Customs, Police and Immigration, and undertake a training needs assessment to identify and focus on key training needs to enhance the effectiveness of Custom functions.
- Develop an IT platform to enhance efficiencies and provide the ability to monitor and analyse border activities.
- Obtain equipment to assist with the inspection of luggage and cargo at the Hanan International Airport, in particular an x-ray machine at the arrival area and training to enhance the ability to detect cross border movement of cash and NBI.
- Finalise the amended border declaration documents for printing and distribution, to replace the existing documents.
- Provide appropriate training to Authorised Offices about their responsibilities under the Act including the identification of NBI to enhance their ability to detect the movement of currency.
- Amend the FTRA to ensure that corporate entities be captured and sanctioned when involved in any physical transportation of cash or NBI across the border.
- Amend the FTRA to ensure that false declaration is captured and that appropriate sanctions are provided.

- Amend the FTRA to provide Authorised Officer’s express powers to question any person about the source, use and destination of any cash or NBI, and any appropriate sanctions for failure to comply or provide an answer to any questions by an Authorised Officer.
- Amend the FTRA to ensure that specific search powers are provided to allow the search of cargo and mail for the purpose of interdiction of cash or NBI including the ability to search any “receptacle” crossing the border and unaccompanied cargo or mail.
- Develop a policy and procedure document regarding the allocation of responsibilities, due process when undertaking a search of a luggage, article, carryon bags, etc. including search of persons, due process when processing an arrest and detaining or seizing any cash or NBI including the security of any cash or NBI.
- Consider the monitoring and reporting requirements for inclusion of the physical movement of precious stones, metals and electronic money.

372. Immediately after the onsite, the FIU commenced an analysis of border movements and CTRs. This analysis identified that cash was moving through the airport undetected after being withdrawn from bank accounts for transportation outside of Niue or being deposited into domestic bank accounts, generating CTRs. Two such instances have resulted of a CTR being filed to the FIU but there was no further dissemination or consultation with Customs about the possible failure to declare the movement of the cash across the border.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to section 2.7 underlying overall rating
SR.IX	PC	<ul style="list-style-type: none"> • While there is an obligation to declare, there has been a delay with printing, the forms were not available during or shortly after the onsite • Lack of legal provision to empower authorised officers to request for information about the origin and the intended use and destination of the currency • Lack of policy and procedure or regulation regarding the seizure process of any currency under the FTRA • Lack of proper coordination and sharing of information amongst local authorities regarding cross border movement of currency • Lack of formal agreement between the Niue Authorities and New Zealand to share information on currency movement since the only weekly flight is from and to New Zealand • Lack of sanctions for making false declaration or disclosure • Lack of legal provision to seize currency pursuant to UN SCR list • Limitations due to the non-inclusion of other vehicles or methodologies for moving currency such as air mails or unaccompanied cargo • Limitation for the non-capturing of the distribution of currency with other persons travelling together or in a team to avoid the reporting requirement.

R.30	PC	<ul style="list-style-type: none">• There is limited equipment available to allow proper monitoring of cross border activities• There are limited resources available to implement the legislation.
R.32	PC	<ul style="list-style-type: none">• There is no system for maintaining statistics.

3. PREVENTATIVE MEASURES —FINANCIAL INSTITUTIONS

Preamble: Regulatory approaches in Niue

373. Whilst a central bank is non-existent in Niue, the *Financial Transactions Reporting Act 2006 (FTRA)* provides for the powers and functions of the FIU which includes oversight of compliance with the FTRA by financial institutions. This function of the FIU is not used in practice and therefore none of the financial institutions in Niue are regulated. Niue has an established approach to company regulation

Preamble: Law/Regulation/Other Enforceable Means

374. The overarching AML/CFT pieces of legislation laying down the framework under which financial institutions operate are:

- i. The FTRA which applies in relation to a transaction conducted through financial institutions as defined in section 3 of the Act. A financial institutions includes a register bank; anyone carrying on the business of banking in Niue; trustees; money remitters; lawyers and accountants (within specified limits); notaries public; real estate agents; dealers in precious metals/stones; licensed casinos or gambling houses; insurers and insurance companies and share brokers. In addition, part 5 of the FTRA establishes the FIU and provides for its functions and powers.
- ii. *Best Practice Guidelines for Financial Institutions.*

375. The FIU has the duty to supervise financial institutions' compliance with the FTRA under section 21 of the FTRA.

376. The FATF standards require that the basic obligations under Recommendation 5, 10 and 13, should be set out in law or regulation. A number of criteria in the FATF Assessment Methodology are marked with an asterisk, which means that they include minimal obligations that should be set out in law or regulation. In this context, "law or regulation" refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for noncompliance. A separate concept referred to in the Methodology is that of "other enforceable means" such as guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or a self-regulatory organisation (SRO). According to the Methodology, obligations set out in law or regulation as well as in other enforceable means have to be enforceable.

377. Bearing in mind the above, the Evaluation Team has concluded that the Best Practice Guidelines issued by the FIU cannot be considered as either law or regulation or as "other enforceable means". Law or regulation refers to primary or secondary legislation issued or authorised by a legislative body whilst "other enforceable means" refers to guidelines and instructions that are enforceable with sanctions for non-compliance and which are issued by competent authorities. Although the Guidelines are issued by competent authorities they are not directly enforceable as there are no sanctions which can be applied should financial institutions not meet the provisions of the Guidelines.

Preamble: Scope of application of preventative measures to financial institutions

378. In December 2006 the Government of Niue closed all its offshore operations. This commenced with the repeal of the International Banking Act 1997 in 2002 and subsequent closure of the International Banking Registry in 2002 with all licences being revoked. The final act of closure was on 31st December 2006 when, as a result of the repeal of the *International Business Companies Act 1994* (IBC), all international business companies registered thereunder were effectively dissolved. The *Companies Act 2006* established the Niue Companies Registry.

379. There is only one domestic bank and two money remittance businesses in Niue. The domestic bank, which has one branch, offers purely domestic facilities on the island. The bank has a Western Union remittance service and the local travel agency serves as a remittance business and sends and receives normally small amounts to and from overseas, mainly between relatives living in Niue and New Zealand. The remittance business also provides loans to individuals and businesses. The current definition of financial institution in the FTRA does not cover lending and therefore the remittance business is not subject to the FTRA when undertaking the activity of lending.

380. The *Niue Bank Act 1994* sets out a basis for a Central Bank, which, to date, has not been established. The Niue Authorities advise that there are no plans to establish a Central Bank. There is currently no domestic supervision or regulation of the domestic bank. The one domestic bank, the Bank of the South Pacific, relies on its parent bank, registered in Papua New Guinea, for its procedures and it has very limited policies and procedures in place for AML/CFT. A banking supervisor was appointed in 2006 however this person left the Public Service in 2010 and the position remains vacant. There are plans to fill this position to undertake the supervisory requirements.

381. The Government owned Niue Development Bank, which provides both consumer and business loans but does not take deposits, also appears to be a financial institution under the FTRA but is not yet subject to AML/CFT obligations or compliance monitoring by the FIU. Cash plays a very important role as Niue is a small economy. Cash is the main form of currency in the country. The main payments are made by cash or cheque with only a very few retailers (the bank, travel agency and hotels) services accepting credit card payments. There is no EFTPOS and any other electronic transactions are made at the bank. The movement to a cashless economy is slow due to the high costs associated with the necessary technology and the small size of the economy. However the government is considering ATMs and the domestic bank has considered electronic banking however the infrastructure set-up costs are above NZD1 million.

3.1. Risk of money laundering or terrorist financing

382. The FTRA does not generally provide for CDD to be applied on the basis of risk.

383. There are a number of jurisdiction-specific factors which lead the assessment team to conclude that the domestic financial sector presents a low risk of ML and FT at the present time. These factors include: the small size of the financial sector which is dominated by one domestic bank and one money remitter even though neither of these financial institutions are currently supervised for AML/CFT purposes; accounts at the bank are held for Niuean residents only; the absence of (inward) correspondent banking relationships; no use of third party intermediaries by the banking sector; and the transfers of funds being made by the money remitter being only to New Zealand.

Exclusion of sectors based on AML/CFT risk

384. Niue authorities have not employed any formal risk-based approach to supervision of the financial sector, nor excluded any part of the sector on using quantifiable risk-based information.

3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Legal Framework:

Recommendations 5

Prohibition of Anonymous Accounts (c. 5.1):

385. Section 36 of the *Financial Transactions Reporting Act 2006 (FTRA)* provides that a person who opens or operates an account with a financial institution in a false name is guilty of an offence. Section 37(1) of the FTRA provides that a financial institution must not open, operate, or maintain an anonymous account or an account in a false name.

386. Section 37 (3) provides that an anonymous account which existed on the commencement of the FTRA but which appeared to the financial institution to be the true name of the account holder does not result in the financial institution being in contravention of section 37(1).

When CDD is required (c. 5.2):

387. Section 15 of the FTRA provides that verification of identity must be undertaken when establishing a business relationship or conducting a transaction with a person.

388. Section 19 of the FTRA requires financial institutions to include originator information with funds transfers. There is no explicit requirement to verify the identity of the customer when carrying out wire transfers.

389. Subsection 6 of section 15 provides that verification of the identity of the customer may not be waived where the financial institution has reason to suspect that the transaction is suspicious or unusual.

390. There is no explicit requirement to carry out CDD when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.

Identification measures and verification sources (c. 5.3):

391. Section 15 of the FTRA provides that when establishing a business relationship or conducting a transaction with a person, a financial institution must, before carrying out the transaction, verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person. The Best Practice Guidelines provide examples of the possible forms of identification.

Identification of Legal Persons or Other Arrangements (c. 5.4):

392. Section 15(2)(a) of the FTRA provides that if the person is a legal entity, a financial institution must adequately verify its legal existence and structure, including information relating to the person's name, legal form, address and directors; and the principal owners and beneficiaries; and provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised, and provisions to identify those persons.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

393. The FTRA does not explicitly provide for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner to ensure that the financial institution is satisfied that it knows who the beneficial owner is.

394. Section 15(4) of the FTRA provides that if the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

395. There is no explicit requirement in the FTRA for financial institutions to understand the ownership and control structure of the customer or to determine who the natural persons are that ultimately own or control the customer.

Information on Purpose and Nature of Business Relationship (c. 5.6):

396. Section 15(3) of the FTRA provides that a financial institution must take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction. The definition of transaction provided in section 4 of the FTRA is not limited to an individual transaction and includes the opening of an account, entering into a fiduciary relationship and a payment made in satisfaction, in whole or in part, of a contractual or other legal obligation.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

397. There is no explicit requirement in the FTRA to conduct ongoing due diligence on the business relationship.

398. Section 18 of the FTRA requires financial institutions to must pay special attention to the following if they have no apparent or visible economic or lawful purpose:

- (a) transactions that are complex, large, or unusual
- (b) unusual patterns of transactions.

399. There is no express requirement under the FTRA for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

400. There are no requirements under the FTRA for enhanced due diligence to be conducted for higher risk customers.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9 & 5.10):

401. The FTRA is not drafted in a manner to provide for the adoption by financial institutions of a risk-based approach.

402. Section 15(6) of the FTRA provides that verification of identity is not necessary if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity or, depending on the transaction profile, if the transaction is a low risk bulk and regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person.

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):

403. The provision in section 15(6) of the FTRA is not allowed if the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person.

Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

404. The Niue FIU has not issued the financial institutions with any guidelines on the risk based application of CDD.

Timing of Verification of Identity—General Rule (c. 5.13):

405. Section 15 of the FTRA requires financial institutions to verify customers' identity when establishing a business relationship or conducting a transaction with a person, a financial institution must, before carrying out the transaction, verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1): Failure to Complete CDD before commencing the Business Relationship (c. 5.15): Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

406. In relation to timing of verification of identity, failure to complete CDD before or after commencing the business relationship, section 16 of the FTRA provides that if satisfactory evidence of the customer's identity is not produced or obtained by, a financial institution, the financial institution must not proceed any further with the transaction unless directed to do so by the Unit.

Existing Customers—CDD Requirements (c. 5.17):

407. Section 37(1) of the FTRA provides that a financial institution must not open, operate, or maintain an anonymous account or an account in a false name. Section 37 (3) provides that an anonymous account which existed on the commencement of the FTRA but which appeared to the financial institution to be the true name of the account holder does not result in the financial institution being in contravention of section 37(1).

408. The *Best Practice Guidelines for Financial Institutions* issued by the Niue FIU in July 2009 provide that in a situation where there has been a significant time lapse between dealings with a particular customer, it may be sensible to renew the verification to ensure that the financial institution

is dealing with the same person. As identified earlier these Guidelines are not considered as other enforceable means.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

409. This is not expressly provided in the FTRA. The *Best Practice Guidelines for Financial Institutions* issued by the Niue FIU in July 2009 provides that in a situation where there has been a significant time lapse between dealings with a particular customer, it may be sensible to renew the verification to ensure that the financial institution is dealing with the same person.

Effectiveness

410. The adoption of the FTRA has provided Niue with an Act which sets out the CDD obligations, which are somewhat limited but which apply equally to all financial institutions. The definition of financial institutions also includes designated non-financial businesses and professions.

411. The scope of the FTRA is generally consistent with the requirements of Recommendation 5 apart from the activity of lending which is not included in the definition of a financial institution.

412. The FTRA does not require CDD to be undertaken in all the instances referred to in recommendation 5; has no requirement in respect of beneficial owners; and does not provide for ensuring that accounts existing before the FTRA came into effect are not anonymous accounts or accounts in fictitious names.

413. The FIU has recently, under the provisions of the FTRA, issued best practice guidelines. These guidelines contain comprehensive information and interpretation on the laws relevant to money laundering and terrorist financing in Niue. They also include information on the CDD requirements of the FTRA such as customer verification, record retention and transactions and significant information on the reporting of suspicion provisions including red flags and indicators.

414. Effectiveness of arrangements to comply with the detailed obligations of the FTRA has not yet been verified by the FIU through compliance monitoring. The assessment of effectiveness was limited at the time of the visit but the assessment team were told by staff at the bank that although there were no formal CDD procedures in place cash payments were only made to holders of pass books and due to the limited number of residents everyone is known.

Recommendation 6

Foreign PEPs—Requirement to Identify (c. 6.1):

415. Section 15 (2)(b) of the FTRA provides that if the person is a politically exposed person, the financial institution must have appropriate risk management systems to determine whether the customer is a politically exposed person. The definition of a PEP provided in the *Best Practice Guidelines for Financial Institutions* refers to individuals who are or have previously been assigned prominent public functions. It does not extend to the beneficial owner being a PEP.

Foreign PEPs—Risk Management/approval (c. 6.2; 6.2.1):

416. Section 15(2)(b) of the FTRA provides that if the person is a politically exposed person, the financial institution must obtain approval of senior management before establishing a business relationship with the person. There is no requirement to obtain senior management approval for continuing a relationship with a customer who has subsequently been identified as a PEP.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

417. Section 15(2)(b) of the FTRA provides that if the person is a politically exposed person, the financial institution must take reasonable measures to establish the source of wealth and funds of the person.

Foreign PEPs—On-going Monitoring (c. 6.4):

418. Section 15(2)(b) of the FTRA provides that if the person is a politically exposed person, the financial institution must conduct regular and ongoing enhanced monitoring of the business relationship.

Domestic PEPs—Requirements (Additional Element c. 6.5)

419. As neither the FTRA nor the Guidelines issued by the FIU contain a definition of a PEP it is not clear whether the requirements of the FTRA apply to both foreign and domestic PEPs.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

Effectiveness

420. The FTRA contains provisions in respect of PEPs and the *Best Practice Guidelines for Financial Institutions* contains a small amount of information although there is not a provision for financial institutions to obtain senior management approval for continuing a relationship with a customer who has subsequently been identified as a PEP. Neither the bank nor the money remitter has procedures in place in respect of PEPs although at present services are provided only to customers resident in Niue. The effectiveness of the provisions of the FTRA cannot be assessed as no supervision of compliance with the requirements of the FTRA has been undertaken by the FIU.

Recommendation 7

421. The only financial institution in Niue with the potential for cross-border correspondent relationships would be the one domestic bank.

Requirement to Obtain Information on Respondent Institution AML/CFT controls, etc. (c. 7.1 – 7.5) :

422. The FTRA does not provide for controls on correspondent banking or other similar relationships.

Effectiveness

423. The FTRA does not provide for correspondent banking or other similar relationships. In practice any controls on correspondent banking relationships would be based on group controls and

home supervisor requirements. Effectiveness of arrangements to comply with any internal requirements of the bank has not yet been verified through compliance monitoring.

Recommendation 8

Misuse of New Technology for ML/FT (c. 8.1):

424. The use of technology such as electronic banking, ATMs and EFTPOS has not reached Niue. The internet access on Niue is slow with small bandwidth that does not enable banking services such as internet banking or telephone banking services that BSP branches in other countries such as Fiji provide. In order for these services to occur an upgrade the cost estimates of which are more than NZD 1 million. In this respect policies or guidelines have not been issued by the Niue FIU and if such developments do occur then these will be issued accordingly.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

425. The assessment team were advised by the financial institutions that no business is established or transactions conducted on a non-face to face basis.

Effectiveness

426. The FTRA does not provide for the misuse of new technology for ML/FT. At present the risk is effectively managed in that the use of technology such as electronic banking is not available in Niue.

427. The FTRA does not provide for financial institutions to address any specific risks of non-face to face business. Although at present the risks appear to be effectively managed in that all business is conducted on a face to face basis.

3.2.2. Recommendations and Comments

Recommendation 5

428. The authorities should widen the scope of the FTRA to include the activity of lending to ensure that CDD requirements would be required to be undertaken when the money value transmitter was providing the service of lending. Consideration should also be given to the recognition of other entities which are undertaking activities within the scope of the FTRA but have not been recognised as financial institutions by the authorities.

429. The authorities should amend the FTRA or other laws to bring the CDD requirements into line with the requirements of recommendation 5. Those amendments should include provisions for CDD to be undertaken when carrying out occasional transactions that are wire transfers and where there are doubts about the veracity or accuracy of previously obtained identification data; provide for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner to ensure that the financial institution is satisfied that it knows who the beneficial owner is and for financial institutions to understand the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer.

430. The authorities should include explicit requirements for financial institutions to conduct ongoing due diligence on the business relationship, including scrutiny of transactions to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary, the source of funds; and to ensure that CDD documents, data or information is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships

431. Consideration should also be given by the authorities to providing for a risk-based approach in the FTRA. Financial institutions should be required to perform enhanced CDD for higher risk categories of customer, business relationship or transaction and may be allowed to apply reduced or simplified CDD where the risks are low. The provisions for reduced or simplified CDD should be restricted to countries that Niue is satisfied have effectively implemented the FATF Recommendations.

432. Authorities should expressly require financial institutions to undertake CDD on anonymous accounts which existed on the commencement of the FTRA but which appeared to the financial institution to be the true name of the account holder and to apply CDD requirements to existing customers on the basis of materiality and risk.

Recommendation 6

433. The authorities should provide a full definition of a PEP in accordance with the FATF Recommendations and require financial institutions to obtain senior management approval to continue a business relationship where a customer or beneficial owner has been accepted and is subsequently found to be a PEP.

Recommendation 7

434. Although correspondent banking relationships do not exist at present there is no legal provision to prohibit the use of such relationships. The authorities should include provisions for controls over correspondent banking relationships in the FTRA.

Recommendation 8

435. The FTRA does not provide for the misuse of technological developments or for non-face to face business. Measures to manage both of these provisions have been effectively achieved at present as the use of technology such as electronic banking, ATMs and EFTPOS has not reached Niue and all business is currently undertaken on a face to face basis. However, there are no legal provisions to prohibit financial institutions from undertaking business on a non-face-to-face business.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> • The FTRA does not provide adequately for accounts in fictitious names • There is no requirement for CDD to be undertaken when carrying out occasional transactions that are wire transfers

		<ul style="list-style-type: none"> • There is no requirement for CDD to be undertaken where there are doubts about the veracity or accuracy of previously obtained identification data • There is no requirement for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner or the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer when the customer is a legal person or legal arrangement • There is no requirement to conduct ongoing due diligence on the business relationship • There is no requirement for ongoing due diligence to include scrutiny of transactions to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds • There is no requirement to ensure that CDD documents, data or information is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships • There is no requirement for enhanced CDD to be undertaken for higher risk categories of customer, business relationship or transactions • There is no requirement to undertake CDD on existing customers on the basis of materiality and risk • There is no requirement to undertake CDD on anonymous accounts which existed on the commencement of the FTRA • There is a scope issue because lending is not included as a financial activity and because the FIU does not treat the Niue Development Bank as a financial institution although the ME team agrees it would fall under the definition in the FTRA • Effective implementation of the existing CDD provisions is not established.
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R.6	PC	<ul style="list-style-type: none"> • There is a definition of a PEP in the guidelines, but this definition is not in line with that provided in the FATF Recommendations. • There is no requirement to apply the stricter CDD measures to beneficial owners who themselves qualify as a PEP. • No requirement to obtain senior management approval to continue a business relationship where a customer or beneficial owner has been accepted and is subsequently found to be a PEP. • Effectiveness not tested.
R.7	NC	<ul style="list-style-type: none"> • No requirement to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business and to determine from publicly available information the reputation of the institution and quality of supervision, including whether it has been subject to a ML/FT investigation or regulatory action. • No requirement to assess the respondent institutions AML/CFT controls, and ascertain they are adequate and effective. • No requirement to obtain senior management approval before establishing new correspondent relationships. • No requirement to document the respective AML/CFT responsibilities of each institution. • Where a correspondent relationship involves the maintenance of “payable-through accounts” there is no requirement for financial institutions to be satisfied that their customer (the respondent financial institution) has performed all the normal CDD obligations set out in R.5 on those of its customers that have direct access to the accounts of the correspondent financial institutions; and that the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.
R.8	PC	<ul style="list-style-type: none"> • No requirement to have policies in place or to take measures to prevent the misuse of technological developments. • No requirement to address the specific risks of non-face to face business

3.3. Third Parties and Introduced Business (R.9)

3.3.1. Description and Analysis

Legal Framework:

436. Section 15 of the *Financial Transactions Reporting Act 2006 (FTRA)* requires the financial institution to verify the identity of the person when establishing a business relationship or conducting a transaction. There is no provision in the FTRA for financial institutions to place reliance on a third party to have undertaken verification of identity.

437. The financial institutions always undertake the verification of identity themselves as all business is undertaken on a face to face basis.

Controls on the Reliance of Third Parties for CDD (c. 9.1 – 9.5):

438. The FTRA does not provide for reliance on a third party to perform some of the elements of the CDD process. Section 15 of the FTRA requires the financial institution to verify the identity of the person when establishing a business relationship or conducting a transaction.

Effectiveness

439. The risks appear to be effectively managed as the FTRA does not allow for reliance on a third party and requires financial institutions to verify identity.

3.3.2. Recommendations and Comments

440. Recommendation 9 is not applicable as the FTRA does not permit financial institutions or other third parties to perform some of the CDD requirements of the FTRA.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	N/A	

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Legal Framework:

441. There are no laws on data protection in force on Niue save for the official information for the public service offices which highlights the fact that there is nothing in law which would provide for any form of secrecy or confidentiality.

Secrecy Provisions Inhibiting Implementation of FATF Recommendations (c. 4.1):

442. Section 5(2) of the FTRA provides that ‘a financial institution must comply with the provisions of this Act, despite any other Act or law to the contrary’. Therefore, confidentiality and secrecy provisions in other laws should be overridden, though this is not stated explicitly and is yet to be tested.

443. Section 21(2) of the FTRA provides that the FIU may collect, free of charge and at the FIU’s request, any information the FIU considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government.

444. Section 61 of the *Proceeds of Crime Act 1998* provides that notwithstanding any provision in any other law, the Attorney-General may direct the person in charge of any Government department or statutory body to disclose a document or information which is in the possession or under the control of that person or to which that person may reasonably have access (not being a document readily available to the public), if the Attorney-General is satisfied that the information is relevant to establishing whether a serious offence has been, or is being, committed.

3.4.2. Recommendations and Comments

445. Secrecy provisions do not currently operate to prevent competent authorities accessing and sharing information, conducting criminal or proceeds of crime investigations or providing mutual assistance in respect of ML or TF offences.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	This recommendation is fully observed

3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1. Description and Analysis

Legal Framework:

446. Part 4 of the FTRA sets out the obligations for financial institutions to keep records of transactions and records relating to customers including CDD information.

447. Section 19 provides for financial institutions to include originator information with funds transfers and for that information to remain with the transfers. There is no definition of originator information provided for in the FTRA.

448. Electronic transfers are made only between the one domestic bank and its head office in Papua New Guinea using SWIFT or Western Union. The bank in PNG then makes the onward transfer to the bank in New Zealand. The SWIFT process is such that unless the necessary information is included on the transfer that transfer will not be made. The bank confirmed that when using Western Union it conforms to the AML/CFT standards required by that system.

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

449. Section 14 of the FTRA requires a financial institution to keep the records of every transaction that is conducted through the financial institution that are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU. The records required must be kept for at least 6 years after the date on which the account is closed or the business relationship ceases and in any other case, whichever is the later of the following dates:

- (i) the date on which the financial institution last obtained information identifying the parties to the transaction; or
- (ii) the date on which the financial institution last received or sent correspondence relating to the transaction; or
- (iii) the date of the transaction.

Record-Keeping for Identification Data (c. 10.2):

450. Section 17 of the FTRA provides that a financial institution must keep a record of the evidence of identity that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and a record of all correspondence between the identified person and the financial institution.

451. The records referred to above must be kept for at least 6 years after whichever of the following dates applies:

- (a) if the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) in any other case, whichever is the later of the following dates:
 - (i) the date on which the financial institution last obtained evidence of a person's identity; or
 - (ii) the date on which the financial transaction last received correspondence from, or sent correspondence to, the identified person; or
 - (iii) the date of the transaction.

Availability of Records to Competent Authorities (c. 10.3):

452. The FTRA does not expressly provide for the records to be kept in a manner that when called upon they can be retrieved in a timely manner.

Effectiveness

453. The provisions of section 17 of the FTRA in respect of record keeping are generally consistent with the requirements of recommendation 10. Although, the FTRA does not require records to be kept in a manner which provides for timely retrieval the financial institutions did, in practice, have ready access to the records.

Special Recommendation VII

Obtain Originator Information for Wire Transfers (c.VII.1, applying c. 5.2 & 5.3 in R.5.):

454. Section 19 of the FTRA provides that a financial institution must include accurate originator information on any form of funds transfers.

455. Section 19 of the FTRA does not apply to electronic funds transfers which are transfers or settlements between financial institution, and where the originator and beneficiary of the transfers are acting on their own behalf.

456. However, the FTRA does not provide a definition of "accurate originator information" and there does not appear to have been any guidance issued as to the information which must accompany a transfer.

457. Section 15 of the FTRA requires a financial institution, before carrying out a transaction, to verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person. The definition of transaction includes the transfer of funds by electronic or other non-physical means.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

458. Section 19 of the FTRA provides that a financial institution must include accurate originator information on electronic funds transfers and on any other form of funds transfers and that information must remain with the transfers.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

459. The FTRA does not contain any provisions regarding the inclusion of originator information in domestic wire transfers. However, this is not applicable to Niue as the only financial institution undertaking electronic transfers does so only to its head office in Papua New Guinea.

Processing of Non-Routine Transactions (c. VII.4):

460. Section 19 of the FTRA requires the originator information to remain with the transfer but the FTRA does not provide for cross-border wire transfers where technical limitations prevent the full originator information from accompanying the transfer.

Maintenance of Originator Information (c. VII.5):

461. Section 18(2)(b) of the FTRA requires financial institutions to pay special attention to wire transfers that do not contain complete originator information..

Monitoring of Implementation of SR.VII (c. VII.6):

462. Section 21 of the FTRA provides for the FIU to conduct examinations to ensure compliance with the requirements of the FTRA by financial institutions.

463. The FTRA does not provide for effective proportionate and dissuasive criminal, civil or administrative sanctions for non-compliance with the FTRA to be available to the FIU. Although, Section 56 of the *Proceeds of Crime Act 1998* (POCA) provides that a financial institution which contravenes the record retention requirements of the Act which includes documents relating to the telegraphic or electronic transfer of funds is guilty of an offence punishable, on conviction, by a fine not exceeding 300 penalty units.

Sanctions (c. VII.7, applying c. 17.1-17.4 in R.17.)

464. The FTRA does not provide for effective proportionate and dissuasive criminal, civil or administrative sanctions for non-compliance with the FTRA to be available to the FIU. Although, Section 56 of the POCA provides that a financial institution which contravenes the record retention requirements of the Act which includes documents relating to the telegraphic or electronic transfer of funds is guilty of an offence punishable, on conviction, by a fine not exceeding 300 penalty units.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.7):

465. Niue has not risk based procedures for transfers not accompanied by originator information.

Effectiveness

466. At present, Niue has no specific provisions that address the requirements in relation to SR.VII. The only existing obligations in relation to electronic funds transfers in the FTRA are for financial institutions to include originator information on electronic funds transfer and that such information must remain with the transfer.

467. The provision of electronic transfer of funds is not widely available in Niue with only the domestic bank having access to the SWIFT and Western Union payment systems. Both payment systems have mandatory fields which require the financial institution, to include the account number, the account name and the address of the customer before the transfer can be accepted into the system.

468. The transfers made via the money value transfer remitter are made through a branch of the remitter situated in Auckland. The remitter undertakes CDD procedures in respect of all transfers out and requires identification for incoming payments.

469. The FTRA requires a financial institution to pay special attention to wire transfers that do not contain complete originator information but it does not require effective risk-based procedures to be adopted for identifying and handling such wire transfers.

470. The FIU has not conducted an examination of the bank or the money transfer remitter to ensure compliance with the requirements of the FTRA.

3.5.2. Recommendations and Comments

471. The authorities should consider providing for the records to be kept for longer than the 6 years specified if requested by a competent authority and in a manner that when called upon they can be retrieved in a timely manner.

472. The competent authorities should issue detailed requirements, consistent with international standards, to ensure that wire transfers are accompanied by accurate and meaningful originator information through the payment chain.

473. Although the Niue domestic bank operates the SWIFT and Western Union systems, which have mandatory fields in respect of originator information, there is no detailed instruction in the FTRA as to what constitutes full originator information.

474. The competent authorities should require the beneficiary financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must cover, whether a wire transfer or related transactions without complete originator information are suspicious enough to be reported to the CIFIU, and whether the beneficiary financial institutions should consider restricting or terminating relationship with financial institutions that do not comply with SR.VII.

475. The authorities should conduct examinations in order to assess the effectiveness of the procedures of both financial institutions.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	No requirement to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
SR.VII	PC	<ul style="list-style-type: none"> • There is no detailed instruction issued by the competent authorities to the financial institutions on the requirements of SR.VII • There is no detailed instruction in the FTRA as to what constitutes full originator information • There is no requirement in law, regulation or other enforceable means for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers without complete originator information • There is no appropriate sanction mechanism related to the implementation of SR.VII • There has been no supervision to establish effectiveness.

Unusual and Suspicious Transactions

3.6. Monitoring of Transactions and Relationships (R.11 & 21)

3.6.1. Description and Analysis

Recommendation 11

Legal Framework:

476. Section 18 of the *Financial Transactions Reporting Act 2006 (FTRA)* sets out the obligations for financial institutions to monitor transactions and to pay special attention to transactions which are complex, large, or unusual and unusual patterns of transactions.

477. Section 18 of the FTRA also provides for business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

478. Section 18 (1) of the FTRA requires financial institutions to pay special attention to transactions that are complex, large, or unusual and unusual patterns of transactions if they have no apparent or visible economic or lawful purpose.

Examination of Complex & Unusual Transactions (c. 11.2):

479. Section 18(3)(a) of the FTRA requires financial institutions to examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing.

Record-Keeping of Findings of Examination (c. 11.3):

480. Section 18(3)(b) of the FTRA requires financial institutions to make available such findings to the Unit or to a law enforcement agency to assist the Unit or agency in an investigation relating to a money laundering offence; a serious offence or financing of terrorism. The requirement does not extend to auditors.

Effectiveness

481. The provisions of section 18 of the FTRA in respect of the monitoring of transactions are generally consistent with the requirements of Recommendation 11. However, effectiveness of arrangements to comply with the detailed obligations of the FTRA has not yet been verified by the FIU through compliance monitoring.

Recommendation 21

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

482. Section 18(2)(a) of the FTRA requires financial institutions to pay special attention to business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism. There is no reference to extending this requirement to include legal persons and other financial institutions. There are no effective measures to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

483. Section 18(3) of the FTRA requires financial institutions to examine as far as possible the background and purpose of transactions or business relations with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism if they have no apparent or visible economic or lawful purpose. Such findings must be recorded in writing; and on request, made available to the Unit or to a law enforcement agency.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

484. There are no provisions in legislation that allow for the competent authorities in Niue to apply counter-measures to jurisdictions which have been identified by the FATF as not sufficiently applying the FATF Recommendations. The FTRA does not provide for appropriate counter measures to be applied to countries not applying or insufficiently applying the FATF Recommendations.

Effectiveness

485. The effectiveness of the provisions of section 18 of the FTRA in respect of countries not sufficiently applying the FATF Recommendations are compromised as there is no requirement for financial institutions to be advised of concerns about weaknesses in the AML/CFT systems of other countries.

3.6.2. Recommendations and Comments

486. Consideration should be given to amending the FTRA to provide for financial institutions to make available to auditors their findings of transactions that are complex, unusually large, or in unusual patterns. Effectiveness of arrangements to comply with the detailed obligations of the monitoring requirements of the FTRA has not been verified by the FIU through compliance monitoring.

487. Consideration should be given to providing financial institutions with information on the public documents issued by FATF in respect of countries whose AML/CFT frameworks are considered to be weak.

488. Consideration should be given to providing the FIU with the power to issue notices which would require financial institutions to give special attention and conduct enhanced CDD where relationships are or have been established with persons from countries with which the FIU has concerns. These notices should be mandatory in nature.

489. Consideration should also be given to implementing legislation which would provide for the authorities in Niue to apply counter-measures against jurisdictions which do not sufficiently meet the FATF Recommendations.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none">• There is no requirement for financial institutions to make their findings available for auditors• Compliance with the obligations of the FTRA has not been verified by the FIU through compliance monitoring.
R.21	PC	<ul style="list-style-type: none">• Insufficient information provided to reporting institutions on countries of concern to the FATF• No provision for the application of counter measures• No examinations have been undertaken to ensure compliance with the obligations of the FTRA.

3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

3.7.1. Description and Analysis

Recommendation 13 and SR.IV

Legal Framework:

490. Niue's STR reporting framework is established under Part 3 of the *Financial Transactions Reporting Act 2006 (FTRA)* ("Obligation to report suspicious transactions"). Guidance on the legal obligation, as well as examples of common indicators, is included in the *Best Practice Guidelines for Financial Institutions* (at page 31: "Reporting Suspicious Transactions").

Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

491. Section 8 of the FTRA states the following:

8. Financial institutions to report suspicious transactions

(1) If:

- (a) a person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and
- (b) the financial institution has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to:
 - (i) the investigation or prosecution of any person for a money laundering offence, financing of terrorism, or any other serious offence; or
 - (ii) the enforcement of the *Proceeds of Crime Act 1998*;

the financial institution must prepare a report of the transaction or proposed transaction and give the report to the Unit as soon as possible, but no later than 2 working days after forming the suspicion.

(2) If a financial institution fails without reasonable excuse to comply with **subsection (1)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

(3) A suspicious transactions report must:

- (a) be in writing and may be given by electronic mail or by any other approved form and manner; and
- (b) contain the details specified in the **Schedule**; and
- (c) contain a statement of the grounds on which the financial institution holds the suspicion; and
- (d) be signed or otherwise authenticated by the financial institution.

(4) A financial institution that has given a suspicious transaction report to the Unit must:

- (a) automatically monitor other transactions of the customer who produced a suspicious transactions report, and report any further suspicions found; and
- (b) provide to the Unit any further information that it has about the transaction or proposed transaction or information sent to the Unit as soon as possible and, in any event, within 2 working days.

(5) If a financial institution fails without reasonable excuse to comply with **subsection (4)**, the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate - by a fine not exceeding 10,000 penalty units

492. Section 8 does not specify that STR reporting is required when a financial institution suspects that funds are the proceeds of a criminal activity. Rather, the legal requirement is to report when it has reasonable grounds to suspect (s8(1)(b)).

493. The *Best Practice Guidelines for Financial Institutions*, at page 32, that:

“Financial institutions must report to the FIU any transactions, or proposed transactions suspected of being relevant to... money laundering; terrorist financing; a serious offence; proceeds of crime enforcement.”

494. There is inconsistency between the legal obligation as set out in legislation (to report when there are reasonable grounds to suspect) and the guidance relating to that obligation (which suggests reporting when there is actual suspicion).

495. The STR reporting requirements do not cover all predicate offences as discussed under FATF Recommendation 1.

496. There has been no STR in relation to crime submitted by any financial institution.

STRs Related to Terrorism and its Financing (c. 13.2, SRIV):

497. Section 8 of the FTRA does not require a financial institution to submit an STR when it suspects that the transaction is relevant to terrorist financing. Rather the requirement is to report when it has reasonable grounds to suspect (s8(1)(b)).

498. As discussed above, there is inconsistency between the legal obligation as set out in legislation (to report when there are reasonable grounds to suspect) and the section in the *Best Practice Guidelines for Financial Institutions* that relates to that obligation (which suggests reporting when there is actual suspicion).

499. As set out in relation to SRII and SRIII, no specified entities have been gazetted under the TSTCA 2006. Further none of the UNSCR lists are shared with the financial institutions; this limits the ability of financial institutions to check against known lists.

500. There has been no STR in relation to terrorist financing submitted by any financial institution.

Attempted Transactions (c. 13.3, SRIV):

501. Section 8(1)(a) of the FTRA refers to a person conducting, or seeking to conduct any transaction, so that financial institutions are clearly required to submit an STR in relation to attempted transactions. There is no minimum provision with regard to the amount involved in the transaction or attempted transaction.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

502. Section 8(1)(a) of the FTRA refers to any transaction relevant to investigation or prosecution of any person for a money laundering offence, financing of terrorism, or any other serious offence, or the enforcement of the *Proceeds of Crime Act 1998* (POCA). It is silent as to any exceptions relating to issues such as tax matters and is broad in its scope.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

503. There is no explicit requirement for reporting when financial institutions suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically. The reporting obligation is limited to circumstances involving “serious offences” as defined under POCA.

Recommendation 14

Protection for Making STRs (c. 14.1):

504. This requirement is covered in section 12 of the FTRA, which states “*No civil, criminal, or disciplinary proceedings may be taken against a financial institution; or an officer, employee, or agent of the financial institution acting in the course of that person’s employment or agency; in relation to any action by the financial institution or the officer, employee or agent taken in good faith under section 8.*”

505. There has never been a case whereby a customer has attempted to take action against any of the persons listed for submitting a STR as there has never been a STR submitted.

Prohibition Against Tipping-Off (c. 14.2):

506. This requirement is covered in section 10(1) of the FTRA, which states “*a financial institution must not disclose to any person that the financial institution is contemplating making a suspicious transaction report; or has given a suspicious transaction report to the Financial Intelligence Unit; unless required to do so under this Act or any other Act. If a financial institution contravenes subsection (1), the financial institution is guilty of an offence punishable on conviction; in the case of an individual – by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or in the case of a body corporate- by a fine not exceeding 10,000 penalty units.*”

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

507. This requirement is covered in section 11 of the FTRA, which restricts the disclosure of any information that will identify, or is likely to identify, a person who has handled a transaction report in respect of which a suspicious transaction report has been made; a person who has prepared a suspicious transaction report; a person who has made a suspicious transaction report; as well as any information contained in a suspicious transaction report. Section 11(2) states that “*A person must not disclose the information except for any of the following purposes: the enforcement of the Proceeds of Crimes Act 1998; or detection, investigation, or prosecution of a money laundering offence; or financing of terrorism; or a serious offence.*”

508. Section 11 (4) states that “*A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.*”

Recommendation 19

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

509. Section 6 of the FTRA requires financial institutions to file a report for any cash transaction exceeding NZD10,000 in a single transaction. This requirement does not apply to multiple or linked transactions and does not apply if both parties to the transaction are financial institutions.

510. Section 6 of the FTRA also requires that financial institutions file a report for any electronic funds transfer exceeding NZD10,000 in a single transaction. This requirement does not apply to multiple or linked transaction, or transactions within Niue (even if the initial sender or final recipient is outside Niue).

511. Reports under this section are required to be submitted to the Financial Intelligence Unit. Statistics on reports submitted are detailed under Recommendation 26.

Additional Element—Computerised Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

512. The FIU records any such reports received manually onto an excel spreadsheet. This can be made available to competent authorities if necessary. There are no instances where such access has been requested or given.

Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

513. Memoranda of Agreements established between the FIU and law enforcement agencies enable information to be shared but do not include confidentiality provisions or otherwise restrict the use of that information.

Recommendation 25

Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):

514. There is currently no mechanism in place to provide financial institutions with adequate and appropriate feedback on STR or CTR filings.

515. Feedback on STRs has not been provided as no STRs have been received by the Niue FIU since its establishment. Financial institutions indicated that there are no regular communications follow up and/or feedback regarding any CTRs filed.

Effectiveness

516. There has been no STR reporting from any financial institution in Niue. The reason given by the FIU for the lack of reporting is that given the relatively small scale of the financial institutions' operations there have never been any transactions that have cause to be reported.

517. However, it is not clear that financial institutions are aware of or understand their reporting obligations and no effective guidance or feedback has been given by the FIU in this regard. There has been no oversight or supervision of financial institutions to ensure that they are complying with their reporting obligations.

518. Most of the requirements of Recommendation 13 are covered in the FTRA (subject to comments on predicate offences and tax matters). The main deficiency is in effective implementation of this requirement by financial institutions.

3.7.2. Recommendations and Comments

519. The following actions are recommended to enhance Niue's monitoring and STR reporting regime:

Recommendation 13

520. The FTRA should be amended so as to impose an obligation to report when a financial institution suspects that funds are the proceeds of crime or related to terrorist financing.

521. The remaining FATF predicate offences should be incorporated into an amended FTRA, and in further guidance to financial institutions.

522. Tax matters and other suspicious transactions related to any criminal act should be clarified in FTRA, and in further guidance to financial institutions to remove any doubt or confusion caused by the current wording.

523. Niue should undertake measures to enhance compliance with STR reporting requirements by financial institutions, including active monitoring and supervision.

Recommendation 25

524. Niue's FIU should establish internal guidelines and procedures to provide consistent, timely, and appropriate feedback to financial institutions on STR reporting to enhance the effectiveness of the reporting regime.

3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none"> • Cascading effect from Recommendation 1 and SRI: STR reporting does not cover all predicate offences of the full range of terrorist financing • The lack of STR reporting from financial institutions – ineffective implementation • Scope issue as institutions that lend are not financial institutions and the FIU has not recognised several entities that are financial institutions as such and there have been no reports from those entities.
R.14	C	The recommendation is fully observed.
R.19	C	The recommendation is fully observed.
R.25	PC	<ul style="list-style-type: none"> • There are no formalised processes and procedures to provide adequate and appropriate feedback to financial institutions and on STRs filed • No evidence of any general or specific feedback provided on a regular basis to reporting entities.
SR.IV	PC	<ul style="list-style-type: none"> • No specified entities have been gazetted under the TSTCA • The lack of STR reporting from financial institutions indicates weakness and ineffectiveness of implementation.

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

3.8.1 Description and Analysis

Legal Framework:

525. Section 13 of the *Financial Transactions Reporting Act 2006 (FTRA)* covers requirements pertaining to “other preventative measures by financial institutions”.

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):

15.1

526. The specific requirements concerning internal policies, procedures and controls (and communication of these to employees) are detailed in section 13(3) of the FTRA:

13 Other preventative measures by financial institutions

(3) A financial institution must establish and maintain internal procedures:

- (a) to screen prospective officers or employees of the institution to ensure, so far as practicable, that those persons do not have criminal backgrounds and, in particular, to ensure that they have had no involvement of any kind in money laundering or financing of terrorism; and
- (b) to make the institution’s officers and employees aware of the laws in Niue about money laundering; and
- (c) to make the institution’s officers and employees aware of the procedures, policies, and audit systems adopted by the institution to deal with money laundering; and
- (d) to train the institution’s officer and employees to recognise and deal with money laundering.

527. Section 13 (4) then requires all financial institutions to forward a written statement of their policies and procedures to the Financial Intelligence Unit.

528. The specific requirements to establish and maintain procedures refer to procedures relating to the screening of employees; raising employees’ awareness of laws about money laundering; raising employees’ awareness of the institution’s procedures and policies in relation to money laundering; and training of employees to recognise and deal with money laundering.

529. There are no legal obligations in relation to internal procedures for CDD, record keeping, or detection and reporting of suspicious transactions. While the requirement for financial institutions to carry out these functions may imply a need for procedures in this regard, discussions with financial institutions during the onsite indicated that no such procedures are in place.

530. Further, the obligations in relation to procedures for the raising of employees’ awareness of a financial institution’s procedures only refer to “money laundering”. There are no similar requirements in law referring to awareness raising of procedures in relation to the financing of terrorism.

15.1.1

531. The specific requirements to appoint an AML/CFT compliance officer are in sections 13(1) and (2) of the FTRA, which state “*a financial institution must appoint a compliance officer to be responsible for ensuring the financial institution’s compliance with the requirements of this Act. The requirement in subsection (1) does not apply to an individual who, in the course of carrying on his or her business, does not employ, or act in association with, any other person*”.

532. There is no specific requirement for the compliance officer to be appointed at a management level.

533. Further, discussions with financial institutions during the onsite indicated that no such appointments have been made by financial institutions.

15.1.2

534. There is no legal requirement that a compliance officer should have timely access to customer identification information and other CDD data, transaction records, and other relevant information.

535. Discussions with financial institutions during the onsite indicated that no compliance officers have been appointed, so it was not possible to test whether such access would be granted in practice.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):

536. There is no legal requirement that financial institutions maintain an adequately resourced and independent audit function to test compliance (including sample testing) with procedures, policies and controls in relation to AML/CFT.

537. Discussions with financial institutions during the onsite indicated that no such independent audit functions existed within the financial institutions.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

538. The specific requirements on financial institutions concerning training of employees are detailed in section 13(3)(b) and (d) of the FTRA, which state that a financial institution must establish and maintain internal procedures “*to make the institution’s officers and employees aware of the laws in Niue about money laundering; and to train the institution’s officer and employees to recognise and deal with money laundering*”.

539. Section 13(3)(b) only refers to making employees aware of laws about money laundering. There is no similar requirement referring to laws about the financing of terrorism.

540. Section 13(3)(d) refers to training officers and employees to recognise and deal with money laundering. There is no similar requirement referring to training to recognise and deal with the financing of terrorism.

541. Discussions with financial institutions during the onsite indicated that no such training, either in relation to money laundering or the financing of terrorism takes place in any financial institutions.

Employee Screening Procedures (c. 15.4):

542. The specific requirements on financial institutions concerning screening of employees are detailed in section 13(3)(a) of the FTRA, which requires financial institutions “to screen prospective officers or employees of the institution to ensure, so far as practicable, that those persons do not have criminal backgrounds and, in particular, to ensure that they have had no involvement of any kind in money laundering or financing of terrorism”.

543. Compliance by financial institutions with this obligation is not monitored by any supervisory authority and discussions with financial institutions during the onsite indicated that no such internal procedures are in place. However, the small population means that there is a general awareness of the conduct of persons and any adverse information is generally known.

Additional Element—Independence of Compliance Officer (c. 15.5):

544. There is no legal requirement relating to compliance officers being able to act independently or to report to senior management.

545. Discussions with financial institutions during the onsite indicated that no compliance officers have been appointed, so it was not possible to test whether such independence would be granted in practice.

Recommendation 22

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

546. During the onsite it was identified that at least one financial institution (a Niue company that acts as a money remitter) has a branch in a foreign jurisdiction.

547. There is no legal requirement that financial institutions ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations.

548. There is no legal requirement that financial institutions pay particular attention to this principle with respect to their branches and subsidiaries in countries which do not, or insufficiently, apply the FATF Recommendations.

549. There is no legal requirement that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard.

550. There is no legal requirement that financial institutions inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to local laws.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

551. Per c. 22.1, 22.1.1 & 22.1.2 above

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

552. There is no legal requirement relating to the application of consistent CDD measures at a group level.

3.8.2. Recommendations and Comments

553. The requirements of Recommendation 15 are not covered fully in the FTRA.

554. The FTRA should be amended so that:

- The obligations on financial institutions to maintain policies, procedures and controls extend to policies, procedures and controls in relation to CDD, record keeping, and the detection and reporting of suspicious transactions.
- The requirements in relation to awareness raising and training of employees explicitly cover the financing of terrorism.
- The requirement to appoint an AML/CFT compliance officer stipulates that the officer be at a management level and includes provisions relating to a compliance officer's access to records and independence.
- A requirement that financial institutions maintain an adequately resourced and independent AML/CFT audit function is included.
- The requirements of Recommendation 22 are included.

555. The FIU should actively monitor financial institutions (including conducting regular examinations) to ensure that they comply with these obligations (see Recommendation 23).

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none">• Systems and control obligations do not cover all aspects of AML/CFT• Training and awareness obligations do not cover financing of terrorism• Obligations around compliance officers do not cover seniority, access to records or independence• There is no requirement for an independent audit function.
R.22	NC	<ul style="list-style-type: none">• Contents of Recommendation 22 are not included in Niue legislation.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework:

556. The Niue Bank issues banking licences upon application for registration under Part 7 of the *Niue Bank Act 1994*. Pursuant to section 45 of the Bank Act the Niue Bank must publish the principles upon which it acts or proposes to act in determining such applications for registration.

557. The Niue Bank has not been established and no such principles have been published, so it is not possible to determine how any application to register a bank in Niue would be dealt with.

558. Information provided by the Niuean authorities is that Bank of the South Pacific was registered by way of a special meeting of the board of the Niue Bank. This was an ad-hoc process in the absence of any published principles.”

Prohibition of Establishment Shell Banks (c. 18.1):

559. There is no legal prohibition on establishing shell banks in Niue. “Shell Bank” is not defined anywhere in Niuean legislation.

560. The Niuean authorities have confirmed that there are no shell banks in Niue and that there are no plans to register such entities in Niue. The Niuean authorities contend that, despite a lack of published principles for registration, they would refuse any such application and, in fact, have done so on a recent occasion.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

561. There is no legal prohibition on Niuean financial institutions entering into correspondent banking relationships with shell banks.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

562. There is no legal obligation on Niuean financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2. Recommendations and Comments

563. The requirements of Recommendation 18 are not included in Niuean legislation. Legislation should be amended or enacted so as to fully include all aspects of Recommendation 18.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	<ul style="list-style-type: none"> • No legal prohibition on establishing shell banks in Niue • No legal prohibition on entering into correspondent banking relationships with shell banks • No legal obligation in relation to respondent financial institutions’ accounts being used by shell banks.

REGULATION, SUPERVISION, GUIDANCE, MONITORING AND SANCTIONS

3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1. Description and Analysis

Authorities/SROs roles and duties & Structure and resources - R.23, 30

Designated supervisory authorities and application of AML/CFT measures

Legal Framework:

564. The *Financial Transactions Reporting Act 2006 (FTRA)* comprises the regulatory and supervisory framework for monitoring and enforcing compliance with AML/CFT requirements. Responsibility for AML/CFT supervision is placed on the FIU, the Banking Supervisor and the Registrar of Companies.

565. Powers to be exercised in relation to AML/CFT supervision are vested in the FIU.

Regulation and Supervision of Financial Institutions (c. 23.1):

566. Powers to supervise compliance by financial institutions are contained in section 21(2); 21(6) and 23 of the FTRA.

21 (2) The Unit may collect, free of charge and at the Unit's request, any information the Unit considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government

21(6) A member of the Unit:

- a. may enter the premises of any financial institution during ordinary business hours to inspect any records [relating to transactions, customer identification, monitoring of transactions and originator details for funds transfers]; and make notes and take copies of the whole or any part of the record;

23 (1) A member of the Unit may apply to a Judge of the High Court for a warrant:

- a. to enter premises belonging to, or in possession or control of, a financial institution; and
- b. to search the premises and remove any document, material, or thing on the premises.

(2) The Judge must grant the application if he or she is satisfied that there are reasonable grounds for believing that:

- a. the financial institution has failed to keep a transaction record or report a suspicious transaction as required by this Act; or
- b. an officer or employee of a financial institution is committing, has committed, or is about to commit, a money laundering offence.

567. These powers are generally adequate to enable the FIU to supervise financial institutions for compliance with their obligations under the FTRA.

568. However, these powers have not been exercised by the Financial Intelligence Unit. No information or records have been requested from financial institutions and there has been no supervision of financial institutions for compliance with AML/CFT obligations.

569. Offsite AML/CFT supervisory monitoring information is available pursuant to section 13(4) of the FTRA, which requires financial institutions to prepare a written statement of their internal procedures and submit it to the Financial Intelligence Unit.

570. However, there are issues relating to the scope of procedures that financial institutions are required to maintain (see Recommendation 15). Further, no such reports have been prepared by any

financial institutions or submitted to the Financial Intelligence Unit. The FIU has not contacted any financial institution in relation to this requirement, nor taken any action to ensure financial institutions are aware of it.

571. There are gaps apparent in the lack of application of the AML/CFT requirements to financial institutions and a lack of supervision thereof. The FIU acknowledges that there are insufficient resources within the office and insufficient prioritisation of scarce resources to deal with currently identified financial institutions.

Designation of Competent Authority (c. 23.2):

572. Functions in respect of AML/CFT supervision are placed on three separate authorities pursuant to the FTRA.

573. Section 13(5) states that the supervisory authority of a financial institution must examine and supervise the financial institution to ensure compliance with the FTRA. “Supervisory authority” is defined in Section 2 as a person designated as the “Banking Supervisor” and, in relation to incorporated companies, includes the Registrar of Companies.

574. There are no powers vested in either the “Banking Supervisor” or the Registrar of Companies in relation to fulfilling these statutory functions. The Registrar of Companies does not carry out this function and there is nobody designated as a “Banking Supervisor”.

575. Section 21 of the FTRA states that the functions of the FIU include “*to conduct examinations to ensure compliance with this Act by financial institutions*”.

576. The Head of the FIU stated that the FIU has assumed responsibility for supervision of all financial institutions, although no active supervision takes place.

577. No examinations of financial institutions have been conducted and no offsite monitoring of compliance has been undertaken. The Head of the FIU explained that the FIU does not have resources or expertise to carry out examinations of financial institutions.

Structure and resources of supervisory authorities

Adequacy of Resources for Competent Authorities (c. 30.1):

578. The FIU has one staff member, the Head of the Financial Intelligence Unit, to carry out all AML/CFT compliance and supervision functions as well as all functions relating to the collection and analysis of STRs.

579. The FIU operates within the Crown Law Office and the staff member is expected to spend 10% of their time on AML/CFT matters. In practice, resource prioritisation means that that person spends approximately 5% of their time on AML/CFT matters. Given that the FIU has to undertake both the core FIU and supervisory duties, as well as attend to international commitments, some of these duties are currently not undertaken.

580. The evaluation team has been advised that given the jurisdiction’s lack of resources to fully implement, monitor compliance with, and enforce the requirements of the FTRA, technical assistance will be requested to assist with training and supervision functions (for example onsite examinations).

Integrity of Competent Authorities (c. 30.2):

581. All government departments and agencies are required to maintain a high professional standard in accordance with their professions and the Public Service policies and regulations. These have a constitutional basis and include the *Public Service Regulations 2004* and the Code of Conduct within which the standards of confidentiality are contained. This includes penalties for a breach of confidentiality. In addition the *Niue Act 1966* provides for the use of official information and sanctions for the breach of the confidential requirements. There are currently no additional codes of conduct requirements in place for the staff of the Financial Intelligence Unit.

Training for Competent Authorities (c. 30.3):

582. No training has been received by staff of the FIU in conducting onsite examinations or any other aspect of AML/CFT supervision.

583. No internal guidelines, policies or procedures have been introduced in relation to conducting onsite examinations or any other aspect of AML/CFT supervision

584. The Head of the FIU explained that they do not have resources or expertise to carry out supervisory functions. The Head of FIU was unaware of several statutory powers and obligations in the FTRA and was unable to comment whether the powers in the FTRA were adequate for supervisory purposes.

Authorities Powers and Sanctions – R.29 & 17

Recommendation 29 (Supervisory powers)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

585. Pursuant to section 21(2) of the FTRA, the FIU may collect, free of charge and at the FIU's request, any information the FIU considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government.

586. "Relevant to money laundering, financing of terrorism, and serious offences" appears wide enough to allow the FIU to collect information from financial institutions relevant to their compliance with the FTRA. However, these powers have not been exercised so it is not possible to assess their application or effectiveness.

587. Offsite AML/CFT supervisory monitoring information is available pursuant to section 13(4) of the FTRA, which requires financial institutions to prepare a written statement of their internal procedures and submit it to the Financial Intelligence Unit.

588. However, there are issues relating to the scope of procedures that financial institutions are required to maintain (see Recommendation 15). Further, no such reports have been prepared by any financial institutions or submitted to the Financial Intelligence Unit. The FIU has not contacted any financial institution in relation to this requirement, nor taken any action to ensure financial institutions are aware of it. No standard operating procedures or other internal guidelines for receiving or analysing these statements have been prepared by the FIU.

589. No training has been undertaken by the FIU in relation to the use of these powers or the supervision of financial institutions. No internal guidelines, policies or procedures have been introduced in relation to the exercise of these powers or the supervision of financial institutions.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

590. As noted above, although the function of conducting inspections has been given to the Banking Supervisor and the Registrar of Companies pursuant to section 13(5) of the FTRA, no corresponding powers have been vested in those supervisory authorities to fulfil this function.

591. Section 21(1)(c) of the FTRA states that it is the function of the FIU to conduct examinations to ensure compliance with the Act by financial institutions.

592. Pursuant to section 21(6) the FTRA a member of the FIU may enter the premises of any financial institution during ordinary business hours to inspect any records (relating to transactions, customer identification, monitoring of transactions and originator details for funds transfers); and make notes and take copies of the whole or any part of the record

593. This power appears sufficient to allow the FIU to conduct onsite inspections of financial institutions. However, these powers have not been exercised.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

594. There is no legal power for AML/CFT supervisors to compel the production of records by financial institutions.

595. The FIU may, pursuant to section 21(6) of the FTRA, obtain access to records, documents or information for AML/CFT purposes by way of an onsite inspection without the need to obtain a court order. It should be noted, however, that there are no sanctions for non-cooperation with, or obstruction of, an officer of the FIU in this regard.

596. The FIU also has a power to apply for a search warrant where it appears that the financial institution has failed to keep a transaction record or report a suspicious transaction or that an officer or employee of a financial institution is committing, has committed, or is about to commit, a money laundering offence, in addition to the power in s21 (6).

597. There is no regular collection of, or offsite monitoring of, AML/CFT compliance information from financial institutions.

Powers of Enforcement & Sanction (c. 29.4):

598. The powers for enforcement and sanction for non-compliance with AML/CFT requirements are set out in the FTRA.

Recommendation 17 (Sanctions)

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

599. The FTRA contains various sanctions for failing to comply with AML/CFT requirements.

600. These include failing to make a CTR (section 6(4)); structuring a transaction to avoid CTR reporting (section 7); failing to make a STR (section 8(2)); and the unlawful disclosure of a STR (section 10(2)). These failures attract a sanction, on conviction, of up to 2,500 penalty units or 5 years imprisonment in the case of an individual and up to 10,000 penalty units in the case of a body corporate.

601. A financial institution which opens, operates, or maintains, an anonymous account is guilty of an offence punishable, on conviction, by up to 1,000 penalty units or 4 years imprisonment in the case of an individual and up to 5,000 penalty units in the case of a body corporate (section 37).

602. A financial institution who fails to conduct CDD on customers (section 15(5)) or fails to keep CDD records (section 17(3)) is guilty of an offence punishable, on conviction, by up to 250 penalty units or 2 years imprisonment in the case of an individual and up to 1,000 penalty units in the case of a body corporate (section 37).

603. There are no powers of enforcement or sanction available against financial institutions for failing to comply with sections 13, 18 and 19 of the FTRA (namely failing to maintain procedures; failing to prepare and submit written statements, failing to monitor transactions; and failing to include originator information on funds transfers).

604. There are no administrative sanctions available where a financial institution has contravened any of the provisions of the FTRA.

605. No sanctions have been imposed on any financial institution in relation to any obligation under the FTRA.

Designation of Authority to Impose Sanctions (c. 17.2):

606. The responsibility for applying sanctions against financial institutions for non-compliance with AML/CFT obligations resides with the Niue Police.

607. In the absence of any enforcement action to date, the assessment team was unable to assess the effectiveness of the sanctions regime and arrangements.

Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):

608. All sanctions specified in the FTRA are applicable against bodies corporate. There is no provision for sanctions against directors or senior management.

Range of Sanctions—Scope and Proportionality (c. 17.4):

609. All sanctions specified in the FTRA are applicable on conviction of an offence. These include financial penalties of between 250 and 2,500 penalty units (currently NZD25,000 to NZD250,000) or between 2 and 5 years imprisonment for individuals and between 1,000 and 10,000 (currently NZD100,000 to NZD1,000,000) penalty units for bodies corporate.

610. There are no administrative or other non-criminal sanctions available against financial institutions for failing to comply with the FTRA.

611. Review of the scope of sanctions and quantum of penalties would seem appropriate to provide a more graduated, but ultimately dissuasive, range of actions and sanctions in the future.

Market entry – Recommendation 23

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

612. There are no fit and proper criteria applied to the directors, senior managers or owners of financial institutions.

613. Nor are there any criteria to prevent or disqualify directors, senior managers or owners of financial institutions as a result of having been convicted of any offence involving dishonesty or fraud.

614. The *Niue Bank Act 1994* requires that all banks apply for registration, but there are no fit and proper criteria in the *Niue Bank Act 1994* and no principles or other guidelines have been produced in this regard.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):

615. Apart from banks, there is no requirement for entities, including money remittance businesses, to be licensed or registered save for the business registration requirement under *The Business Licence Act 1997* which is applicable to all businesses on Niue.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

616. Apart from banks, there is no requirement for any entity to be licensed or registered, save for the business registration requirement under *The Business Licence Act 1997* and that is applicable to all businesses on Niue.

617. No supervision has been undertaken in respect of any financial institution.

618. There is also uncertainty surrounding the status of the Niuean Development Bank, which is not registered under the *Niue Bank Act 1994*. Activities undertaken by the Niuean Development Bank include lending, collecting, holding and exchanging funds. This institution is not currently subject to any licensing or AML/CFT supervision and is unaware of any AML/CFT obligations or legislation.

Ongoing supervision and monitoring – Recommendation 23

Application of Prudential Regulations to AML/CFT (c. 23.4):

619. There is no prudential regulation of banks or other financial institutions in Niue.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

620. Money remittance business is defined as a financial institution under the FTRA and subject to the obligations under that Act. While one of the two money remitters in Niue is the only entity that has submitted Cash Transaction Reports to the FIU, no supervision has been undertaken.

621. More proactive and regular AML compliance engagement and information collection would assist in monitoring and supervising to ensure compliance.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

622. There is no regulation of financial institutions as set out above.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

Guidelines for Financial Institutions (c. 25.1):

623. *Best Practice Guidelines for Financial Institutions* were prepared by the FIU in July 2009. These provide general information on money laundering and the financing of terrorism as well as detail on the reporting of suspicious transactions. However, of the two financial institutions, one confirmed during the onsite that a copy of the guidelines was not sighted during the 11 months that the current manager has been managing the institution, and a copy was made available only two weeks before the onsite and the other stated that they had never sighted the guideline.

624. No guidance on any other AML/CT obligations or requirements has been issued.

Statistics (applying R.32) and effectiveness

625. There are no statistics in relation to supervisory authorities as there have been no onsite inspections or other supervisory activities undertaken. Nor have there been any enforcement actions or sanctions applied.

626. In the absence of any statistics, other data or any supervision, the team is unable to assess the effectiveness of the supervisory and oversight system

3.10.2. Recommendations and Comments

The following actions are recommended to enhance Niue's monitoring and STR reporting regime:

Recommendation 29

627. Adequate powers are available to the FIU to monitor compliance, conduct onsite examinations and obtain necessary information to carry out AML/CFT supervision. The effectiveness of these powers is compromised by the absence of regular collection and monitoring of offsite AML/CFT compliance information and the lack of onsite examinations.

628. The FIU should commence a program of onsite and offsite supervision of all financial institutions as a matter of urgency.

Recommendation 17

629. The FTRA has a range of sanctions available to be exercised over financial institutions but these are not applicable to all AML/CFT obligations.

630. The FTRA should be amended to include sanctions for non-compliance with sections 13, 18 and 19 (namely failing to maintain procedures; failing to prepare and submit written statements, failing to monitor transaction; and failing to include originator information on funds transfers).

631. The only sanctions available are criminal penalties and imprisonment. The Niuean authorities should consider establishing a wider range of sanctions, including proportionate administrative sanctions such as administrative fines or compliance orders.

632. The Niuean authorities should consider amending the FTRA to allow for sanctions to be applied to directors and senior management of bodies corporate.

633. No AML/CFT compliance sanctions have been imposed to date. This is not supervising, given that no supervision has been undertaken in order to identify compliance deficiencies.

Recommendation 23

634. The FTRA should be amended so that it is clear who is responsible for supervising entities in relation to AML/CFT requirements. Taking into account the scale of the financial service sector in Niue, this should ideally be one single agency.

635. The Niuean authorities should consider establishing through legislation a register of financial service providers to ensure the FIU has sufficient information to identify all parties that fall within the definition of financial institution. At a minimum, all MVT and money exchange business should be subject to a mandatory registration requirement. The registration framework should provide effective penalties for any entities carrying on such business that are not registered, and provide grounds for deregistration including for wilful failure to comply with AML/CFT requirements or upon conviction for certain offences including crimes relating to fraud, dishonesty or ML and FT.

636. The FIU should also consider establishing working arrangements with the Registrar of Corporations to identify all businesses in Niue that are licensed as businesses to provide any type of financial service that would be subject to the FTRA.

637. The FIU should also determine whether the Niuean Development Bank is captured by the FTRA.

638. The Niuean authorities should provide in legislation for powers to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in or being a senior manager or director of a financial institution. They should consider introducing fit and proper person requirements for all such persons.

639. The FIU should as soon as possible carry out onsite and offsite compliance monitoring regarding the effectiveness of arrangements established by financial institutions to implement obligations set out in the FTRA.

640. The FIU should implement regular collection and offsite monitoring of AML/CFT compliance information, for example through annual reports by each subject entity, and by requiring copies of annual internal or external audit reports on AML/CFT compliance and procedures. These reports should supplement the compliance information derived from onsite examinations to monitor effectiveness of arrangements for compliance with AML/CFT requirements.

641. The Niuean authorities should consider whether additional legislative and supervisory arrangements will be required to effectively monitor and supervise on a consolidated basis the risks arising from the establishment of any foreign subsidiaries, branches or offices of Niuean financial institutions.

Recommendation 25

642. The FIU should issue detailed guidelines to assist financial institutions to effectively comply with all the AML/CFT requirements under the FTRA.

Recommendation 30

643. Resources: The FIU should consider staffing and resourcing requirements as soon as possible to provide sufficient resources to effectively conduct on and offsite AML/CFT supervision for all

financial institutions and ensure compliance with the FTRA. This should include training for staff in relation to conducting onsite examinations and other aspects of AML/CFT supervision.

644. Having additional staff within the FIU would also mitigate any perception of lack of impartiality arising from the Head of the Financial Intelligence Unit's family connections with a financial institution. A larger FIU would enable this to be dealt with through allocation of work to different members of staff.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	PC	<ul style="list-style-type: none"> Penalties for compliance breaches by financial institutions do not apply to all AML/CFT obligations No administrative sanctions available for compliance breaches No sanctions applicable against directors or senior management No effective use of formal sanctions powers to date.
R.23	PC	<ul style="list-style-type: none"> Effectiveness of monitoring and supervision regime is undermined by the lack of onsite AML examinations and inadequate information to carry out regular offsite AML compliance monitoring No legislation exists to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in, or being a senior manager or director of a financial institution No registration or licensing requirement is in place for money or value transfer service providers, or other non-bank financial institutions.
R.25	PC	<ul style="list-style-type: none"> Lack of comprehensive guidance to assist subject entities to comply with all AML/CFT regulatory requirements Financial institutions are not aware of previously issued guidance material on STRs This is a composite rating.
R.29	LC	Lack of effectiveness of powers due to no exercise of the same.

3.11. Money or Value Transfer Services (SR.VI)

3.11.1. Description and Analysis (summary)

Legal Framework:

645. The *Financial Transactions Reporting Act 2006* (FTRA) definition of financial institution includes, in section 3, any person who carries on a business of “collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons”. All providers are designated as financial institutions and subject to AML/CFT requirements. There is no separate category of money or value transfer services providers in the 2006 FTRA or other laws.

646. The implementation of AML/CFT obligations in the regulated sector, which includes the banking sector and one international remittance provider, is covered in the preceding sections. By way of background, one international remittance provider is Western Union located in a bank and is

licensed as part of its banking operations. The other, from the local travel agency, is a financial institution that is not subject to licensing requirements.

647. In relation to informal money/value transfer (MVT) operators or alternative remittance systems operating in Niue, no such businesses have been identified.

648. According to financial institutions met during the onsite, the outflow of funds from Niue residents exceeds the inflow of funds from the Niuean diaspora. The explanation provided was that the Niuean community makes the majority of their domestic purchases in New Zealand rather than in Niue and transfer funds to New Zealand for that purpose.

Designation of Registration or Licensing Authority (c. VI.1):

649. Section 38 of the FTRA states that a person who is not a financial institution and who operates a funds or assets transfer system must be “*authorised to do so by the relevant supervisory authority*”.

650. This requirement has not been implemented by Niuean authorities and it is unclear who the relevant supervisory authority might be or upon what conditions a business might be so authorised.

Application of FATF Recommendations (c. VI.2): (applying R.4-11, 13-15 & 21-23, & SRI-IX)

651. Section 38 of the FTRA states that a person who is not a financial institution and who operates a funds or assets transfer system is subject only to Parts 2 and 3 of the ACT. These parts relate to CTRs and STRs.

Monitoring of Value Transfer Service Operators (c. VI.3):

652. There is neither full application of FATF Recommendations nor any regime for monitoring of informal money/value transfer (MVT) operators.

List of Agents (c. VI.4):

653. There is no legal requirement for MVTs to maintain a list of agents.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

654. The FIU has the same sanction powers outlined under Recommendation 17, in relation to the obligations in Part 2 and 3 of the FTRA.

Additional Element—Applying Best Practices Paper for SR.VI (c. VI.6):

655. No action has been taken to apply the Best Practices Paper for Special Recommendation VI.

Statistics (applying R.32) and effectiveness

656. No informal MVT operators or alternative remittance systems have been identified in Niue, so there are no statistics in relation to the licensing, registration or supervision thereof.

3.11.2. Recommendations and Comments

657. The informal MVT sector appears negligible. However, Niuean authorities should clarify the operation of the licensing and registration regime, including stipulating who will authorise such businesses and on what conditions.

658. Section 238 of the FTRA should be amended so that informal MVTs are subject to all the obligations in that Act and are required to maintain a list of agents.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	There is neither full application of FATF Recommendations nor any regime for monitoring of informal MVT operators.

4. PREVENTATIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General Description

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

659. As noted in section 1 of this report, Niue does not have casinos (including internet casinos), real estate agents, dealers in precious metals or precious stones, or trust and company service providers, but the remaining two categories of DNFBPs, as defined by the FATF, are found in Niue. Within the last six months, a lawyer has established a private practice, and an accountancy firm commenced business offering accounting services.

660. DNFBPs are included as ‘reporting institutions’ in section 3 of the *Financial Transactions Reporting Act 2006 (FTRA)*. In defining the various types of DNFBPs for the purposes of the FTRA, Niue has adhered very closely to the definitions contained in the glossary to the FATF Recommendations. The requirements applied to financial institutions in the FTRA are thus similarly applied to DNFBPs.

661. The accountancy firm is providing a mixture of accountancy services including the provision of advice and assistance in the formation of companies and possibly trusts.

662. The lawyer may be involved in any of the FATF-designated types of activities. The evaluation team was not aware of any trust and company service providers operating in Niue but it may be that the lawyer will operate in that manner in the future.

663. The Niue Companies Registry registers Niue resident companies and has re-registered less than 10 former international business companies (IBCs) since the IBC Registry closure in 2006. Pursuant to the *Companies Act 2006*, all applications for re-registration are made to the High Court before the Niue Companies Registrar will accept such applications. The Companies Act is based on the New Zealand and Samoa legislation. For any applications for re-registration that are made before the High Court, the Registrar requires that the application must specify the purpose for which registration is required. Currently there are four IBCs that have been re-registered.

Legal Framework:

664. DNFBPs are captured under section 3 of the FTRA as ‘financial institutions’. The categories of DNFBPs covered in Niue are:

- Dealers in precious metals and dealers in precious stones when they engage in any transaction with a customer equal to or above NZD10,000 or its equivalent in foreign currency
- Acting as agents for clients in the buying and selling of real estate
- Casinos or gambling houses, including a person who carries on that business through the internet, when their customers engage in transactions equal to or above NZD10,000 or its equivalent in foreign currency
- A lawyer, a notary, an independent legal professional and an accountant when they prepare for or carry out transactions for their client relating to any of the following activities:
 - Buying and selling real estate, businesses, and business entities

- Managing client money, securities, or other assets
- Managing bank, savings, or securities accounts, including the crediting or debiting of accounts or causing this to be done
- Organising contributions for the creation, operation or management of companies, legal persons or arrangements

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):

665. Part 4 of the FTRA, on obligations to keep records and verify identity, applies to all categories of DNFBPs. Currently, the CDD requirements in the FTRA are implemented equally for all customers and not varied based on risk.

When is CDD required?

666. All DNFBPs are required to identify and verify their customer based on any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the customer in the circumstances as stipulated for financial institutions (see section 3.2 of this report).

667. Anonymous transactions or accounts are prohibited under section 37 of the FTRA.

Customer identification and verification

668. Similar to financial institutions, DNFBPs are required under section 15 of the FTRA to identify and verify all natural persons and legal entities, their legal existence and structure, including information relating to the person's name, legal form, address and directors; the principal owners and beneficiaries; and, provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised, and provisions to identify those persons. If the DNFBP has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons then the DNFBP must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

669. The FTRA does not explicitly provide for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner to ensure that the financial institution is satisfied that it knows who the beneficial owner is. This is particularly important for DNFBPs involved in the creation, operation or management of legal persons and legal arrangements.

670. There is no explicit requirement in the FTRA for financial institutions to understand the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer.

671. As with financial institutions, section 15 of the FTRA requires DNFBPs to conduct verification of identity before carrying out the transaction. Section 16 of the FTRA further specifies that if satisfactory evidence of the customer's identity is not produced to, or obtained by, a DNFBP then the DNFBP must not proceed any further with the transaction unless directed to do so by the FIU.

672. The FTRA does not explicitly provide for DNFBPs to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner to ensure that the financial institution is satisfied that it knows who the beneficial owner is.

Ongoing due diligence

673. There is no explicit requirement in the FTRA to conduct ongoing due diligence on the business relationship.

674. Section 18 of the FTRA requires DNFBPs to pay special attention to the following if they have no apparent or visible economic or lawful purpose:

- (a) transactions that are complex, large, or unusual
- (b) unusual patterns of transactions

675. There is no express requirement under the FTRA for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships.

Enhanced CDD

676. There are no requirements under the FTRA for enhanced due diligence to be conducted for higher risk customers.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 & 8-11 to DNFBP) (c.12.2):

677. Similar to financial institutions DNFBPs are required to determine whether a customer is a PEP and to obtain senior management approval for establishing a relationship with a PEP. The FTRA also requires DNFBPs to take reasonable measures to establish the source of wealth and source of funds and to undertake enhanced monitoring. There is no requirement for DNFBPs to obtain senior management approval for continuing a relationship with a customer who has subsequently been determined as being a PEP.

678. The FTRA does not provide for the misuse of technological developments or for non-face to face business. Measures to manage both of these provisions have been effectively achieved at present as the use of technology such as electronic banking, ATMs and EFTPOS has not reached Niue and all business is currently undertaken on a face-to-face basis. However, there are no legal provisions to prohibit DNFBPs from undertaking business on a non-face to face business.

679. As with financial institutions Recommendation 9 is not applicable as the FTRA does not permit DNFBPs or other third parties to perform some of the CDD requirements of the FTRA.

680. Overall the requirements of the FTRA in respect of record keeping are largely in compliance with the requirements of Recommendation 10.

681. The provisions of section 18 of the FTRA in respect of the monitoring of transactions are generally consistent with the requirements of Recommendation 11.

Effectiveness

682. The requirements of the FTRA which apply to financial institutions apply equally to DNFBPs.

683. During the last 6 months one lawyer and one accountant have established businesses in Niue and, as they are involved in the creation, operation or management of legal persons and legal arrangements, they are subject to the provisions of the FTRA.

684. Initial contact had been made with the lawyer and the accountant at the time of the onsite. However the FTRA had not been applied to them. They had not received any information or guidance on the AML/CFT framework in place in Niue, beyond that initial contact, and had not been subject to any monitoring by the FIU.

4.1.2. Recommendations and Comments

685. It is recommended that the FIU explicitly provide in the FTRA the requirement to collect information on the beneficiaries and to ascertain the beneficial owners of trusts. The FIU should consider as a matter of priority meeting with the DNFBPs in order to be aware of the activities being undertaken and to advise them of the provisions of the FTRA which apply to them and provide them with guidance on how they can meet the AML/CFT requirements.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none">• Deficiencies in relation to R.5, R.-, 8-11 equally apply to DNFBPs, which are subject to the FTRA• Although both the lawyer and the accountant are subject to the FTRA as DNFBPs their obligations as such have not been implemented and they are not currently subject to any regulatory oversight by the FIU or any other relevant authority.

4.2. Monitoring Transactions and other Issues (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

STR reporting for DNFBPs (16.1 – applying R.13):

686. DNFBPs are captured by the definition of financial institution in section 3 of the *Financial Transactions Reporting Act 2006* (FTRA) and are subject to the same reporting obligations as discussed in relation to Recommendation 13.

687. Niue does not have casinos (including internet casinos) or real estate agents, nor does it have dealers in precious metals or precious stones.

688. Within the last 6 months a lawyer has established a private practice, and an accountancy firm also commenced business approximately 12 months ago. These businesses may possibly come within the definition of a financial institution.

Cooperation between SROs and the FIU in cases lawyers, notaries, etc. report STRs to their SRO (16.2):

689. There are no self-regulatory organisations in Niue.

Tipping off, safe harbour, internal controls (16.3 – applying R.14, 15 & 21):

690. DNFBPs are subject to the same obligations as discussed in relation to Recommendations 14, 15 and 21.

Additional Element – extension of the STR requirement extended to auditing by accountants (16.4):

691. This is adequately covered by section 9 of the FTRA, which requires auditors of financial institutions to submit STRs.

Additional Element—FIU requirements to file STRs on proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically (16.5 – applying additional element 13.5 to DNFBPs):

692. There is no explicit requirement for reporting when DNFBPs suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically. The reporting obligation in the FTRA is limited to “serious offences”.

Statistics and effectiveness

693. There are DNFBPs identified that meet the definition of financial institution but the FTRA requirements do not seem to be implemented and consequently no statistics are available.

4.2.2 Recommendation and comments

694. In addition to the comments set out in relation to Recommendation 13, 14 and 15, the FIU should as a matter of urgency determine whether the potential DNFBPs in Niue are captured by the FTRA.

695. As with financial institutions the effectiveness of the provisions of section 18 of the FTRA in respect of countries not sufficiently applying the FATF Recommendations are compromised as there is no requirement for DNFBPs to be advised of concerns about weaknesses in the AML/CFT systems of other countries.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> • STR obligations are not implemented in practice • STR reporting does not cover all predicate offences • Systems and control obligations do not cover all aspects of AML/CFT

		<ul style="list-style-type: none"> • Training and awareness obligations do not cover financing of terrorism • Obligations around compliance officers do not cover seniority, access to records or independence • There is no requirement for an independent audit function • Potential DNFBPs have not been adequately identified • Insufficient information provided to reporting institutions on countries of concern to the FIU • No provision for the application of counter measures • No examinations have been undertaken to ensure compliance with the obligations of the FTRA.
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4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Recommendation 24 (Supervision of DNFBPs)

Legal Framework:

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

696. Casinos, including internet casinos, whose customers engage in transactions equal to or above NZD10,000 are captured by the definition of financial institution in section 3 of the *Financial Transactions Reporting Act 2006* (FTRA) and are subject to the same regulation and supervision regime as discussed in relation to Recommendations 23 and 17

697. Niue does not currently have casinos (including internet casinos).

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

698. DNFBPs are included in the definition of financial institution in the FTRA and are subject to the same regulation and supervision regime as discussed in relation to Recommendations 23 and 17.

699. Within the last 6 months a lawyer has established a private practice, and an accounting firm has also commenced business approximately 12 months ago. These businesses may possibly come within the definition of a financial institution, however their business practises have not been reviewed by the Niue FIU.

Recommendation 25 (Guidance for the DNFBP sectors)

Guidelines for DNFBPs (applying c. 25.1):

700. No guidance has been issued in relation to the DNFBP sectors.

4.3.2. Recommendations and Comments

701. There are at least two possible DNFBPs that have been established in the past 6 to 12 months. The FIU should as a matter of urgency determine whether these businesses are captured by the FTRA. If so, guidelines for DNFBPs should be developed and published.

4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBPs)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	PC	<ul style="list-style-type: none"> • Potential DNFBPs have not been adequately identified • Penalties for compliance breaches by financial institutions do not apply to all AML/CFT obligations • No administrative sanctions available for compliance breaches • No sanctions applicable against directors or senior management • No effective use of formal sanctions powers to date • Effectiveness of monitoring and supervision regime is undermined by the lack of onsite AML examinations and inadequate information to carry out regular offsite AML compliance monitoring • No legislation exists to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in, or being a senior manager or director of a financial institution • No registration or licensing requirement is in place for money or value transfer service providers, or other non-bank financial institutions.
R.25	PC	No guidance provided on AML/CFT for DNFBPs.

4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Legal Framework:

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

702. The *Financial Transactions Reporting Act 2006* (FTRA) definition of financial institution includes “casinos or gambling houses”. This is in excess of the requirement of the FATF to include casinos only, and includes one of the examples listed by the FATF of other DNFBP i.e. gambling. However, as noted earlier, neither casinos nor gambling houses exist in Niue.

703. There are no high value or luxury goods sold in Niue. These are generally purchased offshore and imported. Neither are there any auction houses or investment advisors.

Modernisation of Conduct of Financial Transactions (c. 20.2):

704. Niue is essentially a cash based economy for retail transactions. There are no ATMs in Niue. The Niuean authorities have not taken any measures to encourage the use of more modern and secure techniques for conducting financial transactions. However, given the population size it may not be profitable for financial institutions to introduce new products into the market.

4.4.2 Recommendations and Comments

705. The Niuean authorities should investigate the viability of modern and secure techniques for conducting transactions.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	LC	No measures have been taken to encourage the use of modern and secure techniques for conducting financial transactions

5. LEGAL PERSONS & ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

706. Niue has the *Companies Act, 2006*, *Incorporated Societies Act 1908*, *Partnership Act 1908*, *Partnership Application Act 1994*. These laws contain provisions of incorporation/registration and operation of companies and partnerships. *The Business Licence Act 1997* also has some application.

707. The Niue Companies Registry registers Niue resident companies and has re-registered less than ten former international business companies (IBCs) since the IBC Registry closure in 2006. Pursuant to the Companies Act, all applications for re-registration are made to the High Court before the Niue Companies Registrar will accept such applications. The Niue *Companies Act 2006* is based on the New Zealand and Samoa legislation. For any applications for re-registration that are made to the High Court, the Registrar requires that the application must specify the purpose for which registration is required. Currently there are four IBCs that have been re-registered.

Legal Framework:

Companies

708. *The Companies Act, 2006* was enacted in 2006. It replaced *the International Business Companies Act 1994 (IBCA)* (section 349), which had allowed for offshore companies in Niue. A person who is eligible to incorporate a company can establish a public or private company in Niue. Private company registration requires that registering companies have more than 100 shareholders and have stocks available for public subscription. A public company does not have limitation of shareholders and can issue stocks to the public (section 9). In Niue at least one share and one shareholder are mandatory to incorporate a company (sections 22 and 46). Overseas companies may be registered under section 292-297. Part 14 (sections 331-335) deals with international business companies, particularly for re-registration of offshore companies registered under the IBCA. *The Companies Act* had a transitional time period of re-registration up to the close of 31 December 2006 for their legal existence (section 335); although there is a provision whereby companies that did not re-register cease their legal existence. Of the almost 10,000 international business companies that were registered under the International Business Companies Act prior to its repeal, less than ten companies re-registered, after High Court review, under the Companies Act and only four remain registered under the Companies Act. There is no information available on the activities of other companies that did not re-register or on any liquidation process of such companies.

709. An application for incorporation of a company must be made to the Registrar in the prescribed form with:

- (a) The name of the company, which must comply with section 10; and
- (b) Whether the company is a private company or a public company; and
- (c) Whether the rules of the company differ from the model rules set out in Schedule 2 (in the case of a private company) or Schedule 4 (in the case of a public company); and
- (d) The full name, residential address, and postal address of every director of the proposed company; and
- (e) The full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
- (f) The registered office of the proposed company; and

(g) The postal address of the company, which may be the registered office or any other postal address.

And accompanied by –

- (a) A consent by each person named as a director to act as a director of the company, in the prescribed form; and
- (b) A copy of the rules of the company, if they differ from the model rules; and
- (c) The prescribed fee

710. Companies are also required to submit information on any alteration of rules. International business companies were required to submit memorandum of association and articles of association.

711. The current forms for applying to incorporate a company, change director, issue share certificates, and other aspects of company administration, only require information on the name, residential address and email address of the person concerned and consequently, no information regarding beneficial ownership and control of legal persons is available.

712. There is no prohibition in the *Companies Act* on directors appointing nominees to act in their place. The issue and change of any shareholders and directors are to be informed to the Company Registry (section 26) and shares must be transferred by entry in the share register (section 38), the company is required to maintain a share register (section 40) and that share register is evidence of legal title (section 41).

713. Any person who is under 21 years of age, is an uncharged bankrupt, has been convicted in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, or has been convicted under sections 337 to 340 of this Act or under any of sections 180 to 183, 191 to 205A, or 207 to 211 of the *Niue Act 1966*, are disqualified from being promoter and director of a company during the period of 5 years after the conviction or the judgment (ss. 77 and 78), however they may still hold shares.

Partnerships

714. Niue has the *Partnership Act 1908* and the *Partnership Application Act 1994* to register and functionalize partnerships. Partnerships can be registered as a partnership, a limited liability partnership or a special partnership. Special partnerships may be formed for the purposes of agriculture, mining, mercantile, mechanical, manufacturing, or other business, by any number of persons, upon the terms and subject to the conditions and liabilities, except for the purpose either of banking or insurance.

715. A partnership can be formed in Niue by deed or written agreement of partnership constituting that partnership is executed, or signed by all the partners or by their duly appointed attorneys (section 5 of the Partnership Act). The Niue Public Service Commission can appoint a Registrar of Partnership with the advice of the Cabinet (sections 11 and 12). It is not clear what details are required for registering a partnership.

Societies/Cooperatives

716. Niue has the *Incorporated Societies Act 1908* to incorporate societies in Niue with not less than 15 persons associated for any lawful purpose but not for pecuniary gain (section 4). The rules for incorporation should include name of the society, objects, modes of membership, etc. (section 6). There is no such further information required that would assist in identifying the beneficial ownership and control of societies.

Type of Legal	No.	No. domestic,	Objectives of	Unusual	Action taken
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Person/Arrangements		government, One man, JV or Foreign, branch, liaison	Majority with any unusual	Objectives, If any	against if any (for any reason)
Private companies	44	5 GON owned	Standard incorporation		
Public companies					
Holding companies					
Subsidiary companies					
Foreign companies	2				
Joint-venture companies	2	2 GON			
Re-registered companies	4		Standard incorporation		
Partnerships	34	Not reported			
Sole proprietorship	92	Not reported			
Cooperative Societies					
Others - if any	24				

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

Central Registration System

717. The Company Registrar's Office (CRO) is the central registration authority for all companies in Niue. The CRO collects all documents received and sends them to the registry located in New Zealand. Niue also has central registration system for societies and partnership.

718. Niue does not have any legal provision or measures to identify beneficial ownership of companies. The Companies Act requirements are limited to the names of apparent promoters or directors. No information on the beneficial owners (as defined by the FATF) of the company is collected by CRO nor is there a requirement in law for them to do so.

719. Directors and managers of companies may be natural or legal persons. Information on shareholders and directors during registration, incorporation and annual reporting is not collected. Directors' names are not checked against international terrorist lists (UNSCR 1267) and there are no domestic terrorist lists pursuant to UNSCR 1373.

720. The national registry and companies do not require companies to record the beneficial ownership and control details for all companies and other legal persons registered in that country. CRO officials were not aware of AML/CFT and the associated beneficial ownership issues. Officials confirmed that they work as conduit for their registry managed in New Zealand. It is difficult to ensure that the changes in ownership and control data are kept up to date and publicly available, or available to competent authorities in up-to-date form.

Company Formation and Service Providers

721. Anyone in Niue may act as a company formation agent and/or company service provider. Nothing in the Companies Act or other law/regulation requires these third parties to collect and hold any identifying information on shareholders or directors of companies, which they form, or act for in one or another capacity, including nominee directors or holders of beneficial interests in shares. They are also not required to obtain, verify and retain records of the beneficial ownership and control of legal persons.

Availability to Competent Authorities

722. The competent authorities in Niue are legally able to obtain or have access to the data available with the Registrar under provisions in the *Proceeds of Crime Act 1998* (POCA), the *Terrorism Suppression and Transnational Crimes Act 2006* (TSTCA), or the *Financial Transactions Reporting Act 2006* (FTRA) but they are not be able to compel information on beneficial ownership as that information is not collected or held.

723. Though the Court may review corporate arrangements and can lift the corporate veil in case of offences under POCA, it cannot be sure that such information will be adequate, accurate and timely in the course of criminal investigation.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

724. Niue laws do not require that companies keep information on the beneficial ownership and control of legal persons and so the competent authorities cannot obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of legal persons.

Prevention of Misuse of Bearer Shares (c. 33.3):

725. *The Companies Act 2006* requires companies to have at least one share and one shareholder.

726. *The Companies Act 2006* is silent as to bearer shares however Niue authorities advise that bearer shares are prohibited. Niue sets out that the requirement for a share register that requires the name and last known address of the shareholders in section 40 of the *Companies Act 2006* would amount to a prohibition. In the absence of a positive legal requirement for registerable shares, or an express prohibition of bearer shares, there can be no certainty that bearer shares are prohibited.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions (c. 33.4):

727. Niue does not have a system for collecting information on beneficial ownership and control of companies for financial institutions to access.

Effectiveness

728. Niue has limited awareness of the issues of beneficial ownership and control of legal persons which is exacerbated by the CRO working as a collection agency only. No laws and measures are in place to prevent the unlawful use of legal persons and enhance transparency (in particular, it is notable that the Companies Act is silent as to the prohibition of bearer shares).

5.1.2 Recommendations and Comments

729. Niue has the Companies Office to register and keep records of companies, partnerships and societies. However, Niue does not have a legal and procedural system to collect and find out beneficial ownership and control of legal persons. Some essential information is not available to the Registrar and other competent authorities.

730. Company Formation and Service Providers are not required to collect and hold any identifying information on shareholders or directors of companies.

731. Awareness should be raised among authorities of AML/CFT issues relating to legal persons

732. In order to comply with Recommendation 33, Niue authorities should:

- Require information on beneficial ownership and control of legal person to be provided at registration and when there is a change of ownership, directors or senior managers.
- Develop measures to collect information on beneficial ownership and control of legal person.
- Niue should develop measures to prevent the unlawful use of legal persons and enhance transparency to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons.
- Niue should raise awareness with and train its authorities.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none">• No legal requirement for acquiring information on beneficial ownership and control of legal person• No availability of the information on beneficial ownership and control of legal person and consequently, this information cannot be made available to competent authorities• No measures in place to prevent the unlawful use of legal persons and enhance transparency.

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1 Description and Analysis

Legal Framework:

733. Part 10 of the *Trusts Act 1994* provides for the Registrar of the High Court to maintain a register of trusts. The Registrar of the High Court confirms that at the time of the onsite no trusts had been registered (though the Registrar was considering an application for registration by a trust at the time of the onsite).

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

Central Registration System

734. The Registrar of the High Court (RHC) is the central registering authority for all trusts in Niue. However, section 64 of the Trust Act does not make the registration of trust mandatory. Registration of trust arrangements is voluntary. Niue does not have any legal provisions or measures to identify or find out or require information on beneficial ownership of trusts. The trust is only required to provide the names of the trustee, settlor and beneficiary. Information provided about the trustee, settler and beneficiary during registration and annual reporting, is not checked against international terrorist lists (UNSCR 1267) or domestic terrorist lists (UNSCR 1373).

735. The RHC does not require records to be kept of beneficial ownership and control details of trusts. Niue authorities are not well informed about AML/CFT and beneficial ownership issues. It is difficult to ensure that the changes in ownership and control data are kept up to date and publicly available, or available to competent authorities in an up-to-date form.

Trust Formation and Service Providers

736. Any person in Niue may act as a trust formation agent and/or company service provider. There is no requirement under the Act or any other law/regulation that requires third parties to collect and hold any identifying information on beneficial owner and controller. There is also no requirement for third parties to obtain, verify and retain records of the beneficial ownership and control of trusts.

Availability to Competent Authorities

737. The competent authorities in Niue are legally competent to obtain or have access to data and to share such information with other competent authorities, domestically or internationally, by following certain procedures available within *Proceeds of Crime Act 1998* (POCA), the *Terrorism Suppression and Transnational Crimes Act 2006* (TSTCA), or the *Financial Transactions Reporting Act 2006* (FTRA), *Mutual Assistance in Criminal Matters Act 2006* (MACMA), and other laws, but is limited to general contact information, not to essential beneficial ownership and control information.

738. Niue authorities advise that as Niue is a small place, where all people are known to each other, it is a general practice not to ask for criminal records from registrants.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

739. As Niue laws do not require information to be kept on the beneficial ownership and control of legal persons/trusts, the competent authorities are not able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of legal persons/trusts.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions (c. 34.3):

740. Niue does not have a system of collecting information on beneficial ownership and control of companies for financial institutions to access.

Effectiveness

741. Niue has limited awareness of the issues of beneficial ownership and control of legal persons which is exacerbated by the RHC working as a collection agency only. No laws or measures are in place to prevent the unlawful use of legal persons and enhance transparency.

5.2.2. Recommendations and Comments

742. Registration of trusts in Niue is not mandatory.

743. Niue does not have system of collecting information on beneficial ownership and control of trusts.

744. Company Formation and Service Providers are not required to collect and hold any identifying information on beneficial ownership and control of trusts.

745. Niue does not have systems and measures to prevent the unlawful use of legal arrangements by money launderers and adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, which can be obtained, or accessed in a timely fashion, by competent authorities.

746. It is recommended that:

- Niue should collect information on beneficial ownership and control of legal person in registration and change of stakeholders.
- Niue should develop measures to collect information on beneficial ownership and control of trusts.
- Niue should develop measures to prevent the unlawful use of trust and enhance transparency.
- Niue should raise awareness with and train its authorities.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none">• Beneficial ownership information is not required to be obtained by some parties and to be made available to authorities as needed• There is no legal or other system of collecting information on beneficial ownership and control of trusts, consequently, this information cannot be made available to competent authorities.

5.3. Non-Profit Organisations (SR.VIII)

5.3.1. Description and Analysis

Special Recommendation VIII

747. The Niuean not-for-profit sector is small with only 24 Non-Profit Organisations (NPOs) registered as incorporated societies, of which 20 are active. Registration of NPOs is not compulsory and so there are no accurate details of the actual numbers and financial size of NPOs in Niue. No discrete permit is required in order to raise and collect donations or other funds. No NPOs are currently registered for tax purposes.

748. The majority of the NPOs are domestic entities; however there are a few international NPOs that operate in Niue. International NPOs must register as an incorporated society before they are

permitted to operate in Niue. The two most recent registrations before the onsite visit were received and approved by the Registrar in early 2011.

749. Niue officials noted that due to the size of the jurisdiction, and the familiarity of its inhabitants with each other, “any suspicious activities would be easily detected, particularly non-profit organisations”. There are no known terrorist activities in Niue or links with terrorist activities.

750. The self-regulating organisation for NPOs in Niue is Organisation INC, also known as NIUANGO. It is a registered society but is not active.

Legal Framework:

751. Those NPOs that register mainly do so as incorporated societies. According to Niuean authorities there are also a few NPOs that operate under a business licence.

752. The *Incorporated Societies Act 1908* governs all aspects of incorporated societies seeking to operate as a not-for-profit organisation in Niue. The Act includes the definition of an incorporated society, details and documents that are required when applying for registration, the requirements of reporting, and the conditions of de-registration. The Act does not set out any requirement for compulsory registration and officials advised that registration is usually sought only to enable societies to access government funding.

753. For the purposes of the Act ‘Registrar’ is defined in s3 as meaning “the Registrar of Incorporated Societies” and is first referred to as the Registrar in s7 regarding registration. The function of the Registrar currently resides with the position of the Secretary to Justice.

754. In describing the qualifications to apply for incorporation the Incorporated Societies Act defines incorporated societies as:

1. Any society consisting of not less than 15 persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar under this Act, become incorporated as a society under this Act.
2. No such application shall be made except with the consent of a majority of the members of the society.

755. The *Income Tax Act 1961* provides that payment of income tax is exempted for those societies or institutions, incorporated or not, that generally raise money for charitable purposes, for amateur sporting activities, or for developing the island of Niue.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

756. Niue has not done a review of the legislation and regulations governing NPOs to consider their adequacy to prevent abuse of the sector for terrorist financing.

757. Niue has not used all available sources of information to undertake domestic reviews of NPOs, neither does it currently utilise its capacity to obtain timely information that could identify the features and types of NPOs.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

758. Niue has not undertaken any outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse, neither awareness raising on the risks of terrorist abuse, nor general outreach to promote good governance in NPOs and public confidence in NPOs.

759. However, Niue authorities note that the majority of the NPOs are church groups and committees, the members of which are generally the same community leaders. These community leaders are well known in Niuean society and have a high level of awareness and responsibility for the good governance of the NPO community groups in which they are involved.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

760. The *Incorporated Societies Act* requires mandatory annual reporting and the application of fines for non-submission of the annual report. However, the Registrar advised that few annual reports are received each year; the Registrar does not pursue the reports and had no recollection of ever applying the available fines to non-compliant NPOs or societies.

761. There is no proactive, on-going supervision for incorporated societies after registration. There is no supervision of other NPOs.

762. There are no figures kept that can comprehensively indicate which NPOs hold a significant share of the sector's resources or on international activities. However, Niuean authorities appear to be generally familiar with the activities occurring in their small jurisdiction.

763. Niue authorities advise that there is the consideration of non-profit organisations being issued guidelines or best practices similar to those issued to financial institutions. There was no timeline suggested for this activity.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

764. While section 6 seems to imply that incorporated societies will keep a physical copy of their written rules, there is no express provision that they do so; rather, they must submit two copies of their rules to the Registrar under section 7. S22 requires that every society keeps a register of its members, including names, addresses and occupations.

765. Niue authorities advise that records of incorporated societies are kept indefinitely as a matter of departmental policy. The Act does not require any other long-term record keeping. Annual reporting necessitates keeping financial records for a minimum of 12 months, but annual reporting is not currently enforced.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

766. The *Incorporated Societies Act* allows for application of penalties (fines) for various contraventions of the Act including defaulting on annual reporting. Section 25(e) allows that a society may be wound up "If the Court of a Judge is of the opinion that it is just and equitable that the society should be wound up". Petitions to the Court for winding up an incorporated society can be made by the society, by a member or by a creditor, or by the Registrar.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

767. Registration of any NPO is not compulsory. The *Incorporated Societies Act* details what is required for registration but neither compels mandatory registration nor prohibits unregistered NPOs being active.

768. Where registration and other information is held by the Registrar the information is available per S34(1) whereby “every person may, inspect the register or any documents lodged with the Registrar”, S34(3) and (4) provide for procedures to use registry documents in court.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

769. Section 33 requires that the Registrar keeps a register of “all matters required by this Act or by any regulations to be recorded by the Registrar”. The Registrar holds the reports that are submitted incorporated societies. The Registrar holds the reports indefinitely; at a minimum 7 years.

770. Some records were destroyed by the 2004 cyclone that affected Niue, the replacement storage facility is shipping containers; the Justice Department indicated that these are not ideal storage but do not have the resources to upgrade it in the near future.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

771. The Registrar of Societies indicated that any concerns or suspicions either identified by the Registrar or reported to the Registrar would be referred to the relevant investigation agency, in most instances the Niue Police Force.

772. Section 34 details the ability of ‘every person’ to inspect registration or any other documents lodged with the Registrar. It also notes the appropriate court requirements for production of original copies for the purposes of evidence.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

773. At the time of the onsite visit Niue had good domestic cooperation. There are no current practices of sharing information on NPOs, due to the general lack of oversight of the sector, but cooperation between agencies exists on most matters. Niue has a highly cooperative domestic environment due to single personnel holding responsibility for multiple roles in the Niuean government, and the continual interaction of those individuals with each other in their various capacities.

Access to information on administration and management of NPOs during investigations (c. VIII.4.2):

774. Access to information is readily available to investigative agencies; however, the effectiveness of such an investigation is compromised by the lack of enforcement by the Registrar of annual reporting by NPOs and the low number of voluntary submissions of annual reports.

775. There is little awareness or concern of authorities of the possibilities for terrorist abuse in Niue. The perception of a low risk of terrorist abuse prevails, and practically seems reasonable, but the low risk is unproven and the perception unsupported due to the absence of financial reports of NPOs, or any other statistics.

Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3)

776. While Niue agencies do share information well, there has been no sharing of information on NPOs suspected of being exploited for TF purposes, because there are no such suspicions held. This is consistent with low crime rates and the absence of any known terrorist activity.

777. Niue's authorities advised that there have been cases of fraud and misappropriation of funds but that these were not investigated and were either dealt with internally by the society involved or not pursued further by either the Registrar or NPO.

Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):

778. Any international requests for assistance pertaining to NPOs would generally follow Niue's usual procedure. If received directly by the Registrar they would require advice from Crown Law to ensure keeping with legal requirements. Authorities advised that they would only provide information in cases where sufficient information was provided to support a proper investigation and not for a search that was based only on speculation.

5.3.2. Recommendations and Comments

To meet the requirements of Special Recommendation VIII, Niue should:

779. Review legislation and regulations affecting NPOs and consider their adequacy in preventing abuse of the sector for terrorist financing.

780. Use all available sources of information to review existent NPOs, and obtain timely information that could identify the features and types of NPOs in Niue.

781. Undertake outreach/awareness raising to NPOs on the risks of TF and available measures to protect the sector.

782. Undertake outreach/awareness raising to NPOs promoting transparency, accountability, integrity, and public confidence in the administration and management of NPOs.

783. Review the dimensions of sector, including the numbers and types of NPOs, the distribution of financial resources, and international activities.

784. Conduct supervision and monitoring of the NPO sector, including enforcement of annual reporting obligations for registered NPOs and employment of available sanctions for non-complying societies.

785. Introduce mandatory registration or licensing for all NPOs.

786. Introduce a specified period for registered societies to keep the full records of their administration and management, including financial and programmatic information.

787. Conduct investigation on occasions where a case of maladministration, or abuse of an NPO, is brought to the attention of authorities.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
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SR.VIII	PC	<ul style="list-style-type: none"> • No review of the domestic NPO sector has been undertaken • No outreach/awareness raising to NPOs on the risks of TF and available measures to protect the sector • No outreach/awareness raising to NPOs promoting transparency, accountability, integrity, and public confidence in the administration and management of NPOs • No monitoring of the NPO sector, including enforcement of annual reporting obligations for registered NPOs and employment of available sanctions for non-complying societies • Do not have mandatory registration or licensing for all NPOs • Do not have a specified period for registered societies to keep the full records of their administration and management, including financial and programmatic information.
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6. NATIONAL AND INTERNATIONAL COOPERATION

6.1. National Cooperation and Coordination (R.31)

6.1.1 Description and Analysis

Legal Framework:

788. Niue's AML/CFT national cooperation and coordination is based on policy and practice rather than statutory provision.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT Matters (c. 31.1):

789. The Solicitor General (SG) in Niue is the head of Crown Law (which prosecutes crimes and would take proceeds of crime action) and also the head of the FIU, and the AML supervisor. Having one person undertake these different roles consequently results in coordination, although it does limit resources available to that person to undertake each duty.

790. Cooperation and coordination between agencies occurs as a matter of process. Memoranda of Agreements (MOAs) have been signed for information sharing and cooperation between the FIU and:

- Police and Immigration
- Treasury (includes Customs and Revenue)
- Justice

791. There is cooperation and sharing of information that has resulted in the signing of a Memorandum of Understanding MOU between the three main law enforcement based agencies of police, customs and quarantine.

792. The Secretary to Government established and chairs the National Coordinating Committee (NCC) under the Constitutional mandate. The NCC consists of the Head of the FIU and the SG, the Commissioner of Police and Head of Immigration, and the Head of Customs.

793. The NCC does not have terms of reference but has been set up to deal with AML/CFT matters. The NCC meets on an as-needed basis. Minutes and records of meetings are not kept. In lieu of meetings email exchanges including the relevant parties are used. As an example, copies of the Niue report to the APG Annual meeting which forms the Niue FIU annual report are sent to the AML/CFT stakeholders (i.e. Police, Customs, etc.) and any issues that arise are discussed as required.

794. There are no formal procedures for policy development or consultation. Cabinet submissions may originate from Department Heads or the relevant Minister. In practice, AML/CFT policy formulation and coordination usually originates from the SG following regional AML/CFT conferences or workshops. Policy proposals may be discussed by the NCC and/or Cabinet which must give final approval. Informal cooperation and coordination takes place at an agency-to-agency level. There are no laws that formally enable or prevent other Government agencies exchanging AML/CFT-related information with each other, or cooperating in AML/CFT matters. In practice, the SG is available to the Police for legal advice and interpretation of relevant AML/CFT legislation.

Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):

795. Under the *Financial Transactions Reporting Act 2006* (FTRA), the FIU is the supervisor for all regulated entities. As the FIU is in its infancy it has not yet engaged in any consultations with its regulated entities.

Statistics (applying R.32):

796. No statistics are available in relation to domestic cooperation between AML/CFT agencies.

6.1.2. Recommendations and Comments

797. Niue is a small jurisdiction and meetings between the key agencies can normally be arranged as needed. Information is being shared informally, but does not include all relevant agencies and may not always be done in a timely manner.

798. Niue may wish to consider keeping formal minutes of meetings and records of actions arising from both policy and operational meetings.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	<ul style="list-style-type: none"> Information is not shared with all relevant agencies in a timely manner A gap in understanding AML/CFT implications leads to information not being shared.

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Legal Framework:

799. Niue has ratified the *UN International Convention for the Suppression of the Financing of Terrorism*. However, it has not ratified the *United Nations Convention against Transnational Organised Crime* (the “Palermo Convention”), or the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Vienna Convention).

800. . Niue authorities stated that they were taking action to ratify these conventions.

801. Niue has a suite of legislation to implement the Vienna and Palermo conventions and the UNSCRs, including, the *Proceeds of Crimes Act 1998* (POCA), *Mutual Legal Assistance in Criminal Matters Act 1998* (MACMA), *Terrorism Suppression and Transnational Organised Crimes Act 2006* (TSTCA), *Financial Transactions Reporting Act 2006* (FTRA), *Misuse of Drugs Act 2007*, *Extradition Act 2007*, and its *United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2004*.

802. **Ratification of AML Related UN Conventions (c. 35.1) :**

Vienna Convention (c. 35.1):

803. Niue has implemented the majority of requirements of *the Vienna Convention*, though it is not a party to the convention. The *Misuse of Drugs Act 2007* criminalises majority of drug related issues, POCA criminalises money laundering, and international cooperation is managed in MACMA and *Extradition Act*. The offences under *the Misuse of Drugs Act* have extra-territorial operation and sanctions available are broader for natural persons in recognition of the gravity of such offences.

804. The POCA, although untested in Niue, provides a regime for seizure and restraint of property, forfeiture and pecuniary penalty orders as set out in recommendation 3. The MACMA enables Niue to provide a broad range of assistance to requesting countries and for reciprocal requests to Niue. Such assistances are broad including evidence, warrant, search, seizure, forfeiture, confiscation, restraining order, etc.

805. The *Extradition Act 2007* limits extradition to “extradition countries”, which is currently only New Zealand and the Cook Islands.

Palermo Convention (c. 35.1):

806. While Niue is not party to the Palermo Convention, it has implemented some of the requirements of the Palermo Convention. Participation in an organised criminal group has been criminalised in s.35 of TSTCA as have people trafficking and smuggling in ss. (36-39), the subject of the Annexes II & III to the Convention.

807. Money laundering is criminalised in POCA, as set out in the analysis of Recommendation 1 in this report, and MACMA enables the enforcement of foreign forfeiture/confiscation and pecuniary penalty orders.

Ratification of CFT Related UN Conventions (c. I.1):

808. Niue joined the *United Nations International Convention for the Suppression of the Financing of Terrorism 1999* on 22 June 2009. There are no declarations or reservations recorded by the UN from Niue on the convention.

809. Niue has implemented some requirements of the TF Convention. Terrorist acts and TF are criminalised in line with the convention but lack ancillary offences. The Act has listed all the treaties annexed to the Convention and made any offence under those treaties offences of terrorism. The detail provisions of criminalisation and deficiencies have been analysed under SR II.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)

810. As set out in SRIII, it may be possible to give effect to UNSCR 1267 by using the UN Act regulations, but Niuean Authorities have not considered this approach and have no policies or procedures that would support it.

811. The TSTCA criminalises TF but the specified entities have not yet been gazetted as required by the Act.

812. Niue does not have any statutory legal provision to designate its own terrorist list and manage the list of other countries other than to provide cooperation under MACMA and the Extradition Act. Details have been discussed under the analysis of SR.III in this report.

Effectiveness

813. Niue is yet to join the Palermo and Vienna Conventions.

814. There is legislation that implements these conventions, however many of the provisions are yet to be tested, and whilst there may be a very low risk of TF, scope to apply and test the ML offence provisions and POCA regime exists.

815. Niue has implemented many aspects of the TF convention through law and the regulation for 1267 covers some of the requirements.

6.2.2. Recommendations and Comments

816. Niue has joined the *UN Convention for Suppression of Terrorism Financing 1999*. It has not joined or registered with the *Vienna and Palermo Conventions*.

817. In order to meet the standards Niue should join the Vienna and Palermo Conventions.

818. A number of technical issues with the operation of the ML, TF, POCA and MACMA regimes have been identified elsewhere in this report and should be addressed to ensure effective implementation.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	NC	<ul style="list-style-type: none">• No ratification of Vienna and Palermo conventions• Partial implementation of the FT Convention• Laws related to these issues are defective in criminalisation, international cooperation• Authorities are less aware of the conventions and issues therein.
SR.I	PC	<ul style="list-style-type: none">• Partial implementation of the FT Convention – TSTCA is deficient in criminalisation, no ancillary offences are criminalised• International cooperation is legally and practically limited due to the definition of criminal matters• UNSCRs are not implemented.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Legal Framework:

819. The central legal instrument for mutual legal assistance is the *Mutual Assistance in Criminal Matters Act 1998* (MACMA). It provides a broad legal framework for providing and receiving mutual legal assistance. Any MLA, in Niue, is based on criminal matters linked to a serious offence. The competent authority for the purposes of MLA is the Attorney General.

Widest Possible Range of Mutual Assistance (c. 36.1):

820. The MACMA enables Niue to provide a broad range of assistance in criminal and proceeds of crime matters.

Criminal Matters

821. The trigger for the provision of assistance in relation to a criminal matter is the existence in the foreign country of a “proceeding” or investigation in respect of a “criminal matter” as defined. As can be seen from the definitions below, it is not necessary for a conviction to have been obtained in the proceeding or for a charge to have been laid in the investigation for assistance to be provided.

822. A “proceeding” for the purposes of MACMA is defined in relation to a criminal matter as including “a proceeding before a judicial officer or jury for the purpose of gathering evidential material that may lead to the laying of a criminal charge or assessing evidential material in support of the laying of a criminal charge. “Criminal matter” is defined as an offence against a provision of:

(a) any law of Niue that is a serious offence; or

(b) A law of a foreign country, in relation to acts or omissions, which had they occurred in Niue, would have constituted a serious offence (s.3), whereas serious offence is an offence that carries maximum penalty death or minimum penalty imprisonment for not less than 12 months (s. 3).

823. The Attorney General (AG) may authorise the provision of the following types of assistance to a requesting country in respect of a proceeding or investigation in a criminal matter :

(a) the taking of evidence;

(b) production of documents or articles;

(c) issue of search warrants;

(d) the transfer of a person undergoing a sentence of imprisonment (whether in custody or not) or a person in custody pending trial or sentence to the requesting country to give evidence in a proceeding or to assist with the investigation, (provided the person consents).

824. There is no provision in MACMA that deals with the service of documents on behalf of a foreign country, although section 4 clearly states that the Act does not limit the provision or obtaining of international assistance other than assistance of a kind that may be provided or obtained under the MACMA, nor is the absence of any treaty a bar to the provision of assistance.

825. Section 36 of the MACMA enables the AG to seek assistance on behalf of a defendant in respect of a criminal matter. Where a court certifies that it would be in the interests of justice for the AG to request assistance from a foreign country in the taking of evidence, production of articles or documents or seizure of things or to make arrangements for the attendance of witnesses on behalf of a defendant, the AG must make the relevant request.

Proceeds of crime matters

826. Where a proceeding or investigation in respect of a “serious offence” has commenced in a foreign country, and there are reasonable grounds to believe that the tainted property in relations to the offence is located in Niue the AG may authorise a constable to apply for a search warrant, or apply to a Commissioner for a production order.

827. Where a proceeding has commenced in the requesting country for a serious offence, or the AG believes on reasonable grounds that a proceeding is about to commence in respect of a serious offence, and that property which may be made the subject of a foreign restraining order is located in

Niue, the AG may also apply to a court for a restraining order against the property under the *Proceeds of Crime Act 1998* (s34 MACMA).

828. Requesting countries may also seek assistance in the registration and enforcement of foreign orders made in respect of serious offences, namely:

- (a) a foreign forfeiture order
- (b) a foreign confiscation order
- (c) a foreign restraining order

829. A “serious offence” is defined to have the same meaning as in the POCA, as an offence punishable by more than 12 months’ imprisonment or death.

830. Foreign forfeiture and confiscation orders may not be enforced unless a person has been convicted of the offence and the conviction and order are not subject to appeal in the foreign country.

831. “Foreign restraining order” is defined as “an order made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country.

832. In the case of the exercise of investigative functions, making of applications and enforcement of foreign orders, specified provisions of the POCA apply to the application authorised to be made under the MACMA and to the enforcement of the foreign orders.

833. Corresponding provisions of the MACMA permit Niue to seek assistance from foreign countries in respect of proceedings or investigations for criminal matters or for assistance with POCA matters in respect of serious offences.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

834. Niue has never received or requested mutual legal assistance so there is no way to assess whether assistance could be provided in a timely, constructively and effective manner.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

835. Niue has not signed any conventions, treaties, agreements or arrangements, whether bilateral or multilateral, on mutual legal assistance. However the laws do not require treaties in order to provide MLA.

836. Niue is able to apply some conditions to providing MLA but these do not appear to be unduly restrictive. Section 8 of the MACMA provides that assistance provided to a foreign country may be subject to any conditions the AG determines. While this is untested, and it is not clear what conditions the AG might set the team is confident that they are likely to be reasonable and not unduly restrictive. Section 7 provides for assistance to be refused on the basis that the request might prejudice the national, essential or public interests of Niue, result in manifest unfairness or a denial of human rights; or as otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

837. Section 51 of the *Terrorism Suppression and Transnational Crimes Act 2006* (TSTCA), makes clear that for the purpose of mutual assistance, and despite anything in the MACMA, an offence which would constitute a terrorist act shall not be taken to be an offence of a political

character or an offence connected with a political offence or an offence inspired by a political motive, or a fiscal offence. Further, that no request may be declined on the basis of bank secrecy alone.

Efficiency of Processes (c. 36.3):

838. Except the provisions in the MACMA, no policy or procedure exists for clear and efficient processes for the execution of MLA request in timely way without delays.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

839. The MACMA does not make specific provision for refusing assistance on the basis that the offence involves a fiscal matter, notwithstanding the terminology employed in the TSTCA and referred to above, however, nor does it state that a request will not be refused on the basis alone that the conduct is of a fiscal nature. Niue has not received any requests for mutual assistance but Authorities stated that they would not refuse assistance in a matter of a fiscal nature as long as it met the other criteria set out in the MACMA.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

840. The AG has a wide discretion to refuse MLA and it is not clear in the MACMA that this discretion could not be used to refuse MLA on the sole ground that the offence is considered to involve fiscal matters.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

841. The powers available to competent authorities to obtain search warrants in relation to a criminal investigation and to obtain search warrants in respect of tainted property, production orders and search warrants for property tracking documents are available to be applied in response to a request for mutual assistance. Each of these powers may be exercised in respect of financial institutions.

Avoiding Conflicts of Jurisdiction (c. 36.7):

842. Niue does not have any provision for avoiding conflict of jurisdiction. Section 8 may assist in that the AG could provide MLA on conditions that would assist in avoiding a conflict.

Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

843. Any MLA requested to Niue is subject to the approval of Attorney General.

844. The provision of assistance in respect of compulsory evidence or information gathering does appear to be limited to the MACMA having regard to section 5 MACMA, which provides:

“This Act does not prevent the provision or obtaining of international assistance in criminal matters *other than assistance of a kind that may be provided or obtained under this Act*”.

845. Where a corresponding investigation is being conducted in Niue and investigators gather material for their own purposes which may be relevant to an investigation in another jurisdiction, investigators may share intelligence on a police-to-police basis.

International Cooperation under SR.V (applying c. 36.1-36.6 in R. 36, c. V.1):

846. Niue is able to provide assistance in respect of offences committed in foreign countries and which involve the financing of terrorism, terrorist acts and terrorist organisations, provided the relevant offence would fall within the criminal matter or serious offence definition specified above. The nature of that assistance is broad and is set out in respect of recommendation 36.1 above. As set out above the mechanisms are yet to be tested and technical deficiencies in not gazetting under the TSTCA may cause difficulties.

847. The provision of mutual assistance is not subject to any requirement for a charge to have been laid (in respect of investigations in criminal matters) or a conviction having been obtained (in respect of proceedings). In terrorism matters, the TSTCA specifically provides that notwithstanding anything in the MACMA, an offence under the TSTCA is taken not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, or a fiscal offence. Further, subsection 51 provides that no request for mutual assistance in relation to an offence under the TSTCA may be declined solely on the basis of bank secrecy.

848. The powers of competent authorities required under FATF Recommendation 28 are available provided the prerequisites as to the existence of a proceeding or investigation into a criminal matter or a serious offence are met.

Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6):

849. The only relevant mechanism to potentially avoid conflicts of jurisdiction is section 8 of the MACMA.

Recommendation 37

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

850. A prerequisite for the provision of mutual assistance is the requirement that the request relates to a proceeding or investigation in respect of a “criminal matter” or that a proceeding in respect of a “serious offence” has commenced. The definition of a “criminal matter” provides that in the case of a foreign offence, that had the conduct occurred in the Niue, the acts or omissions would have constituted a serious offence. The definition of “serious offence” is an offence that attracts more than 12 month imprisonment or death. It does not limit the jurisdiction where the offence occurred, and the definition of “criminal matter” makes clear that it can refer to foreign offences.

851. Dual criminality is a requirement for extradition and MLA but this does not appear to have legal or practical impediments to rendering assistance where both Niue and the requesting jurisdiction criminalise the conduct underlying the offence. The MACMA is unclear on the application of dual criminality for less intrusive and non-compulsory measures. Given the lack of any requests received this has not been tested for non-compulsory measures.

International Cooperation under SR.V (applying c. 37.1-37.2 in R. 37, c. V.2):

852. In relation to SR.V, as set out above, the foreign offence must fall within the definition of “criminal matter” or “serious offence” to enable mutual assistance to be provided.

853. Terrorist acts and TF are serious offences and are extraditable offences. Section 51 of TSTCA provides that terrorism and TF offences may not be considered political in nature, or fiscal matters. It further reiterates that bank secrecy do not inhibit MLA in regards to offences constituting terrorist acts or TF.

854. Section 50 of TSTCA sets out the action to be taken in a case where the Attorney-General refuses a request from another country to extradite a person under the *Extradition Act 1965*. If the extradition request relates to an act or omission that constitutes an offence listed, including terrorism and terrorist financing, the Attorney-General must submit the matter to the police. However, the *Extradition Act 1965* has been superseded by the *Extradition Act 2007*. While the 2007 Act does not contain the same condition, it is likely that a purposive approach would be taken and the Attorney General would prosecute if they were not able to extradite.

855. All other provision and deficiencies discussed above R.37 are same for the issues under SR.V.

Recommendation 38

856. The MACMA and POCA provide the framework to provide mutual assistance in response to a request from a foreign country for:

- (a) Search warrants for tainted property
- (b) Production orders & search warrants for property tracking documents
- (c) Interim restraining orders
- (d) Registration of foreign forfeiture pecuniary penalty and restraining orders

857. Action may be taken where there is an investigation or proceeding in a foreign country in respect of a “serious offence”. Subject to falling within this definition, which applies to money laundering and financing terrorism offences, this broad range of assistance may be provided if the AG so authorises.

858. The laws are untested and deficiencies in the money laundering and terrorism financing offence provisions noted elsewhere in this report may limit the ability to provide mutual assistance. Some deficiencies in the definitions of “proceeds” and “realisable property” in the POCA, noted elsewhere in this report may also affect effectiveness.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):

859. Niue has MACMA and POCA to provide any kind of response to mutual legal assistance requests related to the identification, freezing, seizure, or confiscation of (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, the commission of any ML, FT or other predicate offences.

860. Problems arise by the definition of property (including the tainted) as they differ in POCA and TSTCA, and MACMA relates only to the definition with POCA. Consequently, the instruments including the intended are not covered in POCA as in TSTCA. As a result, issues relating to instruments cannot be confiscated exercised under MACMA. Problems of freezing also come in relation to TSTCA as they have been discussed in the section on SR.III in this report.

861. As there has been no other procedures in place, no request for MLA has been received, the issues of effective and timely response could not be assessed. But the small size of the jurisdiction and the high level of domestic cooperation amongst agencies, assist in Niue responding in a timely manner.

Property of Corresponding Value (c. 38.2):

862. Section 32 of MACMA, sets out that a foreign confiscation order can be made and a “foreign confiscation order” is defined as an order made under the law of a foreign country for a person to pay

to the foreign country an amount representing the value (or part thereof) of the person's benefits from an offence against the law of that country.

Coordination of Seizure and Confiscation Actions (c. 38.3):

863. Niue has had no MLA experience, so has no basis on which to plan for coordination of seizure and confiscation actions.

International Cooperation under SR.V (applying c. 38.1-38.3 in R. 38, c. V.3):

864. TF is by definition a serious offence under MACMA. Therefore the provisions under sections 38 to 46 apply to TF as well.

Asset Forfeiture Fund (c. 38.4):

865. Niue does not have an asset forfeiture fund set up.

Sharing of Confiscated Assets (c. 38.5):

866. Section 35A of MACMA empowers the Cabinet of Niue to approve proposals for sharing certain property under forfeiture/confiscation order under MCMA or POCA with a foreign country that has provided assistance to Niue, with the Attorney General entering into arrangements with the competent authorities of the foreign country in order to give effect to any sharing proposal. However this has never occurred.

Additional Element (R.38) – Recognition of Foreign Orders for a) Confiscation of assets from organisations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

867. The provisions of MACMA do not allow Niue to consider, recognise, and enforce any foreign non-criminal confiscation order. Niue does not have civil forfeiture system. ML/TF do not carry reverse burden of proof.

Additional Element under SR.V (applying c. 38.4-38.6 in R.38, c V.7):

868. It is same as above in R.36-R.38.

Statistics (applying R.32)

869. There have been no requests for mutual legal assistance or extradition and no statistics are available. Capacity is required to for awareness raising and training programs.

Analysis of effectiveness

870. The laws of Niue relating to MLA appear to facilitate a broad range of assistance but those laws remain untested.

6.3.2. Recommendations and Comments

871. The MACMA enables Niue to provide a broad range of assistance to requesting countries in the investigation and prosecution of criminal matters and in respect of proceeds of crime investigations and proceedings. The provisions of the MACMA and POCA are intended to operate together where requests are made for assistance of the type contemplated by the POCA. Some deficiencies arise as a result of offence definitions and provisions in the POCA.

872. While the MACMA does not specifically provide for the service of documents, this would not preclude this type of assistance.

873. No consideration has been given to asset forfeiture funds or to operational mechanisms for sharing with other countries.

874. Niue should:

- Ensure that policy or procedure exists for clear and efficient processes for the execution of MLA requests and provide clarification of processes and roles.
- Put in place a mechanism for avoiding conflict of jurisdiction.
- Demonstrate through use of the provision how the AG is not made subject to unreasonable or unduly restrictive conditions.
- To make clear whether dual criminality would impede the application of less intrusive and non-compulsory measures.
- To extend the scope of coverage of MLA to instruments that are intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value.
- Consider operational mechanisms for sharing assets forfeiture funds with other countries.

875. Niue should consider

- Putting in place coordination mechanisms with other countries for provisional measures and confiscation.
- Niue should consider for asset forfeiture funds and operational mechanisms for sharing with other countries.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	<ul style="list-style-type: none"> Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the ML offence may limit effectiveness No policy or procedure exists for clear and efficient processes for the execution of MLA requests resulting in a lack of clarity of the processes and roles should MLA requests be received No mechanism for avoiding conflict of jurisdiction The AG has a wide discretion to refuse MLAs although this has not been tested Given the very low crime risks, effectiveness is neutral.
R.37	LC	It is not clear whether dual criminality would impede the application of less intrusive and non-compulsory measures <i>in practice</i> because there has been no application for mutual assistance to Niue.
R.38	LC	<ul style="list-style-type: none"> Deficiencies identified in R.3 apply to MLA – scope of coverage not extending to instruments that are intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value not covered Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness Given the very low crime risks, effectiveness is neutral.
SR.V	PC	<ul style="list-style-type: none"> Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness There is no policy or procedure exists for clear and efficient processes for the execution of MLA requests resulting in a lack of clarity of the processes and roles should MLA requests be received There is no mechanism for avoiding conflict of jurisdiction The AG has a wide discretion to refuse although this has not been tested.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

876. The *Extradition Act 2007* sets out the procedures for the extradition of individuals from and to Niue in respect of the commission of an ‘extradition offence’. An ‘extradition offence’ is defined under section 2 as an offence against the law of an extradition country for which the maximum penalty is death, or imprisonment, for a period of not less than 12 months or conduct which is required to be treated as an extradition offence under an extradition treaty between an extradition country and Niue.

877. An ‘extradition country’ refers to New Zealand, or a country with which Niue has undertaken to surrender all persons, or a colony, territory or protectorate of an extradition country, or a territory for the international relations of which an extradition country is responsible. Niue has not undertaken to surrender all persons to other countries; only New Zealand and Cook Islands currently fall under this definition.

878. *The Crimes Against Internationally Protected Persons and Hostages Act 1984* also has some legal provisions relating to extradition

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

879. Dual criminality is a requirement for extradition and MLA, however, this does not appear to have legal or practical impediments to rendering assistance where both Niue and the requesting jurisdiction criminalise the conduct underlying the offence. Given the lack of any requests received this has not been tested for non-compulsory measures.

Money Laundering as Extraditable Offence (c. 39.1):

880. The Extradition Act requires any extradition based on extraditable offence and only to country that is an extradition country. The extraditable offence is defined as (s.3):

- (i) an offence against a law of an extradition country for which the maximum penalty is death, or imprisonment or other deprivation of liberty, for a period of not less than 12 months; or,
- (ii) conduct which is required to be treated as an extradition offence under extradition treaty between an extradition country and Niue;

The extradition country is defined as:

- (i) New Zealand
- (ii) a country with which Niue has undertaken to surrender all persons who are wanted by the authorities of that country for carrying out of a sentence or detention order or against whom the authorities are proceeding for an offence; or
- (iii) a colony, territory or protectorate of extradition country; or
- (iv) a territory for the international relations of which extradition country is responsible.

The same sections defines extraditable person as

- (i) a person accused of having committed an extraditable offence; or
- (ii) a person convicted of an extradition offence in respect of whom there is an intention to impose a sentence as a consequence of the conviction.

881. As set out above in the absence of an undertaking for Niue to extradite, only New Zealand and Cook Islands are ‘extradition countries’ as defined in the Act. The offence of money laundering is a serious offence in both New Zealand and Cook Islands. It is unclear if, were another country to request to extradite from Cook Islands for a money laundering offence, that extradition could occur under the current legislation. Similarly it is unclear whether New Zealand or the Cook Islands could seek to extradite from Niue on behalf of another country if the money laundering offence did not occur in their jurisdiction, given that neither of their money laundering offences can be applied outside of their territory.

Extradition of Nationals (c. 39.2):

882. All Niuean nationals hold New Zealand citizenship. Under section 11(iv) of the Extradition Act a discretionary ground of refusal is that “the person is a New Zealand citizen and there is not

treaty in force between Niue and the extradition country which provides for the extraction of New Zealand citizens, or there is not treaty between New Zealand and the extradition countries which provides for the extraditions of New Zealand citizens from Niue”.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

883. There is no provision in the Extradition Act for prosecution in lieu of extradition. There is provision in the TSTCA for prosecution in lieu of extradition in relation to certain offence provisions under the TSTCA.

Efficiency of Extradition Process (c. 39.4):

884. Extradition requires a court process. While the court of Niue sits twice a year, in practice the judge is able to hear various applications by telephone. Under this system application for extradition to New Zealand or the Cook Islands could be efficiently considered.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

885. Section 8 of the Extradition Act provides for simplified measures when a person consents to surrender. Simplified measures are possible upon his or her consent and also for any offence which is not requested or is not an extraditable offence. Section 8 also provides that only the court can issue a surrender order and must be satisfied that surrender was given voluntarily.

886. A simplified procedure known as “backing of warrants” exists for “extradition countries”. The procedure involves the endorsement of the original warrant issued in New Zealand or the Cook Islands for the purposes of provisional arrest and obviates the need for provision the level of supporting documentation required if you use other parts of the Extradition Act.

Extradition for TF purposes SR.V (V.4)

887. Terrorist acts and terrorism financing satisfy the criteria for extraditable offences. However the Extradition Act definition of ‘extradition country’ means Niue is currently only able extradite to New Zealand or Cook Islands.

888. Further to above provision, Niue has a specific provision for non-extradition under the TSTCA. Section 50 of TSTCA provides "*Obligation to extradite or prosecute: (1) If the Attorney-General refuses a request from another country to extradite a person under the Extradition Act 1965, and the extradition request relates to an act or omission that may constitute an offence listed in subsection (2), the Attorney-General must submit the matter to the police. (2) The offences referred to in subsection (1) are those set out in sections 6 to 11, 28, 29, 31, 33, 34, and 35*". However this creates issues in regards to other serious offences where extradition is denied.

Additional Element under SR.V (applying c. 39.5 in R. 39, c V.8)

889. Section 8 of the Extradition Act provides for simplified measures when a person consents to surrender. Simplified measures are possible upon his or her consent and also for any offence which is not requested or is not an extraditable offence. Section 8 also provides that only the court can issue a surrender order and must be satisfied that surrender was given voluntarily.

890. A simplified procedure known as “backing of warrants” exists for “extradition countries”. The procedure involves the endorsement of the original warrant issued in New Zealand or the Cook

Islands for the purposes of provisional arrest and obviates the need for provision the level of supporting documentation required if other parts of the Extradition Act are used.

Statistics (applying R.32)

891. Niue has never received nor had cause to make a request for extradition in relation to the predicate offences of ML or TF.

Analysis of effectiveness

892. The absence of extradition treaties or ‘undertakings to extradite’ is a serious flaw in the extradition system in Niue.

893. While New Zealand and Cook Islands are currently the only two jurisdictions described as ‘extradition countr(ies)’ in the in the Extradition Act, in practice it is likely that any extradition would either originate from or be requested of New Zealand due to the close connection between it and Niue and the number of Niueans that travel between the two.

894. Niue authorities require training on and awareness of extradition.

895. Authorities stated that extradited persons would be deported to New Zealand. Niue would advise and liaise with New Zealand authorities who would then take action as appropriate.

6.4.2. Recommendations and Comments

896. The *Extradition Act 2007* allows Niue to cooperate with New Zealand and Cook Islands in relation to extradition.

897. Niue should:

- Ensure that it is able to consider and, as appropriate, grant extradition requests to the widest range of jurisdictions. To achieve this Niue should consider additional treaties or ‘undertakings to cooperate’ on extradition with a broad range of jurisdictions.
- Provide for legal provision to prosecute in lieu of extradition.
- Ensure further procedural and internal measures to face any request in a timely and effective way.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none"> Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the ML offence may limit effectiveness Niue does not have any legal provision to prosecute in lieu of extradition other than specific offences under the TSTCA Niue has limited extradition to two countries Niue lacks procedural and internal measures to respond to request in a timely and effective way.
R.37	LC	It is not clear whether dual criminality would impede the application of less intrusive and non-compulsory measures in practice.
SR.V	PC	<ul style="list-style-type: none"> Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness Niue does not have any legal provision to prosecute in lieu of extradition Niue has limited extradition to two countries Niue lacks procedural and internal measures to respond to request in a timely and effective way.

6.5. Other Forms of International Cooperation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework

898. International cooperation of the Niue FIU is enabled by the *Financial Transactions Reporting Act 2006* (FTRA) under Section 22. It enables the FIU to have agreements or arrangements with foreign counterparts and other foreign agencies for law enforcement and/or supervision. Section 22 stipulates what information may be shared and how it may be used.

899. Niue authorities advise that Niue FIU has signed:

- A memorandum of arrangement with the New Zealand FIU concerning cooperation in the exchange of financial intelligence related to money laundering and financing of terrorism, October 2008
- An agreement establishing the Association of Pacific Islands Financial Intelligence Units, Kochi, India, July 2011

900. Niue law enforcement authorities do not have a legal framework informing them of non-MLA international cooperation, neither is there any legal instrument prohibiting the provision of assistance.

Widest Range of International Cooperation (c. 40.1 & SR.V)

901. Section 21 of the FTRA empowers the FIU to disseminate information to the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; to receive information from, and otherwise assist the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; and to receive information and assist them, in relation to (i) the detection, investigation or prosecution of a money laundering offence, financing of terrorism, or a serious offence; or (ii) the enforcement of the *Proceeds of Crime Act 1998* (POCA).

902. Similarly, Section 22 empowers the FIU to have an agreement or arrangement in writing for the exchange of information between the Unit and any law enforcement agency or supervisory body outside Niue. The Unit may, with the Minister's approval, enter into an agreement with any institution or agency of a foreign State, or an international organisation established by Governments of foreign states, that has powers and duties similar to those of the Unit; and any other law enforcement agency or supervisory body outside Niue. The agreement must restrict the use of information to purposes relevant to the detection, investigation, or prosecution of money laundering offence, or serious offence, financing of terrorism; or offence that is substantially similar to above. However, Niue has provided assistance with information on non-serious offences.

903. Such information must be treated in a confidential manner and must not be further disclosed without the express consent of the Unit or the relevant law enforcement agency or supervisory body outside Niue and limit under the agreement or arrangement.

904. The Niue FIU can request other domestic agencies to provide assistance in responding to any international requests.

905. Niue law enforcement agencies advise that they are in regular contact with their New Zealand counterparts in police, immigration and customs, and practically provide a wide range of assistance. Niue law enforcement authorities engage in a range of regional and global law enforcement networks such as the Pacific TCU network, Oceania Customs Organisation, and Interpol (via New Zealand police). Through these networks they are able to meet and communication with counterpart agencies in, and provide assistance to, other Pacific jurisdictions, and potentially with other jurisdictions around the world.

Provision of Assistance in Timely, Constructive and Effective Manner (c.40.1.1 & SR.V):

906. Niue authorities claim that any matters relating to AML/CFT would involve the following government agencies, headed by the Secretary to Government:

- Crown Law (includes Niue FIU)
- Police (includes Immigration and the Transnational Crimes liaison post)
- Customs (includes Tax)
- Other departments are called in as appropriate

907. Some delay may be encountered if Niue is required to meet the cost of any international investigation as that expenditure would require Cabinet approval. However, due to the familiarity of Niue's members of Parliament, this decision would likely be made quickly.

908. Niue FIU has received two formal requests: one from UK Serious Organised Crime Agency (SOCA) in 2007 and one from the Ukraine FIU (2007). The Ukraine FIU request was received via Niue Police and the Egmont Secure Web (ESW), commencing an enquiry on 6 October 2007 regarding a former IBC, continuing to 11 June 2009. The request from UK SOCA was also via the ESW and the Niue Police, dated 14 March 2007. Both requests sought information on former Niue international business companies and information was provided accordingly. The Ukraine FIU

request was in relation to a money-laundering investigation and the SOCA request in for preparation of paperwork to add to an intelligence portfolio.

909. The Niue Police Department has well established lines of communication with both New Zealand and Australian law enforcement agencies contributing to provision of assistance in a timely, constructive and effective manner. These connections have been tested and found timely and effective when utilised to progress investigations involving enquiries carried out by overseas agencies.

910. The Niue Police Department also recently established a Transnational Crimes Unit liaison post, based with the TCU in Samoa. The advantages of this post are its access to the TCU database across the Pacific, updated software, and significant opportunities for training and mentoring of local Police staff from the larger TCU bases in Samoa and Fiji.

Clear and Effective Gateways for Exchange of Information (c. 40.2 & SR.V):

911. In addition to Memorandum of Arrangement between Niue FIU and New Zealand FIU, Niue's membership in the Egmont Group provides for a clear and effective gateway for exchange of information via the Egmont Secure Web.

912. Niue authorities advise that Niue FIU has assisted other FIUs on an informal basis and it remains able to assist other organisations where requested.

913. The nature of Niue's small-sized government means that enquiries and requests for assistance are efficiently identified and referred to the correct agency and to the correct officer.

914. The Niue Police are able to access Interpol services and information, and cooperate in kind, via their New Zealand colleagues.

Spontaneous Exchange of Information (c. 40.3 & SR.V):

915. *Section 21 of FTRA* empowers the FIU to disseminate information as set out above. While there are no provisions which restrict spontaneous dissemination of information to foreign counterparts, the Niue FIU has not used this power.

916. As stated, Niue Police is close with both New Zealand and Australian law enforcement agencies. The Niue Police advised that spontaneous exchange of information would easily occur with these two jurisdictions in particular and with others as appropriate.

917. Niue can also use the Interpol network via their New Zealand counterparts for spontaneous exchange of information.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4 & SR.V):

918. Niue authorities can conduct inquiries on behalf of their competent authorities within the provisions of the Niue MLA framework

FIU Authorised to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1 & SR.V):

919. MOUs between the FIU and the law enforcement agencies, and amongst the law enforcement agencies themselves, enable ready sharing of information and ability to coordinate on investigations. This includes investigations undertaken by any of those Niuean agencies, including the FIU, on behalf of foreign counterparts.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5 & SR.V):

920. As above in (c. 40.4 & SR.V).

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6 & SR.V):

921. Niue FIU is the only agency able to provide international cooperation beyond the MLA framework. However, in that case, the grounds of restriction are limited only to confidential use so there are no unreasonable or unduly restrictive conditions on the exchange of information. Also, as mentioned previously, the FIU can request information from other agencies in order to provide international assistance.

922. Niue's membership in the Egmont Group of FIUs enables them to readily share information with fellow Egmont members without unreasonable or undue restrictions, likewise its MOA with New Zealand FIU.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7 & SR.V):

923. There are no Niue laws, or parts of laws, prohibiting provision of assistance in requests that involve fiscal matters; however the TSTCA is only law where explicit permission exists to assist regardless of any involvement of fiscal matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8 & SR.V):

924. There are no Niue laws, or parts of laws, prohibiting provision of assistance in requests due to secrecy or confidentiality laws.

Safeguards in Use of Exchanged Information (c. 40.9 & SR.V):

925. The exceptions provided are the permitted used under ss. 25 and 26, and mutual understanding or arrangements under s. 22.4. Section 22.4 states that any agreement must also stipulate that the information is to be treated in a confidential manner and must not be further disclosed without the express consent of the Unit or the relevant law enforcement agency or supervisory body outside Niue, and the same is expected to apply to Niue.

926. In addition under the FTRA the powers to direct information is provided only to the Attorney General, although such information remains subject to confidentiality and secrecy (section 26).

927. The sections of the FTRA dealing with secrecy and FIU/law enforcement staff responsibilities, both when employed in those positions and after, ensure the confidentiality of any information received from foreign counterparts.

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1 & SR.V):

928. Niue FIU can conduct exchange of information under ss.21-23 of FTRA with non-counterpart agencies. It has not had opportunity to exercise this power.

929. The MOUs and MOAs between agencies provide for the ability to disclose to the requested authority the purpose of the request and on whose behalf the request is made. This has not been tested in practice as no requests have been received.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11 & SR.V)

930. The Niue FIU is able to collect information relating to criminal offences from other agencies by virtue of s. 21.5. Niue authorities claim that cooperation and coordination occurs as a matter of process. Memorandums of Agreement (MOAs) have been signed for information sharing and cooperation between the FIU and Police and Immigration, Treasury (includes Customs and Revenue), Department of Justice, and between each agency.

Statistics (applying R.32)

Table: Statistics of non-MLA international cooperation

	2007	2008	2009	2010	2011	Total
FIU-to-FIU requests	2	0	0	0	0	2
Non-FIU to FIU requests	0	0	0	0	0	0

Analysis of effectiveness

931. Niue has comparatively flexible and comprehensive international cooperation mechanism beyond MLA. It has also used these provisions and is effective too. Niue has shared information even beyond the scope of serious offence.

6.5.2. Recommendations and Comments

932. The FTRA has comprehensive provisions for other forms of international cooperation although it is centred on the FIU and the Attorney General. Niue is also member to Egmont Group and has access to Interpol via its New Zealand counterparts. There are no unduly restrictive measures on providing cooperation.

933. Niue should:

- Consider empowering other agencies, beyond FIU too, for providing their cooperation to foreign counterparts.
- Have express provisions to safeguard the information received from foreign agencies.
- Keep statistics in systematic manner.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	PC	<ul style="list-style-type: none"> • International cooperation to counterpart agencies is limited • No clear guidelines on for the treatment of information received from foreign agencies confidentially • Effectiveness unable to be established from the statistics provided.

SR.V	PC	<ul style="list-style-type: none">• International cooperation to counterpart agencies is limited• No clear guidelines on for the treatment of information received from foreign agencies confidentially• Effectiveness unable to be established from the statistics provided.
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7. OTHER ISSUES

7.1. Resources and Statistics

934. There a general lack of resources to effectively implement the full requirements of Niue's AML/CFT regime. It is understandable in a small jurisdiction for government officials to assume more than one post; however the nature of certain work functions is better separated, at least at the operational levels, if not at the management level.

935. There needs to be additional resources, time if not human resources, devoted to the FIU to undertake their duties, especially AML/CFT supervision.

	Rating	Summary of factors underlying rating
R.30	PC	<ul style="list-style-type: none">• Insufficient resources to effectively conduct on and offsite AML/CFT supervision for all financial institutions and ensure compliance with the FTRA• Effective implementation of the FIU responsibility has been inhibited by the number of staff available to undertake those responsibilities• There is no IT infrastructure to support both the record-keeping and the analysis function of the FIU• There is no independent budget for the FIU• Police are not adequately trained to undertake financial investigations• There is limited equipment available to allow proper monitoring of cross-border activities.
R.32	PC	<ul style="list-style-type: none">• There is no structured approach to collecting and maintaining AML/CFT-related statistics.

7.2. Other relevant AML/CFT Measures or Issues

936. Niue is a micro-state with a population of 1,460 people. Niue's size gives rise to some unique issues in relation to the application of the FATF standards. For example, in other jurisdictions, the failure to consider money laundering charges or asset confiscation in relation to one relatively minor case of petty corruption would not be an effectiveness issue, and is unlikely to be reflected in a Mutual Evaluation Report. However, as there are very limited cases in Niue of acquisitive crime, that one case is reflected in this report. Similarly the money value transfer service in Niue is 50% of the financial institutions, and therefore faced more scrutiny than money value transfer services might in jurisdictions with a larger financial sector.

937. It is clear that Niue has a low risk of money laundering and terrorist financing. Despite the low level of risk, and the size of the population, Niue has actively engaged with the international AML/CFT community, and has taken steps to put in place an AML/CFT regime.

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • There are important gaps in the coverage of domestic predicate offences • There are no ancillary offences for money laundering • It is not clear that the scope of property covered subject to the offence is in keeping with the international standards • Definition of property does not specifically include “moveable or immovable assets” and “legal documents or instruments evidencing title to or interest in such assets” • No implementation of existing legal provisions and available legal powers.
2. ML offense—mental element and corporate liability	LC	No implementation of existing legal provisions so no evidence of effectiveness
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Scope of coverage does not extend coverage to Instruments intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value • The effectiveness of the POCA is limited by the definitions of “proceeds” and “realisable property” and inconsistencies in the provisions • Agencies do not have a well-developed awareness of the POCA • Some clarification of functions is required • There has been no practical application of the POCA in domestic or foreign matters.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> • This recommendation is fully observed
5. Customer due diligence	PC	<ul style="list-style-type: none"> • The FTRA does not provide adequately for accounts in fictitious names • There is no requirement for CDD to be undertaken when carrying out occasional transactions that are wire transfers • There is no requirement for CDD to be undertaken where there are doubts about the veracity or accuracy of previously obtained identification data • There is no requirement for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner or the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>when the customer is a legal person or legal arrangement</p> <ul style="list-style-type: none"> • There is no requirement to conduct on-going due diligence on the business relationship • There is no requirement for on-going due diligence to include scrutiny of transactions to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds • There is no requirement to ensure that CDD documents, data or information is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships • There is no requirement for enhanced CDD to be undertaken for higher risk categories of customer, business relationship or transactions • There is no requirement to undertake CDD on existing customers on the basis of materiality and risk • There is no requirement to undertake CDD on anonymous accounts which existed on the commencement of the FTRA • There is a scope issue because lending is not included as a financial activity and because the FIU does not treat the Niue Development Bank as a financial institution although the ME team agrees it would fall under the definition in the FTRA • Effective implementation of the existing CDD provisions is not established.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • There is a definition of a PEP in the guidelines, but this definition is not in line with that provided in the FATF Recommendations • There is no requirement to apply the stricter CDD measures to beneficial owners who themselves qualify as a PEP • No requirement to obtain senior management approval to continue a business relationship where a customer or beneficial owner has been accepted and is subsequently found to be a PEP • Effectiveness not tested.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • No requirement to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and quality of supervision, including whether it has been subject to a ML/FT investigation or regulatory action

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> • No requirement to assess the respondent institutions AML/CFT controls, and ascertain they are adequate and effective • No requirement to obtain senior management approval before establishing new correspondent relationships • No requirement to document the respective AML/CFT responsibilities of each institution • Where a correspondent relationship involves the maintenance of “payable-through accounts” there is no requirement for financial institutions to be satisfied that their customer (the respondent financial institution) has performed all the normal CDD obligations set out in R.5 on those of its customers that have direct access to the accounts of the correspondent financial institutions; and that the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • No requirement to have policies in place or to take measures to prevent the misuse of technological developments • No requirement to address the specific risks of non-face-to-face business.
9. Third parties and introducers	N/A	
10. Record-keeping	LC	No requirement to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
11. Unusual transactions	LC	<ul style="list-style-type: none"> • There is no requirement for financial institutions to make their findings available for auditors • Compliance with the obligations of the FTRA has not been verified by the FIU through compliance monitoring.
12. DNFBP–R.5, 6, 8–11	PC	<ul style="list-style-type: none"> • Deficiencies in relation to R.5, R.6, 8-11 equally apply to DNFBPs, which are subject to the FTRA • Although both the lawyer and the accountant are subject to the FTRA as DNFBPs their obligations as such have not been implemented and they are not currently subject to any regulatory oversight by the FIU or any other relevant authority.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Cascading effect from Recommendation 1 and SRI - STR reporting does not cover all predicate offences of the full range of terrorist financing • The lack of STR reporting from financial institutions ineffective implementation • Scope issue as institutions that lend are not financial

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		institutions and the FIU has not recognised several entities that are Financial Institutions as such and there have been no reports from those entities.
14. Protection & no tipping-off	C	The recommendation is fully observed
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • Systems and control obligations do not cover all aspects of AML/CFT • Training and awareness obligations do not cover financing of terrorism • Obligations around compliance officers do not cover seniority, access to records or independence • There is no requirement for an independent audit function.
16. DNFBP–R.13–15 & 21	PC	<ul style="list-style-type: none"> • STR obligations are not implemented in practice • STR reporting does not cover all predicate offences • Systems and control obligations do not cover all aspects of AML/CFT • Training and awareness obligations do not cover financing of terrorism • Obligations around compliance officers do not cover seniority, access to records or independence • There is no requirement for an independent audit function • Potential DNFBPs have not been adequately identified • Insufficient information provided to reporting institutions on countries of concern to the FIU • No provision for the application of counter measures • No examinations have been undertaken to ensure compliance with the obligations of the FTRA.
17. Sanctions	PC	<ul style="list-style-type: none"> • Penalties for compliance breaches by financial institutions do not apply to all AML/CFT obligations • No administrative sanctions available for compliance breaches • No sanctions applicable against directors or senior management • No effective use of formal sanctions powers to date.
18. Shell banks	NC	<ul style="list-style-type: none"> • no legal prohibition on establishing shell banks in Niue • no legal prohibition on entering into correspondent banking relationships with shell banks • no legal obligation in relation to respondent financial institutions' accounts being used by shell banks.
19. Other forms of reporting	C	The recommendation is fully observed.

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
20. Other DNFBP & secure transaction techniques	LC	No measures have been taken to encourage the use of modern and secure techniques for conducting financial transactions.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Insufficient information provided to reporting institutions on countries of concern to the FATF • No provision for the application of counter measures • No examinations have been undertaken to ensure compliance with the obligations of the FTRA.
22. Foreign branches & subsidiaries	NC	Contents of Recommendation 22 are not included in Niue legislation.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Effectiveness of monitoring and supervision regime is undermined by the lack of onsite AML examinations and inadequate information to carry out regular offsite AML compliance monitoring • No legislation exists to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in, or being a senior manager or director of a financial institution • No registration or licensing requirement is in place for money or value transfer service providers, or other non-bank financial institutions.
24. DNFBP—regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Potential DNFBPs have not been adequately identified • Penalties for compliance breaches by financial institutions do not apply to all AML/CFT obligations • No administrative sanctions available for compliance breaches • No sanctions applicable against directors or senior management • No effective use of formal sanctions powers to date • Effectiveness of monitoring and supervision regime is undermined by the lack of onsite AML examinations and inadequate information to carry out regular offsite AML compliance monitoring • No legislation exists to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in, or being a senior manager or director of a financial institution • No registration or licensing requirement is in place for money or value transfer service providers, or other non-bank financial institutions.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • There are no formalised processes and procedures to provide adequate and appropriate feedback to financial institutions and on STRs filed • No evidence of any general or specific feedback provided

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>on a regular basis to reporting entities</p> <ul style="list-style-type: none"> • Lack of comprehensive guidance to assist subject entities to comply with all AML/CFT regulatory requirements • Financial institutions are not aware of previously issued guidance material on STRs • No guidance provided on AML/CFT for DNFBPs.
Institutional and other measures		
26.The FIU	PC	<ul style="list-style-type: none"> • Lack of clarity on the set-up and legislated functions of the FIU in regards to its additional powers to direct certain third parties in facilitating any investigation • AML/CFT guidance is not widely distributed to all financial institutions captured under the FTRA • No independent budget for the FIU and limited number of FIU staff to ensure the effective delivery of the FIU responsibilities and to address any potential perceived conflict of interest situation • No backup and offsite storage of FIU information. • Lack of engagement and consultation with the relevant agencies responsible for AML/CFT • Lack of clarity on the operational independence of the Head of FIU • As no STRs have been received by the FIU, effectiveness of analysis and dissemination can't be established • Lack of formal and consistent feedback process with financial institutions.
27.Law enforcement authorities	PC	<ul style="list-style-type: none"> • Niue has not considered allowing competent authorities to postpone or waive the arrest of suspected persons and/or seizure of the money • No investigation or consideration of ML charge despite there being at least one opportunity to investigate or consider a charge.
28.Powers of competent authorities	LC	Some relevant powers are available in various laws but the effectiveness of the powers has not been tested.
29.Supervisors	LC	Lack of effectiveness of powers due to no exercise of the same.
30.Resources, integrity, and training	PC	<ul style="list-style-type: none"> • Insufficient resources to effectively conduct on and offsite AML/CFT supervision for all financial institutions and ensure compliance with the FTRA • Effective implementation of the FIU responsibility has been inhibited by the number of staff available to undertake those responsibilities • There is no IT infrastructure to support both the record-

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		keeping and the analysis function of the FIU <ul style="list-style-type: none"> • There is no independent budget for the FIU • Police are not adequately trained to undertake financial investigations • There is limited equipment available to allow proper monitoring of cross border activities.
31.National cooperation	LC	<ul style="list-style-type: none"> • Information is not shared with all relevant agencies in a timely manner • A gap in understanding AML/CFT implications leads to information not being shared.
32.Statistics	PC	There is no structured approach to collecting and maintaining AML/CFT related statistics.
33.Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> • No legal requirement for acquiring information on beneficial ownership and control of legal person • No availability of the information on beneficial ownership and control of legal person and consequently, this information cannot be made available to competent authorities • No measures in place to prevent the unlawful use of legal persons and enhance transparency • No certainty as to whether bearer shares are prohibited.
34.Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • Beneficial ownership information isn't required to be obtained by some party and to be made available to authorities as needed • No legal or other system of collecting information on beneficial ownership and control of trusts and consequently, this information cannot be made available to competent authorities.
International Cooperation		
35.Conventions	NC	<ul style="list-style-type: none"> • No ratification of Vienna and Palermo conventions • Partial implementation of the FT Convention • Laws related to these issues are defective in criminalisation, international cooperation • Authorities are less aware of the conventions and issues therein.
36.Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the ML offence may limit effectiveness • No policy or procedure exists for clear and efficient processes for the execution of MLA requests resulting in a lack of clarity of the processes and roles should MLA requests be received

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> • No mechanism for avoiding conflict of jurisdiction • The AG has a wide discretion to refuse MLAs although this has not been tested • Given the very low crime risks, effectiveness is neutral.
37. Dual criminality	LC	It is not clear whether dual criminality would impede the application of less intrusive and non-compulsory measures in practice because there has been no application for mutual assistance or extradition to Niue.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Deficiencies identified in R.3 apply to MLA – scope of coverage not extending to instruments that are intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value not covered • Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness • Given the very low crime risks, effectiveness is neutral.
39. Extradition	NC	<ul style="list-style-type: none"> • Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the ML offence may limit effectiveness • Niue does not have any legal provision to prosecute in lieu of extradition other than specific offences under the TSTCA • Niue has limited extradition two countries • Niue lacks procedural and internal measures to respond to request in a timely and effective way.
40. Other forms of cooperation	PC	<ul style="list-style-type: none"> • International cooperation to counterpart agencies is limited. • No clear guidelines on for the treatment of information received from foreign agencies confidentially • Effectiveness unable to be established from the statistics provided.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • Partial implementation of the FT Convention - TSTCA is deficient in criminalisation, no ancillary offences are criminalised • International cooperation is legally and practically limited due to the definition of criminal matters • UNSCRs are not implemented.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> • Providing or collecting funds for a terrorist organisation or an individual terrorist is not currently covered

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> • No criminalisation of ancillary offences • No dissuasive and proportionate sanctions to legal persons.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • Only a clear legal basis for elements of UNSCR1267, but not 1373 • No implementation of UNSCR 1267 and successor resolutions • No legal system for domestic designations system and considering designation by other countries. • No system for communicating actions taken under freezing mechanisms • Lack of adequate mechanism to ensure effective cooperation among countries for giving effect to the actions initiated under the freezing mechanisms • Lack of comprehensive and mandatory guidelines to financial institutions to comply with SR.III requirements • Lack of simplified mechanisms in place to unfreeze the funds and properties of delisted or innocent third parties • No exercise of available powers or monitoring of compliance • Lack of training and awareness programs on the requirements of SR.III.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • No specified entities have been gazetted under the TSTCA • The lack of STR reporting from financial institutions indicates weakness and ineffectiveness of implementation.
SR.V International cooperation	PC	<ul style="list-style-type: none"> • Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness • No policy or procedure exists for clear and efficient processes for the execution of MLA requests resulting in a lack of clarity of the processes and roles should MLA requests be received • No mechanism for avoiding conflict of jurisdiction • The AG has a wide discretion to refuse although this has not been tested • Given the dual criminality requirement, some deficiencies in offence provisions and the consequent application of the TF offence may limit effectiveness • Niue does not have any legal provision to prosecute in lieu of extradition • Niue has limited extradition to two countries • Niue lacks procedural and internal measures to respond to

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>request in a timely and effective way</p> <ul style="list-style-type: none"> • International cooperation to counterpart agencies is limited. • No clear guidelines on for the treatment of information received from foreign agencies confidentially • Effectiveness unable to be established from the statistics provided.
SR.VI AML/CFT requirements for money/value transfer services	PC	There is neither full application of FATF Recommendations nor any regime for monitoring of informal MVT operators.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • There is no detailed instruction issued by the competent authorities to the financial institutions on the requirements of SR.VII • There is no detailed instruction in the FTRA as to what constitutes full originator information • There is no requirement in law, regulation or other enforceable means for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers without complete originator information • There is no appropriate sanction mechanism related to the implementation of SR.VII • There has been no supervision to establish effectiveness.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • No review of the domestic NPO sector has been undertaken • No outreach/awareness raising to NPOs on the risks of TF and available measures to protect the sector • No outreach/awareness raising to NPOs promoting transparency, accountability, integrity, and public confidence in the administration and management of NPOs • No monitoring of the NPO sector, including enforcement of annual reporting obligations for registered NPOs and employment of available sanctions for non-complying societies • Do not have mandatory registration or licensing for all NPOs • Do not have a specified period for registered societies to keep the full records of their administration and management, including financial and programmatic information.
SR.IX Cash Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> • While there is an obligation to declare, there has been an issue with printing, the forms were not available during or shortly after the onsite • Lack of legal provision to empower authorised officers to

TABLE 1: Ratings

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>request for information about the origin and the intended use and destination of the currency</p> <ul style="list-style-type: none"> • Lack of policy and procedure or regulation regarding the seizure process of any currency under the FTRA • Lack of proper coordination and sharing of information amongst local authorities regarding cross border movement of currency • Lack of formal agreement between the Niue Authorities and New Zealand to share information on currency movement since the only weekly flight is from and to New Zealand • Lack of sanctions for making false declaration or disclosure • Lack of legal provision to seize currency pursuant to UN SCR list. • Limitations due to the non-inclusion of other vehicles or methodologies for moving currency such as air mails or unaccompanied cargo. • Limitation for the non-capturing of the distribution of currency with other persons travelling together or in a team to avoid the reporting requirement.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> • Amend relevant legislation to ensure coverage of the widest scope of predicate offences. • Clarify through case law or statutory amendment that the scope of coverage of property in the ML offence is in keeping with the international standards. • Amend the POCA to include ancillary offences in line with international standards. • Clarify that a person can be convicted of both the predicate offence and of laundering proceeds of that offending either through successfully prosecuting a self-launderer or through amendment to legislation. • Clarify that in proving property is the proceeds of crime it is not necessary that a person be convicted of a predicate offence either through the Courts or through amendment to legislation. • Clarify that knowledge can be inferred from objective factual circumstances • Consider money laundering charges in appropriate cases of acquisitive crime. • Provide greater awareness and training with respect to the nature of the offence of ML, including training of reporting entities, investigators, prosecutors and judicial officers and policy people.
Criminalisation of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • Criminalisation of TF in relation to individual terrorists should be covered. • It should be clear the range of offences that would apply to a body corporate if it engaged in terrorist financing. • Niue should take immediate action to gazette specified entities under section 5 to give effect to sections 6 and 7 • Authorities should familiarise themselves with provisions under the TSTCA and receive training on the same.
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> • Extend coverage to Instruments intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value. • Should consider reviewing the restraining order and any related provisions to ensure that the property which may be subject to restraint extends to property of the defendant, property of third parties subject to the effective control of the defendant, tainted property and property gifted by the defendant. • In addition, should ensure that the terminology and operation

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<p>of the restraining order and related provisions are consistent.</p> <ul style="list-style-type: none"> • Should also consider whether the definition of a “serious offence” should be expanded to include a minimum fine to ensure that actions of legal person which may not be subject to imprisonment are captured. • May also wish to consider extending the monitoring order provisions to enable such an order to be made in respect of accounts of persons other than the defendant or a person who has benefitted from the offence. Under the present provision, an order could not be obtained in circumstances where a corporate account or account of other third party was used where that corporate or third party did not benefit. • It is also noted that the SG has power to compel disclosure of information from government departments which might be relevant to establishing whether an offence has been committed or to a POCA application or order. As a consequence, the SG is placed in a position of having an active role in a criminal investigation which the SG may later be required to prosecute. Niue may wish to consider whether such a power might be more appropriately exercised by police at an executive level. • May also wish to consider whether this provision was intended to expressly override taxation secrecy provisions as such information is of invaluable assistance in the conduct of proceeds of crime proceedings where reverse onus provisions apply or where the examination power is actively used.
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> • Publish in gazette notification of UNSCRs immediately and distribute to the reporting and other related agencies for implementation. • Amend laws to provide clear freezing powers against the funds and assets of any kind of terrorist or related persons. • Amend law to have its domestic designations system and consider and recognise designation by other countries. • Consider developing mechanism to ensure that effective cooperation among countries for giving effect to the actions initiated under the freezing mechanisms. • Provide comprehensive and mandatory guidelines to financial institutions to comply with SR.III requirements. • Consider providing simplified mechanisms to unfreeze the funds and properties of delisted or innocent third parties • Niue FIU and other concerned authorities should exercise available powers and monitor compliance.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Undertake an assessment of the amount of resources available to, and the placement of, the FIU to maximise its independence. • Consider appointing a second FIU Officer to be available to

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<p>undertake some of the FIU function. This would enhance coverage of FIU obligations and assist in mitigating any possible conflict of interest or the perception of conflict of interest, which may discourage reporting from financial institutions.</p> <ul style="list-style-type: none"> • Properly identify the reporting institutions covered by the FTRA so as to provide appropriate guidance. • Undertake awareness training for financial institutions and law enforcement agencies about the form and the manner of STR reporting. • Amend the FTRA to ensure that the decision making process on the dissemination of an STR rests with the Head of FIU. • Amend the FTRA to ensure that an STR is only disseminated to domestic authorities for investigation or is acted upon when there are grounds to suspect ML or TF. • Amend the FTRA to remove all references to the now-redundant term “Attorney-General”, in response to that position having been repealed in 2006. • Amend the FTRA to provide sanctions against a financial institution when they do not provide information in response to a request for information relating to money laundering, terrorism financing and serious offences.
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</p>	<ul style="list-style-type: none"> • Assign a police officer or unit within the Police at operational level to be responsible for ML and TF investigations. Have Niue Police and Customs review and amend the <i>Niue Act 1966</i>, the Customs Act 1966 to ensure that it provides the Niue Police and Customs the necessary powers to effectively investigate ML, TF and other serious offences that may generate significant proceeds of crime. • Formally establish the Combined Law Agency Group to ensure an effective multi-agency approach to any future investigation that would require the involvement of certain government agencies. • Have Niue Police and Customs to undertake a risk assessment to determine the risks and trends of money laundering or potential trends of ML or TF in Niue. • Continue to improve capacity and capability of Niue Police with regards to specialist investigative skills development. In particular, the on-going development of financial investigators needs to be considered. Proceed of crime investigations involve unique income determination investigation technique that have not been developed in the Niue Police, and can enhance the investigation of other predicate offences. • The Niue Police needs to further develop skills in the area of financial investigation to build a sustainable long term capability in this area.

TABLE 2: Recommended actions

FATF Recommendations	40+9	Recommended Action (in order of priority within each section)
		<ul style="list-style-type: none"> • A shared understanding or policy in relation to addressing financial crime needs to be developed between the Niue Police, the FIU and CLO so that they are able to work together to respond in a coordinated, timely and effective manner to cases or to suspicious financial activity if and as it occurs
3. Preventive Measures – Financial Institutions		
Risk of money laundering or terrorist financing		
Customer due diligence, including enhanced or reduced measures (R.5–8)		<ul style="list-style-type: none"> • The authorities should widen the scope of the FTRA to include the activity of lending to ensure that CDD requirements would be required to be undertaken when the money value transmitter was providing the service of lending. Consideration should also be given to the recognition of other entities which are undertaking activities within the scope of the FTRA but have not been recognised as financial institutions by the authorities. • The authorities should amend the FTRA or other laws to bring the CDD requirements into line with the requirements of recommendation 5. Those amendments should include provisions for CDD to be undertaken when carrying out occasional transactions that are wire transfers and where there are doubts about the veracity or accuracy of previously obtained identification data; provide for financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner to ensure that the financial institution is satisfied that it knows who the beneficial owner is and for financial institutions to understand the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer. • The authorities should include explicit requirements for financial institutions to conduct on-going due diligence on the business relationship, including scrutiny of transactions to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary, the source of funds; and to ensure that CDD documents, data or information is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships • Consideration should also be given by the authorities to providing for a risk-based approach in the FTRA. Financial institutions should be required to perform enhanced CDD for higher risk categories of customer, business relationship or transaction and may be allowed to apply reduced or simplified CDD where the risks are low. The provisions for reduced or simplified CDD should be

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<p>restricted to countries that Niue is satisfied have effectively implemented the FATF Recommendations.</p> <ul style="list-style-type: none"> • Authorities should expressly require financial institutions to undertake CDD on anonymous accounts which existed on the commencement of the FTRA but which appeared to the financial institution to be the true name of the account holder and to apply CDD requirements to existing customers on the basis of materiality and risk. • The authorities should provide a full definition of a PEP in accordance with the FATF Recommendations and require financial institutions to obtain senior management approval to continue a business relationship where a customer or beneficial owner has been accepted and is subsequently found to be a PEP. • Although correspondent banking relationships do not exist at present there is no legal provision to prohibit the use of such relationships. The authorities should include provisions for controls over correspondent banking relationships in the FTRA. • The FTRA does not provide for the misuse of technological developments or for non-face to face business. Measures to manage both of these provisions have been effectively achieved at present as the use of technology such as electronic banking, ATMs and EFTPOS has not reached Niue and all business is currently undertaken on a face to face basis. However, there are no legal provisions to prohibit financial institutions from undertaking business on a non-face- to-face business.
Third parties and introduced business (R.9)	Recommendation 9 is not applicable as the FTRA does not permit financial institutions or other third parties to perform some of the CDD requirements of the FTRA.
Financial institution secrecy or confidentiality (R.4)	Secrecy provisions do not currently operate to prevent competent authorities accessing and sharing information, conducting criminal or proceeds of crime investigations or providing mutual assistance in respect of ML or TF offences.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • The authorities should consider providing for the records to be kept for longer than the 6 years specified if requested by a competent authority and in a manner that when called upon they can be retrieved in a timely manner. • The competent authorities should issue detailed requirements, consistent with international standards, to ensure that wire transfers are accompanied by accurate and meaningful originator information through the payment chain. • Although the Niue domestic bank operates the SWIFT and Western Union systems, which have mandatory fields in respect of originator information, there is no detailed instruction in the FTRA as to what constitutes full originator information.

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> • The competent authorities should require the beneficiary financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must cover, whether a wire transfer or related transactions without complete originator information are suspicious enough to be reported to the CIFIU, and whether the beneficiary financial institutions should consider restricting or terminating relationship with financial institutions that do not comply with SR.VII. • The authorities should conduct examinations in order to assess the effectiveness of the procedures of both financial institutions.
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Consideration should be given to amending the FTRA to provide for financial institutions to make available their findings of complex, unusual large or unusual patterns of transactions to auditors. Effectiveness of arrangements to comply with the detailed obligations of the monitoring requirements of the FTRA has not been verified by the FIU through compliance monitoring. • Consideration should be given to providing financial institutions with information on the public documents issued by FATF in respect of countries whose AML/CFT frameworks are considered to be weak. • Consideration should be given to providing the FIU with a power to issue notices which would require financial institutions to give special attention and conduct enhanced CDD where relationships are or have been established with persons from countries with which the FIU has concerns. These notices should be mandatory in nature. • Consideration should also be given to implementing legislation which would provide for the authorities in Niue to apply counter-measures against jurisdictions which do not sufficiently meet the FATF Recommendations.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<ul style="list-style-type: none"> • The FTRA should be amended so as to impose an obligation to report when a financial institution suspects that funds are the proceeds of crime or related to terrorist financing. • The remaining FATF predicate offences should be incorporated into an amended FTRA, and in further guidance to financial institutions. • Tax matters and other suspicious transactions related to any criminal act should be clarified in FTRA, and in further guidance to financial institutions to remove any doubt or confusion caused by the current wording. • Niue should undertake measures to enhance compliance with STR reporting requirements by financial institutions, including active monitoring and supervision.

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> • Niue’s FIU should establish internal guidelines and procedures to provide consistent, timely, and appropriate feedback to financial institutions on STR reporting to enhance the effectiveness of the reporting regime.
<p>Cross Border Declaration or disclosure (SR IX)</p>	<ul style="list-style-type: none"> • Recognise the need for Niue Customs, Police and Immigration to develop policy and procedures and to acquire specialist equipment to enhance the delivery of service. There is strong desire to improve the effectiveness of the Niue Customs, Police and Immigration to build capacity and capability across a broad range of delivery areas. • Address identified training deficiencies of Niue Customs, Police and Immigration, and undertake a training needs assessment to identify and focus on key training needs to enhance the effectiveness of Custom functions. • Develop an IT platform to enhance efficiencies and provide the ability to monitor and analyse border activities. • Obtain equipment to assist with the inspection of luggage and cargo at the Hanan International Airport, in particular an x-ray machine at the arrival area and training to enhance the ability to detect cross border movement of cash and NBI. • Finalise the amended border declaration documents for printing and distribution, to replace the existing documents. • Provide appropriate training to Authorised Offices about their responsibilities under the Act including the identification of NBI to enhance their ability to detect the movement of currency. • Amend the FTRA to ensure that corporate entities be captured and sanctioned when involved in any physical transportation of cash or NBI across the border. • Amend the FTRA to ensure that false declaration is captured and that appropriate sanctions are provided. • Amend the FTRA to provide Authorised Officer’s express powers to question any person about the source, use and destination of any cash or NBI, and any appropriate sanctions for failure to comply or provide an answer to any questions by an Authorised Officer. • Amend the FTRA to ensure that specific search powers are provided to allow the search of cargo and mail for the purpose of interdiction of cash or NBI including the ability to search any “receptacle” crossing the border and unaccompanied cargo or mail. • Develop a policy and procedure document regarding the allocation of responsibilities, due process when undertaking a search of a luggage, article, carryon bags, etc. including search of persons, due process when processing an arrest and detaining or seizing any cash or NBI including the security of any cash or NBI.

TABLE 2: Recommended actions

FATF Recommendations	40+9	Recommended Action (in order of priority within each section)
		<ul style="list-style-type: none"> • Consider the monitoring and reporting requirements for inclusion of the physical movement of precious stones, metals and electronic money. • Immediately after the onsite, the FIU commenced an analysis of border movements and CTRs. This analysis identified that cash was moving through the airport undetected after being withdrawn from bank accounts for transportation outside of Niue or being deposited into domestic bank accounts, generating CTRs. Two such instances have resulted of a CTR being filed to the FIU but there was no further dissemination or consultation with Customs about the possible failure to declare the movement of the cash across the border.
Internal controls, compliance, audit and foreign branches (R.15 & 22)		<ul style="list-style-type: none"> • the obligations on financial institutions to maintain policies, procedures and controls extends to policies, procedures and controls in relation to CDD, record keeping, and the detection and reporting of suspicious transactions. • The requirements in relation to awareness raising and training of employees explicitly cover the financing of terrorism. • The requirement to appoint an AML/CFT compliance officer stipulates that the officer be at a management level and includes provisions relating to a compliance officer's access to records and independence. • A requirement that financial institutions maintain an adequately resourced and independent AML/CFT audit function is included. • To include the requirements of Recommendation 22. • The FIU should actively monitor financial institutions (including conducting regular examinations) to ensure that they comply with these obligations (see Recommendation 23).
Shell banks (R.18)		<ul style="list-style-type: none"> • The requirements of Recommendation 18 are not included in Niuean legislation. Legislation should be amended or enacted so as to fully include all aspects of Recommendation 18
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"> • Adequate powers are available to the FIU to monitor compliance, conduct onsite examinations and obtain necessary information to carry out AML/CFT supervision. The effectiveness of these powers is compromised by the absence of regular collection and monitoring of offsite AML/CFT compliance information and the lack of onsite examinations. • The FIU should commence a program of onsite and offsite supervision of all financial institutions as a matter of urgency. • The FTRA has a range of sanctions available to be exercised over financial institutions but these are not applicable to all AML/CFT obligations.

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> • The FTRA should be amended to include sanctions for non-compliance with sections 13, 18 and 19 (namely failing to maintain procedures; failing to prepare and submit written statements, failing to monitor transaction; and failing to include originator information on funds transfers). • The only sanctions available are criminal penalties and imprisonment. The Niuean authorities should consider establishing a wider range of sanctions, including proportionate administrative sanctions such as administrative fines or compliance orders. • The Niuean authorities should consider amending the FTRA to allow for sanctions to be applied to directors and senior management of bodies corporate. • No AML/CFT compliance sanctions have been imposed to date. This is not supervising, given that no supervision has been undertaken in order to identify compliance deficiencies. • The FTRA should be amended so that it is clear who is responsible for supervising entities in relation to AML/CFT requirements. Taking into account the scale of the financial service sector in Niue, this should ideally be one single agency. • The Niuean authorities should consider establishing through legislation a register of financial service providers to ensure the FIU has sufficient information to identify all parties that fall within the definition of financial institution. At a minimum, all MVT and money exchange business should be subject to a mandatory registration requirement. The registration framework should provide effective penalties for any entities carrying on such business that are not registered, and provide grounds for deregistration including for wilful failure to comply with AML/CFT requirements or upon conviction for certain offences including crimes relating to fraud, dishonesty or ML and FT. • The FIU should also consider establishing working arrangements with the Registrar of Corporations to identify all businesses in Niue that are licensed as businesses to provide any type of financial service that would be subject to the FTRA. • The FIU should also determine whether the Niuean Development Bank is captured by the FTRA. • The Niuean authorities should provide in legislation for powers to prevent criminals or their associates from holding or being beneficial owners of a controlling interest in or being a senior manager or director of a financial institution. They should consider introducing fit and proper person requirements for all such persons. • The FIU should as soon as possible carry out onsite and offsite compliance monitoring regarding the effectiveness of arrangements established by financial institutions to implement obligations set out in the FTRA.

TABLE 2: Recommended actions

FATF Recommendations	40+9 Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> • The FIU should implement regular collection and offsite monitoring of AML/CFT compliance information, for example through annual reports by each subject entity, and requiring copies of annual internal or external audit reports on AML/CFT compliance and procedures. These reports should supplement the compliance information derived from onsite examinations to monitor effectiveness of arrangements for compliance with AML/CFT requirements. • The Niuean authorities should consider whether additional legislative and supervisory arrangements will be required to effectively monitor and supervise on a consolidated basis the risks arising from the establishment of any foreign subsidiaries, branches or offices of Niuean financial institutions. • The FIU should issue detailed guidelines to assist financial institutions to effectively comply with all the AML/CFT requirements under the FTRA. • Resources: The FIU should consider staffing and resourcing requirements as soon as possible to provide sufficient resources to effectively conduct on and offsite AML/CFT supervision for all financial institutions and ensure compliance with the FTRA. This should include training for staff in relation to conducting onsite examinations and other aspects of AML/CFT supervision. • Having additional staff within the FIU would also mitigate any perception of lack of impartiality arising from the Head of the Financial Intelligence Unit's family connections with a financial institution. A larger FIU would enable this to be dealt with through allocation of work to different members of staff.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • The informal MVT sector appears negligible. However, Niuean authorities should clarify the operation of the licensing and registration regime, including stipulating who will authorise such businesses and on what conditions. • Section 238 of the FTRA should be amended so that informal MVTs are subject to all the obligations in that Act and are required to maintain a list of agents.
4.Preventive Measures – Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p>It is recommended that the FIU explicitly provide in the FTRA the requirement to collect information on the beneficiaries and to ascertain the beneficial owners of trusts. The FIU should consider as a matter of priority meeting with the DNFBPs in order to be aware of the activities being undertaken; to advise them of the provisions of the FTRA which apply to them and provide them with guidance on how they can meet the AML/CFT requirements.</p>

TABLE 2: Recommended actions

FATF Recommendations	40+9	Recommended Action (in order of priority within each section)
Suspicious transaction reporting (R.16)		In addition to the comments set out in relation to Recommendation 13, 14 and 15, the FIU should as a matter of urgency determine whether the potential DNFBPs in Niue are captured by the FTRA.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)		There are at least 2 possible DNFBPs that have been established in the past 6 to 12 months. The FIU should as a matter of urgency determine whether these businesses are captured by the FTRA. If so, guidelines for DNFBPs should be developed and published.
Other designated non-financial businesses and professions (R.20)		The Niuean authorities should investigate the viability of modern and secure techniques for conducting transactions.
5. Legal Persons and Arrangements & Non-profit Organisations		
Legal Persons–Access to beneficial ownership and control information (R.33)		<ul style="list-style-type: none"> • Require information on beneficial ownership and control of legal person to be provided at registration and when there is a change of ownership, directors or senior managers. • Develop measures to collect information on beneficial ownership and control of legal person. • Niue should develop measures to prevent the unlawful use of legal persons and enhance transparency to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons. • Niue should raise awareness with and train its authorities.
Legal Arrangements–Access to beneficial ownership and control information (R.34)		<ul style="list-style-type: none"> • Niue should collect information on beneficial ownership and control of legal person in registration and change of stakeholders. • Niue should develop measures to collect information on beneficial ownership and control of trusts. • Niue should develop measures to prevent the unlawful use of trust and enhance transparency. • Niue should raise awareness with and train its authorities.
Non-profit organisations (SR.VIII)		<ul style="list-style-type: none"> • Review legislation and regulations affecting NPOs and consider their adequacy in preventing abuse of the sector for terrorist financing. • Use all available sources of information to review existent NPOs, and obtain timely information that could identify the features and types of NPOs in Niue. • Undertake outreach/awareness raising to NPOs on the risks of TF and available measures to protect the sector. • Undertake outreach/awareness raising to NPOs promoting transparency, accountability, integrity, and public confidence in the administration and management of NPOs. • Review the dimensions of sector, including the numbers and

TABLE 2: Recommended actions

FATF Recommendations	40+9	Recommended Action (in order of priority within each section)
		<p>types of NPOs, the distribution of financial resources, and international activities.</p> <ul style="list-style-type: none"> • Conduct supervision and monitoring of the NPO sector, including enforcement of annual reporting obligations for registered NPOs and employment of available sanctions for non-complying societies. • Introduce mandatory registration or licensing for all NPOs. • Introduce a specified period for registered societies to keep the full records of their administration and management, including financial and programmatic information. • Conduct investigation on occasions where a case of maladministration, or abuse of an NPO, is brought to the attention of authorities.
6. National and International Cooperation		
National cooperation and coordination (R.31 & 32)		<ul style="list-style-type: none"> • Niue is a small jurisdiction and meetings between the key agencies can normally be arranged as needed. Information is being shared informally, but does not include all relevant agencies and may not always be done in a timely manner. • Niue may wish to consider keeping formal minutes of meetings and records of actions arising from both policy and operational meetings.
The Conventions and UN Special Resolutions (R.35 & SR.I)		<ul style="list-style-type: none"> • Niue has joined the UN Convention for Suppression of Terrorism Financing, 1999. It has not joined or registered with the Vienna and Palermo Conventions. • In order to meet the standards Niue should join the Vienna and Palermo Conventions. • A number of technical issues with the operation of the ML, TF, POCA and MACMA regimes have been identified elsewhere in this report and should be addressed to ensure effective implementation.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)		<ul style="list-style-type: none"> • Ensure that policy or procedure exists for clear and efficient processes for the execution of MLA requests and provide clarification of processes and roles. • Put in place a mechanism for avoiding conflict of jurisdiction. • Demonstrate through use of the provision how the AG is not made subject to unreasonable or unduly restrictive conditions. • To make clear whether dual criminality would impede the application of less intrusive and non-compulsory measures. • To extend the scope of coverage of MLA to instruments that are intended to be used in an offence by a person other than one convicted of the offence and to confiscation of property of corresponding value. • Consider operational mechanisms for sharing assets forfeiture

TABLE 2: Recommended actions

FATF Recommendations	40+9	Recommended Action (in order of priority within each section)
		funds with other countries. <ul style="list-style-type: none"> • Consider Putting in place coordination mechanisms with other countries for provisional measures and confiscation. • Niue should consider for assets forfeiture funds and operational mechanism for sharing with other countries.
Extradition (R. 39, 37, SR.V & R.32)		<ul style="list-style-type: none"> • Ensure that it is able to consider and, as appropriate, grant extradition requests to the widest range of jurisdictions. To achieve this Niue should consider additional treaties or undertakings to cooperate on extradition with a broad range of jurisdictions. • Provide for legal provision to prosecute in lieu of extradition. • Ensure further procedural and internal measures to face any request in a timely and effective way.
Other Forms of Cooperation (R. 40, SR.V & R.32)		<ul style="list-style-type: none"> • Consider empowering other agencies, beyond FIU too, for providing their cooperation to foreign counterparts. • Have express provisions to safeguard the information received from foreign agencies. • Keep statistics in systematic manner
7. Other Issues		
Other relevant AML/CFT measures or issues		

ANNEX 1: AUTHORITIES' RESPONSE TO THE ASSESSMENT

**GOVERNMENT OF NIUE RESPONSE TO THE APG NIUE MUTUAL EVALUATION
REPORT 2012 AS PROVIDED TO THE PLENARY OF THE ASIA PACIFIC GROUP
ANNUAL MEETING 19 JULY 2012**

The Niue delegation wishes to thank the Government of Australia for hosting this meeting and to thank the people of Brisbane for their warm hospitality.

The Government of Niue appreciates the important contribution the APG continues to make in the international fight against money laundering and terrorist financing. Niue would like to further express its gratitude to the APG Mutual Evaluation team for its commitment and valuable contribution to Niue's ongoing AML/CFT efforts. The Niue authorities found the experience invaluable and appreciated the open and honest manner in which the Mutual Evaluation was conducted.

Whilst the risks and opportunities to conduct money laundering and terrorist financing on Niue are low as acknowledged by the Mutual Evaluation team, the government considers it important to have an AML/CFT regime which is robust and effective, so as not to attract money laundering or terrorist financing activity. As stated during the on-site visit, Niue does not wish to be a weak link in the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism in the Asia Pacific region or worldwide.

The Niue Government therefore remains committed to ensuring it has a robust AML/CFT framework including the development of a legal and regulatory regime that will ensure ongoing high level compliance with the FATF 40 +9 Recommendations.

At the same time, any evaluation must also take into consideration that Niue is a Small Island State; even by Pacific island standards, it is small. It has a tiny population – 1500 people, and tiny economy with little in the way of characteristics that may attract money laundering or terrorist financing activity.

It is therefore most important that Niue's AML/CFT regime, in being robust and effective, is also risk-focused, proportionate, workable and cost-effective having regard to Niue's size, circumstances and resources. This approach also appears consistent with the February 2012 FATF Recommendations and Niue fully supports this approach given the low risk.

The government is currently undertaking a review of Niue's transactional banking services and requirements, and of the legislative and regulatory regime for financial services generally. The Niue government is including the AML/CFT regime in this work. Legislative changes, including to the AML/CFT regimes, will include changes following on from this evaluation and decisions the Niue government will make in this context.

Comments of the Niue Government on particular aspects of the Mutual Evaluation Report

We make some specific comments on Niue's position referred to in the report and for all APG members and observers who read this report to recall this when considering Niue's report:

- In 2002 and 2006 respectively Niue closed its offshore bank registry and international business companies registry which were key parts of Niue's earlier international banking regime.

- Niue previously had just under 10,000 IBCs registered and of this only 10 have applied for restoration to the new companies regime. While Niue has re-registered 10 former international business companies, these are subject to Niue's ordinary laws and only 4 remain active on the registry. It is also worth noting that there are two ways former IBCs may re-register; the first option is through the Registrar and the second is an application made at the Niue High Court. The Registrar requires that all applications for restoration are to be made by application to the High Court and the 10 companies that have gone through this process have applied to the High Court before being permitted to apply to the Companies registry. Niue neither markets nor encourages offshore companies to register under its new companies registry. There are less than 50 companies currently registered with the Niue Companies Office and less than 30 non-profit organisations registered at the Incorporated Societies Registry.
- Niue currently has only two financial institutions: one commercial bank that is a branch of a Pacific regional bank, and one remittance service that sends and receives funds primarily with New Zealand. There are three more possible financial institutions that may be included under the supervisory and reporting framework.
- There are no insurance companies as insurance is extremely difficult to obtain (and if it is, it is from New Zealand) and almost all homes and businesses do not have insurance, and this includes life insurance.
- There are no casinos (including internet based casinos) and no dealers in precious metals and dealers in precious stones.
- There are no real estate agents and particular emphasis is on the fact that Niuean land cannot be bought or sold and any leases of land are legally required to be registered with the Niue Land Court Registry.
- There is no exchange for the trading in securities or assets, or the buying and selling of businesses.
- There is no logging, or mining industries.
- As the APG Mutual Evaluation team points out in its report, there are no high value or luxury goods sold in Niue as these are generally purchased offshore and imported. Neither are there any auction houses or investment advisors because as stated in the draft report, with securities and insurance sectors, the size of the Niuean economy does not provide a commercially viable basis for the local provision of these services.
- In terms of access Niue is not a transit stop for airlines or shipping services. Niue has one commercial airline flight per week operated by Air New Zealand using an Airbus A320 that originates and ends in Auckland, New Zealand. There is one shipping service for supplies from Auckland, New Zealand although it also calls into neighbouring countries of the Cook Islands and Tonga.
- Niue's national budget is \$US16m.

Niue wishes to report the following updates since the Mutual Evaluation Report:

- A banking advisor has been engaged to assist not only its transactional banking review but also with the AML/CFT legal framework;
- Niue has, as received by the depository on 16 July 2012, acceded to both the Palermo and Vienna Conventions;

- An intelligence officer has been appointed to the FIU so that there are now two officers and this addresses concerns raised in the report;
- The Niue FIU has received CTRs from the one commercial bank (total of 529 over 5 months) some of which are still under analysis by the FIU;
- The immigration passenger arrival and departure forms that include the border cash reporting requirements are being printed and these are planned to be distributed within the next two months. In the interim, customs officers will ask each passenger during usual processing on the border cash requirements;
- The FIU will also issue new reporting forms for better compliance as these are simpler and designed for easier reporting. New Border Cash Report forms have been issued to customs and are at the ports ready for use;
- Another development that is not strictly part of the AML/CFT reporting process under the APG ME mandate is the passing of the Income Tax Amendment Act 2012 by the Niue Assembly on 16 July 2012. This amendment will enable Niue to enter into Tax Information Exchange agreements and further enhances Niue's ability to exchange tax information relating to money laundering and terrorist financing.

ANNEX 2: DETAILS OF ALL BODIES MET DURING THE ONSITE VISIT

Public Sector

1. Niue Monetary Board
2. Chief of Police
 - Chief Immigration Officer
 - Head of Customs
3. Crown Law Office
 - Head of Niue FIU
 - Acting Secretary to Government
4. Customs
5. External Affairs
6. Premier of Niue
 - Minister of Finance
7. Justice Department
 - Acting Financial Secretary, Treasury
 - Registrar of High Court
 - Registrar of Trusts
 - Registrar for Incorporated Societies
8. Niue Public Service Commission
9. Acting Registrar of Companies
10. Solicitor-General
11. Tax Office
12. Treasury/Ministry of Finance

Private Sector

13. Accounting Firm
14. Commercial Bank
15. Development Bank
16. Alternative remitter (Travel Agency)

ANNEX 3: LIST OF ALL LAWS, REGULATIONS, AND OTHER MATERIAL RECEIVED

Key legislation provided

1. Administration Act 1969
2. Assembly Members Interests Act 2006 Act 284
3. Aviation Crimes Act 1973
4. Aviation Crimes Amendment Act 2006 Act 283
5. Business License Act 2011 Act 307
6. Chemical Weapons Act 2007 Act 289
7. Companies Amendment Act 2006 Act 282
8. Extradition Act 2007 Act 292
9. Financial Transactions Reporting Act 2006 Act 278
10. Income Tax Act 1961
11. Misuse of Drugs Act 2007 Act 288
12. Mutual Assistance in Criminal Matters Act 1998
13. Mutual Assistance in Criminal Matters Amendment Bill – DRAFT
14. Niue Act 1966
15. Niue Bank Act 1994
16. Niue Trust Fund Amendment Act 2010 Act 306
17. Proceeds of Crime Act 1998
18. Proceeds of Crime Amendment Act 2007 Act 291
19. Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction Act 2007
20. Public Service Regulations 2004
21. Statistics Act 2009 Act 301
22. Terrorism Suppression and Transnational Crimes Act 2006 Act 280
23. Terrorism Suppression and Transnational Organised Crime Amendment Bill - DRAFT
24. United Nations Act 1946

Key regulations provided

1. Best Practice Guidelines for Financial Institutions July 09
2. United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2004