



Anti-money laundering  
and counter-terrorist  
financing measures

# Cook Islands

Mutual Evaluation Report

September 2018





The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

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This mutual evaluation report was adopted by the APG at its annual meeting in July 2018.

Citing reference:

APG (2018), *Anti-money laundering and counter-terrorist financing measures – Cook Islands*, Third Round Mutual Evaluation Report, APG, Sydney

<http://www.apgml.org/includes/handlers/get-document.ashx?d=efd47cd0-a195-4e71-8eb0-0612f98caf61>

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## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in the Cook Islands as at the date of the on-site visit, 20 November to 1 December 2017. It analyses the level of compliance with the Financial Action Taskforce 40 Recommendations and the level of effectiveness of the Cook Islands' anti-money laundering/counter terrorist financing (AML/CFT) system and provides recommendations on how the system could be strengthened.

### *Key Findings*

2. The Cook Islands has established a well-functioning framework to conduct risk assessments, translate the findings into legislative and policy decisions and raise awareness across agencies and the private sector.

3. Abuse of legal persons and arrangements remains the key money laundering / terrorist financing (ML/TF) vulnerability for the Cook Islands and is appropriately a primary area of focus for the Financial Intelligence Unit (FIU) and Financial Supervisory Commission (FSC) in their AML/CFT efforts.

4. The pursuit of ML and proceeds of crime derived from domestic offending is inadequate, with limited use of financial intelligence and analysis by law enforcement agencies (LEAs).

5. There have been improvements made to the Cook Islands' AML/CFT supervisory framework since its last mutual evaluation. One of these changes was the implementation of the requirement for Reporting Institutions (RIs) to assess their ML/TF risk and implement risk-based measures accordingly.

6. Competent authorities in the Cook Islands are actively engaged with foreign counterparts, relevant international bodies, legal instruments and networks. This is in recognition of the fact that the most significant ML/TF risks in the Cook Islands come from proceeds of crime generated overseas. While the use of mutual legal assistance (MLA) is still not fluent, the Cook Islands is constructive and timely in responding to requests for information or assistance, including MLA, from foreign counterparts.

7. With a low level of risk identified for TF, the Cook Islands has scope for improvement in the level of vigilance and preparedness demonstrated by law enforcement agencies (LEAs) on terrorism and TF issues. However, it has implemented an appropriate framework to identify persons and entities designated under relevant United Nations Security Council resolutions (UNSCRs); and to consider foreign requests for designation and to de-list entities.

### *Risks and General Situation*

8. The Cook Islands' ML/TF risks arise to a large extent from its international exposure through its offshore/international financial sector<sup>1</sup>. The 2015 National Risk Assessment (NRA) identified the layering of the proceeds of foreign predicate offences through the Cook Islands offshore financial sector (banks and trust and company service providers (TCSPs)) as the main ML/TF threat. The Cook Islands offshore financial sector offers some legislated protections in relation to privacy and asset protection against creditor claims. These elements contribute to the attractiveness of the Cook Islands' offshore financial sector but also amplify the risk of ML/TF. Other threats identified included corruption, drug trafficking and organised crime groups operating within the Cook Islands.

9. The iterative approach to risk assessments pursued by the Cook Islands is evidence of a mature understanding of risk. The 2015 NRA and the three targeted exercises in risk assessment conducted in 2017 are a product of, and further support for, the implementation of a risk-based approach to AML/CFT. However, LEAs understate vulnerabilities associated with capacity in competent authorities and threats posed by proceeds from domestic offences.

### *Overall Level of Effectiveness and Technical Compliance*

10. The Cook Islands' generally robust regulatory framework, tight-knit community and sharp focus on ML/TF issues amongst key agencies, such as the FIU and FSC, has resulted in a high level of technical compliance and a strong AML/CFT framework. However, there are structural deficiencies in the use of financial analysis, and the prioritisation of ML/TF and proceeds of crimes issues by LEAs.

11. Since its last mutual evaluation, the Cook Islands has enhanced regulatory oversight of licensed trustee companies (LTCs) and the banking sector. Improvements have also been made with respect to legislative provision to counter TF, including instituting a framework to identify entities designated under relevant UNSCRs.

### *Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

12. The Cook Islands has thoroughly identified and assessed its ML/TF risks, derived from a robust risk assessment process that engaged all relevant stakeholders and used appropriate methodologies to assess risks. However, competent authorities, in particular, the Cook Islands Police (CIP), understate the threats posed by proceeds from domestic offences and the vulnerabilities posed by limited resourcing and capacity in competent authorities.

13. At a policy level, national coordination has been effective in securing AML/CFT legislative reform and there is strong support from senior government officials for AML/CFT efforts. At an operational level, cooperation between agencies is strong but infrequently directed towards the deliberate mitigation of ML/TF risks identified in the NRA.

14. There are some deficiencies in the Cook Islands' risk assessment exercises, which should be addressed. These include assessing risks associated with cyber-enabled financial crime including business email compromise, and employee theft/fraud as a discrete threat; and an assessment of vulnerabilities within the competent authorities. The threat to ML/TF posed by organised crime groups operating within the Cook Islands should be reassessed to incorporate the competent authorities' more developed understanding of this issue.

15. The Cook Islands' new National AML/CFT Strategy provides practical measures to improve active mitigation of ML/TF risks.

<sup>1</sup> Offshore financial sector and international financial sector are used interchangeably throughout this report.

*Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

16. The FIU provides quality financial intelligence and other relevant information to LEAs in a timely manner, however, there has been minimal use of financial intelligence to investigate ML/TF or predicate offences by LEAs. This is due to the lack of focus LEAs place on conducting financial investigations and limited capacity in relation to financial investigations.

17. The FIU obtained investigative powers with the passage of the FIU Act 2015, but the use of these powers to collect information to an evidentiary standard is only pursued on a limited basis.

18. The volume of suspicious transaction reports (STRs) is reasonable and largely in line with identified ML/TF risks, with the exception of the lack of STRs received from the legal and LTC sectors. The quality of STRs received is sufficient for the FIU to initiate and support its operational analysis. However, there is no established mechanism for feedback on STRs from the FIU to RIs or LEAs.

19. Not all reporting institutions (RIs) were able to report electronically at the time of the on-site, which limited the FIU's ability to conduct real-time operational analysis and limited strategic analysis.<sup>2</sup> There were problems with the uploading of batch files, however, those affected RIs were reporting via email.

20. There is little evidence that the two operational-level coordination bodies, the Cook Islands Combined Law Agency Group (CLAG) and the Cook Islands National Intelligence Taskforce (CINIT), regularly discuss financial intelligence disseminations, ML or asset confiscation matters.

21. The Cook Islands has not demonstrated effectiveness in investigating and prosecuting ML in line with its risks. In particular, there is one ML investigation (currently ongoing) in response to domestic laundering of foreign proceeds of crime, which has been assessed as posing a high-risk.

22. There is negligible activity related to detection, restraint and confiscation of criminal proceeds, instrumentalities or property of equivalent value. Missed opportunities to confiscate proceeds are evident in the four ML investigations and investigations of predicate offences.

23. The low level of confiscation activity is not in line with the assessments of ML risk, which rated risks posed by the offshore financial sector as medium, with several proceeds-generating crimes presenting a medium level threat such as bribery and corruption, drug trafficking, illegal fishing, and fraud presenting a high-level threat.

24. Criminal sanctions for ML are not proportionate compared to other serious crimes, which may be a factor in the negligible level of ML investigations (see R.3).

*Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

25. The Cook Islands has a low risk for TF and a reasonable legal framework to prosecute TF activities under the Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004 (CTPA) and an inter-agency Terrorist and Terrorist Financing Action Plan (Action Plan).

26. There has been no investigation, prosecution or conviction of TF in the Cook Islands, which is consistent with the Cook Islands' TF risk profile.

27. The recently adopted Action Plan contains a response framework that extends to TF but focuses on terrorist events taking place in the Cook Islands.

<sup>2</sup> This has since been rectified and the FIU's database now allows for online reporting.  
Anti-money laundering and counter-terrorist financing measures in the Cook Islands 2018 © APG 2018

28. The Cook Islands has implemented an appropriate framework to identify persons and entities designated under relevant UNSCRs and to consider foreign requests for designation and to de-list entities; despite minor technical deficiencies.

29. Despite the low TF risk posed by Cook Islands Non-Profit Organisations (NPOs), the FIU has a history of robust engagement with its NPO sector, including raising awareness of possible TF risks with select NPOs.

30. High-risk RIs in the Cook Islands have the necessary systems in place to implement targeted financial sanctions (TFS) without delay. While specific awareness of the requirement to freeze funds under the CTPA was not universal, most high-risk RIs conduct regular or ongoing screening using commercial sanctions databases and indicated during interviews that they would immediately contact the FIU in the event of a sanctions match.

31. There are moderate deficiencies in the Cook Islands' legal framework to implement TFS related to the financing of the proliferation of weapons of mass destruction (PF), as set out in the TC Annex (R.7).

32. The key vulnerability for the Cook Islands in relation to TFS related to PF is the Cook Islands' shipping registry. The registry provider, Maritime Cook Islands (MCI), has recently become subject to a Regulation which classifies it as an RI (it was previously not subject to any AML/CFT obligations) with limited CDD requirements.

33. No supervision has been undertaken in relation to RIs implementation of TFS obligations against PF.

#### *Preventive Measures (Chapter 5 - IO4; R.9-23)*

34. The Cook Islands has a sound legal and regulatory framework for preventive measures, however as the Financial Transactions Reporting Act 2017 (FTRA 2017) was enacted in June 2017, many RIs are yet to implement the more comprehensive set of obligations contained in this Act. Most high-risk RIs have implemented appropriate mitigating measures, with banks, LTCs and the money or value transfer service (MVTs) provider agreeing to enter into voluntary compliance ahead of the passage of the FTRA 2017.

35. In some instances, RIs have demonstrated a preference for avoiding risk rather than applying enhanced measures, which, while adverse for financial inclusion, occurs in the context of the Cook Islands with industry seeking to avoid reputational damage and maintain confidence in the Cook Islands.

36. Implementation of customer due diligence (CDD) measures is mostly sound, particularly across RIs with higher levels of ML/TF risk, however, LTCs have difficulties monitoring the transactions of the legal persons and assets held by international legal arrangements administered by them, which is a weakness. Identifying beneficial ownership is a key challenge for most RIs operating in the international sector, especially where complex structures and foreign ownership are involved. LTCs are also challenged by, and refuse business if they cannot obtain appropriate due diligence information on, the underlying ownership and management of an asset.

37. RIs face challenges identifying the families and close associates of domestic politically exposed persons (PEPs), given the context of a small jurisdiction where 'everyone is related to everyone'.

#### *Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

38. There is a sound licensing framework for financial institutions (FIs) and LTCs, including fit and proper requirements to prevent criminals and their associates from operating within these



sectors. In respect of other designated non-financial businesses and professions (DNFBPs), there are some limitations in the market entry requirements for lawyers and no licensing or fit and proper requirements for lower risk DNFBPs (accountants, real estate agents and pearl dealers). Casinos are prohibited in the Cook Islands.

39. There has been limited supervisory activity conducted under the FTRA 2017, which came into effect in July 2017. However, AML/CFT examinations prior to this date were conducted pursuant to the FTRA 200 and covered most preventive measure obligations as required under the FATF standards.

40. The FIU has issued warning letters and required businesses to prepare action plans, but has not applied other forms of remedial sanctions. While the assessment team did not identify any significant breaches that may have warranted such action, the implementation of the more comprehensive suite of preventive measures and supervisory activity under the FTRA 2017 has been limited to date. The FSC has applied notable and dissuasive sanctions, including the cancellation of insurance business licences, directing an LTC to remove a Principal and placing conditions on a bank, preventing it from conducting further transactions while it was being evaluated.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

41. Abuse of legal persons and arrangements in the Cook Islands' offshore financial sector has been assessed as the primary ML/TF threat faced by the jurisdiction. However, there is little evidence to indicate that actual levels of abuse of legal persons and legal arrangements are high. The assessment of risk flows from the vulnerability posed by the offshore financial sector.

42. Use of international legal persons and arrangements are subject to robust supervision by the FSC and the FIU due to the requirement that only LTCs, which are RIs, may form, register and manage these entities. The Cook Islands' regulatory regime and supervision constitute strong mitigating measures to reduce the risk of ML/TF related abuse of legal persons and arrangements.

43. Competent authorities are able to obtain access to basic and beneficial ownership information on almost all legal persons and arrangements in a timely manner through CDD collected by RIs. However, understanding of beneficial ownership varies across competent authorities and RIs.

#### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

44. The Cook Islands provides constructive and timely information and assistance when requested by other countries. The number of requests received by the Cook Islands is commensurate with the size of the Cook Islands financial sector, and risks of ML/TF. All formal requests are dealt with on an urgent basis and the processes for the execution of requests are clear.

45. The Cook Islands use their informal and treaty-based cooperation framework, as opposed to formal legal assistance mechanisms such as MLA, in their AML/CFT efforts. There have no MLA requests prompted by the CIP or other LEAs, except the FIU. This is likely due to reliance or preference by LEAs to use their informal and treaty-based cooperation framework. Moreover, LEAs are not sufficiently focused on transnational criminal threats to consider MLA as a useful tool in investigations.

46. The Cook Islands is extensively engaged in international and regional organisations and utilises those forums appropriately, particularly in relation to supervision and licensing. Limited domestic activity in relation to ML/TF means these networks have not been utilised to that end. Certain agencies in the Cook Islands, such as FSC, FIU, Revenue Management Division (RMD) (Tax and Customs) routinely share information with foreign counterparts.

*Priority Actions*

47. The prioritised recommended actions for the Cook Islands, based on these findings, are:
- i. Improve the capacity and practice, including through training and standard operating procedures, of LEAs and judges in relation to confiscation of the proceeds and instrumentalities of crime, with a particular focus on restraining property of equivalent value. In particular, RMD (Tax and Customs) should increase coordination with the FIU and LEAs to ensure proceeds of crime actions related to tax and customs are pursued where possible.
  - ii. Pursue parallel investigations into ML for offences with substantial proceeds of crime. In particular, CIP should build institutional capacity to investigate ML and establish policies and procedures that embed ML and Proceeds of Crime Act 2003 (POCA) considerations into investigative strategy.
  - iii. Competent authorities should improve awareness amongst LEAs to identify abuse of legal persons and arrangements.
  - iv. Authorities should consider working with RIs to enhance their understanding of beneficial ownership, and family members and close associates of domestic PEPs.
  - v. Authorities should supervise RIs compliance with TFS obligations and amend the deficiencies in the Cook Islands' legal framework to implement TFS related to PF.
  - vi. LEAs, particularly the CIP, should ensure MLA requests and international information sharing are part of the investigation process, as appropriate. This may involve training investigators, prosecutors and judges on international cooperation in order to increase the use of MLA and extradition.
  - vii. Assess the threat posed by cyber-enabled financial crime and review the assessment of vulnerabilities within competent authorities.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

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

### Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

<b>R.1</b> - Assessing risk & applying risk-based approach	<b>R.2</b> - National cooperation and coordination	<b>R.3</b> - Money laundering offence	<b>R.4</b> - Confiscation & provisional measures	<b>R.5</b> - Terrorist financing offence	<b>R.6</b> - Targeted financial sanctions – terrorism & terrorist financing
<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.7</b> - Targeted financial sanctions – proliferation	<b>R.8</b> - Non-profit organisations	<b>R.9</b> - Financial institution secrecy laws	<b>R.10</b> - Customer due diligence	<b>R.11</b> - Record keeping	<b>R.12</b> - Politically exposed persons
<b>PC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.13</b> - Correspondent banking	<b>R.14</b> - Money or value transfer services	<b>R.15</b> - New technologies	<b>R.16</b> - Wire transfers	<b>R.17</b> - Reliance on third parties	<b>R.18</b> - Internal controls and foreign branches and subsidiaries
<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.19</b> - Higher-risk countries	<b>R.20</b> - Reporting of suspicious transactions	<b>R.21</b> - Tipping-off and confidentiality	<b>R.22</b> - DNFFBPs: Customer due diligence	<b>R.23</b> - DNFFBPs: Other measures	<b>R.24</b> - Transparency & BO of legal persons
<b>LC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.25</b> - Transparency & BO of legal arrangements	<b>R.26</b> - Regulation and supervision of financial institutions	<b>R.27</b> - Powers of supervision	<b>R.28</b> - Regulation and supervision of DNFFBPs	<b>R.29</b> - Financial intelligence units	<b>R.30</b> - Responsibilities of law enforcement and investigative authorities
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.31</b> - Powers of law enforcement and investigative authorities	<b>R.32</b> - Cash couriers	<b>R.33</b> - Statistics	<b>R.34</b> - Guidance and feedback	<b>R.35</b> - Sanctions	<b>R.36</b> - International instruments
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>
<b>R.37</b> - Mutual legal assistance	<b>R.38</b> - Mutual legal assistance: freezing and confiscation	<b>R.39</b> - Extradition	<b>R.40</b> - Other forms of international cooperation		
<b>LC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>		



## MUTUAL EVALUATION REPORT OF THE COOK ISLANDS

### *Preface*

1. This report summarises the AML/CFT measures in place in the Cook Islands as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Cook Islands' AML/CFT system and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the Cook Islands, and information obtained by the assessment team during its on-site visit to the Cook Islands from 20 November to 1 December 2017.
3. The evaluation was conducted by an assessment team consisting of:
  - Ms Human Lam, Department of Justice, Hong Kong, China (legal expert)
  - Mr 'Aminiasi Kefu, Attorney-General's Office, Tonga (legal expert)
  - Mr Li Qing, People's Bank of China (financial expert)
  - Mr Kolisi Simamao, Samoa International Finance Authority (financial expert and GIFCS representative)
  - Mr Avaneesh Raman, Fiji Financial Intelligence Unit (FIU expert)
  - Mr Michael McGillion, Australian Transaction Reports and Analysis Centre (AUSTRAC) (FIU/LEA expert)
4. The assessment process was supported by Ms Mitali Tyagi and Ms Suzie White of the APG secretariat.
5. The report was reviewed by Mr Richard Pratt, GIFCS, Ms Vanessa Jones, Ministry of Justice, New Zealand, and the FATF Secretariat.
6. The Cook Islands previously underwent an APG Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 2009 evaluation has been published and is available at [www.apgml.org](http://www.apgml.org).
7. The Cook Islands' 2009 Mutual Evaluation concluded that the jurisdiction was compliant with four Recommendations; largely compliant with 25; partially compliant with 19; and one Recommendation was not applicable. The Cook Islands was rated compliant or largely compliant with 14 of the 16 Core and Key Recommendations.
8. The Cook Islands entered the APG's second round follow-up process in 2010 under regular follow-up. While the Cook Islands made steady progress with AML reforms, no substantive progress was made in relation to the two core/key Recommendations rated PC in the 2009 MER by the time the Cook Islands exited second round follow-up in 2016.
9. The Cook Islands exited the APG's 2<sup>nd</sup> round follow-up process in 2016, in accordance with members' decision at the 2013 Annual Meeting (to phase out the APG's 2<sup>nd</sup> round follow-up process in 2014 for all members on regular follow-up, including the Cook Islands). The Cook Islands had not achieved progress equivalent to largely compliant on the two core and key Recommendations rated PC in its 2009 MER, namely R.3 (Provisional measures/confiscation) and R.5 (CDD).



10. The Cook Islands comprise 15 small islands, spread over 2.2 million square kilometres in the Pacific Ocean, 3,010km northeast of Auckland, New Zealand and between American Samoa and French Polynesia. The latest population figure, as reported in the December 2016 census, was 17,459 residents. Rarotonga, the most populous island, is the capital.

11. The official languages of the Cook Islands are Cook Islands Maori and English. Cook Islands Maori is spoken on the islands of Atiu, Aitutaki, Mitiaro, Mauke, Mangaia and Rarotonga, albeit with some differences in accent and vocabulary. The islands of Penrhyn, Rakahanga, Manihiki, Palmerston and Pukapukan speak other languages.

12. The Cook Islands' GDP for 2016 was NZ\$ 325 million (US\$ 214 million) and GDP per capita was NZ\$ 16,706 (US\$ 11,000). (Cook Islands Ministry of Finance & Economic Management (MFEM), 2018).

13. The Cook Islands' economy is primarily based on tourism. It also has an offshore financial services sector.

14. The Cook Islands is a parliamentary democracy, based on the UK system with Queen Elizabeth II the Head of State, represented by the Queen's Representative. The Cook Islands is a self-governing state in free association with New Zealand. Under the terms of the free association, Cook Islanders are New Zealand citizens and enjoy the right of free access to New Zealand. The Cook Islands government has full executive powers and makes its own laws.

15. The Cook Islands has a unicameral parliament with 24 elected members and a parliamentary term of four years. The Head of Government is the elected Prime Minister. There is also a 15 member House of Ariki (Chiefs) who advises the Government on land use and customary issues.

16. The Cook Islands does not have a central bank. It has its own currency, which is in circulation alongside the New Zealand dollar, and is not legal tender outside the Cook Islands. The Cook Islands dollar is pegged at par to the New Zealand dollar.

### ***Overview of ML/TF Risks***

#### ***Country's risk assessment & Scoping of Higher Risk Issues***

17. A national risk assessment was completed in March 2015 (NRA 2015) and adopted by the Cook Islands Cabinet. The NRA 2015 was supplemented by a review of Primary Threats and High-Risk Sectors (2017 Review of Risk) published in October 2017, a review of Secondary Threats and Low-Risk Sectors (Secondary Review 2017) published in December 2017 and a further assessment into international legal persons released in December 2017.

18. The main money laundering (ML) and terrorist financing (TF) threat identified by the Cook Islands relates to the abuse of its trust and company service providers (TCSP) sector, in particular, the layering of the proceeds of fraud committed abroad. Domestically, noteworthy predicate crimes in terms of ML/TF threats include corruption and bribery, and illegal fishing within Cook Islands' substantial Exclusive Economic Zone (EEZ). Other serious threats include employee theft, organised crime groups operating within the Cook Islands, and tax and duty evasion. Cyber-enabled financial crimes are emerging as a serious threat.

19. The 2015 NRA notes the level of threat and vulnerability presented by the financial sector and DNFBPs is low for domestic institutions and high for international institutions (such as the LTCs and the private bank).

1 20. During the mutual evaluation on-site visit the assessment team focussed particularly on the following high-risk issues based on the results of the 2015 NRA, discussions with the Cook Islands, open-source information and information provided by APG members:

- Governance and capacity – to understand how the Cook Islands’ authorities operate to overcome capacity constraints stemming from its small population;
- Corruption – based on a notable number of investigations against public officials including Ministers of the Crown;
- The offshore financial sector – including risks identified by the Cook Islands in relation to TCSPs and banking, and significant legislative reform during the period of assessment;
- The shipping registry – based on the Cook Islands’ own identification of proliferation financing risks associated with its international shipping register.

21. TF was a lower area of focus due to the Cook Islands’ low risk of onshore terrorism.

#### *International Trusts*

22. This report, in IO.1, IO.3 and IO.5, examines the effectiveness of the Cook Islands’ measures to understand the ML/TF risk posed by its international trusts, and measures taken to mitigate those risks. Generally, the assessment team observes the distinction between proceeds of crime being invested or laundered through Cook Islands trusts, including proceeds of tax evasion and fraud, and activities of persons seeking to obfuscate attempts by creditors in civil proceedings. In assessing the Cook Islands’ compliance with the FATF standards, this MER is limited to evaluating the former.

23. The establishment of international trusts and provision of trustee services is the primary product offered by the Cook Islands international financial sector. Protection in the Cook Islands’ legislation in relation to international trusts attracts wealthy individuals, primarily from the United States, but also increasingly from Asia, to settle trusts there for asset protection and succession planning.

24. International trusts are often used to hold investments through legal persons and can contain complex ownership structures with multiple layers of subsidiary trusts and companies. Such structures may obscure the identity of the beneficial owner and complicate the LTC’s ability to monitor the activities of its customer. Many LTCs rely on third party introducers, which presents heightened ML/TF risk.

25. The following features of the Cook Islands’ legislative framework contribute to the popularity of its international financial sector, and corresponding increase in ML/TF risks (discussed further in IO 1):

- Foreign judgements: A Cook Islands court will not recognise foreign judgements if they are based upon a law that is inconsistent with the International Trusts Act 1984 (ITA) or if they relate to a matter governed by the law of the Cook Islands. Importantly, this does not apply to criminal proceedings or requests under the Mutual Assistance in Criminal Matters Act (MACMA).
- Privacy or secrecy protections (see below).
- Forced Heirship: A Cook Islands international trust, or any settlement on it, remains intact (not void or voidable) in the event that foreign legislation seeks to enforce heirship rights of any person related to the settlor.



- Bankruptcy: A Cook Islands international trust, or any settlement on it, shall not be void or voidable in the event of the settlor's bankruptcy in his/her home jurisdiction.
- Beneficiaries protection: Any interest in trust assets given to a beneficiary shall not, during his/her lifetime, be alienated or pass by bankruptcy, insolvency or liquidation or be seized or taken in execution by process of law.
- Retention of some control by settlors: An international trust will not be invalidated or a disposition declared void where the settlor retains any of the powers prescribed in the ITA.
- Statutory limitation periods: Statutory limitation periods have been prescribed within which a creditor can commence an action to determine if a transfer to an international trust is fraudulent. In summary, a creditor must commence an action in a court of competent jurisdiction within one year of the date of the disposition he/she is claiming against and in the Cook Islands courts within two years of that same disposition.
- Proper law clauses in trust deeds: In the context of asset protection planning, trusts deeds can include a provision to change the governing or 'proper' law of a trust,<sup>3</sup> and to require it upon the happening of a specified event (or event of duress).<sup>4</sup> Such clauses are commonly called "flee clauses" and can make it harder to bring legal proceedings against the assets of the trust because governing law and relevant courts become harder to identify. Competent authorities and surveyed LTCs in the Cook Islands have not observed any instance where these clauses had been utilised, to 'flee' from or to the Cook Islands, in at least 15 years. Mitigating measures in relation to the supervision of LTCs (see IO. 3) and controls around the establishment of international trusts (see IO.5) apply regardless of any provision in a trust deed.

### *A 'Secrecy Jurisdiction'?*

26. The Cook Islands has legislated privacy protections for international companies, international trusts, limited liability companies, and international partnerships, whereby 'divulging or communicating' information relating to the relevant legal person or arrangement or banking business and customers may be an offence.<sup>5</sup> In 2018, the Cook Islands was ranked 100 out of 112 on the Financial Secrecy Index, which ranks jurisdictions according to secrecy of information and the scale of their offshore financial activities.<sup>6</sup> The positive ranking reflects the minimal impact of the Cook Islands' offshore activities globally. However, the reputation of being a 'secrecy jurisdiction' is a feature of the Cook Islands offshore financial sector and a factor in the high level of ML/TF risk assigned to this sector by the Cook Islands and the assessment team.

27. Importantly, privacy protections in legislation **do not** apply where:
- the disclosure is required or authorised by a Court of the Cook Islands;
  - the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under any Act;
  - the disclosure is made as required by or under a search warrant; or
  - where disclosure is required by the Financial Transactions Reporting Act to competent authorities or other RIs.

<sup>3</sup> See section 13G, International Trusts Act

<sup>4</sup> These typically include claims, or anticipated claims, by creditors (civil proceedings).

<sup>5</sup> s227(2), International Companies Act 1981-82; s74(2), International Partnerships Act 1984; s72(5), Limited Liability Companies Act 2008; s23(2), International Trusts Act 1984; and s54(1) Banking Act 2011.

<sup>6</sup> <https://www.financialsecrecyindex.com/introduction/fsi-2018-results>

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1 **Materiality**

28. The key contributing industries to the Cook Islands economy are tourism, finance, pearl, marine and fruit export industries. Tourism is the main industry, with over 146,000 visitors in 2016 (MFEM, 2018). The Cook Islands experience economic challenges due to its geographic location, few primary industries other than fisheries, under-developed infrastructure on islands other than Rarotonga and vulnerability to periodic natural disaster. Foreign aid and remittance from emigrants, predominantly from New Zealand, support the Cook Islands' trade deficit, which was NZ\$ 153.8 million (US\$ 101.1 million) in 2017.

29. The Cook Islands financial sector comprises one international/private bank, three commercial banks, one money remittance/foreign exchange company, one superannuation fund and a small number of insurance providers. The size of the Cook Islands financial sector, including the offshore financial sector, is relatively small by global standards and the Cook Islands is not regarded as an international or regional financial centre. The net foreign assets held in the Cook Islands' banking system as at 31 March 2017 was NZ\$ 136.1 million (US\$ 89.5 million).

30. The Cook Islands cash economy is small and there is 100% formal access to financial services. The state-owned bank has branches on all outer islands. Significant cash transactions are limited to normal banking of weekly business takings, and given the small scale of operations and the inter-connected community, large or unusual transactions attract attention.

31. The DNFBP sector comprises eight trustee companies, approximately 11 lawyers, one accountant, 25 pearl dealers and one real estate agent. There are also six motor vehicle dealers that are classified as RIs.

32. The licensed trustee companies (LTCs) in the Cook Islands are characterised as financial institutions for the purposes of regulation and supervision. The Cook Islands implemented this framework in recognition of the significant vulnerability posed by LTCs with respect to abuse of legal persons and arrangements. Legal arrangements, particularly international trusts, are the primary drawcard of the Cook Islands' international financial sector (see above for a description of features of Cook Islands international trusts).

33. Importantly, in the context of the Cook Islands, company service provider and introducer roles usually played by lawyers in other jurisdictions, are undertaken almost entirely by LTCs. While lawyers play a role in the establishment of domestic legal persons and arrangements, the TCSP role for higher risk international legal persons and arrangements is undertaken by LTCs. Most lawyers are engaged in domestic legal work such as family, land and criminal matters. Some work with the offshore industry providing advice on the offshore industry law and related matters.

34. The offshore financial sector in the Cook Islands is an important part of the jurisdiction's economy. The sector, which specialises in the provision of trustee services, has experienced significant contraction following the strengthening of legislative requirements governing the sector, including the passage and implementation of the Banking Act 2011 and Trustee Companies Act 2014. As at November 2017, the offshore financial sector comprises of the one private/international bank and the eight trustee companies.

### **Structural Elements**

#### *Governance and capacity*

35. The main structural elements required for an effective AML/CFT system are present in the Cook Islands; there is political stability, high-level commitment to AML/CFT efforts, rule of law, stable and accountable institutions and an independent, efficient and capable judicial system.

36. In building its institutions and systems for governance, the Cook Islands has had to overcome challenges shared by some other Pacific Island jurisdictions related to limited expertise and staffing capacity available for AML/CFT work.

37. Independent researchers have noted the severe impact of outward movements of people on the Cook Islands. For example in 1966-1976 the Cook Islands lost more than half its vocationally qualified population, and then again in the mid-1990s<sup>7</sup>. In fact, the Cook Islands has been categorised as an 'exodus' demography, with emigration of 44-60% of the islands' born population,<sup>8</sup> and a rate of decline in population similar to war-torn countries.<sup>9</sup> In noting the investment opportunities presented by the Cook Islands, a 2015 ADB report highlighted the significant challenge posed by systemic depopulation.<sup>10</sup>

38. To address the capacity challenges the Cook Islands calls for assistance from higher capacity neighbours, e.g. New Zealand, Australia and Fiji when required. The Cook Islands' relationship with New Zealand is a particularly significant remedy for capacity issues and will be discussed further below. It is important, however, to also credit the competence of local authorities in ensuring stability and strength of governance. The Cook Islands authorities and institutions comprise local experts and some expatriates, who are of a high calibre and make up in quality what is lacking in quantity. Further, there appears to be support locally for the appointment of foreigners to high-level positions (e.g. Head of the FIU, Solicitor-General) in order to ensure such positions are competently staffed.

39. However, capacity remains a concern in some areas. With respect to AML/CFT efforts, the observation of the 2009 MER of the Cook Islands, that capacity constraint in the LEAs impacts on the lack of ML-related investigation, still holds true.

### **Background and other Contextual Factors**

#### *Relationship of free association with New Zealand*

40. The Cook Islands is not a UN member and relies on its 'special relationship of free association with New Zealand' in engaging in foreign affairs, defence and supplementing governance capacity. This relationship is characterised by unique constitutional arrangements in both New Zealand's and the Cook Islands' constitutions, Cook Islanders holding New Zealand citizenship, and NZ\$ circulated as official tender within the Cook Islands. The most recent codification of the principles underpinning the partnership between New Zealand and the Cook Islands was set out in the Joint Centenary Declaration, signed by the Prime Ministers of both countries in 2001.

41. In significant respects, the Cook Islands operate as a sovereign and independent state:

- In the conduct of its foreign affairs, the Cook Islands interact with the international community as a sovereign and independent state. Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.
- With respect to treaties, the Government of the Cook Islands possesses the capacity to enter into treaties and other international agreements in its own right with governments and regional and international organisations.

<sup>7</sup> Connell, J. (2006). Migration, Dependency and Inequality in the Pacific: Old Wine in Bigger Bottles? (Part 2). In Stewart Firth (Eds.), *Globalisation and Governance in the Pacific Islands*, (pp. 81-106). Canberra: ANU Press

<sup>8</sup> Bertram, G. (1986) Sustainable developments in pacific micro-economies. *World Devel* 14: 809-822; *Ibid* Connell (2006)

<sup>9</sup> *Guardian, The*, "Niue, the Pacific island struggling to cope as its population plummets", 13 July 2014.

<sup>10</sup> Asian Development Bank (2015) The Cook Islands Stronger Investment Climate for Sustainable Growth; this extract can be placed in context with the latest population figure, from the December 2016 census, of 17,459 residents.

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- With respect to diplomatic and consular relations, the Cook Islands and New Zealand recognise the right of each other in accordance with its national interests, to establish diplomatic relations with third parties.

42. However, the important relationship between the Cook Islands and New Zealand has an impact on defence, security, and expertise available to the Cook Islands government, applicable laws and judiciary.

- Given the small population of the Cook Islands, there are gaps in local expertise available, which are readily and swiftly filled in cooperation with New Zealand. In the event of complex investigations, LEAs routinely call upon assistance from New Zealand. For example, forensic accounting skills.
- Clause 7 of the Joint Centenary Declaration, and corresponding section 5 of New Zealand's Cook Islands' Constitution Act 1964, record a responsibility for New Zealand to assist the Cook Islands upon request in matters of defence and security.
- New Zealand laws may be applicable in the Cook Islands if incorporated by Cook Islands legislation, and case law has been accepted by the Courts as being highly persuasive in interpreting and applying Cook Islands laws.
- Articles 48 and 56 of the Cook Islands' Constitution mandate that Judges of the High Court and Court of Appeal respectively must be Judges or Barristers from New Zealand's High Court, Court of Appeal or Supreme Court, or from an equivalent office in another Commonwealth country. To date all Judges appointed have been non-resident New Zealand judges.

#### *De-risking in the Pacific*

43. Over the last decade, the Cook Islands, along with most other jurisdictions in the Pacific, has experienced difficulties in correspondent banking relationships for domestic banks. This is largely due to the trend of de-risking impacting many small jurisdictions, and sectors such as the remittance sector or consumers with crypto-currency businesses. Larger banks in the United States, Europe and Australia have responded to factors such as the cost of ML/TF compliance and the threat of enforcement penalties by withdrawing their banking services from consumers that pose a higher level of risk, or where insufficient information or familiarity support.

44. RIs in the Cook Islands has taken strong risk avoidance measures, for example, two banks exited the international financial sector due to ML/TF risk, one LTC does not accept PEPs as customers, and multiple banks do not accept MVTs providers as customers.

45. Given the context of the Cook Islands, which has been subject to blacklisting and experienced challenges maintaining correspondent banking relationships, the threat of de-risking is an important factor in understanding the policy and regulatory decisions made by authorities with respect to the financial sector. The Cook Islands is concerned with avoiding reputational damage and maintaining confidence in the Cook Islands as hosting a well-regulated financial industry.

#### *AML/CFT strategy*

46. The Cook Islands has a National AML/CFT and PF Strategy for 2017 – 2020 (National Strategy), which was implemented in November 2017. The National Strategy contains five key objectives, as follows:

- Objective 1 – Improve the legal and institutional framework to detect, disrupt and prevent ML/TF/PF activities.

- Objective 2 – Improve the effectiveness of ML/TF investigations and prosecutions, and proceeds confiscation in the Cook Islands.
- Objective 3 – Strengthen International and Domestic cooperation.
- Objective 4 – Strengthen capacity building and awareness raising of ML/TF/PF issues.
- Objective 5 – Improve the collection of statistical information on ML/TF/PF issues.

47. The National Anti-Money Laundering Coordination Committee (NACC) is responsible for monitoring and assessing the effectiveness of the strategy, and reporting to Cabinet on progress on an annual basis.

48. The National Strategy feeds into the Cook Islands' national vision under the Te Kaveinga Nui – National Sustainable Development Plan 2016-2020, in particular to Goal 2 (Expand economic opportunities, improve economic resilience and productive employment to ensure decent work for all) and Goal 16 (Promote a peaceful and just society and practice good governance with transparency and accountability).

### *Legal & institutional framework*

49. The legal framework for AML/CFT preventive measures is set out in the Financial Transactions Reporting Act 2017. Money laundering is criminalised under the Crimes Act 1969 and TF is criminalised under the Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004. The FIU operates under the FIU Act 2015.

50. The institutional framework for AML/CFT is as follows:

- **The FIU** – is the financial intelligence unit, AML/CFT supervisor and an investigating law enforcement agency. The FIU has overall responsibility for the administration and enforcement of AML/CFT laws and is the Chair of the National Anti-Money Laundering Coordinating Committee (NACC). The FIU sits within the FSC but operates as an independent operational unit.
- **The CIP** – is the relevant law enforcement agency for the investigation and prosecution of all criminal conduct in the Cook Islands including ML/TF offences (and relevant predicate offences) in relation to which the Police work closely with the FIU to investigate.
- **The Crown Law Office (CLO)** – is the relevant law enforcement agency for the prosecution of ML/TF offences (and relevant predicate offences) and the submitting of applications for orders under the Proceeds of Crime Act 2003. The CLO provides advice to all LEAs on prosecutions. It represents LEAs in Court and is responsible for administering mutual legal assistance requests and proceeds of crime matters. The CLO is also responsible for reviewing and management of legislation for Parliament and Executive Council (primary and subsidiary legislation).
- **The RMD (Tax and Customs)** – is a division of the Ministry of Finance and Economic Management (MFEM) and is responsible for the administration and enforcement of taxation and customs laws. Tax and Customs are two separate functions within the RMD both reporting to the same Head of Division.
- **The FSC** – is responsible for the prudential regulation of the banks and insurance companies, and regulation of money changers, and remittance businesses, and trustee and corporate service providers. The FSC is also the administrator of the international registry which holds all international or “offshore” legal entity registers including companies, trusts, foundations and partnerships.

- **The Ministry of Foreign Affairs and Immigration (MFAI)** – is the Ministry responsible for the Cook Islands diplomatic relations with other States and international organisations, such as the United Nations. Immigration, a separate division within the MFAI, is responsible for border protection (entry and exit of persons from the Cook Islands) and coordinates its efforts with Customs, FIU and the Police.
- **The Ministry of Justice (MOJ)** – is responsible for the justice sector, including the administration of the Cook Islands Court system. In addition, MOJ is the administrator of the domestic registry, this registry holds all legal entities that are owned and/or operate domestically including the companies and incorporated societies registers.
- **The Business Trade and Investment Board (BTIB)** – is responsible for the regulation of foreign investment (and investors) into the Cook Islands.
- **The Cook Islands Financial Services Development Authority (FSDA)** – is mandated as the government organisation for marketing and development authority of the financial sector. It also plays an active role in ensuring industry is kept abreast of international developments in both business and compliance areas.
- **The Cook Islands Public Expenditure and Review Committee and Audit Office (Audit)** – is responsible for the oversight of public expenditure by Crown Agencies in accordance with the Cook Islands government financial policies and procedures. Audit has an investigative function in relation to possible misappropriation of public resources.
- **The Ministry of Marine Resources (MMR)** - is responsible for the administration and regulation of marine resources within the Cook Islands. MMR is the licensing agency for fisheries as well as the law enforcement agency for illegal fishing activity. MMR coordinates its efforts with Police, Customs and regional counterparts in performing this function.

51. There are four coordination bodies within the AML/CFT framework of the Cook Islands:

- **National Anti-Money Laundering Coordinating Committee (NACC)** – is responsible for formulating and promoting the Cook Islands AML/CFT policies as well as ensuring the institutional framework for AML/CFT covers all relevant areas of the economy for the Cook Islands. The Minister of Finance is the patron of the NACC and the membership comprises the FIU, Police, Customs, CLO, FSC, MOJ, MFAI, MMR, Audit and BTIB.
- **CINIT** – is an operational level, intelligence sharing body comprised of the Police, FIU, Customs and Immigration (a division in MFAI). CINIT's main focus is criminal investigations but does also include investigations by other Crown agencies on a case by case basis.
- **CLAG** – is an operational level, coordinating committee for joint law enforcement operations in the Cook Islands.
- **Cook Islands Anti-Corruption Committee (ACC)** – is an operational level, coordinating committee for anti-corruption strategies and policies in the Cook Islands. The ACC does not have an investigative function, instead relies on its members to coordinate their efforts to address corruption cases in the Cook Islands. ACC members are the FIU, Police, Audit, and CLO, with the FIU Head the current chair.

### *Significant changes since last MER*

52. There have been improvements in the Cook Islands' regulatory framework and risk profile since its 2009 MER. Notably, in 2011 the Banking Act 2011 strengthened the physical presence requirement that was first introduced in 2003, requiring that meaningful mind, management and records must be physically present in the Cook Islands.

53. In 2013 the FSC issued a number of Prudential Standards (on banking licensing, capital adequacy, asset classification, external auditors, fit and proper persons, liquidity risk, and large exposures), which further strengthened the regulatory framework.

54. In 2014 the Trustee Companies Act was passed, which brought the regulatory regime for LTCs in line with that of FIs.

55. From 2015 onwards, the regulatory and supervisory framework moved towards risk-based AML/CFT and prudential supervision. Further, a new FTRA was enacted in 2017 to enhance the risk-based approach to supervision and regulation, and place obligations on RIs to undertake a risk-based approach in their activities.

56. As a result of these changes, the legal and regulatory framework for FIs and LTCs in the Cook Islands is stronger than it was at the time of its 2009 MER. Further, the financial and LTC sectors have contracted since 2009 and product offerings have reduced as a result of the stricter requirements in place.

57. Changes have also occurred in terms of law enforcement with the FIU being assigned broad investigative powers under the FIU Act 2015. Therefore, the FIU is no longer an 'administrative FIU' as it was in 2009. While the allocation of responsibility for ML investigations is still not entirely clear, the ability of the FIU to independently investigate ML and 'financial misconduct' is a significant change in the law enforcement response to criminal activity involving illicit proceeds.

#### *Financial sector and DNFBPs*

58. The financial sector in the Cook Islands is relatively small compared to international standards. There are three commercial banks (one of which is a Government-owned bank), one private bank, two insurers, two insurance intermediaries, one money MVTs provider (which provides money changing and remittance services) and one national superannuation fund.

59. The Cook Islands is 'host' regulator to two commercial banks and 'home' regulator to one local private bank and the state-owned bank.

60. The primary business of the three commercial (domestic) banks is retail services including deposit taking, savings and lending services.

61. Three banks hold international banking licences, however, since mid-2014 only the private bank utilises its international banking licence and operates in the international sector. It provides custodian and asset management services for international clients.

62. The DNFBP sector includes eight LTCs, 11 lawyers, one accountant, six motor vehicle dealers, 25 pearl dealers and one real estate agent. It is noted that motor vehicle dealers are not defined as DNFBPs under the FATF recommendations, so analysis of this sector is limited in this report.

63. Since November 2017 Maritime Cook Islands (MCI), the company contracted by the Ministry of Transport (MoT) to administer the Cook Islands' Ships Registry, has been classified as an RI and subject to a limited scope of AML/CFT obligations.

1 **Table 1: Reporting institutions numbers as at November 2017**

Sector	Number of entities
<i>Financial institutions</i>	
Commercial banks	3
Private banks	1
MVTS (remittance and foreign exchange)	1
Insurers	2
Insurance intermediaries	2
Superannuation fund	1
<i>DNFBPs</i>	
LTCs	8
Lawyers	11
Accountants	1
Motor vehicle dealers	6
Pearl dealers	25
Real estate agents	1
<i>Other</i>	
Shipping registry	1

### *Preventive measures*

64. Following the passage of the FTRA 2017, RIs in the Cook Islands are subject to generally comprehensive preventive measures with some exceptions.

65. The Cook Islands has implemented the following exemptions or simplified measures based on an assessment of risk:

- Native freehold land transfers are exempt.
- Limited foreign currency exchange conducted at hotels and accommodation providers are exempt.
- Delayed verification measures are permitted for CDD on outer island residents (linked to financial inclusion).

66. The FTRA 2017 provides for RIs to undertake simplified customer due diligence on a legal person whose securities are listed on a recognised stock exchange, however, there are currently no stock exchanges designated for this exemption.

67. In response to the Cook Islands' recognition of the vulnerabilities relating to TFS related to PF by the Cook Islands shipping registry, in 2017 the shipping registry contractor, MCI, was designated as an RI and is subject to a limited suite of obligations. Most importantly, MCI is required to conduct CDD on the controlling principal of a vessel at the time of registration. It is noted however that CDD is not required for other entities that may have beneficial ownership or control of a vessel.

### *Legal persons and arrangements*

68. The Cook Islands' offshore financial sector is an important part of its economy and a notable vulnerability with respect to ML/TF. As such the risks and context surrounding legal persons and arrangements in the Cook Islands were carefully considered by the assessment team.

69. Legal persons and arrangements in the Cook Islands comprise various forms of companies and trusts which are divided into two broad types reflecting the structure of the financial sector:



- Domestic entities, consisting of companies (872 registered at 31 Dec 2016), incorporated societies (17 registered at 31 Dec 2016), and domestic trusts;<sup>11</sup> and
- International entities, consisting of international legal persons and international trusts.

70. The following table provides information on registration numbers for international entities:

**Table 2: International entities registered (2014 - 2016)**

TYPE OF ENTITY	LEGISLATION	2014 (31-Dec-14)			2015 ( 31-Dec-15)			2016 (31-Dec-16)		
		Current	New	Total	Current	New	Total	Current	New	Total
<b>International Company (IC)</b>	International Companies Act 1981-82	958	102	<b>1060</b>	1007	72	<b>1079</b>	944	69	<b>1013</b>
<b>Foreign Company (FC)</b>	International Companies Act 1981-82	19	0	<b>19</b>	14	1	<b>15</b>	12	0	<b>12</b>
<b>International Trust (IT)</b>	International Trusts Act 1984	2326	276	<b>2602</b>	2214	239	<b>2453</b>	2050	240	<b>2290</b>
<b>International Partnership (IP)</b>	International Partnerships Act 1984	4	0	<b>4</b>	4	0	<b>4</b>	4	1	<b>5</b>
<b>Limited Liability Company (LLC)</b>	Limited Liability Companies Act 2008	317	77	<b>394</b>	328	84	<b>412</b>	61	329	<b>390</b>
<b>Foundation (FA) not online yet</b>	Foundation Act 2012	2	4	<b>6</b>	3	20	<b>23</b>	20	26	<b>46</b>
<b>TOTAL</b>		<b>3626</b>	<b>459</b>	<b>4085</b>	<b>3570</b>	<b>416</b>	<b>3986</b>	<b>3091</b>	<b>665</b>	<b>3756</b>

71. Regardless of relative size, Cook Islands' 2015 NRA and 2017 Review of Risk recognise that the offshore financial sector poses ML risks. In particular, the use or abuse by foreign actors of the international financial sector led to a risk rating of 'High' for ML related to fraud (2015 NRA). The team focused on understanding the risks posed by the offshore financial sector, in particular through international trusts (see discussion above).

### *Supervisory arrangements*

72. The FIU is the AML/CFT supervisor for all RIs. The supervisory section of the FIU is staffed by one person, the Senior Compliance Officer. When conducting on-site AML/CFT examinations the Senior Compliance Officer is supported by a staff member from the FSC.

73. The FIU is empowered under the FIU Act 2015 to administer and enforce relevant Acts, including the FTRA 2017 which sets out RIs preventive measure obligations.

74. The FSC is the prudential regulator in the Cook Islands and is responsible for licensing and monitoring the compliance of FIs and LTCs. The FSC has four staff members assigned to prudential supervision. The FSC has wide-ranging powers, set out in the FSC Act 2003. In July 2004 the Head of the FIU formally delegated authority to the FSC to conduct AML/CFT supervision of FIs and LTCs on

<sup>11</sup> No registration required for domestic trusts  
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1 the FIU's behalf. This responsibility reverted back to the FIU in June 2015 once the FIU had improved expertise and resources to perform this function. The FSC continues to provide support to AML/CFT supervision when requested by the FIU.

75. With respect to the institutional framework for legal persons and arrangements, there are two registries in the Cook Islands – domestic and international. MOJ maintains the domestic registry for legal persons (but not legal arrangements) and their website contains information on the requirements for the creation of domestic legal persons. The FSC operates the registry for international companies and international trusts and their website, together with that of FSDA, provide information on the creation of these international entities.

### *International Cooperation*

76. The Cook Islands prime ML/TF threat relates to the abuse of LTCs, in particular, the layering of proceeds of fraud committed abroad. Given the international nature of this crime type, in addition to other significant domestic predicates such as corruption and illegal fishing, cooperation with competent authorities of other jurisdictions is critical to the Cook Islands' efforts to detect and deter ML/TF. The Cook Islands has demonstrated their commitment to international cooperation by providing various forms of cooperation, despite their limited resources, at all levels, including informally and formally, and also utilising treaty-based networks.

77. Crown Law is responsible for MLA and extradition matters, and most competent authorities engage in cooperative networks and relationships with their counterparts internationally. The Cook Islands mostly utilises international organisations, networks, MOUs or treaties to engage in international cooperation, and, in a more limited way, through MLA requests.

78. In line with the risks in its offshore financial sector, the Cook Islands provide international cooperation relating to ML/TF most often to the United States. The Cook Islands, however, does not have a formal arrangement with the United States, despite having requested the establishment of such an arrangement with the United States. There are issues related to the United States' recognition of the Cook Islands as a separate independent State from New Zealand. Accordingly, requests to the Cook Islands are submitted through New Zealand, which then sends the requests to the Cook Islands. The Cook Islands responds directly to the United States. Notwithstanding this formal gap, international cooperation is provided by the Cook Islands to the United States, and the assessment team viewed positive feedback from the United States regarding the timeliness and quality of responses received from the Cook Islands.

79. The Cook Islands is a member of the Group of International Finance Centre Supervisors (GIFCS) and the Group of International Insurance Centre Supervisors (GIICS), which provide a global network of international finance/offshore regulators with expertise in the regulation of TCSPs and insurance providers respectively. It is also a participant in the International Conference of Banking Supervisors (ICBS). The FIU is a member of the Egmont Group of FIUs targeting ML/TF through cooperative activities. Regionally, the Cook Islands is a member of the Asset Recovery Interagency Network – Asia-Pacific (ARIN-AP), the Pacific Transnational Crime Network (PTCN) and Pacific Islands Forum (PIF), and works with its regional colleagues to stimulate economic growth and enhance political governance and security in the region. Lastly, Cook Islands Police is a member of the Pacific Islands Chiefs of Police.

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The Cook Islands has conducted a robust risk assessment process that engaged all relevant stakeholders and used appropriate methodologies to assess risks. While the understanding of risk is generally good, there are some variations. Competent authorities, in particular, the CIP, understate vulnerabilities associated with capacity issues in competent authorities and threats posed by proceeds from domestic offences. For example, threats posed by proceeds from domestic offences, including cyber-enabled crime, employee theft/fraud and the risk of organised crime groups.
- At a policy level, national coordination has been effective in securing AML/CFT legislative reform and there is strong support from senior government officials for AML/CFT efforts to mitigate ML/TF risks.
- At an operational level, cooperation between agencies is strong but infrequently directed towards the deliberate mitigation of ML/TF risks identified in the NRA. The Cook Islands' new National AML/CFT Strategy provides practical measures to improve performance in this regard but, due to its recent introduction, the team is unable to conclude that implementation has been wholly effective.
- FIs and DNFBPs were engaged in the national risk assessment process and have started to apply their understanding of the Cook Islands ML/TF risks to their risk assessments and controls.

#### **Recommended Actions**

- Monitor the implementation of the AML/CFT National Strategy and consider implementing periodic agency reporting.
- Realign operational tasking within CINIT and CLAG to better implement ML/TF mitigation strategies identified in the NRA and by NCC.
- Promote the uptake of the 2017 International Legal Persons Review by RIs to improve risk controls for international legal persons.
- Consider a more detailed assessment of vulnerabilities within the competent authorities, particularly the CIP and FIU.
- Assess risks associated with cyber-enabled financial crime including business email compromise, and employee theft/fraud as a discrete threat.
- Update the NRA's consideration of the emerging threat of organised crime groups operating within the Cook Islands, in light of the Cook Islands' competent authorities identification of potential indicators that the threat may now be manifest.

80. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

**Immediate Outcome 1 (Risk, Policy and Coordination)**

2

*Country's understanding of its ML/TF risks*

81. The Cook Islands has demonstrated commitment to the systematic identification and evaluation of ML/TF risks at a national level through the production of national risk assessments (NRAs) (October 2008 and March 2015) two supplementary reviews of 'primary threats and high-risk sectors' (2017 Review of Risk) and 'secondary threats and low risk sectors' (2017 Secondary Review) finalised in October 2017 and published as a single amalgamated report on the FSC website in December 2017, and a further assessment into international legal persons concluded in December 2017.

82. The methodology of the 2015 NRA followed FATF guidance on NRAs and was based on qualitative and quantitative analysis of data collected from all member agencies of the NACC and most noteworthy RIs covering the period 2011 to 2013. It was approved by Cabinet on 10 March 2015. In broad terms, the 2015 NRA identified the layering of the proceeds of foreign predicate offences through the Cook Islands international financial sector (banks and TCSPs) as the main ML/TF threat. Other significant threats identified included corruption, drug trafficking and organised crime groups operating within the Cook Islands.

83. The 2017 Review of Risk aimed to build upon the findings of the 2015 NRA by conducting focused analysis on areas identified as high-risk. The methodology for the 2017 Review of Risk took the form of expert commentary on the context and risk factors for the Cook Islands financial and DNFBP sectors, drawing upon data and consultation from RIs and the FIU conducted in 2017. This work was intended to provide greater focus on areas that are high-risk or other areas that the Cook Islands determined would benefit from greater attention. The limited scope of the 2017 Review of Risk means it must be considered as a supplement to the 2015 NRA, which is the most recent overarching risk assessment with a systemic review and evaluation of criminal threats and institutional vulnerabilities at a national level.

84. The 2017 Secondary Review was based upon a series of desk-based reviews and on-site compliance assessments conducted by FSC and FIU targeting industry sectors rated as lower risks in the 2015 NRA, including accountants, lawyers (excluding TCSPs), pearl dealers, motor vehicle dealers, real estate agents, Lotto agencies and NPOs. Like the 2017 Review of Risk, the 2017 Secondary Review is not a standalone assessment and should be read as a supplement to the 2015 NRA. The 2017 Secondary Review provides updated risk ratings for these sectors with short descriptors to justify the ratings only.

85. A further assessment of risks was concluded on 1 December: 'ML/TF/PF Risk Associated with International Legal Persons in the Cook Islands' (2017 International Legal Persons Review). It provides a detailed survey of the various types of international legal persons in the Cook Islands and the possible ML/TF risks for each.

86. The iterative approach to risk assessment pursued by the Cook Islands is evidence of a mature understanding of risk. The 2015 NRA and the three 2017 Reviews are a product of and, further support for, the implementation of a risk-based approach to AML/CFT under the FTRA 2017. The FTRA 2017 obliges RIs to undertake a risk assessment and demonstrate a risk-based approach in their AML/CFT measures.

87. The findings of the various risk assessment exercises present a reasonable assessment of the ML/TF threats faced by the Cook Islands, with some exceptions that are discussed in more detail later in this report. The majority of stakeholders across government and the private sector demonstrated an understanding of threats consistent with that presented in the 2015 NRA and the three 2017 Reviews.

88. Across stakeholders, and in the risk assessment exercises, inherent risks arising from the offshore financial sector are readily acknowledged, with authorities and TCSPs swift to point to measures undertaken to mitigate these risks. In particular, stakeholders point to the passage of the Banking Act 2011 and Trustee Companies Act 2014, and subsequent supervisory and enforcement action undertaken by the FSC in relation to licensing under these Acts. The assessment team concurs with the Cook Islands' assessment that the residual ML/TF risk associated with the offshore financial sector is substantially lower in 2017 than it was in 2009, but nonetheless remains the highest ML/TF risk in the Cook Islands.

**Box 1: The international financial sector in the 2017 Review of Risk.**

The 2017 Review of Risk provides a detailed, publicly accessible assessment of the ML/TF risk associated with the international financial sector in the Cook Islands. Abuse of its international financial sector is a serious vulnerability for the Cook Islands in ensuring effectiveness of its AML/CFT measures. As such this supplementary assessment of risk demonstrates a mature approach to the understanding of ML/TF risks in the Cook Islands. Features of the risk assessment include:

- A contextualisation of the Cook Islands economy and the size of assets held in the Cook Islands banking system;
- A review of international tax agreements and initiatives that impact on ML/TF risk, and an examination of information requests from foreign jurisdictions (over 80% from the US) and case studies to determine jurisdictional risk;
- An examination of the customer base of the sole private bank that services the TCSP sector (providing exact figures for each type of legal person or arrangement and also broken down by delivery channel e.g. referred by CI TCSPs, non-CI referrals, or direct contact without referral from an intermediary) and an examination of annual funds flows into/out of the bank broken down by jurisdiction;
- A year-on-year examination of all legal persons and arrangements registered through the Cook Islands offshore financial industry (providing exact figures for each type of legal person or arrangement) and the contextualisation of the size and nature of the customer base against peer jurisdictions;
- An examination of common product types and delivery channels (which notes the prevalence of international trusts used for asset protection, targeting the US market referred by US-based third-party introducers), particular vulnerabilities associated with common legal structures in CI legal persons and arrangements, and controls that can be implemented to mitigate these risks;
- Recommendations to improve national AML/CFT frameworks including recommendations to further strengthen due diligence requirements for beneficial ownership.

89. The assessment team found that the understanding of risk amongst stakeholders often extended beyond the level of analysis contained within the 2015 NRA. During interviews, most government and private sector stakeholders were able to articulate their views on ML/TF risks, even where those matters were not covered in the NRA. The assessment team observed a good grasp of wider ML/TF risks and a generally consistent and reasonable understanding of risk at a national level. Certain threats discussed in the following paragraphs were consistently raised by stakeholders despite minimal treatment in the NRA 2015.

90. Specifically on international trusts, competent authorities, especially the FSC and FIU, demonstrated a good understanding of the areas of vulnerability and the typologies of abuse that may occur through international trusts (in particular trusts established for asset protection being the

primary product offered in the Cook Islands' international financial sector). These may include gaps in information held by LTCs on settled assets, activities of underlying legal persons, limited information regarding the source of wealth and frequent reliance on introducers (see IO. 4 for a discussion on use of introducers). The private sector is engaging in internal risk assessments under the FTRA 2017 relating to these trusts, but already has a sophisticated understanding of the issues and risks in relation to international legal arrangements.

91. The threat of cyber-enabled crime and the vulnerability of authorities and the financial and DNFBP sectors to it have yet to be formally assessed, despite being identified as an emerging threat in the NRA 2015. The assessment team was provided information from various sources of multiple cases of attempted or successful cyber-enabled fraud, including a business email compromise attempt targeting the FSC, and testimony from most RIs regarding experiences of advance fee fraud and business email compromise. Authorities are aware of the trend and have considered delivery of cyber-safety training and awareness-raising in the community as a preventative measure. The omission of an assessment of cyber-enabled financial crime is possibly explained by the abrupt increase in cyber-crime offending worldwide since the NRA was completed in 2015, and the competing priority for the Cook Islands to complete the 2017 Review of Risk in relation to the implementation of the FTRA 2017 by RIs. However, the impact of cyber-enabled crime on ML/TF landscape in the Cook Islands is now serious enough to warrant prompt examination through a formal risk assessment exercise.

92. Changing risk profiles in relation to the operation of organised crime groups within the Cook Islands were foreshadowed by the NRA 2015 but have yet to be re-assessed under the NRA. LEAs are exercising vigilance and coordination in relation to a potential increase in criminality associated with organised crime groups; however, an assessment of any ML/TF risks posed by this increase has not yet occurred.

93. Authorities are also aware of card-skimming trends in the Pacific region but have not yet assessed the threat to the Cook Islands. LEAs have reportedly considered the transnational criminal threat posed by ATM skimming and credit card fraud at a regional level with other Pacific jurisdictions. A specific ML/TF risk assessment for the Cook Islands associated with such trends is lacking.

94. Multiple cases of employee theft or financial fraud by an employee were reported to the assessment team by all three commercial banks operating in the Cook Islands and similar cases were reported in relation to retail businesses and hotels. In multiple cases, the loss to the employer exceeded NZ\$ 150,000 (US\$ 98,762) and was subject to criminal investigation. While such cases are not frequent, these crimes are qualitatively different from most thefts in the Cook Islands which range from theft of valuables from hotels to petty theft of property in the outer islands. The Cook Islands would benefit from evaluating this crime type to inform an effective AML/CFT response.

95. While the risk assessment exercises identify vulnerabilities that exist within government agencies and the private sector, the analysis understates these to an extent. For example, the CIP is the investigative authority for financial crimes but does not possess, in its own right, capabilities or trained personnel necessary to investigate medium-to-complex financial crimes or collect criminal intelligence domestically (see analysis under IO.7), presenting greater than 'medium' vulnerabilities. Similarly, the FIU has a strong record of performance but is carrying substantial 'key person risk' in relation to staff members that hold technical expertise and historical institutional knowledge in its intelligence division, presenting more than a 'low' level of vulnerability. Comprising only two analysts, various aspects of business continuity (ranging from being able to physically access financial transaction reports, having sufficient experience and training to locate and understand transaction reports, situational awareness, and resourcing to support time-critical operations) could conceivably be substantially degraded or disrupted at short notice. Although capacity constraints are difficult to

avoid in a small FIU, some mitigation strategies (such as exploring an expanded user base for the transactions reports database) could be considered as contingency planning.

96. In a similar vein, the assessment team found in the risk assessment exercises and in interviews with the Cook Islands that authorities hold a domestic/foreign divide in their perception of ML/TF risk. While external threats and their contribution to risk are readily acknowledged, domestic threats and vulnerabilities generally receive a level of attention disproportionately lower than the risk presented. That having been said, domestic issues of resourcing and capacity, and difficulties in performing covert investigations are readily acknowledged by the Cook Islands, and some mitigating measures have been implemented; for example, the FSC provides resources to support the FIU's conduct of on-site supervisory examinations on FIs and LTCs.

97. By contrast, the Cook Islands assessments of ML/TF threats originating from outside the Cook Islands is more robust. Track record of Cook Islands authorities supporting the investigation, confiscation and repatriation of illicit funds unconnected to the Cook Islands residents is strong.

#### *National policies to address identified ML/TF risks*

98. The Cook Islands Government issued its first National AML/CFT and PF Strategy (National Strategy) in November 2017. Prior to this the Cook Islands was reliant on regular coordination and collaboration within the small AML/CFT community of practice, primarily demonstrated by the proceedings of the NACC.

99. This approach was reasonably effective, however as demonstrated by the lack of ML prosecutions since 2009, the absence of a clearly defined AML/CFT strategy endorsed by government reduced the effectiveness of national responses to ML/TF risks. Nonetheless, the NACC was able to achieve AML/CFT legislative reform culminating in the implementation of the FTRA 2017 but also including enactment of the Trustee Companies Act 2014, which represent a significant strengthening of the AML/CFT regime in the Cook Islands.

100. The 2017 Review of Risk explicitly recommended the introduction of the National Strategy. The National Strategy pursues the key objectives listed below, with specific measures targeting identified institutional weaknesses including:

- A focus on identifying and conducting financial investigations with specific reference to parallel ML investigations, and improving responsibility and accountability for domestic competent authorities for actions taken (or not taken) in relation to ML;
- The introduction of a civil forfeiture bill and mechanisms to improve the confiscation of criminal assets;
- The formalisation of contingency planning in relation to targeted financial sanctions and terrorism financing;
- Improving the collection of statistics around ML/TF/PF.

101. Due to its recent introduction, the assessment team could not assess the effectiveness of this policy to address identified ML/TF risks. However, the National Strategy would be improved by a requirement to periodically report progress made on the measures outlined above (agency-by-agency) to a responsible Minister to ensure accountability.

#### *Exemptions, enhanced and simplified measures*

102. The Cook Islands has appropriate frameworks in place to implement transparent risk-based exemptions, and enhanced and simplified AML/CFT measures. Authorities were able to articulate a coherent evidence base for current exemptions such as native freehold land transfers, foreign currency exchange conducted at hotels and accommodation providers, and financial

inclusion/simplified due diligence measures for outer island residents who are unable to present sufficient documentary evidence of identity.

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103. The FSC and FIU have a conservative risk appetite for reputational loss and ML/TF risks, which results more frequently in the application of enhanced measures than simplified measures or exemptions. This approach is not the result of a deficient or unsophisticated understanding of ML/TF risk; rather, the tail-effects of reputational damage incurred at the turn of the century continue to be experienced by the Cook Islands' financial sector to the present, resulting in a national consensus that over-regulation of the financial sector is preferable to risking further reputational damage in order to provide regulatory relief. The Cook Islands' authorities are open to the possibility of further exemptions within their risk appetite.

104. In the case of accountants, there might be an argument for reducing the regulatory burden. While FIU has characterised its one accountant as 'medium/low risk', presumably due to the lack of awareness and engagement with its AML/CFT obligations, the actual product offered by the accounting firm presents a low risk. The accountant is only characterised as an RI because it deals with trust funds related to superannuation accounts offered by local small-to-medium size businesses.

**Box 2: Case study - Response to CDD in the outer islands.**

In 2013 the FSC and FIU were advised by the Bankers' Association that typographical variations in identification documents issued in the outer islands, and limited availability of source documents, were hampering CDD procedures. Rather than permit RIs to accept these variations or to create exemptions for full CDD for outer islanders, the FSC and FIU maintained the existing standard and instead issued a guidance note in 2014 (PN 1/2014) permitting delayed verification when opening a personal bank account for Cook Islands residents living in the outer islands. Under the guidance issued, RIs were still required to obtain valid identification from the individual before applying delayed verification for other source documents necessary for complete CDD. The guidance also restricted the RIs from undertaking any withdrawals or outward transfers until CDD procedures were fully applied and completed.

*Objectives and activities of competent authorities*

105. The assessment team found evidence that agencies which were closely involved in the production of the NRA and the 2017 Reviews (particularly the FIU and FSC) have since 2015 clearly incorporated the findings of the risk assessment exercises into their respective work programs, outreach activities and standard operating procedures. By contrast, the extent to which other agencies with AML/CFT responsibilities (such as CIP, CLO, Tax, Customs and Immigration) are directing their operations in order to mitigate identified national ML/TF risks is variable.

106. CIP considers that the operational and corporate strategies of CIP are sympathetic to the findings of the risk assessment exercises, however, there is no evidence that risk assessments are considered either for strategic or capability planning. There is no evidence that the risk assessment exercises are an input for intelligence analysis to inform operational planning either within CIP or in its capacity as Chair of CLAG and CINIT. While CIP has implemented an 'intelligence-led policing' approach which covers four priority crime types (motor vehicle offences, domestic violence, theft and burglary), routine intelligence reporting to police senior management places little focus on financial crimes or other serious or organised predicate offences. Internal training materials and operational plans provided by CIP contain no references to ML/TF or financial intelligence and few references to financial crime (with the exception of a specific guideline on fraud investigations).

107. CLO has undertaken little work to identify and remove strategic barriers to the successful prosecution of ML/TF and the confiscation of criminal wealth, or to strengthen the severity of sentencing for financial crimes, despite such barriers being considered medium risk. For example,



CLO deemed it in the public interest to conclude a proceeds of crime action in relation to a significant corruption case by consenting to a confiscation order for an amount less than one third of the total proceeds that had been identified by CLO, despite corruption and bribery being identified as 'medium' risk in the NRA (see Box 12). The CLO prioritisation framework does not take into consideration the findings of the risk assessment exercises or prioritise matters based on ML/TF risk.

108. Customs officials who met with the assessment team were well-versed in the findings of the NRA 2015 and the 2017 Reviews. Customs has conducted activities in collaboration with the FIU to address national ML/TF risks relevant to its responsibilities, including cash couriership and the threat posed by organised crime groups. Customs is seeking to build capability in relation to other ML/TF threats identified in the risk assessment exercises such as trade-based money laundering and has increased its staffing and resourcing since 2014.

109. Tax authorities were familiar with the findings of the risk assessment exercises. Tax crime was assessed as a low risk in the 2015 NRA, and the 2017 Review of Risk recognised abuse of the CI financial system to evade taxes overseas as a real threat that had 'not yet manifested into ML'. Therefore, the activities of RMD-Tax appear consistent with the assessment of risk. Opportunities to conduct criminal proceedings for predicate tax crime or parallel ML have not however been pursued (see further analysis under IO 7).

110. Without advocacy by FIU or FSC, it is uncertain other LEAs would prioritise ML/TF against competing operational priorities, or factor AML/CFT into capability development.

#### *National coordination and cooperation*

111. The NACC is responsible for formulating the Cook Islands' AML/CFT policies and institutional frameworks, as discussed in the preceding sections. At an operational level, there are two committees which serve as national coordinating mechanisms for activities to combat ML/TF and PF: the Cook Islands Combined Law Agency Group (CLAG) and the Cook Islands National Intelligence Taskforce (CINIT). A third committee, the Cook Islands Anti-Corruption Committee, is a mechanism to coordinate anti-corruption strategy and policy but is not a forum for coordinating activities to combat ML/TF and PF *per se*.

112. The CLAG allows for the exchange and sharing of information and intelligence between the signatories in order to detect, prevent, investigate, prosecute and respond to offences or suspected offences against national legislation administered by the relevant agencies. CLAG is chaired by the Commissioner of Police, and it includes middle management representatives from CIP, FIU, Customs and Immigration and the CLO as well as other stakeholder agencies such as Ministry of Health as required.

113. CINIT is chaired by a commissioned officer from the CIP and comprises operational staff from the same range of agencies as CLAG, with a reporting line back to CLAG. The key objective of CINIT is to share information or intelligence to assist with profiling of an individual or entity that is of interest to CINIT or any suspicious illegal activity including drugs, economic crime, organised crime groups, ML, people smuggling, proceeds of crime, including but not limited to the financing of terrorist acts, activities or persons and groups. CINIT has a security classification of information which prevents unauthorised disclosure of information referred to the taskforce.

114. There is little evidence that the two operational-level coordination bodies CLAG and CINIT routinely discuss ML/TF, or asset confiscation matters. The FIU has referred four information dissemination reports to CINIT from 2012 to 2016. CINIT meeting minutes show that there are discussions around profiling of the predicate offences and related cases. CINIT and CLAG are underutilised by competent agencies, which reduces the effectiveness of these agencies to disrupt ML/TF and predicate crime and deny criminals the benefit of the proceeds of crime. This is consistent with the assessment team's findings in relation to IO.7 and IO.8. However, CLAG and CINIT have

conducted effective joint agency operations targeting organised crime generally, including tasking out by CINIT to the FIU to provide financial intelligence support to the operation (see Box 3).

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**Box 3: Case study - Joint agency operation tasked out of CINIT**

In 2017 CINIT members coordinated a joint response by competent authorities to an event (a ‘fight night’) in Rarotonga which reporting indicated would attract the attendance of members of foreign transnational organised crime gangs as either promoters, participants or spectators. Operational tasking arising from CINIT included intelligence collection, planning (domestically, internationally and at the border), information-sharing between CINIT agencies and joint analysis, and formulation of operational responses and contingency planning. No criminality was identified during the event or the period in which high-risk individuals remained in-country. The work of CINIT ensured the preparedness of LEAs and capitalised on the intelligence opportunities provided by the travel of high-risk individuals to the Cook Islands.

115. A review of CLAG and CINIT is proposed under the National AML/CFT Strategy 2017-2020, to increase the use of these forums to combat ML. The assessment team supports this proposal.

116. Interagency cooperation outside of the formal CLAG and CINIT frameworks occurs regularly and demonstrates that agencies are willing and able to work in a coordinated fashion as a matter of routine. For example:

- In 2016 the FIU’s utilised its compulsory powers to support an investigation by the Audit Office into the misuse of public monies. This investigation was subsequently referred to CLO to assess criminality, and then to CIP for investigation.
- FIU and Customs conducting joint operations targeting undeclared currency movements (see discussion on Operation Bordeaux in IO. 8 and Operation Bread in Box 28).
- In 2012 RMD was brought into a significant CIP investigation into ML and structuring. Tax officials raised an assessment of roughly NZ\$ 200,000 (US\$ 131,700) debt payable by the suspect. A proportion of the debt was directly deducted from funds restrained during the investigation (see Box 8).
- The FSC provides staff to support the FIU’s conduct of on-site AML/CFT examinations of FIs and LTCs and the two supervisors coordinate their compliance programs where possible to maximise effectiveness and minimise disruption for RIs.

117. The assessment team considered the relationship between CIP and FIU, noting the Cook Islands’ 2009 MER identified an indistinct division of responsibility between FIU and CIP. In that report, the assessment team observed a lack of clarity in terms of responsibilities for ML investigation, attributable to the capability and expertise within FIU Intelligence Division on financial crimes, but responsibility for, and powers of, criminal investigations residing with CIP.

118. In response to specific questioning on this previous finding and the passage of the FIU Act 2015 (which allocated additional “investigative” responsibilities to the FIU and removed the FTRA 2004 requirement for the FIU to refer all potential ML and TF matters to CIP “for investigation”), the Cook Islands advised that while production of financial intelligence (termed “preliminary investigations”) is a routine line of work for the FIU, the collection of information to an evidentiary standard (“further investigations”) is only pursued on a limited basis. The FIU was able to demonstrate an ability to collect documents from RIs and conduct interviews, to an evidentiary standard.

119. It is the view of the assessment team that in practice, the FIU's power to conduct "further investigations" into ML permits the FIU to more efficiently propose and participate in joint agency investigations with a great degree of operational freedom to pursue financial lines of enquiry,<sup>12</sup> but nonetheless falls short of a stand-alone investigations capability. The FIU lacks most compulsory powers set out in R.31, and it is not sufficiently resourced to acquit an investigative role autonomously. Further, while the FIU is no longer required to refer matters to CIP for investigation, there are few indications that the FIU's "further investigations" since 2015 have been conducted in a manner that provides a realistic prospect of prosecuting ML without the involvement of CIP.

120. The allocation of statutory investigative powers for ML and TF to the FIU in 2015 is a positive sign insofar as the Government of the Cook Islands recognises that effectiveness of ML investigation and prosecution of ML is low and it is actively seeking to empower agencies to improve this situation. However, to the extent this statute effects a diffusion of responsibility for ML investigations across agencies, it raises concerns that fundamental and difficult root causes of low effectiveness of ML investigations, particularly structural weaknesses within the CIP in relation to ML investigation and the subsequent underutilisation of CLAG to progress joint agency ML investigations (see analysis of IO.6 and IO.7), will remain unaddressed.

121. For the avoidance of doubt, the relationship between CIP and FIU is clearly amicable, cooperative and positive, characterised by frequent communication on operational matters. The FIU and CIP were able to provide examples of collaboration on investigations that lie within CIP's current capability, such as using optical character recognition software possessed by the FIU to scan financial statements in support of a fraud investigation at the request of CIP.

#### *Private sector's awareness of risks*

122. Both the 2015 and 2017 risk assessment exercises were produced in consultation with RIs and industry experts, including consultation with all high-risk RIs in the Cook Islands.

123. The FTRA Guidelines 2017 require RIs to produce and update ML/TF risk assessments to respond to the risk-ratings assigned to industry sectors in risk assessment exercises.

124. The assessment team found evidence of substantial awareness-raising efforts by FSC and FIU around ML/TF risk including face-to-face seminars with strong attendance from industry, the production of sectoral specific FTRA Guidelines and the production of the 2017 Review of Risk and Secondary Review 2017. Interviews with industry associations and high-risk RIs showed a widespread awareness of the 2015 and 2017 risk assessment exercises and their findings. Awareness amongst medium to low-risk RIs ranged from familiarity to peripheral awareness of the NRA findings.

125. Engagement between competent authorities and the private sector is facilitated by the close geographic clustering of all relevant stakeholders in Rarotonga and the small community of practice. Authorities have the ability to conduct face-to-face meetings with its entire regulated population on a frequent and ongoing basis, which fosters trust and information-sharing around ML/TF risk.

#### *Overall conclusions on Immediate Outcome 1*

126. Overall, the Cook Islands demonstrates to a large extent that all relevant stakeholders understand its ML and TF risk exposure and policy responses to these risks are well-coordinated and evidence-based. Moderate improvements are required to ensure that the activities of competent authorities are better targeted towards the mitigation of identified and emerging risks.

127. **The Cook Islands has a Substantial level of effectiveness with Immediate Outcome 1.**

<sup>12</sup> A greater operational freedom than would be found had FIU formally accredited its intelligence analysts as investigators with CIP and other law enforcement agencies, instead of receiving new statutory powers.



## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *IO. 6*

- The FIU provides quality financial intelligence and other relevant information to LEAs in a timely manner; however, there has been minimal use of financial intelligence to investigate ML/TF or predicate offences by LEAs. This is due to the lack of focus LEAs place on conducting financial investigations and the CIP's limited capacity in relation to financial investigations.
- The FIU obtained investigative powers with the passage of the FIU Act 2015. The assessment team noted the distinction between the production of financial intelligence by the FIU and the collection of information to an evidentiary standard, constituting investigations. In this context, the team finds that the production of financial intelligence is a routine line of work but investigations are only pursued by the FIU on a limited basis.
- All LEAs can access a broad range of financial intelligence but in practice only use financial intelligence to support investigations to a limited extent.
- The FIU utilises financial transaction reports in its database to undertake operational and strategic analysis and disseminate intelligence reports to LEAs.
- The FIU is carrying substantial 'key person risk' in relation to staff members that hold technical expertise on conducting financial investigations. Comprising only two analysts, various aspects of business continuity could be substantially degraded or disrupted at short notice.
- The FIU is the central AML/CFT coordinator in the Cook Islands, which allows for the robust and open exchange of information and intelligence amongst key agencies.

##### *IO. 7*

- With only four ML investigations, none of which have progressed to prosecution, Cook Islands has not demonstrated effectiveness in investigating and prosecuting ML in line with its risks.
- There is insufficient commitment from LEAs, in particular, CIP and CLO, involved in the investigation and prosecution of crime to focus on ML convictions. LEAs generally lack understanding of their role and responsibilities and appear to be inadequately resourced ((including skills and training) to enable the successful investigation and prosecution of ML offences.
- The Cook Islands' LEAs are losing opportunities to pursue ML investigations, including through parallel financial investigations.
- The lack of ML cases involving the laundering of foreign proceeds of crime, which has been assessed as posing a 'high' risk, suggests that LEAs do not target the most significant ML threat faced by the Cook Islands.
- Criminal sanctions for ML are not proportionate compared to other serious crimes, which may be a factor in the low level of ML investigations (see TC R.3). Further, money launderers have not been subject to any sanctions in the Cook Islands.

##### *IO. 8*

- There is negligible activity related to detection, restraint and confiscation of criminal proceeds, instrumentalities or property of equivalent value. Missed opportunities to confiscate proceeds

are evident in the four ML investigations and investigations of predicate offences.

- LEAs have limited knowledge of the legal framework for detection, restraint and confiscation of criminal proceeds, instrumentalities or property of equivalent value. Confiscation, asset freezing and provisional measures are not pursued as a policy objective and are not considered by LEAs when investigating predicate offences.
- The statutory powers to seize falsely or undeclared cash or BNIs for further investigation under the Customs Revenue and Border Protection Act 2012 have been utilised on a limited basis. LEAs have not traced any undeclared cash or goods that have been moved outside the Cook Islands.
- There are indications that authorities have assisted foreign counterparts with respect to proceeds of foreign crimes that are laundered in the Cook Islands, which is assessed to be a 'high' level ML/TF threat. However, there is no evidence to demonstrate that the Cook Islands proactively target this type of ML/TF activity, and initiate law enforcement action themselves.
- The low level of confiscation activity is not in line with the assessments of ML risk, which rated risks posed by the offshore financial sector as Medium, with several proceeds-generating crimes presenting a medium level threat such as bribery and corruption, drug trafficking, illegal fishing, and fraud presenting a high-level threat.

### ***Recommended Actions***

#### *IO. 6*

- Develop and implement a comprehensive strategic plan to ensure that financial intelligence is effectively used in the development of evidence in investigations of all predicate crimes, ML, TF and tracing criminal proceeds.
- Incorporate the use of financial intelligence into LEAs' investigative doctrine or manuals with a view to fostering best practice in using financial intelligence to generate lines of inquiry for ML/TF and predicate offences.
- Train officers CIP in the use and benefit of financial intelligence.
- Implement a mechanism for the FIU to receive regular feedback from LEAs on the usefulness of disseminations; provide feedback to RIs on the usefulness of transaction reports.
- Review the FIU's standard operating procedures, especially in relation to its financial investigative role.
- Undertake in-depth strategic analysis within the FIU to identify and better support operational needs of competent authorities.
- Employee additional FIU staff, preferably with investigative expertise, and provide further training to staff with less experience in conducting financial investigations.

#### *IO. 7*

- Pursue ML cases in parallel with their investigations of predicate offences, in particular for serious offences and those with substantial proceeds involved in keeping with NACC policy.
- Allocate responsibility to personnel or teams within CIP or CLO to identify instances where ML investigations or financial investigations should be initiated.
- Ensure dedicated staff within LEAs have specialised knowledge on financial crimes and ML, and receive regular training on new investigative techniques, typologies of ML, trends and research methods. Future efforts to provide training should bear in mind that training offered in the past has not been appropriately taken up.

- Develop guidelines and manuals for action by CIP in relation to ML, whether identified by the FIU or CIP.
- In implementing Objectives 1b and 2c of the National AML/CFT strategy (policy for and conduct of parallel ML investigations), CIP and CLO should enhance the prioritisation of ML investigations with the goal of parallel financial investigations becoming common practice.

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#### IO. 8

- Provide training to LEAs and judges in relation to confiscation of the proceeds and instrumentalities of crime, with a particular focus on restraining property of equivalent value. This should include raising awareness of the benefits to the community where proceeds are confiscated and made available for the broader community, including repatriation to victims, domestic and overseas.
- Issue policies, standard operating procedures and investigation timelines to include asset-related considerations in investigations.
- RMD (Tax) and Customs should increase coordination with the FIU and LEAs to ensure proceeds of crime actions related to tax and customs are pursued where possible.

128. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

#### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

129. Financial intelligence is primarily developed by the FIU, however, Customs and Tax have developed financial intelligence products in relation to the investigation of RMD-related offences. Despite the FIU conducting preliminary financial investigations and referring potential ML cases to LEAs, there has been limited use of financial intelligence to investigate ML/TF or predicate offences. The FIU has developed financial intelligence which has been used in ML investigations including *Police v Mussel & Mussel* matter and three other ML investigations.

130. The Cook Islands FIU was initially established as an administrative FIU, but the FIU Act 2015 expanded the role of the FIU beyond financial analysis to include investigation and prosecution of 'financial misconduct'.<sup>13</sup> "Financial misconduct" is defined broadly to include ML, TF and PF (see R.30). In the context of the Cook Islands, investigations of ML, TF and associated predicate offences are usually, with recent exceptions (Box 11 and 16), undertaken jointly with the involvement of the FIU and traditional LEAs such as the CIP, CLO and Customs.

#### *Use of financial intelligence and other information*

131. While authorities generally have powers to obtain a broad range of financial and other information, they have made only limited use of financial intelligence and information as a key input into investigations of ML and predicate crime. In particular, it is not clear if financial intelligence and other information from the FIU is sought in all relevant cases, and as a matter of LEAs organisational practice.

132. Considering the limited occurrences of ML investigations in particular (four ML investigations, of which three are ongoing matters – see analysis in IO.7), financial intelligence is not

<sup>13</sup> For the purposes of Core Issue 6.1 operational analysis that is undertaken by the FIU in its unilateral collection of information does not represent the use of financial intelligence in investigations, for the reasons articulated in IO. 1. However, operational analysis which is progressed to a joint-agency investigation is characterised by the assessment team as the use of financial intelligence in investigations, including if it is used by FIU analysts that form part of the joint agency investigating team.

being sufficiently used to develop evidence and trace proceeds related to ML/TF. The use of financial intelligence in investigations related to predicate crimes is somewhat higher but is still very limited.

133. The FIU has a wide range of powers and access to multiple sources of financial and other information, including both commercially available databases (such as World Check and PurpleTRAC<sup>14</sup> database via MCI) and from government entities.<sup>15</sup> LEAs do not have online access to other authorities' database (including the FIU). When further information is required from another government agency, this is normally done by letter, though in urgent cases information can be obtained by email or telephone. Competent authorities indicated that agencies normally respond to requests quite quickly (i.e. within a week). In addition, the FIU can access various databases<sup>16</sup> that support their investigation of ML/TF and/or associated predicate offence.

134. The Cook Islands' investigating agencies do not demonstrate established practice, or a widespread mindset, of using financial information and intelligence to 'follow the money' and to initiate ML investigations. This has recently begun to change in light of the greater involvement by the FIU in investigations, and better utilisation of joint investigating teams.<sup>17</sup> Relevant LEAs have utilised financial intelligence in joint investigations into organised crime, illicit drug trafficking, tax crimes, corruption and bribery, fraud and robbery or theft.

135. Neither the CIP nor Customs' operational strategy specifically includes financial investigations and there is no evidence that CIP uses financial intelligence to guide parallel or standalone ML investigations or the investigation of predicate offences. Statistics provided by the Cook Islands show roughly two to three proactive referrals per year to CIP or CINIT from the FIU. The assessment team was provided information on cases which point towards possible financial misconduct or illustrate financial investigations could have been conducted, but there is no evidence that such investigations occurred to an evidentiary standard.

#### **Box 4: Case study - Financial Intelligence in the investigation of cannabis possession**

In 2012, the CIP commenced an investigation into Person Z for selling cannabis. The CIP requested the assistance of the FIU to undertake preliminary financial investigation of Person Z. Records were obtained from banks in relation to:

- Person Z's personal bank accounts (including joint accounts with his wife);
- Person Z's business accounts and bank accounts of his spouse;
- Tax records;
- Documents; invoices, bills, receipts, dairy notes or correspondence, bank deposit books or slips, chequebooks and butts.

The FIU prepared a financial analysis report depicting Person Z's transactions conducted through the personal and business accounts for the period of 2008 to 2012 (the period for the alleged cultivation

<sup>14</sup> PurpleTRAC is a sanctions screening and vessel tracking product designed to support the Maritime Trade to implement its sanction obligations.

<sup>15</sup> RMD (Tax and Customs), Immigration, FSC, Infrastructure Cook Islands, MoJ, BITB, MMR, MOT, Aviation Security, Biosecurity Cook Islands, Port Authority and MCI.

<sup>16</sup> Tax and customs information, passport and travel database, Interpol/TCU/PTCCC databases, Contractors of building permits information, Domestic Company and Incorporated Society, Birth, Death, Marriage, Land Titles, Court records, BITB's Foreign Investors Information, Registration of vessels, fishing licences, companies LLC, Foundations and partnerships information, motor vehicle registration.

<sup>17</sup> For the purposes of Core Issue 6.1 the assessment team considers that operational analysis undertaken by FIU where information has been unilaterally collected by FIU to an evidential standard does not represent the use of financial intelligence in investigations, for the reasons articulated in IO. 1. Operational analysis which is progressed to a joint-agency investigation has been evaluated with consideration to the use of financial intelligence by all participating competent authorities, **including** FIU analysts participating in the investigation.



of cannabis).

The funds from “unknown source” were included as part of the preliminary financial investigation to:

- Ascertain where these funds were derived from;
- Identify any extended criminal networks.

The FIU together with CIP determined that Person Z had a substantial amount of suspected unexplained wealth. This unexplained wealth was suspected to be connected to drug dealing. However, CIP was not able to gather sufficient evidence for the drug dealing offences. Mr Z was charged with cultivation (for which he was acquitted) and possession for purposes of supply (which was amended during trial to possession). Therefore, proceeds of crime action could not be pursued effectively.

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**Table 3: Predicate / ML investigations involving financial intelligence – 2012-2017**

DATE	MATTER	RESULT	AGENCIES
2012	STR – Bank/Currency Exchange – currency reported Stolen	Convicted	FIU/CIP
2013	STR – Foreign national exchanging foreign currency in excess of NZ\$10,000 (US\$6,590). Failure to declare foreign currency in excess of NZ\$10,000 (US\$6,590) upon entering.	Subject interviewed and Warned	FIU/CIP/CLO/C ustoms
2013	STR - Hotel Case – Foreign National/Theft and Fraud of Hotel Funds	Freeze Instruction/ Convicted	FIU/CIP/CLO
2013	Police Investigation – POI Drug Investigation	Ongoing	FIU/CIP
2013	Citizen complaint letters to CIP/FIU/CLO - Corruption case (Bishop)	Conviction	FIU/CIP/CLO
2013	STR/intelligence report – Bank Employees - Theft and Fraud of Bank Funds.	Conviction/Freeze Instruction and Border Alert Notice	FIU/CIP/Custo ms
2015	FSC Inquiry/STR - Company Principal found to be misusing clients' money/Forgery	Case on HOLD	FIU/CIP/FSC
2015	Police/FIU Investigation – (Intelligence Report/STR/Citizen Complaint) - Hotel Case – Subject Diverting Hotel Funds to personal account. Theft and Fraud of hotel Funds	Freeze Instruction/Border Alert Notice /Settled	FIU/CIP/Custo ms.
2015	Letter to FIU - Government payments to a shipping company (see Box 6)	ON HOLD	FIU/CIP
2016	Intelligence Report/Corruption Allegation – Minister of the Crown	Ongoing FIU/CIP Investigation	FIU/CIP
2016	Intelligence Report - Hotel Case – Subject Theft and Fraud Hotel funds whilst employed	Border Alert Notice/Convicted	FIU/CIP/Custo ms/CLO
2016	Intelligence Report – Theft and Fraud whilst employed as Treasurer for a Church NGO.	Case on HOLD	FIU/CIP
2016	STR - Bank Employee – Misappropriation of Funds	Case before the Courts	FIU/CIP/CLO
2017	Police Investigation. Employee Theft and Fraud of Company Funds.	Case before the Courts	FIU/CIP/CLO
2017	Police Investigation – Drug/Cannabis Investigation	Convicted	FIU/CIP/CLO
2017	Police Investigation. Employee Forged supporting documents	Ongoing	FIU/CIP

	for computer programs for Hotel		
2017	STR - Bank Employee misappropriating social club funds and customer account funds	Case on HOLD	FIU/CIP
2017	Citizen complaint to FIU – Pyramid scheme	Ongoing	FIU/CIP/CLO/ Internal Affairs

136. CIP's internal training documentation contains few references to the use of financial intelligence to develop lines of inquiry. The CIPs "Fraud Investigation Best Practice Manual" does however contain reference to conducting financial inquiries. The Manual recommends that bank inquiries are made and documents be obtained from the bank under warrant prior to interviewing the suspect of a fraud investigation. However, the Manual:

- makes no reference to the FIU, the data it collects, or its ability to request information from international counterparts;
- does not recommend that financial intelligence be used to aid evaluation or corroboration of fraud complaints, or the development of an investigative strategy upon acceptance of a complaint; and
- does not discuss the use of financial inquiries or intelligence analysis to "follow the money" beyond collecting sufficient documentary evidence to prove the predicate offence alleged in the complaint.

137. The absence of measures to promote the use of financial intelligence by CIP is in line with the low number of requests from CIP (see Table 4 below) for FIU information, including none in some years, the low number of ML investigations pursued (discussed in IO 7), and the limited attempts to confiscate the proceeds of crime (discussed in IO 8).

138. In line with the Cook Islands' risk profile, there have not been any investigations into TF and therefore no financial intelligence has been developed or used to support such an investigation. However, despite a low level of TF risk, the FIU has evaluated two cases over the past five years as potential instances of TF. These cases display a very low-risk appetite for potential TF matters and a swift, considered and appropriate response by FIU.

#### **Box 5: Case study - TF inquiry by FIU in response to STR's received**

During 2013 the FIU received five STRs from a bank relating to two clients sending or receiving funds to/from jurisdictions of high TF risk: Afghanistan (4 outward transfers) and Iraq (1 inward transfer).

In both cases, the FIU engaged with the bank and viewed the in-house screening and enhanced due diligence undertaken with the wire transfers connected to the clients.

FIU analysis of the first case determined the remittances were sent to cover operational expenses incurred by the bank's customer, which provided consulting, construction, architecture and rehabilitation services in Afghanistan. The FIU confirmed its analysis through information exchange with a counterpart FIU. No further action was taken as the matter was assessed as unlikely to relate to TF.

FIU analysis of the second case determined the recipient of the transfer offered a variety of business management and consulting services, such as purchasing earth moving and mobile communication equipment for companies in Iraq. The FIU prepared an Intelligence Report and disseminated it to a counterpart FIU in the jurisdiction where the company was registered.

*STRs received and requested by competent authorities*

139. Competent authorities in the Cook Islands displayed awareness of the information they could receive from the FIU. As the table below demonstrates, competent authorities are routinely requesting information from the FIU. In general, the assessment team heard positive feedback from competent authorities on information available and received from the FIU.

**Table 4: Requests for Information to FIU from LEAs or Competent Authorities (2012-2017)**

	Requesting Agency							Total
	CIP	Customs	Tax	Immigration	BTIB	Audit	Others <sup>18</sup>	
2012	7			2	4			13
2013			38					38
2014	8			28	7		5	48
2015	2						9	11
2016				4	4	102	7	117
2017 (Jan-Nov)	27	2			11	6	9	55

140. The FIU has 128,000 financial transaction reports (STRs, CTRs, EFTs and BCRs) in its database and has powers to access a wide range of financial, administrative and law enforcement data. Where it needs to obtain additional information, the FIU is effectively able to do so to support operational analysis. The quality and quantity of STRs received by the FIU appear to be sufficient for it to initiate and support its operational analysis. The level of STR reporting is reasonable and largely in line with identified ML/TF risks (i.e. STRs and CTRs are predominantly received from the banking sector), with some exceptions (see IO.4 for further detail). The rise in STRs in 2017 can be attributed to the increased awareness and training conducted by the FIU, however, the FIU did note that it experienced some defensive reporting and has liaised with the relevant RIs and this has since ceased (see IO.4). It is anticipated that the overall level of STR reporting will increase due to outreach undertaken by the FIU on the FTRA 2017.

141. The grounds for suspicion in the majority of STRs received by the FIU relate to fraud, which aligns with the identified threats in the Cook Islands.

**Table 5: Financial Transaction and other Reports<sup>19</sup> Received by the FIU**

Transaction/ Report Type	No of reports received					
	2012	2013	2014	2015	2016	2017 (Jan- 30 Nov)
STR	52	52	31	39	39	91
CTR	2,226	2,327	2,786	2,692	3,018	3,521
EFTR <sup>20</sup>	6,619	6,883	6,874	10,746	18,789	32,579
BCR	15	20	26	38	49	26
Total	8,912	9,282	9,717	13,514	21,895	36,217
Monthly Total Average	742	774	810	1,126	1,825	3,292

<sup>18</sup> Others include Office of the Public Expenditure Review Committee and Audit (PERCA), Ministry of Foreign Affairs (MOFA), Financial Supervisory Commission (FSC)

<sup>19</sup> Border Currency Reports captured under the Currency Declaration Act

<sup>20</sup> EFTR is not threshold based and requires all electronic or similar fund transfers into and out of the Cook Islands to be reported.

142. Despite the FIU and Customs having worked to create greater awareness around BCR requirements, there was a decline in BCR reporting in 2017, which could be attributed to the phasing out of departure cards. The currency declaration requirement at departure is by voluntary disclosure.

**Table 6: STRs received by the FIU from RIs**

Reporting Institutions	No of STRs received					
	2012	2013	2014	2015	2016	2017 (Jan-Nov (to-date))
Commercial Banks	32	33	20	15	19	30
International Bank	7	13	6	16	5	18
TCPS	11	5	4	6	9	11
Money Remitter	2	-	-	-	3	28
DNFBP	-	-	-	1	-	3
Regulator	-	1	1	1	-	-
Voluntary	-	-	-	-	3	1
Total	52	52	31	39	39	91

143. The FIU regularly requests additional information from RIs to analyse STRs and perform other financial analysis. Additional information typically requested includes related bank account opening documents and transaction histories. The number of requests for additional information has accelerated from 2016 onwards and reflects the on-going engagement of the FIU with the RIs to assist the FIU with analysis of STRs.

**Table 7: Number of requests from FIU to RIs for additional information from 2012 to 2017**

Year	Total Number of Queries to RIs for additional information
2012	107
2013	123
2014	83
2015	84
2016	134
2017 (Jan-30 Nov)	209

#### *Operational needs supported by FIU analysis and dissemination*

144. The FIU's analysis and dissemination is of a good quality. However, the use of FIU's intelligence by relevant LEAs, especially the CIP, has not regularly resulted in the conduct of financial investigations.

145. In the context of a small jurisdiction, the FIU provides a focal point for competent authorities to access expertise in financial analysis. This expertise is not replicated in other agencies, however, when other LEAs identify an operational need for financial enquiries they approach the FIU for assistance.

146. Legislation expanded the role of the FIU in 2015 to allow it to independently investigate financial misconduct (which include ML/TF) and pursue "preliminary financial investigations". The FIU conducts witness interviews, obtains telecommunications data, and receives reports of financial misconduct from the general public.

**Box 6: Case study - Government payments to a shipping company**

In August 2015 the FIU received a letter from a prominent citizen seeking investigation of the advancement of the sum of NZ\$ 200,000 (US\$ 131,660) to a shipping company by a government agency. Subsequently, the FIU and CIP initiated a joint investigation into the matter. At the request of the CIP, a Detective Senior Sergeant from New Zealand Police completed a review of the case in October 2016. The matter is ongoing.

147. While the FIU's database allows for online reporting, not all RIs (including the domestic bank and MVTS provider) are currently able to report electronically due to problems with the uploading of batch files. This is a concern as it impacts the FIU's ability to conduct real-time operational analysis.

148. The FIU has two intelligence analysts, both of whom are trained in conducting financial analysis. The assessment team considers this allocation of staff to be insufficient in light of the broad role held by the FIU, which includes investigation of financial misconduct.

149. The FIU analysts conduct STR analysis manually. They analyse suspicious transactions and other financial transaction information in order to develop intelligence products. The results of the analysis of the different types of reports received are disseminated to relevant LEAs in the form of "information dissemination reports" (IDRs). The FIU utilises STRs, CTRs, EFTRs and BCRs in its intelligence reports. IDRs provide financial intelligence to assist the operational needs of LEAs to investigate predicate and ML offences. While the CIP noted that these IDRs are useful, they have not resulted in successful investigation of ML offences due to insufficient commitment to pursuing the ML offence (refer to IO.7). The majority of the IDRs are disseminated to foreign LEAs, as highlighted in Table 8 below (see also relevant discussion in IO.2 and Tables 22 and 23).

150. The low rate of FIU disseminations leading to ML investigation, conviction or prosecution is of concern. The assessment team, however, is satisfied, based on discussions during the on-site and cases provided by the Cook Islands, that STR referrals have led to some predicate crime investigations.

**Table 8: Disseminations by the FIU to relevant authorities**

Receiving Authority	2012	2013	2014	2015	2016	2017 (Jan-Nov to-date)
CIP	1	8	1	2	1	4
Tax	6	0	0	0	0	5
Foreign LEA	16	8	1	18	12	11
Total	23	16	2	20	13	20

**Box 7: Case study - STR referral leading to predicate crime investigation**

In February 2016 the FIU received an STR which related to a suspicion of theft, receiving stolen property and false accounting of NZ\$ 12,674.04 (US\$ 8,342) by a foreign national who was working for an accommodation business in Rarotonga.

The subject was suspended from employment on 5 February 2016. The suspect had a family vacation planned and was reportedly departing the Cook Islands on 19 February 2016. There was concern that he may change his travel plans to depart the country earlier and avoid law enforcement. A joint-agency investigation was immediately initiated to discuss operational actions to prevent the early departure of the subject.

Urgent requests were submitted to banks for information. Analysis of the information received from the banks revealed the subject's wife had withdrawn NZ\$ 20,450 (US\$13,450) from their bank accounts earlier that day, supporting the suspicion that the subject may depart the country early. The FIU issued a border alert notice for the subject and his wife, obtaining additional financial information from subject's place of employment for analysis. CIP interviewed individuals who would provide evidence to the formal complaint. It was discovered the subject purchased three Air New Zealand tickets earlier in the day to depart early the following morning on 6 February 2016. The subject volunteered not to depart the country as planned and agreed to fully cooperate with the authorities. Joint investigation provided the following outcome:

- An information request from the FIU to the Fiji FIU
- Subject was arrested by CIP on 18 February 2016 and was charged with theft as a servant.

The subject was convicted and sentenced on two charges of theft as a servant, to 12 months community service, 24 months' probation, ordered to repay the sum of NZ\$ 9,354.04 (US\$ 6,157).

151. The FIU information is effectively shared with supervisors (the FIU and FSC) to support their risk-based selection of entities for compliance examination, and the focus of examinations.

152. In general, competent authorities were satisfied with the extent to which FIU analysis and dissemination supported their operational needs. However, RMD suggested greater focus may be usefully placed on their work pursuing domestic incidents of tax evasion.

153. The FIU indicated that regular feedback from LEAs on the results of disseminations would be valuable for the FIU to enhance its intelligence dissemination products and engage in further strategic analysis.

#### *Cooperation and exchange of information/financial intelligence*

154. The FIU is the central AML/CFT coordinator in the Cook Islands, which allows for the robust and open exchange of information and intelligence amongst key agencies. The FIU has good working relationships with CIP and other LEAs. Domestically, the FIU has MOU arrangements with the FSC, CIPS and Customs to exchange information and intelligence effectively.

155. As noted in IO3 above, the FIU and FSC are able to cooperate effectively in relation to AML/CFT supervision information exchange. The FIU and FSC should consider whether a more efficient use of limited resources could be achieved with the delegation of the AML/CFT supervisory functions from the FIU to FSC for FSC licensees, with the FIU supporting the FSC as required and maintaining responsibility for AML/CFT supervision of other DNFBPs. The FIU is responsible for

DNFBP supervision and ought to increase supervisory activity with legal professionals, given the medium/high-risks posed and the low level of awareness of AML/CFT obligations in that sector.

156. The FIU observes strict protocols to protect the confidentiality of information. These protocols are part of the FIUs Information & System Protection Policy. The FIU's standard operating procedure on "Management of Financial Transaction Reports" incorporates processes aimed at safeguarding transaction reports received and IDRs disseminated by the FIU. The FIU does not explicitly incorporate protocols on the confidentiality of STR receipt, analysis and dissemination in the "FIU Policy & Procedures for the Receipt and Processing of SARs".

157. The FIU, in principle, ensures the protection of FIU intelligence by placing caveats on intelligence disseminations. This includes restricting the further sharing of any information in its reports to third parties. This is however not documented in the FIU procedures.

158. There are no prescribed processes to monitor the confidential use and maintenance of information exchanged between agencies, however, it appears that authorities protect the confidentiality of information they receive and use. No barriers have been identified that inhibit or obstruct information flows. Intelligence data is securely protected and is disseminated through processes that respect its confidential nature. The trust and confidence associated with the management of disseminated intelligence is satisfactory.

159. Private sector representatives that met with the assessment team stated that specific feedback from the FIU (e.g. on the use of specific STRs filed) is not regularly received.

160. The FIU effectively exchanges information and intelligence with its Pacific FIU counterparts through both its bilateral MOUs and the Association of Pacific Island FIUs (APIFIU) network. Refer to IO.2 for further information.

#### *Overall conclusions on Immediate Outcome 6*

161. While the FIU is developing quality financial intelligence, there has been minimal use of financial intelligence to investigate ML/TF or predicate offences, primarily due to a lack of focus from LEAs on conducting financial investigations and the CIP's limited capacity in relation to financial investigations. Competent authorities in the Cook Islands did, however, display an awareness of the information they could receive from the FIU and are routinely requesting information from the FIU for broader operational purposes. In the context of a small jurisdiction, the FIU provides a focal point for competent authorities to access expertise in financial analysis.

162. **The Cook Islands has a moderate level of effectiveness for Immediate Outcome 6.**

#### *Immediate Outcome 7 (ML investigation and prosecution)*

##### *ML identification and investigation*

163. CIP is the primary LEA for the investigation of ML offences as the administering agency of the Crimes Act. The FIU has an intelligence-gathering role, but its inquiries are not usually made to an evidentiary standard. As discussed in IO. 1 and IO. 6, the FIU has recently begun to take an important role in ML/TF investigations, which extends beyond intelligence gathering to investigations.

164. The Cook Islands has only conducted four ML investigations, two of which are on-going. The CIP has detected, with the assistance of the FIU, and investigated two cases (Police v Mussel & Mussel and Subject A's case) and the FIU has led two on-going investigations in joint operation with the CIP (Box 11 and 16 below). Apart from Police v Mussel & Mussel, the investigative activity in relation to ML is very recent or ongoing.

**Box 8: Police v Mussel & Mussel**

In 2011 an ML investigation was undertaken by CIP in relation to a local restaurant owner following the receipt of an STR lodged by a bank on possible structured transactions. During the investigation, it was revealed that the restaurant owner had been previously convicted in the United States for drug dealing offences. Information had come to light that the subject had regularly travelled out of the Cook Islands to destinations in Asia and the United States and that the subject had large amounts of cash in his possession.

CIP, with the assistance of the FIU, executed search warrants on the subject's house and restaurant premises where a safe with cash was found. Financial records were obtained from the subject and his bank. In addition, an MLA request was sent to New Zealand for bank records of a New Zealand bank account of the suspect. The Police engaged the assistance of a forensic accountant from the Australian Federal Police to conduct an analysis of the subject's financial records. In June 2011, the subject was charged with 11 offences of structuring and in February 2012 further charges of ML were laid against the subject. The subject's wife was charged with assisting.

The file was provided to CLO for prosecution. CLO sought assistance from a New Zealand Serious Fraud Office prosecutor to review the file for sufficiency of evidence and to prosecute the file. Advice was provided that there was not sufficient evidence to prove that the proceeds were generated from drug dealing. The use of fraud charges in relation to tax offences was proposed in the absence of any evidence of drug dealing offending, however, that was also not possible since the subjects had not filed any tax returns since the establishment of the Restaurant in 2005. In June 2012 the subject pleaded guilty to the structuring charges and was fined \$11,000 (US\$ 7,242).

As a result of the large amount of cash found in the possession of the subject, the Collector of Revenue gave instructions to RMD to audit the subject. As a result of the audit, which included an interview, a calculation of the income was made and the tax assessments raised under section 21 of the Income Tax Act of approximately \$200,000 (US\$ 131,660) (including arrears). A request for information under section 192 of the Income Tax Act 1997 was sent to all the Cook Islands banks. The RMD was able to recover approximately \$100,000 (US\$ 65,830) with a payment plan in place for the outstanding amount.

165. It is not evident that LEAs routinely identify and investigate ML separate from predicate offences. Factors leading to this outcome are likely as follows:

- an apparent preference by key decision-makers that the penalty for conviction of the predicate offence would be sufficient punishment and it is not in the public interest to also pursue the underlying ML offence;
- economic interests related to the tourism sector lead to a focus on safety and consumer issues by LEAs;
- structural weaknesses within CIP in relation to financial investigations and ML generally;
- no internal directives or guidance on ML investigations;
- the relatively low level of domestic proceeds-generating crimes;
- a lower maximum penalty for ML when compared to the maximum penalties for other offences involving dishonesty or corruption (3 – 14 years), and the absence of a sufficiently dissuasive penalty for both natural and legal persons; and
- preference of predicate investigation and prosecution, as it is quicker and less challenging given existing skills and resources.



166. The NACC issued a ‘Parallel Financial Investigation and Multi-Disciplinary Groups Policy’ in November 2017. While parallel financial investigations of predicate crimes are pursued on a limited basis in, for example, fraud and corruption cases, this recently issued policy has not yet translated into practice to ‘follow the money’. This problem is amplified by limited skills and resources within CIP and other LEAs to ‘follow the money’ and undertake complex ML related activities. For example, in the case of Subject A below, despite an ongoing investigation since 2013 on a proceeds-generating crime, with evidence of unexplained wealth, the ML investigation only commenced in 2017.

**Box 9: Subject A’s case (ongoing)**

In 2013, the CIP acting on intelligence, initiated an investigation into the drug dealing activities of Subject A and requested the assistance of the FIU for the analysis of the subject’s personal and business financials. A total of more than NZ\$ 11,000 (US\$ 7,242) unexplained wealth was identified but the FIU were unable to complete the analysis due to other source documents such as deposit books not being available. In 2017, the CIP received an ML complaint in regards to Subject A and the investigation of the matter is still on-going. The assistance of the New Zealand Serious Fraud Office has been sought.

167. CLO is involved in investigations at a relatively early stage as it advises CIP on the course of action undertaken by investigators and additional charges that can be laid. However, to date the CLO has not provided advice to support continuing investigation or prosecution of ML. In the one instance where ML investigation was pursued (see Box 8), following legal opinion from CLO, the charges were withdrawn as there was insufficient evidence for prosecution.

168. During the on-site, the CIP expressed its concern at its lack of resources and expertise to investigate ML. The CIP has around 109 police officers, five of whom are tasked to conduct financial investigations when the need arises. It is not clear that these staff have received adequate training to perform this function. There is no designated team or officer for ML investigations and prosecution in the LEAs and CLO. There is no forensic accountant support in the Cook Islands (private or public) to analyse accounts. Therefore authorities have to resort to assistance in forensic analysis from foreign counterparts, particularly from New Zealand.

169. Despite limited local expertise, CIP was confident that the Cook Islands’ close relationship with New Zealand can be relied upon for relevant expertise to support any ML investigation, particularly in a more complex case. In fact, this is routine in the Cook Islands where fraud cases and complex financial cases have previously involved invoking speedy assistance from the New Zealand Serious Fraud Office (see, Box 9 Subject A’s case). Arguably, the resourcing and expertise constraints in the Cook Islands, in the context of its special relationship with New Zealand, may be considered less egregious than in other small island jurisdictions. However, it is clear that a number of cases involving parallel financial investigations or ML are not being handled expediently due to the limited capability amongst LEAs in the Cook Islands.

170. Several predicate crimes involving significant proceeds of crime have been brought to the attention of LEAs, through their own investigations or by the FIU, and been pursued on the basis of the predicate offence. However, for the most part, the Cook Islands authorities have not conducted parallel financial investigations or included ML offences (and/or proceeds of crime action) in the investigation, due in part to capacity and awareness issues in both the CIP and CLO (see Box 10 Leelesh Chandar below).

171. LEAs and CLO lack internal policy guidelines on investigating and prosecuting ML cases. Reliance is placed in large part on the FIU to provide expertise in respect of matters involving a financial aspect and/or ML. This is largely due to the lack of human resources, including dedicated staff, and technical capacity but also to a lack of awareness to pursue ML cases as discreet criminal

offences. Even though CIP and FIU routinely consult the CLO on the course of action for ongoing investigations, the CLO admitted failing to consider ML or financial aspects of the predicate at issue.

172. The deficiencies in pursuing ML at the early stages of investigations will inevitably effect successful prosecution and conviction of ML cases due to potential weaknesses in evidentiary collection and planning complex cases.

**Box 10: Police v Leelesh Chandar CR No 550/11**

In 2012 Chandar was found guilty by a jury on a charge of theft. The offence related to a “Nigerian scam” in which Chandar helped a Nigerian scammer to launder money fraudulently obtained through his wife’s bank account in exchange for a commission fee of NZ\$ 1,020 (US\$ 670). Chandar was only charged for deliberately keeping the NZ\$ 1,020 (US\$ 670) fee, but not for laundering the proceeds of fraud. He was sentenced to 12 months probationary supervision, with the first six months to be served as community service. During the on-site, the assessment team was told that there have been other similar online scam cases but none have led to an ML investigation or prosecution.

173. As discussed in IO.1, it is positive that the FIU is able to independently investigate ML. However, the fundamental and difficult root causes of low effectiveness of ML investigations remain, particularly structural weaknesses within the CIP in relation to ML investigation and the subsequent underutilisation of CLAG to progress joint agency ML investigations.

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

174. Despite several emerging and identified domestic ML risks, the primary ML threat to the Cook Islands, in general terms, is international in its origin. In the 2015 NRA, Cook Islands assessed as ‘High’ the threat presented by proceeds of crime generated abroad and laundered in the Cook Islands. As the extracts from the 2015 NRA below demonstrate, LEAs have identified proceeds that have been laundered domestically, without taking any ML action:

- 2011: US\$ 12 million from tax fraud and US\$ 1.7 million for unlawful importation, manufacturing and distribution of controlled substance, and money laundering, was recorded as proceeds generated from crimes committed abroad and were laundered through some international trusts and companies.
- 2012: FIU froze US\$ 1.2 million which were the proceeds generated from a fraud which was detected when fraudulent documents were used to open a company account with a bank in the Cook Islands.
- 2013: a sum of US\$ 53 million was generated from securities fraud abroad where US\$ 9.9 million was laundered through an international company in the Cook Islands. The US\$ 9.9 million was repatriated back to the requesting country upon Court settlement. In the same year, the sum of US\$ 6.04 million from a fraud committed abroad was also laundered into an international trust, and the same was repatriated back to the requesting country by consent of the account holder.
- 2013: proceeds from fraud for the sum of US\$ 2.6 million were laundered through an international company destined for another jurisdiction. The Cook Islands through the CLO and responded by executing court orders to obtain tracking documents for evidence to assist with the foreign investigation.

175. The assessment team is aware of two ongoing matters (see Box 11 below, and Box 16 in IO. 8) involving proceeds from foreign crimes being laundered through the Cook Islands offshore financial sector. It appears that law enforcement activity of predicate and/or ML offences involving

the Cook Islands would most likely be triggered by a foreign request for information or assistance. As discussed in IO.2, and evident in the examples above, the Cook Islands is responsive to foreign requests for information and plays a constructive role in foreign proceedings.

**Box 11: Investigation into laundering through the international financial sector**

There is an ongoing investigation into suspected laundering of proceeds of crime through a complex web of Cook Islands international trusts and international companies. It is suspected that US\$ 105 million had been placed into the jurisdiction through the international financial sector.

The investigation, led by the FIU in collaboration with the CIP, was initiated upon receipt of two STRs in early 2017 regarding a person who had been indicted for embezzlement in a foreign jurisdiction. The investigation is proceeding with cooperation from foreign FIU counterparts. A multi-agency ML and financial misconduct criminal investigation team has been established. Thus far the FIU has issued several freezing notices and instructions to RIs to produce financial records.

176. In the context of the threat associated with the offshore financial sector being assessed as 'high', it is notable that LEAs in the Cook Islands were not actively pursuing the handful of cases brought to their attention where foreign proceeds were laundered domestically. This predominantly reactive approach is not demonstrative of an effective response in terms of investigating and prosecuting ML.

177. In terms of domestic proceeds, the risk of ML in the Cook Islands is assessed as low compared to the offshore financial sector. However, four ML investigations and a complete absence of ML prosecution is not consistent with the jurisdiction's domestic risks and threats. Importantly, opportunities for investigation and prosecution of ML have arisen and been missed by LEAs and CLO. For example, the Cook Islands has prosecuted an important case related to corruption where the clear use of substantial proceeds of crime was not pursued as an ML offence.

**Box 12: Police v Bishop (2016)**

In 2016, a prosecution was brought against former Minister of the Crown, Teina Bishop for bribery. At the time of the offending (2013), Bishop was Minister of Marine Resources and had statutory power to issue licences for commercial fishing. The then Minister was interested in purchasing a resort in Aitutaki but was having some difficulty raising the NZ\$ one million (US\$ 659,680) required to purchase it. He approached a foreign-based company with which he had previously had dealings with in respect of fishing licences, and of whom he also had a close relationship with its CEO, and sought a loan from it for part of the purchase price (NZ\$ 250,000)(US\$ 164,600). Eventually, this was agreed upon by the foreign company and the funds were provided to the Minister by a related company in exchange for continuation and issuances of fishing licences to the foreign company. The jury found the former Minister had corruptly derived a benefit from his capacity as Minister of Marine Resources and he was sentenced to approximately two and a half years' imprisonment. In late 2017 an application under the Proceeds of Crime Act 2003 for forfeiture (and pecuniary penalty order in the alternative) was made and an amount (NZ\$ 250,000)(US\$ 164,600) was settled upon by the Solicitor-General and the former Minister which was accepted by the Court.

178. The Cook Islands is also exposed to ML risks from other domestic financial crimes that have not yet been subject to parallel ML investigations. In addition to the case at Box 10 (Police v Leelesh Chandar), which demonstrates missed opportunities in an emerging area of ML risk (frauds and scams), investigations into offences from other emerging threats, such as offences involving drugs, theft, corruption and environmental crimes, have lacked parallel financial investigations or ML investigations.

**Table 9: Predicates and ML investigations**

	Investigations commenced	ML investigations	ML prosecutions
<b>Drug Trafficking</b>	2013 - 1 2014 - 0 2015 - 0 2016 - 0	1	
<b>Corruption</b>	2014 - 0 2015 - 1 2016 - 2	2	1 Ongoing
<b>Embezzlement</b>	2017 - 1	1	Ongoing
<b>Environmental Crimes</b>	0	0	0
<b>Frauds and Scams</b>	2014 - 10 2015 - 14 2016 - 9	0	0
<b>Theft</b>	2014 - 232 2015 - 265 2016 - 222	0	0
<b>Tax Evasion</b>	41 <sup>21</sup>	1	

179. As Table 4 in IO. 6 (Request for Information to FIU from LEAs or Competent Authorities (2012-2017)) indicates LEAs are demonstrating some ability to identify and investigate predicate offences and seek information, including financial information, from the FIU, but the subsequent ML investigations are not consistently flowing through. Further, the absence of ML prosecution is not consistent with the assessment of ML risk reaching a rating of medium with respect to the offshore financial sector, and several foreign proceeds generating crimes posing a medium or high-level threat (for example, bribery and corruption, fraud, environmental crime). Notably, in the limited cases where ML investigations were pursued, the investigations were not conducted expeditiously (see Box 9 and 11 above).

#### *Types of ML cases pursued*

180. The Cook Islands has conducted only four ML investigations, none of which proceeded to prosecution. As described above, despite identified cases of ML, including domestic laundering of foreign proceeds, no stand-alone or third-party ML cases have been investigated and prosecuted.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

181. As there have been only four ML investigations and no prosecution of natural or legal persons there have been no sanctions applied with respect to ML cases in the Cook Islands. However, it is apparent from the penalty provisions that they are not proportionate and dissuasive (see analysis above and in R.3 TC Annex).

182. Separate from the available penalties, as discussed in Chapter 1, there is a reluctance to apply the penalties that are available on the public interest grounds. For example, in the corruption investigation discussed above (Box 12), no action was taken with respect to a business enterprise purchased with proceeds of crime to avoid any impact on the employment that enterprise offered to locals. Further contextual factors related to the dynamics of a small community are likely to influence whether authorities will impose the full suite of charges and seek the available sanctions in the future if ML prosecutions are pursued.

<sup>21</sup> Table 2. 2017 Review of Risk

*Other criminal justice measures*

183. There is no evidence to suggest that the application of any criminal justice measures has been to target ML, even where it was not possible, for justifiable reasons, to secure an ML conviction. The Cook Islands has not demonstrated that it has focused on particular predicate crimes in order to mitigate ML risk.

184. The Cook Islands has argued that at least in one of the ML cases alternative criminal justice measures were applied (see Box 8). In that case, the ML case did not proceed to prosecution, but the Collector of Revenue gave instructions to RMD to audit the subject. The assessment team does not consider this to be an 'alternative' measure to appropriate ML prosecution. The restraining orders expired because CLO did not apply in time to extend them and, as a result, the funds held in various bank accounts by the accused parties were dissipated. The fact that remaining amounts were recovered by RMD as unpaid tax is not an 'alternative' measure, but rather a complementary or residual measure taken in relation to a portion of the funds.

185. Lastly, while the Cook Islands provides ready assistance to other jurisdictions that are investigating ML, including assisting in the repatriation of proceeds of crime (see above and IO.2) where the ML may have involved the Cook Islands' entities, it was not done as an alternative to seeking an ML conviction.

*Overall conclusions on Immediate Outcome 7*

186. LEAs in the Cook Islands have not displayed a commitment to investigate and prosecute ML. It is not evident that LEAs routinely identify and investigate ML, separate from predicate offences. In particular, there are missed opportunities in relation to parallel financial investigations, and investigations related to domestic laundering of foreign proceeds.

187. **The Cook Islands has a low level of effectiveness for Immediate Outcome 7.**

*Immediate Outcome 8 (Confiscation)**Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

188. Confiscation of criminal proceeds, instrumentalities and property of equivalent value is not being pursued as a policy objective in the Cook Islands. LEAs do not have policies and procedures for asset tracing, restraint or management related to ML activities or associated predicate offences.

189. While the Cook Islands' legal framework is generally comprehensive and provides adequate tools for detection, restraint and confiscation of instrumentalities and proceeds of crime, both for domestic and international criminal cases, there is limited knowledge among key agencies of these mechanisms.

190. Tax evasion is an example of a predicate offence that attracts a reasonable law enforcement response from RMD - Tax (see Table 10 below) in terms of issuing tax assessments and seeking to recover amounts of tax evaded. However, there is no consideration of the ML/TF framework in these actions, and the FIU is not routinely consulted in pursuing proceeds of tax evasion. Similarly, Customs has a record of detaining, seizing and confiscating goods at the border (see Table 11 below) but there is no link to ML/TF, or broader consideration of predicate offences, or the value of goods confiscated in relation to any proceeds of crime.

191. In general, LEAs do not understand or are reluctant to apply their powers to confiscate property of equivalent value. In the cultural context of the Cook Islands, this is especially the case where it appears that the perpetrator has been sufficiently punished, including through damage to

social standing or reputation. This leads to a view amongst LEAs that proceedings under proceeds of crime legislation are unnecessary, disproportionate and, in some cases, unjust to the perpetrator.

192. Asset tracing and provisional measures to freeze and seize property are not regularly undertaken by LEAs. Investigators have not been given instructions to follow the money and take actions to locate and restrain property that might be subject to confiscation in predicate investigations.

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

193. The Cook Islands was not able to provide the assessment team with information regarding the amount of money or assets confiscated. Overall, competent authorities have demonstrated limited initiative and efforts in confiscating (including through repatriation, sharing and restitution) the proceeds and instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries.

194. Several hundred reports were made to CIP each year on proceeds generating crimes, such as fraud, theft and burglary. The assessment team understands that most of the reports concerned petty crimes such as theft of food or alcohol. However, in light of the information in Table 9, it is noted that limited action has been taken by CIP to detect, restrain and confiscate the proceeds of crime. Other LEAs such as the RMD - Tax, Customs and FIU have demonstrated a greater inclination to detect, restrain and confiscate the proceeds of crime.

195. Between 2014 and 2016, a total of 29 cases of tax evasion were investigated by RMD, 15 of which were prosecuted. A total of 14 enforcement actions were undertaken during the same period with 27 warning letters issued and 21 flight bans issued to prevent taxpayers absconding overseas without paying their tax liabilities.

196. While RMD is able to recover some of the amounts assessed to be proceeds of tax evasion, there is insufficient evidence to suggest the RMD has effectively or adequately applied the mechanisms available to detect, restrain and confiscate instrumentalities and proceeds of tax crime, or pursue property of equivalent value.

**Table 10: Proceeds from Tax Evasion 2011-2017**

2012	2013	2014	2015	2016	2017
\$741,625 (US\$ 488,376)	\$1,359,100 (US\$ 894,960)	\$648,709 (US\$ 427,170)	\$811,220 (US\$ 534,174)	\$770,447 (US\$ 507,342)	\$313,562 US\$ 206,482
<b>Proceeds of tax evasion recovered</b>					
2012	2013	2014	2015	2016	2017
\$738,341 (US\$ 486,006)	\$507,928 (US\$ 334,362)	\$442,336 (US\$ 291,184)	\$496,566 (US\$ 326,905)	\$675,447 (US\$ 444,659)	\$58,363 (US\$ 38,421)
<b>Percentage of proceeds of tax evasion recovered</b>					
2012	2013	2014	2015	2016	2017
99.6%	37.3%	68.2%	61.2%	87.7%	18.6%

197. The decrease in the percentage of proceeds recovered in 2017 is due to the Tax Amnesty which halted many of the enforcement activities from 1 August 2017 to 31 March 2018 with all debts prior to 1 January 2010 written off and debts post-2010 written off if the arrears arrangement is honoured.

198. Customs utilises its powers under part 16 of the Customs Revenue and Border Protection Act 2012 in relation to detention, seizure and confiscation of goods at the border. However, the cases provided to the assessment team are limited to seizures, forfeitures and reparations in relation to unpaid customs duty.

199. There is no evidence of broader cooperation between Customs, CIP and the FIU in relation to confiscating (including repatriation, sharing and restitution) the proceeds and instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries (see Table 11 below). This includes Customs seizures in relation to drugs and firearms.

**Table 11 Customs Service Seizure, Forfeiture and Repatriation Figures 2012-17**

Year	Investigations of predicate offences	No. of prosecution of predicate offences	No. of conviction of predicate offences	Cases - criminal assets/ proceeds of custom crimes were seized/frozen	Cases - assets/ proceeds of custom crimes seized/frozen and forfeited	No. of cases in which proceeds of custom crime were repatriated	Investigations of predicate offences
2012	Nil	Nil	Nil	Nil	Nil	Nil	Nil
2013	1	1	1	Nil	Nil	Nil	1
2014	4	1	1	10	10	Nil	4
2015	5	3	2	46	46	Nil	5
2016	9	1	1	39	39	Nil	9
2017	14	1	Nil	36	36	Nil	14

200. With respect to proceeds from foreign predicate offences, during the years 2010 to 2016, CLO provided MLA to the United States and assisted to obtain two court orders to restrain funds (one was made ex-parte). In each case funds were restrained and repatriated by the consent of the United States offender) (see Box 13 below) and one forfeiture order was issued and relevant funds were forfeited and repatriated to the United States

**Box 13: Assisting foreign authorities to recover proceeds of foreign crimes**

In 2010 (*Elikana v Dukhman & Ors*), CLO assisted to apply an ex-parte restrain order and successfully repatriated around US\$ 1.6 million relating to fraudulent mortgages to the United States Marshall's office.

In 2013 (*Pareina v ANZ & Ors*), CLO assisted to obtain a production order and a restrain order, and to repatriate around US\$ 5.4 million relating to investment fraud to the United States Marshall's office.

In 2013 (*Todd Ficeto & Florian Homm*), the sum of US\$ 6.04 million from a fraud committed abroad was laundered into an international trust in the Cook Islands, and the same was repatriated back to the requesting country through a nominated bank account of the United States Marshalls by consent of the account holder.

201. Domestically, LEAs have missed opportunities to pursue ML offences and/or proceeds of crime action in cases of online scams, embezzlement by bank or hotel staffs and unexplained wealth (e.g. *Police v Leelesh Chandar*, see Box 10). The assessment team was provided with examples of unrestrained property and an example where a deadline was missed for extending a restraint order (see Box 14 below). This demonstrates the deficiencies in the Cook Islands' ability to prevent the Anti-money laundering and counter-terrorist financing measures in the Cook Islands 2018 © APG 2018

flight or dissipation of assets in such scenarios. These concerns are amplified by the lack of mechanisms for managing complex structures or assets other than funds.

#### **Box 14: Police v Mussel & Mussel**

The restraining orders expired because CLO did not apply in time to extend them. As a result, the funds held in various bank accounts by the accused parties were dissipated, except for the amounts recovered by RMD as unpaid tax (see Box 8). CLO also did not re-apply for a restraining order against the various vehicles of two of the accused parties.

202. There is some evidence to indicate that the FIU and Customs have taken action in a limited number of circumstances to freeze assets under investigation. However, it is not apparent that these actions have resulted in the confiscation or repatriation of the assets.

**Table 12: Freezing Action Undertaken by FIU**

	2012	2013	2014	2015	2016	2017
<b>Number of Freezing Actions</b>	1	4	2	3	4	1
<b>Details</b>	1) US\$1.2m- A Trust (Repatriated to US)	1) US\$ 6.04m- Individual A (Repatriated to US) 2) US\$ 9.924m- Individual B (Repatriated to US) 3) NZ\$ 14k (US\$ 9.2k)- Individual C (Restitution order by CI Court) 4) NZ\$ 47k (US\$ 31k)- Individual D (Restitution order by CI Court)	1) US\$8k- B Trust (Repatriated to US) 2) US\$ 169k- Individual E (Repatriated to US)	1) US\$446k-C Trust (Repatriated to US) 2) NZ\$ 110k (US\$ 72.5k) – unknown individual (Restitution Order by CI Court) 3) NZ\$ 16k (US\$ 10.5k)- Individual F	1) US\$ 160K Individual G (Repatriated to US) 2) US\$ 17k Individual H (Repatriated to US) 3) NZ\$ 14k (US\$ 9.2k)- Individual I – voluntary (Restitution Order by CI Court) 4) NZ\$ 3k (US\$ 2k) related to Individual J	1) US\$ 84k- Company A (Repatriated to US)

**Table 13: Accounts Frozen by FIU based on SARs from 2012-2017**

Accounts Frozen	Value of Accounts (\$)	Type of Predicate Crime
10	US\$ 8,124,000	Fraud/Embezzlement
8	NZ\$ 79,800 (US\$ 52,560)	Theft/Fraud

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

203. The Cook Islands has one international airport (Rarotonga), six designated ports of entry for ships located on the islands of Rarotonga, Aitutaki, Atiu, Penrhyn, Pukapukan and Manihiki and two non-designated ports that open in the yacht season. There are 11 full-time customs officers, 29 part-time airport/customs officers and seven authorised officers (four police officers, one government



representative and two port rangers). A disclosure/declaration system of any currency of NZ\$ 10,000 (US\$ 6,950) or more is operated at all ports of entry.

204. The assessment team was provided with no evidence that confiscation regarding falsely / not declared or disclosed cross-border movements of currency and BNIs has ever been applied as a sanction by border/custom or other relevant authorities.

**Table 14: BCR reporting**

BCRs reported to Customs and the FIU					
Reports	2012	2013	2014	2015	2016
Inward BCR	5	8	12	7	17
Total Value	\$125,195 (US\$ 82.4k)	\$162,269 (US\$ 106.8k)	\$158,445 (US\$ 104.3k)	\$87,510 (US\$ 57.6k)	\$276,128 (US\$ 181.8k)
Outward BCR	9	12	10	28	11
Total Value	\$419,975 (US\$ 267.6k)	\$405,265 (US\$ 266.8k)	\$783,585 (US\$ 516k)	\$1,604,841 (US\$ 1,056,872)	\$1,040,301 (US\$ 685.2k)

205. The FIU and Customs have a good working relationship. Customs has four officials trained to undertake financial investigations. The FIU has issued 12 Border Alerts/Instructions to Customs. The Cook Islands does not have departure cards nor facial recognition software, and it relies primarily rely on intelligence received from the Pacific Transnational Crime Coordination Centre (PTCCC), NZ Customs or NZ Police to detect illicit activity at the border.

206. The BCRs that are made, in increasing numbers to Customs and the FIU, are not verified. Customs adopts a risk-based approach and relies on external regional intelligence as well as local intelligence from Immigration and the FIU to detect currency smuggling at the border and has a cooperative arrangement with the New Zealand Customs service that the customs administrations may assist each other in the prevention, investigation and prosecution of customs offences, including the exchange of information. Customs are also able to apply the search powers under their legislation and to x-ray luggage.

207. The 2015 NRA assessed the impact and risk of undeclared cash being discovered at the border as low. However, the 2015 NRA and discussions with Customs indicated that cross-border movement of currency has not been effectively or critically monitored and there is a heavy reliance on honest declarations by travellers.

208. The statutory powers to seize falsely or undeclared cash or BNIs for further investigation under Part 16 of the Customs Revenue and Border Protection Act 2012 have been utilised on a very limited basis. The case study below illustrates the one instance where currency or BNI has been confiscated.

#### **Box 15: Comptroller v Olson (2015)**

While conducted an on-site compliance examination of an RI, the FIU discovered correspondence and payment instructions relating to five individual bank draft cheques, each valued at US\$ 100,000. The cheques were issued to the defendant, who was returning to the Cook Islands with one of the cheques. The FIU database showed that the defendant had made no currency declaration.

With the intelligence from FIU, the defendant was identified by Customs as having completed a false currency declaration and found to have been carrying a total value of currency including the cheques approximated NZ\$ 196,000 (US\$ 129,120). The currency and BNIs were seized by Customs.

At prosecution, Ms Olson pled guilty but raised a mental illness. In light of her medical condition, consequences of culpability and character references, the judge ordered her discharge without conviction and a payment of NZ\$ 30 (US\$ 20) for court costs.

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The defendant made no application, in these proceedings or subsequently, for the Court to exercise its discretion in returning the currency in light of a discharge. Thus the NZ\$ 196,000 (US\$ 129,120) that had been seized by Customs remained forfeited.

209. Some steps have been taken to improve the level of detection. The FIU issued a Currency Reporting Policy in December 2016 to provide guidance for officers when undertaking their responsibilities with the prevention, detection, search, questioning, detention and seizure of any currency. Authorities have also introduced x-ray machines at the airport in 2017, and the Currency Reporting Policy sets out a process for when a scan detects currency.

210. In October 2017 the FIU and Customs conducted a joint, two-phase operation, named Operation Bordeaux. The purpose of the operation was to determine the threat and vulnerability of non-compliance with the Currency Declaration Act. The operation demonstrated effective cooperation between the FIU, Customs, CIP and Rarotonga Airport Aviation Security. During Phase One two BCRs were received and there were no cases of undeclared currency. Phase Two uncovered one case of undeclared currency, however, this was not detected at the border but later when the FIU followed up with a passenger, following the receipt of intelligence from a foreign counterpart. Following the success of the joint operation, there are plans for FIU staff to be included in annual currency declaration risk assessment operations.

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

211. The low level of activity in relation to confiscation is not consistent with the assessment of ML risk of medium with respect to the offshore financial sector, and several domestic and foreign proceeds-generating crimes posing a medium or high-level threat (for example, bribery and corruption, fraud, environmental crime).

212. The absence of any investigation or confiscation in relation to potential abuse of the international financial sector to receive, hold or move criminal proceeds, or funds to be used in the commission of a crime, is inconsistent with the assessment(s) of ML/TF risks and national AML/CFT policies and priorities.

#### **Box 16: Proceeds of crime invested in the international financial sector**

In 2015, the FSC and FIU began to consider possible ML offences committed by an LTC after discrepancies were noted in a particular client's files and criminal links were revealed with this client (Mr F) upon further investigation. This matter is still under review and a final decision regarding any possible enforcement action is yet to be undertaken.

In addition to proceeds located elsewhere, the Cook Islands is aware that AU one million was used by Mr F to purchase a luxury yacht owned by a Cook Islands company created by Mr F. Another individual, Mr A, set up companies and a bank account in the Cook Islands on behalf of Mr F. Investigation by the FIU into Mr A discovered that he had convictions for drugs, corruption, perjury, traffic offences and theft and used false information in establishing the companies and bank account.

The Cook Islands did not proceed with confiscation proceedings in relation to the yacht due to insufficient evidence. Once registration for the company that owned the yacht lapsed, the FSC realised the yacht for NZ\$ 483,000 (US\$ 317,506) (gross). The net funds have been placed into a trust account

for a six-year period in which claims can be made against it. Claims against the yacht were filed in court in March 2018 and the matter is still ongoing. Proceeds of Crime Action against the funds is also being considered by Cook Islands authorities but no such action has been taken yet.

This case is also discussed in IO. 2 (Box 23: Multi-agency International Cooperation).

213. The assessment team acknowledges the high level of cooperation offered by the Cook Islands where a foreign competent authority pursues assets located in the Cook Islands. However, LEAs have not demonstrated that they have their own confiscation activity that is proportionate to the assessment of ML risks.

214. The assessment team has identified cases, including fraud and tax matters, where predicate offences were investigated but no action was taken to confiscate proceeds generated (cases at Box 14 and 16 above).

#### **Box 17: Collector of Revenue v TAV Ltd and Ellena Tavioni (2017)**

In 2017 TAV Ltd was prosecuted for pay-as-you-earn tax offences (evasion) for failing to pay PAYE of NZ\$ 59,000 (US\$ 38,900) to the Cook Islands RMD - Tax.

TAV Ltd was convicted and fined NZ\$ 49,000 (US\$ 32,300); while its Director Ellena Tavioni, was convicted and fined NZ\$ 61,000 (US\$ 40,200) for aiding and abetting.

The RMD did not use the Proceeds of Crime to recover the evaded tax but rather approached the debt recovery from whole of debt approach as TAV Ltd owed the RMD a total of NZ\$ 500,000 (US\$ 329,400).

TAV Ltd had assets worth approximately NZ\$ 400,000 (US\$ 263,500) that could be seized, which included a three bedroom leasehold property and the business workshop.

However, in this instance it was considered more favourable to go for the full debt rather than the Proceeds of Crime debt, because, if the property was confiscated it would've been unlikely the tax debt would have been met and may result in TAV Ltd's liquidation (likely loss of repayment of debt and future revenue) and the loss of jobs for the 26 staff.

Therefore RMD agreed to allow TAV Ltd to enter into a payment plan to repay all of its arrears. In addition, the current tax obligations were being paid on time

215. The Cook Islands has not convicted any type of terrorism or TF activity in the period under review and therefore no TF confiscations have occurred. This is consistent with the Cook Islands' TF risks as discussed in Chapter 1.

#### *Overall conclusions on Immediate Outcome 8*

216. Confiscation of criminal proceeds, instrumentalities and property of equivalent value is not being pursued as a policy objective in the Cook Islands. LEAs do not have policies and procedures for asset tracing, restraint or management related to ML activities or associated predicate offences. Confiscation of falsely / not declared or disclosed cross-border movements of currency and BNIs is not routinely applied as a sanction by border/custom or other relevant authorities. The low level of activity in relation to confiscation is not consistent with the assessment of ML risk of medium with respect to the offshore financial sector, and several domestic and foreign proceeds-generating crimes posing a medium or high-level threat (e.g. bribery and corruption, fraud, environmental crime).

217. **The Cook Islands has a low level of effectiveness for Immediate Outcome 8.**



## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### Key Findings and Recommended Actions

#### Key Findings

##### IO. 9

- The Cook Islands has a reasonable legal framework to prosecute TF activities under the CTPA and an inter-agency Terrorist and Terrorist Financing Action Plan (Action Plan).
- There has been no investigation, prosecution or conviction of TF in the Cook Islands. This is consistent with the Cook Islands TF risk profile. The FIU has made preliminary inquiries in relation to transactions that were suspected to have the potential for terrorism links and found no evidence to take the matter further. No foreign requests have been received regarding possible TF.
- The FIU is able to identify TF activities through its domestic and international cooperation framework, including through strong engagement with RIs to identify TF activities. LEAs do not, however, have the capacity or expertise to investigate TF and, should the need arise, would need to rely on the assistance from foreign partners, particularly New Zealand through the operation of the Joint Centenary Declaration.
- The recently adopted Terrorist and Terrorist Financing Action Plan contains a response framework that extends to TF but focuses on terrorist events taking place in the Cook Islands.
- The CIP has not demonstrated that TF allegations unrelated to a specific terrorist event within the Cook Islands would be detected, prioritised and investigated. This is consistent with structural weaknesses within the CIP identified under IO7.
- Under the CTPA, the penalty for terrorist financing activities is up to 20 years' imprisonment for an individual and a fine of up to NZ\$ 1,000,000 (US\$ 659,680) for any other entity. The range of sanctions appear proportionate and dissuasive, however, there has been no conviction for TF which provides a basis to assess how well the sanctions would be applied. Given the risk and context, the Cook Islands has not been required to consider the use of other measures to disrupt TF activities.

##### IO. 10

- Noting the Cook Islands' low TF risk, it has implemented an appropriate framework to identify persons and entities designated under UNSCR 1267, its successor resolutions, and UNSCR 1373; and to consider foreign requests for designation and to de-list entities; despite minor technical deficiencies as set out in the TC Annex (R.6).
- A freezing obligations and prohibition from property or financial services to a designated person or entity is immediately brought into force in the Cook Islands upon the designation by the UN or the Cook Islands designated authority, the Attorney-General.
- High-risk RIs in the Cook Islands has the necessary systems in place to implement TFS without delay. While specific awareness of the requirement to freeze funds under the CTPA was not universal, most high-risk RIs conduct regular or ongoing screening against commercial sanctions databases and indicated during interviews that they would immediately contact the FIU in the event of a sanctions match. RIs that have moderate-to-low risk exposure to TFS have systems in place to implement TFS within 12 to 72 hours after listing. There may be delays in implementation of TFS by these RIs as they receive information on designations through the FIU, which only receives notifications of designations from the MFAI during working hours.

- There are no cases of sanctioned entities operating within or through the Cook Islands. While there has not been any supervision of RI's implementation of TFS obligations, it appears that the RIs, FSC and FIU have appropriate systems in place to respond rapidly and freeze assets connected to terrorists, terrorist organisations and terrorist financiers that are the subject of TFS.
- Despite the low TF risk posed by Cook Islands NPOs, the Cook Islands FIU has a history of robust engagement with its NPO sector, including raising awareness of possible TF risks with NPOs that may have international donations, grants or distributions.

#### IO. 11

- There are moderate deficiencies in the Cook Islands' legal framework to implement TFS related to PF, as set out in the TC Annex (R.7).
- While there is high-level commitment to implement measures to address TFS related to PF, with the NACC adopting a PF action plan in 2016, the PF Action plan does not explicitly contain measures to undertake effective supervision of RIs in relation to the implementation of TFS obligations against PF.
- The key vulnerability for the Cook Islands in relation to TFS related to PF is the Cook Islands' shipping registry. The registry provider, MCI, has recently become subject to a Regulation which classifies it as an RI (it was previously not subject to any AML/CFT obligations). The Regulations obligate the MCI to conduct customer due diligence on the 'controlling principal' of a vessel at the time of registration, but CDD is not required for other entities that may have beneficial ownership or control of a vessel.
- The shipping registry contractor recently commenced sanctions screening on the controlling principal of Cook Islands-flagged vessel using a commercial sanctions screening provider that also tracks the movement of vessels to or from high-risk areas for sanctions breaches. This represents a significant improvement to the effectiveness of sanctions screening on the registry; however, it still does not appear that entities with beneficial ownership or control of a vessel other than the controlling principal are screened for sanctions matches.
- High-risk RIs have a reasonable understanding of their obligations and have implemented measures to screen their customers against sanctions lists. Implementation of measures by low-risk RIs is mixed, but commensurate with the low exposure they face.
- The measures in respect of designated individuals and entities under the DPRK and Iran sanctions are implemented without delay and the process for the distribution of sanctions list update notifications is the same as for TFS against TF, therefore the analysis set out in IO.10 applies. The FIU distributes UN sanction list update notifications to RIs and the sanctions listings are publically available on the FSC website. As noted in IO.10, all high-risk RIs that met with the assessment team use commercial sanctions screening providers as their primary source of information about listings pursuant to UNSCRs.
- There has not been any supervision undertaken in relation to RIs implementation of TFS obligations against PF.

#### **Recommended Actions**

#### IO. 9

- Amend its legislative framework to address the deficiencies identified in the TC Annex relating to the CTPA.
- Amend the Terrorist and Terrorist Financing Action Plan to provide a response plan to TF

investigations that are not related to a terrorist event in the Cook Islands.

- Ensure competent authorities, and specifically the CIP, receive TF investigation and prosecution training on a regular basis in order to identify and prioritise TF inquiries. This may follow the model of joint mock exercises that have been conducted in relation to terrorism.
- Amend its general instructions on investigating terrorist events or threats to include TF investigations as a necessary part of such investigations. The general instruction could provide guidance on how to identify instances that may warrant further inquiries related to TF.

#### IO. 10

- Include TFS obligations in its supervision of, and outreach to, moderate-to-low risk RIs and conduct compliance testing of TFS at high-risk RIs.
- Apply a focused and proportionate approach to regulating NPOs, in particular, limiting regulatory burdens to only those NPOs that can reasonably be considered vulnerable to TF abuse.

#### IO. 11

- Amend its legislative framework for TFS against PF to be compliant with the FATF Recommendations (deficiencies identified in the TC Annex).
- Commence supervision of RIs implementation of TFS related to PF obligations.
- Continue to remediate the vulnerabilities associated with its shipping registry in line with its PF action plan.

218. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant to the assessment of effectiveness under this section are R.5-8.

### ***Immediate Outcome 9 (TF investigation and prosecution)***

#### *Prosecution/conviction of types of TF activity consistent with the country's risk profile*

219. Despite some technical deficiencies, the Cook Islands has a legal framework sufficient to prosecute TF activities. The head of the FIU is the chair of the TF sub-group within the NACC, and the FIU has responsibility for the identification and prosecutions of TF.

220. There has been no prosecution or conviction for TF activities. The lack of prosecutions or convictions arising from TF activities is consistent with the Cook Islands' risk profile.

221. There is no provision in the CPTA to cover the financing of travel of individuals to another State for the purpose of preparation, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. It is also not clear whether under the CPTA criminal liability for TF activities can be imposed on all legal persons.

#### *TF identification and investigation*

222. The Terrorist and Terrorist Financing Action Plan, developed by a multi-agency sub-group, allocates the responsibility for investigations of TF to CIP, while identification and prosecution rest with the FIU. There has been no identification or investigation of TF in the Cook Islands. This is consistent with the Cook Islands' risk profile.

223. The Cook Islands relies primarily on alerts raised by RIs to identify potential cases of TF. The FIU has on three occasions investigated transactions relating to funds sent to and received from

countries known to have terrorist activity, based on STRs. In each of the cases, after an initial review, the FIU determined that such funds were not related to TF, and in some cases, it referred the information to foreign counterparts.

224. The FIU provides information to RIs on UN sanctions lists on a regular basis, to help them identify TF intelligence through the filing of STRs. In addition, guidelines issued to sectors, provide limited guidance to RIs on raising flags when transaction involve high-risk jurisdictions. The FIU also has access to all international electronic funds transfers both in and out of the jurisdiction in any amount. Once potential TF funds are identified the FIU can issue instructions to FI to immediately freeze assets.

225. In line with its low TF risk profile, the Cook Islands has not received any foreign requests regarding possible suspected TF.

226. In relation to investigations, CIP has general instructions to investigate TF and terrorism events or threats. These instructions require the Commissioner to be alerted as a matter of priority and coordination to involve the FIU and New Zealand Police. However, with no experience or practical preparation on dealing with TF investigations, it is not evident that if an instance of TF were to occur, there would be adequate awareness within CIP to ensure initiation and proper management of the investigation. Moreover, the general instructions for investigating terrorism events or threats do not require that TF investigations be conducted in all instances where a terrorism event or threat is identified.

227. The Cook Islands acknowledge that there is insufficient capacity and capability domestically to conduct investigations of TF, and the Cook Islands will rely on the expertise and technical assistance from foreign partners. In particular, the authorities have confirmed that LEAs in New Zealand would offer prompt assistance under the Joint Centenary Declaration. New Zealand has extra-territorial jurisdiction over Cook Islands nationals under the Crimes Act 1961 and the Terrorism Suppression Act 2002, and therefore once they receive a request to assist, NZ LEAs can investigate and prosecute Cook Islands' nationals for TF offences.

228. Practically, requests for assistance by Cook Islands Police are made by the Cook Islands Police Commissioner when the need arises, and are based upon a shared understanding between the respective Commissioners, as well as through the common membership Pacific Islands Chiefs of Police and Pacific Transnational Crime Network. Once assistance is provided by the New Zealand Police, there are no legal or operational obstacles with respect to Cook Island Police sharing information with New Zealand Police for law enforcement purposes. The Cook Islands provided evidence where authorities such as the New Zealand Serious Fraud office had assisted Cook Islands Police in respect to a number of predicate and financial investigations (see Box 8 and 9). The requests are made by the Police Commissioner directly with the New Zealand Police Commissioner, outlining the Cook Islands needs for assistance and the timeframe in relation to that request. This assistance can be provided within 4-6 hours for urgent requests. During the on-site visit, the Cook Islands Police provided information to the assessment team regarding an incident in 2017 where a shooter was out in the public. The Cook Islands Police immediately sought assistance from the New Zealand Police, and New Zealand Police placed a response team on stand-by ready to travel to the Cook Islands at immediate notice. Fortunately, the response team was not required in that case. Other law enforcement agencies such as FIU and Customs also have MOUs with their New Zealand counterparts, which have assisted in getting prompt assistance from New Zealand authorities in investigations.

229. Given the low-level TF risk in the Cook Islands, utilising the available assistance from New Zealand and other partners appears prudent. However, in the absence of further work domestically, the Cook Islands LEAs (other than the FIU) do not have the ability to identify, gather information about or initiate investigations in relation to TF.



230. While the Cook Islands has the broad policy and structural frameworks in place to respond to any instances of TF, it is not clear there is sufficient operational knowledge about TF typologies to ensure these can be identified by LEAs other than the FIU. The CIP and CINIT have undertaken mock training exercises with foreign counterparts in relation to terrorism to prepare for such events if they are to occur. Similar preparedness in relation to TF is not however evident.

*TF investigation integrated with, and supportive of, national strategies*

231. TF investigations are integrated into the Cook Islands Terrorist and Terrorist Financing Action Plan. However, TF is not included in the CIP's terrorism preparedness initiatives (such as training exercises), or the CIP's ongoing vigilance in relation to terrorism. Responsibility for identification and prosecution of TF rests separately with the FIU.

232. The response framework provided in the Action Plan only addresses TF investigations resulting from a terrorist event that happens 'to' the Cook Islands, including intelligence of a possible terrorist event, or an attempted terrorist event. However, this response framework does not address TF activity in or through the Cook Islands in relation to individual terrorists, organisations or terrorist acts not occurring in the Cook Islands. Therefore, there is no formally articulated process on how to investigate TF separate from a terrorist event.

233. Further, as discussed above TF is not included in the broader work done by the CIP in relation to terrorism. At the national level, the NACC has a separate terrorism sub-group, but there is no indication to suggest that the multi-agency approach to terrorism includes considerations of TF.

*Effectiveness, proportionality and dissuasiveness of sanctions*

234. Under the CTPA, the penalty for terrorist financing activities is up to 20 years' imprisonment for an individual and a fine of up to \$1,000,000 (US\$ 659,680) for any other entity. Further, the Courts are empowered to revoke the license of any Cook Islands institution involved in TF activity. These sanctions appear to be proportionate and dissuasive and would support the application of effective sanctions. However, given that the TF offence has not been used in the Cook Islands, there is no basis on which to assess how well the sanctions are being applied in practice.

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

235. The Cook Islands has not demonstrated nor have they argued that other criminal justice or other measures are applied to disrupt TF activities where it is not practicable to secure a conviction. The lack of such measures is however consistent with the low risk of TF.

*Overall conclusions on Immediate Outcome 9*

236. Consistent with the Cook Islands low TF risk profile, there have been no investigations, prosecutions or conviction of TF in the Cook Islands. However, the FIU is able to identify TF activities through its domestic and international cooperation framework, including through strong engagement with RIs to identify TF activities. LEAs do not, however, have the capacity or expertise to investigate TF and, should the need arise, would need to rely on the assistance from foreign partners, particularly New Zealand through the operation of the Joint Centenary Declaration.

237. **The Cook Islands has a moderate level of effectiveness for Immediate Outcome 9.**

*Immediate Outcome 10 (TF preventive measures and financial sanctions)*

*Implementation of targeted financial sanctions for TF without delay*

238. The Cook Islands has the legal frameworks necessary to implement TFS without delay. A prohibition from dealing in terrorist property or providing financial services to a terrorist group is

instantly implemented upon the designation of an entity by the UN or the Attorney-General (s5 and ss11-13 of the CTPA 2004). There are minor deficiencies in the legal framework, including that there is no formal procedure to ensure authorisations made by the Attorney-General to access frozen property meet the requirements of UNSC 1452.

239. There is a demonstrated, high-level and broad commitment amongst RIs and competent authorities to the implementation of targeted financial sanctions against terrorism. However, no funds have been identified and thus frozen in connection with TFS for TF, which is consistent with the Cook Islands' low TF risk profile.

240. The Cook Islands FIU notifies all RIs of sanctions listings (discussed further below), however, all high-risk RIs interviewed by the assessment team use commercial sanctions screening providers as their primary source of information about listings pursuant to UNSCRs 1267 and 1373, and as the mechanism by which assets belonging to potential sanctioned entities are identified. For these RIs, this arrangement is more timely and practicable than responding to notification of sanction matters by FIU. The quality of CDD information collected (as noted in IO.4) strengthens the reliance on this approach.

241. For banks and LTCs, screening against the UN consolidated list is always conducted during customer on-boarding. Periodic or continual rescreening of the entire customer base is commonplace in the banking sector and within LTCs.

242. The majority of banks stated that they would immediately and automatically freeze the assets of potential sanctions matches amongst their existing customer base, regardless of time of day. One bank may only identify and freeze during business hours, which depending on the time of listing may result in some delays. Screening of all international funds transfers in the course of 'payment due diligence' is widespread in the banking and LTC sectors and by money-changers/remittance providers.

243. All LTCs conduct manual payment due diligence including sanctions checks for each and every distribution of assets. All LTCs conduct annual rescreening on a rolling basis throughout the year as each client comes up for renewal. All LTCs interviewed were aware of the need to screen for sanctions and report list matches through STRs to the FIU. All LTCs indicated they would wait for, and be guided by, instructions from the FIU prior to transacting on the account, but most did not display prompt knowledge of a specific requirement under the CTPA to freeze assets once detected. The Cook Islands' authorities swiftly responded to this issue by codifying the obligation in the Countering Terrorism and the Proliferation of Weapons of Mass Destruction (Targeted Financial Sanctions) Regulations 2017 during the on-site visit. The effectiveness of this measure, however, cannot be assessed due to its recent introduction, and the team's inability to examine awareness of the new regulation amongst RIs.

244. In December 2016 the shipping registry contractor subscribed to a commercial sanctions screening provider that is specifically designed for applications involving maritime vessels, following trials conducted from September 2016 onwards. There is no evidence the Cook Islands' shipping registry was screened for TFS pursuant to UNSCRs 1373 or 1267 and its successor resolutions prior to September 2016. The implementation of sanctions screening of the shipping registry is discussed further in IO.11.

245. For RIs that do not subscribe to commercial screening providers, the primary source of information about new UN sanctions listings is the FIU. The MFAI receives email alerts about new listings directly from the UN (despite not being a Member State) and passes these on to FIU during business hours in a matter of hours. The FIU then alerts all RIs via email, again in a matter of hours. List update information is not distributed outside business hours; however, the resulting delays in

implementing sanctions are only likely to occur in RIs with lower risks that do not use commercial screening databases.

246. Information about existing listings is provided on the FSC website, which redirects RIs to the UN consolidated list.

247. Knowledge of TFS outside of high-risk RIs is varied but commensurate with the very low TF risks that exist for these sectors.

248. The FIU has conducted awareness raising and outreach activities around the requirements of the CTPA and its interaction with the requirements of the FTRA within the last two years, however sanctions monitoring has not been subject to testing during compliance examination on RIs. A decision to not subject RIs to sanctions testing during this period is understandable given the low TF risk, absence of any sanctioned entities operating within the Cook Islands to date, and the apparent strong compliance by high-risk RIs; however testing should be conducted in the near future to provide assurance that prima facie compliance reflects actual capability and practice.

249. The Cook Islands has not had an opportunity to propose entities to the 1267/1989 or 1988 Committees. This is in line with the Cook Islands' risk profile for TF and terrorism and is not indicative of any deficiency in identifying targets for designation. The lack of suitable targets means the assessment team is unable to assess the effectiveness of procedures in relation to UNSCR 1267/1989 and 1988.

250. The Cook Islands has legislative powers to designate individuals and entities under UNSCR 1373 (as 'CI-specified entities' under the CTPA) if the need arises. There are currently no autonomous sanctions for TF in the Cook Islands, which is in line with their risk profile for TF and terrorism. The Cook Islands has received no requests from foreign governments to designate individuals under UNSCR 1373. As a result, the assessment team is unable to assess the effectiveness of these procedures beyond the technical compliance assessment.

251. While effectiveness in practice cannot be assessed, the team considered what frameworks are in place to respond to potential future sanctions matters. The new National AML/CFT Strategy includes a plan to establish a committee to recommend designations to the Attorney-General and to establish contingency processes to respond to the detection and freezing of assets including the investigation and prosecution of TF in the Cook Islands no later than 2020. It is likely any future sanctions matter would be handled in collaboration with New Zealand, which retains responsibility for proposing listings to the UN for the Cook Islands under the terms of free association.

252. Until such a committee is established, the team is satisfied that future proposals and requests for delisting to the UNSCR 1267/1989 and 1988 committees, and future designations, de-listings and consideration of foreign requests for designation under UNSCR 1373 would be progressed in an appropriate manner by an ad-hoc committee comprising MFAI, FIU, CLO, the New Zealand Ministry of Foreign Affairs and Trade (MFAT), and other identified stakeholders, based on the Cook Islands demonstrated record of interagency cooperation (see IO.1) and the operation of the free association relationship with New Zealand.

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

253. Even though the Cook Islands' NPO sector as a whole has a low TF risk profile, the FIU has demonstrated comparatively strong engagement with the sector in relation to AML/CFT, sustained over the past five years.

254. The Cook Islands authorities are able to articulate an understanding of the size and nature of the NPO sector. As of December 2017, there were 148 NPOs registered with MoJ, with four in receipt of foreign funds. There are 80 charities registered for tax exemptions, half of which are specified individually with the remainder specified by class (i.e. schools or religious organisations). Most NPOs

target their activities towards beneficiaries within the Cook Islands where the risk of diversion for TF is minimal. There are limited cases of NPOs raising funds to send outside the Cook Islands.

255. Cook Islands' authorities indicated they intend to regulate certain high-risk NPOs as RIs under the FTRA, although the necessary FTR Regulation to implement this was not in place at the time of the on-site visit. The assessment team was advised that high-risk NPOs are those with turnover greater than NZ\$ 25,000 (US\$ 16,500) per annum and comprising at least 30% international donations/grants or distributions. While the risk associated with NPOs in the 2017 NRA was assessed as 'medium', the risk of TF appears low for any Cook Islands NPOs falling within this definition.

256. Although there is currently no formal requirement to comply with the FTRA, one charitable NPO interviewed by the assessment team had received assistance from the FIU to compile and implement an AML/CFT program and risk assessment. TF controls in place for this organisation included a refusal to provide grants to projects or appeals outside the Cook Islands unless the recipient was vetted by a reputable international NPO, and a general reluctance to support projects in areas of high TF risk (with the exception of the Philippines). The FATF methodology rests on a risk-based approach to ensure that NPO activities are not unduly disrupted or discouraged. To this extent, the assessment team recommends that the Cook Islands apply a focused and proportionate approach to regulating NPOs, in particular limiting regulatory burdens to NPOs that can reasonably be considered to be vulnerable to TF abuse.

#### *Deprivation of TF assets and instrumentalities*

257. The legal framework and political commitment exists within the Cook Islands to enable the deprivation of assets and instrumentalities from sanctioned entities and organisations, although the Cook Islands has had no cases of potential or identified TF.

258. While there is no example of a TF investigation in the Cook Islands, the FIU demonstrated to the assessment team (see Box 5 in IO.6) that it has the capability to discover, understand and freeze terrorist assets, where such assets transit through the financial sector.

#### *Consistency of measures with overall TF risk profile*

259. Most authorities and RIs interviewed treated the issue of TF with sincerity despite the low-risk profile. The Cook Islands' understanding of TF risk is genuine and based to the extent possible on what experience and data exists domestically. The assessment team agrees with the Cook Islands' assessment of its TF risk profile as low.

260. In light of this assessment of TF risk, the assessment team considers the measures applied to be sufficient. In addition to the appropriate legal framework, the FSC and FIU maintain a good level of engagement with RIs and the NPO sector regarding screening and identification of any TF funds using the Cook Islands' financial sector. There is a readiness to freeze assets and deprive terrorists, terrorist organisations and terrorism financiers from the use of these assets.

261. Lastly, the Cook Islands authorities have demonstrated that they exercise a high level of vigilance and are eager to improve their ability to respond to any terrorism-related assets using the Cook Islands' financial sector. For example:

- the 2017 AML/CFT strategy includes implementation action to improve preparedness in relation to TFS;
- competent authorities responded immediately to deficiencies revealed in the understanding of freezing obligations amongst some RIs by amending the Countering Terrorism and the Proliferation of Weapons of Mass Destruction (Targeted Financial Sanctions) Regulations 2017; and

- despite a low level of risk associated with TF and low vulnerabilities in the NPO sector, competent authorities maintain a high level of contact with international NPOs on AML/CFT matters and are considering regulating them as RIs.

#### *Overall conclusions on Immediate Outcome 10*

262. Overall, within the context of the Cook Islands' low level of TF risk, the implementation of targeted financial sanctions for TF and frameworks to deprive terrorists of assets and instrumentalities has been achieved to a large extent. Moderate improvements primarily relating to the timeliness of screening for new listings by some RIs will improve effectiveness.

263. **The Cook Islands has a substantial level of effectiveness for Immediate Outcome 10.**

#### *Immediate Outcome 11 (PF financial sanctions)*

264. There are moderate deficiencies in the Cook Islands' legal framework to implement TFS related to PF without delay, which impact the Cook Islands ability to effectively implement TFS related to PF. There is no publicly available procedure for unfreezing funds or other assets of persons or entities with the same or similar name as a designated entity (false positives).

#### *Implementation of targeted financial sanctions related to proliferation financing without delay*

265. The Cook Islands exposure to PF is relatively low. There is, however, high-level commitment to implement the provisions across government, with the NACC adopting a PF action plan in 2016. There have been no sanctioned entities identified as operating in or moving funds or assets through the Cook Islands and no funds have been frozen in connection with TFS related to PF.

266. The Cook Islands advised that its links with DPRK and Iran are negligible. The financial sector does not have any direct trade links with DPRK or Iran. The financial sector is prohibited from conducting business with DPRK and must apply enhanced due diligence and monitoring (including filing STRs) to relationships or transactions with Iran. Since 2010 authorities have been alerted to some interactions with DPRK and Iran, all related to shipping activities. In 2015 a bank lodged an STR due to funds received from Iran, linked to the registration of a ship with the Cook Islands Shipping registry. In 2016, during the license application process of a captive insurance company, the FSC discovered that the applicant had previously provided insurance to DPRK vessels in 2005. The issue was raised with the applicant and the FSC was satisfied that this business line had long since discontinued. As evidenced by this engagement, the Cook Islands' main vulnerabilities relating to PF is its shipping registry.

267. The process for the distribution of sanctions list update notifications is the same as for TFS against TF, therefore the analysis set out in IO.10 applies. The FIU distributes UN sanction list update notifications to RIs and the sanctions listings are publicly available on the FSC website. As noted in IO.10, all high-risk RIs that met with the assessment team use commercial sanctions screening providers as their primary source of information about listings pursuant to UNSCRs.

268. Various actions relating to access to funds under UNSCR authorisation, submitting de-listing requests and obligations relating to previous contracts etc. have yet to be tested as no sanctioned entities have been detected operating within the Cook Islands. The National AML/CFT Strategy includes a plan to establish a committee to recommend designations to the Attorney-General and to establish contingency processes to respond to the detection and freezing of assets, including investigation and prosecution of PF in the Cook Islands. It is likely the Cook Islands would request assistance from New Zealand if a sanctions matter arose.

*The Cook Islands Shipping Registry*

269. The Cook Islands 2017 Review of Risk identified the potential for exposure to PF of WMD through the shipping registry. The Ministry of Transport (MoT) outsources most administrative functions to a private contractor, Maritime Cook Islands (MCI). The MoT is unfamiliar with TFS obligations and considers its role to be limited to overseeing the shipping registry contractor to ensure its delegated powers are used in compliance with the International Maritime Organisation standards. MCI advised it understands that its contractual obligations include conducting sanctions screening on behalf of MoT and taking appropriate action in relation to sanctioned vessels in coordination with the Cook Islands Government agencies.

270. As at November 2017 there were 566 vessels registered on the Ships Register, approximately half of which are privately owned yachts. The owners of vessels registered are generally corporations and come from 65 different jurisdictions, most commonly the Marshall Islands, Cook Islands, Singapore, British Virgin Islands, Russia and the United States.

271. In December 2016 MCI commenced a subscription to a commercial sanctions screening provider that is specifically designed to provide sanctions screening and vessel tracking for organisations exposed to shipping and cargoes. The “controlling principal” of a vessel (the ship manager, bareboat charterer, or other person operating the vessel, or, if these are not applicable, the owner) is screened at the time of registration or re-registration using this software, and are subject to daily sanctions screening of entities associated with a vessel and vessel tracking for high-risk movements. MCI also examines the movement history of a vessel based on vessel tracking signals before registration, looking for travel to high-risk areas which, amongst other things, may indicate a breach of UNSCRs. It does not appear that entities with beneficial ownership or control of a vessel other than the controlling principal (for example a beneficial owner of a vessel who is not the controlling principle but is directly or indirectly associated with the vessel) are screened for sanctions matches.

272. In response to the identification of potential for exposure to PF of WMD through the shipping registry, the National AML/CFT Strategy included measures to strengthen the Cook Islands’ TFS against PF regime. One of these measures was the creation of Regulations which require MCI to conduct due diligence on its registered vessels to detect any links to sanctioned entities. The Financial Transaction Reporting (Maritime Cook Islands) Regulations 2017 (“MCI Regulations”) were issued in November 2017. The MCI Regulations designate MCI as an RI with a limited scope of obligations, including the requirement to conduct CDD (including sanctions screening) on the controlling principal of certain vessels prior to registration, and STR obligations. The MCI Regulations assign the FIU as the supervisor of MCI in relation to these obligations. Given the recent passage of this regulation, it had not been implemented at the time of the on-site and so the effectiveness of this arrangement could not be assessed. It is noted that the MCI Regulations do not require MCI to conduct sanctions screening on persons other than the controlling principal.

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

273. No funds or assets of designated persons have been identified or frozen in the Cook Islands. The 2015 NRA notes that there is no evidence of PF of WMD through the Cook Islands and the 2017 Review of Risk analyses the Cook Islands’ exposure to PF through the shipping registry. The assessment team agrees the Cook Islands’ exposure to PF of WMD is low, and that the main exposure is through the shipping registry.

274. Banks and LTCs conduct screening against the UN consolidated list during customer onboarding. Periodic or continual rescreening of customer databases is commonplace in these sectors.

275. The majority of banks stated they would immediately and automatically freeze the assets of potential sanctions matches regardless of the time of day. Screening of international funds transfers in

the course of payment due diligence is widespread in the banking and LTC sectors and by the MVTs provider.

276. All LTCs conduct manual payment due diligence including sanctions checks prior to transferring assets held by the trust. LTCs also conduct annual rescreening on a rolling basis throughout the year as each client comes up for renewal. All LTCs interviewed were aware of the need to screen for sanctions and report list matches through STRs to the FIU. All LTCs indicated they would wait for, and be guided by, instructions from the FIU prior to transacting on the account, but most did not display prompt knowledge of a specific requirement under the CTPA to freeze assets once detected. The Cook Islands authorities responded to this issue by explicitly codifying the obligation in the Countering Terrorism and the Proliferation of Weapons of Mass Destruction (Targeted Financial Sanctions) Regulations 2017 during the on-site visit.

277. MCI advised that if it were to detect a sanctioned vessel, it would likely effect freezing by revoking the vessel's certification of compliance with International Maritime Organisation standards, in consultation with the FIU. MCI has previously worked in cooperation with LEAs in the Cook Islands and a foreign jurisdiction to provide intelligence and ultimately de-register a Cook Islands flagged vessel used to import drugs from Africa to Europe.

#### **Box 18: Ship registrations received from high-risk jurisdictions**

In 2016 MCI was approached by an Iranian fleet for registration. MCI issued a provisional registration but the vessel did not proceed to full registration as the Iranian beneficial owner pulled out when MCI requested further information during the registration process. As part of the registration process, MCI conducted screening on the beneficial owner against the OFAC lists and found no link to sanctioned entities.

In 2014 MCI rejected a vessel registration application when it became apparent that the vessel was a fuel tanker with links to Syria. A local bank had filed an STR related to a transaction made in respect of the intended registration of a foreign fishing vessel when it was identified the payment was being made by an entity with Syrian connections. The vessel was detained by Italian authorities with the cooperation of the Cook Islands authorities. A large quantity of drugs was found on board. The Captain of the ship and crew were Syrian nationals and were imprisoned in Italy. The vessel was deleted from the MCI register because the owners were not fit and proper or of good standing.

#### *FIIs and DNFBPs' understanding of and compliance with obligations*

278. While RIs have a good understanding of their requirements regarding high-risk jurisdictions, and a reasonable understanding of TFS against terrorism obligations, knowledge of obligations on TFS related to PF is not as strong. It is rare for RIs to have customers from sanctioned jurisdictions and all RIs noted a reluctance to deal with customers from DPRK or Iran. Higher risk RIs generally understand their obligations and conduct sanctions screening through commercial screening providers. While knowledge about TFS related to PF obligations should be increased, the review team notes that the current understanding is commensurate with the very low exposure most RIs have to TFS related to PF.

#### *Competent authorities ensuring and monitoring compliance*

279. The FIU has not examined RIs compliance with TFS relating to PF obligations. In June 2017 it issued Practice Guidelines for RIs which specify RIs obligations to monitor and conduct CDD in relation to TFS related to PF.

280. The FIU is able to monitor EFTR transactions within its database related to Iran and DPRK. No matches have been found, however not all EFTRs are currently reported to the FIU by certain RIs (see IO.4).

*Overall conclusions on Immediate Outcome 11*

281. While there is commitment within the Cook Islands to implement measures to address TFS related to PF, there are deficiencies in the legal framework and no supervision has been conducted to assess RIs implementation of their obligations with respect to TFS related to PF.

282. **The Cook Islands has a moderate level of effectiveness for Immediate Outcome 11.**



## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The Cook Islands has a sound legal and regulatory framework for preventive measures, however as the FTRA 2017 was only enacted in June 2017, many RIs are yet to implement the more comprehensive set of obligations contained in this Act. Most high-risk RIs have however implemented appropriate mitigating measures, with banks, LTCs and the MVTS provider agreeing to enter into voluntary compliance ahead of the passage of the FTRA 2017.
- In general, high-risk entities, including banks, LTCs and the MVTS provider, have a good understanding of their risks and obligations, while lower risk RIs have an adequate understanding of their risk and obligations, with the exception of the insurance and legal sectors, which appeared largely unaware of their obligations. ML risk is better understood than TF risk across all sectors. While the weaker understanding of TF risk is a deficiency, it is minor given the Cook Islands' low TF risk profile.
- In some instances, RIs have demonstrated a preference for avoiding risk rather than applying enhanced measures, which, while adverse for financial inclusion, occurs in the context of the Cook Islands with industry seeking to avoid reputational damage and maintain confidence in the Cook Islands.
- Implementation of CDD measures is mostly sound, particularly across RIs with higher levels of ML/TF risk, however, LTCs have difficulties monitoring the transactions of the legal persons and assets held by international legal arrangements administered by them, which is a weakness (as discussed in IO.5). Further, identifying beneficial ownership is a key challenge for most RIs operating in the international sector, especially where complex structures and foreign ownership are involved. LTCs and banks refuse business if they cannot determine the beneficial ownership of a potential customer. Some RIs, including one LTC and one bank, which met with the assessment team could not clearly articulate the difference between beneficial ownership and legal ownership. LTCs are also challenged by, and refuse business if they cannot obtain, appropriate due diligence information, the underlying asset, and management of an asset.
- Most RIs face challenges identifying the families and close associates of domestic PEPs, given the context of a small jurisdiction where 'everyone is related to everyone'.
- A key challenge for the banking sector has been the loss of some correspondent banking relationships due to counterpart de-risking. This has had an impact on the Cook Islands' offshore financial sector given that there is only one private bank servicing this sector.
- RIs generally have a good awareness of STR requirements. The majority of STRs have been submitted by banks, which matches their risk profile and volume of business. The low number of STRs received from some higher risk DNFBP sectors, such as the LTC and legal sectors, is of some concern as it is not commensurate with their risks, however, reporting volumes are increasing.
- Most high-risk RIs, such as banks, LTCs and the MVTS, have implemented policies and controls to comply with AML/CFT requirements. Some DNFBPs have not yet implemented risk-based AML/CFT policies, but the majority are working towards implementation and have been performing CDD, recording keeping and other obligations since the introduction of the FTRA 2004. Most RIs have not reviewed or audited their AML/CFT policies, which is understandable given that the obligation to have a formal risk-based AML/CFT policy came into effect in June

2017. The banking and LTC sectors conduct employee screening, and most RIs have internal AML/CFT training programs in place.

#### **Recommended Actions**

- Ensure that RIs that have not already done so, including low-risk entities, develop and implement AML/CFT policies and procedures, and conduct assessments of their ML/TF risks.
- Work with the legal, insurance, pearl dealers and real estate agent sectors to continue to improve awareness of ML/TF obligations and risks.
- Require LTCs to demonstrate that they understand and monitor activities and transactions in relation to legal persons and assets held by the international legal arrangements administered by them.
- Distribute guidance on beneficial ownership to ensure all RIs have a clear shared understanding of the concept of beneficial ownership as opposed to legal ownership.
- Work with RIs to develop a shared understanding of family members and close associates of local PEPs.
- Continue to work with the LTC sector to ensure shared understanding of LTC's scope of STR reporting obligations.
- Ensure RIs strengthen their internal controls, including regular review and/or audit of AML/CFT policies and improve employee screening mechanisms in light of the multiple recent cases of internal fraud.
- Rectify the minor deficiencies relating to CDD, record-keeping, PEPs, wire transfer rules and higher risk countries as set out in the TC Annex.

283. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant to the assessment of effectiveness under this section are R9-23.

#### **Immediate Outcome 4 (Preventive Measures)**

##### *Understanding of ML/TF risks and AML/CFT obligations*

284. The Cook Islands has a sound legal and regulatory framework for preventive measures, as demonstrated by the high level of technical compliance with the relevant Recommendations. This establishes a good foundation for RIs to understand and implement their obligations in line with the FATF standards. However as the FTRA 2017 was enacted in June 2017 some RIs are yet to implement the additional requirements set out in this Act, specifically the new obligation to have risk-based AML/CFT policies and the requirement to identify domestic PEPs. Under the previous governing legislation, the FTRA 2004, RI obligations were rules-based, however, covered key preventive measures, including CDD (including transaction monitoring and measures for foreign PEPs), record keeping, wire transfer rules and the reporting of CTRs, EFTRs and STRs.

285. Under the FTRA 2017, ML/TF business risk assessments are required by all RIs, however, there is a 12-month window for RIs to come into compliance with this requirement, ending June 2018. Many entities which met with the assessment team advised that they were in the process of developing or finalising their ML/TF risk assessments; however, the majority of RIs were nonetheless conversant with their ML/TF risks and measures required to mitigate these risks.

286. In 2016, supervisors requested voluntary compliance with the requirements set out in the (then) FTR Bill from the banking, MVTS and LTC sectors. Industry accepted this request and updated their internal AML/CFT policy and procedures accordingly. All FIs were requested by the FSC to

provide formal updates on their progress by 31 March 2017, which was followed-up on by the FSC during each on-site visit during 2017. Most banks, LTCs and the MVTs provider were required to meet group or correspondent requirements ahead of the passage of the FTRA 2017. As a result, implementation of policy and the ML/TF risk assessment obligation is more advanced in these sectors, which complements their higher level of ML/TF risk.

287. The guidance material issued by the FIU has been noted by RIs as being useful in developing and/or enhancing RIs understanding of their risks and obligations. Furthermore, the Cook Islands' risk assessment exercises provide a sound foundation for RIs to understand the ML/TF risks in their business, in particular for those RIs headquartered in the Cook Islands. RIs in financial groups with headquarters in foreign jurisdictions noted they considered the findings of the NRA for their ML/TF risk assessments, but in practice, this involved tweaking group-level ML/TF risk assessments for the Cook Islands context rather than using the NRA as a starting point. In discussions on-site, the assessment team observed that, for the most part, the outcomes of the risk assessment exercises inform a shared understanding of risk between authorities and the private sector.

288. In general, high-risk entities, including banks, LTCs and the MVTs provider, have a good understanding of their risks and obligations, while lower risk RIs, including the pearl dealers, have an adequate understanding of their risks and obligations in line with their risk profile, with the exception of the insurance and legal sectors, which appeared largely unaware of their obligations. Banks in particular have a strong understanding of their risks and obligations. For example, the private bank identified that its risks mainly come from offshore wire transfers, complex trust structures and the on-boarding of foreign customers. The MVTs provider has a high level of understanding of its risks and has implemented sound mitigating measures.

289. With respect to the international financial sector, LTCs, the primary gatekeepers, showed a sound understanding of the sources of risk when forming and settling international legal arrangements. The following factors were consistently discussed by LTCs:

- their business is primarily non-face-to-face in nature through established introducer channels, but they conduct CDD directly on the client, their assets and any other beneficiaries or beneficial owners. Counterintuitively, other delivery channels (such as 'walk-in' face-to-face enquiries in the Cook Islands) attract additional scrutiny because they are out of the ordinary;
- the clients they deal with are high net worth individuals, primarily from the United States, and should be able to articulate transparent reasons for seeking a product with secrecy protections such as an international trust for the purposes of asset protection;
- legislative reform now provides transparency in the international financial sector where there is suspicion of criminality or tax evasion while retaining secrecy protections against civil litigation. Legacy clients on-boarded prior to these reforms present a greater ML/TF risk which is either mitigated during annual CDD reviews required by law or by exiting legacy customers whose contemporary ML/TF risk profile cannot be sufficiently mitigated;
- Since 2012 LTCs have been gradually diversifying their product offerings and target markets as a strategy to reduce reliance on trusts for asset protection marketed to United States high net worth individuals. Clients from other jurisdictions or those using Cook Islands structures for other purposes (such as circumventing forced heirship laws) should display less interest in secrecy protections.

290. Banks and LTCs in the Cook Islands had a sophisticated understanding of the ML/TF risks of legal arrangements in both the international and domestic sectors. Some of the banks, on the basis of

that risk, had opted out of international banking for international legal arrangements but continue to offer services for low risk domestic legal persons and domestic trusts.

291. Banks and LTCs displayed an understanding of the ML/TF risks of international legal persons, albeit with less fluency than their understanding of international legal arrangements. Only one or two RIs demonstrated that they had specifically considered the risks posed by particular types of international legal person, as opposed to a broader assessment of ML/TF risks and vulnerabilities generic to all types of legal persons. Based on interviews with LTCs, the assessment team expects that circulation of the 2017 International Legal Persons Review and June 2018 deadline for RIs to implement ML/TF risks assessments will bring about a more practical appreciation amongst LTCs and banks of risk exposure from international legal persons.

292. The MVTs provider has a high level of understanding of its risks and has implemented sound mitigating measures. It is subject to group requirements and was conversant in the ML/TF risks posed by its business.

293. The Law Society developed and released a Compliance and Operational Risk Manual for Lawyers on AML/CFT in October 2017. Representatives from the sector, classified as medium to high-risk, however, did not display an understanding of their obligations commensurate with their risk profile. They were, however, conversant in the ML/TF risks their businesses were exposed to. As noted in Chapter 1, lawyers play a limited role in the offshore financial sector within the Cook Islands. The understanding of ML/TF risks and obligations within the accountants, pearl dealers and real estate agents is generally less developed than that of the high-risk entities; but this is broadly commensurate with risk.

294. Generally, ML risk is better understood than TF risk, which is not surprising given TF risk profile of the Cook Islands. RIs view their risk of TF as low, which matches the conclusions of the 2015 NRA and the views of the competent authorities, with which the assessment team agrees.

#### *Application of mitigating measures*

295. Given the recent enactment of the FTRA 2017, the application of mitigating measures is not fully implemented across all RIs. Higher risk sectors have generally implemented mitigating measures while some lower sectors are yet to implement appropriate measures.

296. As noted above, banks, LTCs and the MVTs provider agreed to enter into voluntary compliance ahead of the passage of the FTRA 2017. Most high-risk RIs with international connections noted minimal amendments were required to their existing AML/CFT policies and procedures to meet the new requirements, as they were already required to meet group or correspondent requirements. The key difference highlighted by some RIs was the requirement to conduct ML/TF risk assessments.

297. As limited supervision activity has been conducted since the passage of the FTRA 2017, the FIU has not yet assessed whether the new FTRA 2017 obligations (i.e. the requirement to have risk-based AML/CFT policies and identify domestic PEPs) have been effectively implemented by RIs (see IO.3). The assessment team, however, reviewed the AML/CFT policies of some RIs and discussed the implementation of various obligations, which appeared sound.

298. In some instances, RIs demonstrated a preference for avoiding business in certain high-risk areas, rather than applying enhanced measures. Some institutions utilise de-risking measures as a mitigating strategy, for example:

- There are three banks which have international banking licences, however, since mid-2014, only one bank has been operating in the international sector. The other two banks left the offshore financial sector as a de-risking measure.

- One LTC does not accept PEPs and another does not accept potential customers involved in the crypto currency sector.
- Multiple banks advised they do not accept MVTs providers as customers.
- Since 2012 LTCs have taken steps to move away from higher risk business lines and high-risk clients. For example, some LTCs have ceased offering nominee director services, some have ceased acting as a co-trustee, some have implemented policy requiring all clients to be tax compliant and some have ceased offering discretionary trusts.
- In 2016 the one bank providing banking services to offshore entities undertook a comprehensive review of all of its customers following the loss of a correspondent banking relationship. In order to re-establish the correspondent relationship, the bank was required to submit all its CDD on its customers to the correspondent. As part of this process, the bank revised its risk appetite and terminated over 100 accounts either due to them being outside its risk appetite or under its new minimum account operating threshold (US\$ 25,000). The bank's ongoing risk review has also resulted in it terminating services for foreign exchange trading platforms and binary options trading platforms.

299. LTCs business involves the on-boarding of foreign customers through non-face-to-face channels, clients who are high net worth individuals and the most commonly sought product is international trusts. Ninety per cent of LTCs clients and business revenues are derived from the United States, with the remainder sourced from Europe and Asia. LTCs noted that their observations of attempted abuse for tax evasion have reduced in light of their obligations to report to the United States Internal Revenue Service under FATCA.

300. LTCs seek to mitigate the risks of non-face-to-face on-boarding by limiting business to customers who come via 'trusted introducers' and limiting the role the introducers play in the CDD process. These introducers are predominantly United States attorneys, who are licensed in the United States (but may not be subject to AML/CFT regulation, as noted in the United States MER). Many of these relationships have been in place for several years. Introducers provide the clients' CDD information to the LTC, who then independently verifies the information received; CDD obligations are not outsourced to the introducer. LTCs infrequently experience challenges in verifying CDD information and refuse business if the process cannot be completed.

301. A key risk that it is common for LTCs, as the trustees of trusts, is to hold shares in international companies or interests in LLCs or partnerships but have no operational control over the underlying entity or its assets. The risk of abuse is greater when an LTC does not undertake adequate due diligence on the underlying entity and its management, including obtaining regular information about the assets and business activities of the entity. The FTRA 2017 does not obligate LTCs to obtain information on the assets it holds (including the assets within the entities it owns as a trustee of a trust) but rather obligates LTCs to obtain information on the ultimate owner of the assets. Section 27C(1A) of the International Trusts Act 1984 however requires trustees to ensure they keep accurate and current records of assets held by the trust, income of the trust, assets made available for use by any beneficiary of the trust, advances made by the trust, distributions made and all transactions of the trust affecting its assets or liabilities. Furthermore, the section 113(1) of the International Companies Act 1981-82, section 7A(1) of the International Partnerships Act 1984 and section 31A of the Limited Liability Companies Act 2008 require international companies, international partnerships and limited liability companies respectively to retain records relating to all money received and expended, all sales and purchase of goods, all assets and liabilities and all transactions affecting the assets or

liabilities of the company. There is no legal requirement for LTCs to monitor the transactions of second-tier assets owned by a trust, where they have no operational control (e.g. companies or partnerships). LTCs noted that maintaining an understanding of such second-tier assets is challenging and many LTCs who met with the assessment team reported that they are beginning to implement measures to gain a better understanding on the activities of such entities to improve their understanding of their ML/TF risk, as required by the FTRA 2017. Most LTCs noted that they are likely to refuse to accept a client with such a proposed structure, based both on the ML/TF risk and commercial rationales given the additional compliance work required.

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302. The majority of the private bank's business is being referred from Cook Islands LTCs, which mitigates risks as these clients have been subject to CDD checks by the LTC. The bank then conducts its own CDD processes. 70% of its transactions are into and out of the United States, followed by transactions into and out of Australia and New Zealand, which make up the next 10%. A key risk to the private bank is its lack of face-to-face business given its client base. It mitigates these risks through the conduct of enhanced CDD and transaction monitoring.

#### *Application of enhanced or specific CDD and recordkeeping requirements*

303. There are minor deficiencies in the CDD requirements contained in the FTRA 2017 which have negligible impact on the effective application of CDD by RIs, as the RIs with higher levels of ML/TF risk implement reasonable CDD measures. These include:

- no requirement for the identity of a life insurance beneficiary to be verified at the time of payout;
- no requirement to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable;
- no requirement for FIs to take enhanced measures (except when identified as a PEP) on a beneficiary who is a legal person or arrangement and presents a higher risk;
- no explicit provision permitting RIs not to pursue the CDD process if there is a risk of tipping-off;
- that RIs are not required to identify the beneficial owner of a natural person (noting however that RIs are required to identify a person who acts on behalf of a customer).

304. Almost all RIs conduct CDD and most which met with the assessment team had denied business relationships when the provision of CDD information was incomplete. CDD has been the focus of supervisory activity in recent years, with the FIU conducting thematic examinations on CDD in 2015 and 2016. Notably, the FIU found a high level of compliance with CDD requirements amongst banks and LTCs in these inspections. The main deficiencies identified by the FIU related to CDD compliance for aged dormant accounts (in most cases the customer has relocated abroad).

**Table 15: Results of 2015/16 on-site examinations of LTCs focused on CDD obligations**

Institution	Date on-site	CDD files reviewed	Fully compliant	Partially compliant
LTC A	14 Aug 2015	69	69	
LTC B	18 Nov 2015	45	42	3
LTC C	25 Jan 2016	49	49	
LTC D	29 Feb 2016	28	28	
LTC E	20 Apr 2016	28	28	
Private Bank	17 Oct 2016	50	50	

305. The FIU, however, found lower levels of compliance amongst banks when it conducted thematic examinations focusing on banks' CDD of accounts classified as domestic trust accounts in 2016. Authorities noted that there was a lack of focus by banks on these accounts, which had previously received limited supervisory attention given their lower risk profile. Many such accounts were long-standing and classified as domestic trust accounts, however, when reviewed it was determined that most were opened and operated by individuals on behalf of family, community or social groups, and were not actual express trusts. Deficiencies included no recorded CDD on signatories, a lack of up to date CDD on signatories and a lack of address details. FIs were required to rectify these deficiencies. Supervisors regularly included legacy customer files in the scope of their review to ensure that such accounts (even those that are dormant and closed files where the relationship has ended) have adequate CDD collected.

**Table 16: 2016 on-site examinations of banks focused on CDD of domestic trust accounts**

Bank Institution	Date on-site	Files reviewed	Fully Compliant	Partially Compliant	Not Compliant
Bank A	20 Apr 2016	9	9		
Bank B	16 Jun 2016	42	9		33
Bank C	18 Oct 2016	36	24	1	11

306. In 2014 the Bankers Association advised the FIU that the banking sector was experiencing challenges conducting CDD on some local residents as there were name variations between a person's driver's licence and their birth certificate. As an address is simply the village you live in the Cook Islands (there are no street numbers), a person's name is a key identifier. To address this issue, the Head of the FIU wrote to the Police Commissioner and requested it be made a requirement that a person applying for a driver's licence must produce their passport and the driver's licence must be issued in this name. This requirement was implemented and the banking sector noted that this has been beneficial in their conduct of CDD (see Box 2 in IO. 1).

307. The bank which has branches on the outer islands previously experienced challenges verifying CDD information on applicants, as these residents infrequently have passports and are issued handwritten, paper driver's licences. While simplified CDD is applied to such local customers who are low risk and accessing low-risk products, the bank has implemented additional measures, such as taking a photo of all new customers and storing it in the customer's file, to seek to mitigate its risks and support its CDD processes. All banks require a copy of a birth certificate to open a bank account. The assessment team believes this approach is in line with the risks and context of these customers.

308. It is not apparent that adequate CDD information is collected and verified in the legal, real estate and insurance sectors due to a lack of awareness of their obligations as RIs. Authorities categorise the legal sector as presenting a medium to high-risk of ML, due to its absence of risk identification and management processes rather than the inherent risk posed by the business products it provides. As noted above and in Chapter 1, the legal sector does not play a significant role in the Cook Islands' international sector. The real estate sector is risk rated low/medium and the insurance sector is rated low risk, as set out in the Secondary Risk Review 2017.

309. Some RIs conduct non-face-to-face CDD, with LTCs and the private bank regularly on-boarding overseas clients. As noted above, LTCs use introducers to receive new business and one of LTCs' key challenges is understanding the underlying asset (and management of the asset), in situations where it does not have operational control of the underlying assets. LTCs seek to overcome this challenge and mitigate the associated risk by obtaining further due diligence information, including source of wealth and information about the activities and management of the underlying asset. If they cannot adequately complete their due diligence processes they will not proceed with the business.

310. All RIs which met with the assessment team noted they do not rely on third parties to conduct CDD on their behalf; rather those who utilise intermediaries require the intermediary to provide ID information and certified verification documents and the RI then performs its own checks and verification of this information, and will liaise either with the introducer or directly with the customer if further information or clarification is required.

311. Most banks and the MVTs provider conduct ongoing transaction monitoring automatically. Some banks have reviewed their existing clientele and assigned risk rating, however, most RIs were still in the process of reviewing their existing customer base.

312. As set out in IO.5, there are deficiencies in the understanding of beneficial ownership in some RIs, including one LTC and one bank who met with the assessment team, as they do not all separate legal ownership from beneficial ownership. Many RIs noted that identifying the beneficial owner is a key challenge, especially when complex structures and foreign beneficial ownership are involved. Therefore RIs may not always be capturing accurate beneficial ownership information as it may not always include entities with effective control. Supervisors, however (who displayed a fluent understanding of the concept of beneficial ownership) noted that they have not detected such deficiencies when checking CDD information as part of compliance inspections.

313. Some banks who met with the assessment team noted that they rely on BITB's foreign investment registration process when verifying the identity of beneficial owners of foreign-owned (over 30%) local companies. It is not clear how complete the accuracy of the beneficial ownership information collected and held by BTIB is, noting that BTIB seek a declaration of beneficial ownership and do not verify the information received.

314. RIs are obliged to retain records for six years and all RIs which met with the assessment team appear to be doing so, which is generally supported by the FIU's supervisory findings. The FIU noted that record-keeping for old accounts, in particular, accounts established prior 2004 (when the FTRA 2004 was implemented), of banks and LTCs, is a weakness, mainly because such records are retained in hard copy and often at offsite storage locations. Any CDD files found to be deficient during on-site examinations are required to be updated within a specific timeframe before the file is considered fully compliant by the supervisor.

#### *Application of EDD measures*

315. Under the FTRA 2017, RIs are required to apply enhanced or specific measures for PEPs, correspondent banking, new technologies, wire transfers and higher risk jurisdictions. TFS obligations are set out in the CTPA 2004. As noted above, the FIU has not yet assessed application by RIs of the new preventive measure obligations contained in the FTRA, however, the previous governing legislation included some requirements related to foreign PEPs, correspondent banking and wire transfers.

316. RIs that met with the assessment team noted the challenges in implementing the new requirement to identify domestic PEPs, and in particular the family and close associates of domestic PEPs, given the context of the Cook Islands where 'everyone is related to everyone'. While some RIs rely on disclosures by the customer, many RIs are reliant on commercial screening solutions, which do not always capture all domestic PEPs and do not capture the friends and close associates of domestic PEPs. As a mitigating measure, numerous RIs referred to the fact that as a small jurisdiction, RIs can also utilise the local knowledge of frontline staff to identify PEPs. Lower risk RIs which do not use commercial screening solutions noted difficulty implementing PEP requirements. Some RIs (such as pearl dealers) noted that PEPs are treated no differently to other customers.

317. The challenge of identifying domestic PEPs is of particular concern due to the recent corruption investigations (see for example Box 12 in IO.7), which confirms the risk posed by some



domestic PEPs. Authorities identified this issue and published a list of Cook Islands PEPs (both positions and current position holders) on the FIU website in November 2017. While this list will support RIs identification of PEPs, the challenge of identifying family and close associates remains.

318. As noted in IO.10 and IO.11, most RIs are sent notifications of UN sanction list updates and check their databases accordingly. Some lower/medium risk RIs such as accountants, pearl dealers and the superannuation fund do not have a practice of screening TFS lists, however, it is noted that their risk of having a sanctioned entity as a customer is very low.

319. Correspondent banking relationships have been a challenge for the banking sector, with the one private bank losing its correspondent banking relationships in 2016 reportedly due to de-risking by former counterparts. The bank restored one of its relationships in late 2016 and established another two in 2017.

320. FIs appear to be largely complying with wire transfer requirements, and some RIs which met with the assessment team have new technologies policies in place.

### *Reporting obligations and tipping off*

321. Most RIs have a good awareness of STR requirements, with some exceptions noted below. As noted in IO.6, the FIU has previously received some defensive reports, however, it addressed these issues directly with the relevant RIs and the quality has improved. For example, the MVTS provider used to report all transactions with high-risk jurisdictions until the FIU met with it in early 2017 and asked it to narrow its grounds for suspicion.

322. The FIU is satisfied with the quality and timeliness of STRs received, and noted they are sufficient to initiate and support analysis.

323. The quantity and quality of reporting for the banking sector appears adequate and aligned with their risk profile. Banks pay close attention to activities relating to high-risk jurisdictions, structuring of payments and cross-border transactions, and report unusual transactions. The majority of STRs were submitted by banks, which matches their risk profile and volume of business.

324. The quantity of STRs received from the DNFBPs is relatively small, partly matching the risk profile. There has been a low (though increasing) number of STRs received from the LTC and legal sectors, however, which is a concern as it is inconsistent with the risk profile of these sectors and may indicate underreporting. The FIU noted that in previous years the volume of STRs received from LTCs had not been commensurate with the risk level of the industry, and the statistics show a clear imbalance across the industry with the majority of the STRs come from a few LTCs. Authorities believe LTCs had a narrow interpretation of their STR obligations prior to the development of, and consultations about, the FTRA 2017. The LTCs previously believed that the suspicion related to knowing or suspecting an investigation into a serious offence was being conducted. The FSC and FIU have conducted awareness raising activities with the sector to educate LTCs on their reporting obligations, and there has been an increase in the number of reports received. The FIU advised that the quality of reports received from LTCs is good. While the assessment team agrees that the low volume of reports is of concern, it notes the LTCs who met with the assessment team demonstrated that they were risk adverse in taking on new business, with many avoid taking on high-risk clients, and is encouraged by the increased volume and reported quality of reports.

325. No STRs have been submitted by the insurance, superannuation, real estate agent or high-value dealer sectors.

326. Of the 39 STRs filed with the FIU in 2016, 20 related to foreign activity. Of those 20, nine were suspected predicate ML offences (fraud, theft, tax crime), which is in line with the risk profile of the Cook Islands

327. Refer to Table 5 and Table 6 in IO.6 for details on STR reporting volumes and suspected predicate offence type.

328. There have been three occasions where STRs were submitted to the FIU relating to potential TF (funds transferred to a jurisdiction known to have terrorist activity), which is in line with the Cook Islands' TF risk profile. RIs know they are obligated to report suspected TF, however, the concept of TF is largely abstract to RIs given the risk and context of the Cook Islands.

329. The FTRA 2017 sets out measures to prevent tipping-off and the majority of RIs who met with the assessment team were aware of these obligations. After submitting an STR, RIs usually wait for instruction from the FIU, and seldom take actions to prevent the unusual transactions to prevent tipping-off, but have terminated business in some instances. Feedback from supervisors and LEAs indicated they have not detected any instances of tipping off since an incident in 2012 where a bank staff member inadvertently advised a customer that the FIU had frozen their account when the customer queried the account status. The staff member received a verbal warning from the Head of the FIU.

#### *Internal controls and legal/regulatory requirements impending implementation*

330. There are no requirements in the FTRA 2017 for financial groups to share internal controls or procedures, however, there are currently no financial groups with more than one RI operating in the Cook Islands.

331. As noted above, most high-risk RIs such as banks, LTCs and MVTs, have implemented policies and controls to comply with AML/CFT requirements, however further work is required to ensure all controls are implemented effectively. Not all DNFBPs have implemented such policies, but the majority are currently drafting procedures.

332. Most RIs who met with the assessment team have not yet reviewed or audited their AML/CFT policies, which is understandable given the requirement to implement an AML/CFT policy came into effect in June 2017 with a 12 month period allowed for coming into compliance. Few RIs had plans to have their policies reviewed or audited, which may hinder improvement in the effectiveness of preventive measures.

333. Employee screening is conducted routinely across the banking and LTC sectors, with senior staff subject to the FSC's fit and proper requirements. Many RIs perceive their biggest threat is internal fraud, which is justified by the numerous cases of employee theft in the Cook Islands, including some instances in the banking sector. All RIs would benefit from implementing sound employee screening measures to mitigate these risks and ensure the integrity of their staff.

334. Most RIs have internal AML/CFT training programs in place, which supervisors have assessed in on-site inspections to be sound. The FIU has conducted various operations to test the level of effectiveness of the AML/CFT training in licensees, including via Mystery Shopper exercises. On one occasion this was carried out by a UNODC official. In addition, the FIU provides all RIs access to the UNODC's computer-based AML/CFT training programmes, however, there has not been a large take up from RIs, with 14 staff from the banking sector, 31 from LTCs, and two from other DNFBPs completing the training since 2012.

335. The FIU has held several awareness-raising sessions with RIs (see IO.3), which RIs noted have been useful to improve their understanding and capacity to implement AML/CFT measures. The assessment team notes that the legal sector, insurance sector, pearl dealers and real estate agents require additional training to enhance their awareness and compliance with their AML/CFT requirements.

336. All relevant legislation which contains secrecy provisions in the Cook Islands is overridden in certain circumstances, and supervisors and LEAs have adequate powers to access relevant information, as set out in R.9. All RIs who met with the assessment team noted that secrecy provisions in other laws do not impede their implementation of AML/CFT measures. The assessment team agrees with this view.

*Overall conclusions on Immediate Outcome 4*

337. In general, higher risk RIs have a good understanding of their risks and obligations while lower risk RIs have an adequate understanding, with the exception of the insurance and legal sectors which appear largely unaware of their obligations. Implementation of CDD measures is mostly sound however LTCs have difficulty monitoring transactions of legal persons and assets held by international legal arrangements administered by them, and some RIs could not clearly articulate the difference between beneficial ownership and legal ownership. Most RIs face challenges in identifying the family and friends of close associates of domestic PEPs given the context in the Cook Islands. RIs generally have a good understanding of STR obligations and most high-risk RIs have implemented risk-based AML/CFT policies and controls, however as supervision pursuant to the FTRA 2017 has been limited, the implementation of these policies has not yet been examined.

338. **The Cook Islands has a moderate level of effectiveness for Immediate Outcome 4.**



## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- There is a sound licensing framework for FIs and LTCs, including fit and proper requirements to prevent criminals and their associates from operating within these sectors. These controls are well implemented for these sectors. In the legal sector, there are market entry requirements relating to the competence of individuals to act as lawyers, however, it is possible for an individual with a criminal conviction to act as a lawyer in the Cook Islands. There are no licensing or fit and proper requirements for accountants, real estate agents and pearl dealers (which are classified as low-risk sectors). Casinos are prohibited in the Cook Islands.
- The FIU and FSC have a good understanding of ML/TF risks within the Cook Islands and the sectors they regulate and have utilised this understanding to commence the application of a risk-based approach to supervision. Banks, LTCs and the MVTs providers are the primary focus of the FIU's supervisory attention, which is appropriate given the higher risks posed by these sectors.
- There has been limited supervisory activity (one on-site examination) conducted under the FTRA 2017, which came into effect in July 2017. AML/CFT examinations prior to this date were conducted under the FTRA 2004 and covered most preventive measure obligations as required under the FATF standards.
- RIs compliance with TFS obligations has not been regularly assessed as part of AML/CFT examinations.
- There are some deficiencies in the sanctions available to supervisors, as set out in R.35, R.27 and R.28. The FIU has issued warning letters and required businesses to prepare action plans, but has not applied other forms of remedial sanctions. While the assessment team did not identify any recent significant breaches which may have warranted such action, the use of sanctions has been limited to date. The FSC has applied notable and dissuasive sanctions, including revoking the licences of three insurance companies, directing an LTC to remove a Principal and placing conditions on a bank, preventing it from conducting further transactions while it was being evaluated.
- Supervisors regularly engage with RIs and there is a shared interest in being a well-regulated jurisdiction. The FIU and FSC have conducted a number of awareness raising sessions which appear effective in enhancing RIs understand their obligations under the FTRA 2017 as well as their ML/TF risks.

#### **Recommended Actions**

- Ensure that the scope of the FIU's examinations covers the new preventive measures set out in the FTRA 2017, including ML/TF risk assessments and AML/CFT policy requirements.
- Monitor RIs compliance with TFS obligations.
- Rectify the deficiencies related to sanctions, the lack of market entry measures for accountants and real estate agents, as set out in the TC Annex (R.28 and R.35).
- Make greater use of offsite supervisory tools, such as the new requirement for RIs to submit annual reports on the implementation of their AML/CFT compliance programs.

- Increase supervisory activity with legal professionals, given the medium/high risks posed and the low level of awareness of AML/CFT obligations in that sector.
- Consider whether a more efficient use of limited resources could be achieved with the delegation of the AML/CFT supervisory functions from the FIU to FSC for FSC licensees, with the FIU supporting

339. The relevant Immediate Outcome considered and assessed in this chapter is IO. 3. The recommendations relevant to the assessment of effectiveness under this section are R26-28 & R.34 & 35.

### 6 *Immediate Outcome 3 (Supervision)*

340. Responsibility for supervision of RIs is split between two authorities as follows: the FIU is responsible for AML/CFT supervision, and the FSC is the prudential regulator for FIs and LTCs.

341. In July 2004 the Head of the FIU formally delegated authority to the FSC to conduct AML/CFT supervision of FIs and LTCs on the FIU's behalf. This responsibility reverted back to the FIU in June 2015 once the FIU had improved expertise and resources to perform this function. The FSC continues to provide support to AML/CFT supervision when requested by the FIU.

342. The FIU has one staff member, the Senior Compliance Officer, dedicated to conducting AML/CFT supervisory activities. The Senior Compliance Officer is accompanied by FSC staff to conduct on-site AML/CFT compliance inspection of FIs and LTCs, which are often conducted immediately before or after FSC prudential inspections. The FIU and FSC meet to discuss their supervision priorities for each year and line up back-to-back inspections on FIs and LTCs when their risk-based priorities align. The FSC has four staff members assigned to prudential supervision.

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

343. The Cook Islands has a sound licensing framework that is implemented effectively for FIs and LTCs. This follows significant legislative changes made in the last decade, including the implementation of the Insurance Act 2008, Money-Changing and Remittance Business Act 2009, Banking Act 2011, Captive Insurance Act 2013, Trustee Companies Act 2014 and the issuance of Prudential Standards on bank licensing, capital adequacy, asset classification, external auditors, fit and proper persons, liquidity risk and large exposures in 2013.

344. The supervisory framework for the banking sector has evolved significantly since the legislative reform of the industry commenced in 2003. The most notable reform since the publication of the 2009 MER is the implementation of the Banking Act 2011, which strengthened the pre-existing physical presence requirement first implemented in 2003. Banks are now required to have meaningful mind, management and records physically present in the Cook Islands.

345. The Trustee Companies Act 2014 brought the regulatory regime for LTCs in line with that of FIs for prudential supervision (noting that LTCs have been captured as RIs for AML/CFT since 2004).

#### *Financial Institutions*

346. All FIs are subject to comprehensive licensing requirements. Money-changing and remittance providers are required to reapply for licences annually, while other FIs have an ongoing licence. The FSC meets with applicants face-to-face in order to assess the ownership and control of the entity. Applications are reviewed by the FSC Lead Supervisor, Deputy Commissioner and Commissioner, who must all attest to the appropriateness of licensing an applicant, prior to the FSC Board considering the application.

347. The FSC undertakes fit and proper checks which include criminal background checks on directors and significant shareholders for existing and proposed FIs to prevent criminals and their associates from operating within the financial sectors. The FSC conducts thorough background and reference checks on applicants and liaises with foreign counterparts if required during this due diligence process. As part of the fit and proper process, the details of the proposed ML Reporting Officer are shared with the FIU for its review and approval. There have been two instances (one bank in 2017 and one LTC in 2016) where the FSC has rejected the appointment of an applicant due to failure to meet fit and proper standards.

348. The FSC does not receive many new licence requests for FIs. The number of rejections is low as the FSC does not consider an application to be formally received until all the relevant material (i.e. provision of business plan, advice regarding external auditor, key person fit and proper affidavits, shareholder personal financial statement of positions, third persons references, law enforcement clearance etc.) is submitted. Typically applicants are unable to provide the required material, so an application does not proceed to a stage where they are considered. The FSC shared case studies with the assessment team that clearly demonstrated this.

349. The FSC conducts regular supervision on its licensees, including offsite prudential monitoring, monthly checks on compliance with licence conditions and annual on-site inspections (with the exception of the MVTs provider). Given the nature of its business, the MVTs provider is not subject to ongoing prudential monitoring, however, is subject to annual licensing and the FSC conducts semi-annual off-site reviews on its business. ML/TF risks form a key part of prudential review and inspections conducted by the FSC as part of its overall assessment of FI risk profiles.

350. Breaches of licensing or registration requirements for FIs are uncommon and are addressed promptly and diligently by the FSC. For example, in May 2017 a bank applied to the FSC to appoint a new financial controller but was denied by the FSC as it discovered adverse information about the applicant in its due diligence process. The FSC has revoked the license of three life insurance companies (in 2012, 2016 and 2017), which were originally licensed under the Offshore Insurance Act 1981 and relicensed under the Insurance Act 2008. While the FSC did not obtain sufficient evidence to determine that these licensees were being used to facilitate tax evasion, the business arrangements did not make commercial or economic sense. Persistent supervisory pressure and ongoing enhanced supervision by the FSC eventually encouraged the departure of these companies from the jurisdiction. Similar insurance licenses have been issued since 2013 under the Captive Insurance Act, which requires the licensee to have a resident Cook Islands Director, which is a risk mitigant as the Director effectively becomes the face of the licensee and is directly accountable to the FSC in respect to the business of the Insurer.

#### *DNFBPs*

351. Due to the inherent high-risk nature of LTCs' business, LTCs are treated as FIs, rather than DNFBPs, under the Cook Islands licensing laws and regulations and are therefore licensed, regulated and supervised for prudential purposes by the FSC. Similar to FIs, LTCs are subject to comprehensive licensing requirements, including fit and proper testing, as set out in the Trustee Companies Act 2014<sup>22</sup>. Applications are reviewed by the FSC and rejected when breaches are identified. For example, in February 2017 an applicant for a Director role within an LTC was declined by the FSC as the applicant lacked the necessary skills, experience and expertise required to ensure that the LTC would comply with its legislative requirements.

352. LTCs are subject to annual on-site inspections by the FSC and are required to report annually to the FSC, providing their audited financial accounts and compliance declaration. This information is

<sup>22</sup> LTCs which operated prior to 2014 have been required to comply with the Trustee Companies Act 2014 obligations since 2014. Those which were unable to comply exited the Cook Islands.

used to assess solvency, capacity to meet business plans and that they are compliant with regulatory obligations as stipulated under the Trustee Companies Act 2014 and Trustee Companies Regulations 2014. LTCs are subject to AML/CFT supervision by the FIU in addition to prudential supervision by the FSC. The supervision of LTCs is discussed in detail in IO.5, as the regime is noted as an effective mitigating measure for international companies and international trusts. Reference to the information contained there is also relevant in considering licensing, registration and other controls.

353. With respect to other DNFBPs, the FTRA 2017 Regulations include “operating a gambling house, casino or lottery, including an operator who carries on operations through the internet or based on a ship” as a specified activity, which therefore captures casinos as RIs. The Gaming Act 1967, however, prohibits the operation of a gaming house in the Cook Islands and LEA advised they have never encountered illegal gaming activity. Cruise ships docked in the Cook Islands territorial waters are required to close on-board casino operations. In September 2017 Customs developed and implemented procedures to check ship casinos while in port to ensure compliance with Cook Islands laws. In July 2017, the FIU commenced visits aboard cruise ships to monitor compliance.

354. Legal practitioners are required to obtain a practising certificate from the Law Society of the Cook Islands, which has its own fit and proper standards. A person must be admitted in another jurisdiction prior to being admitted to the Cook Islands bar. It is technically possible for individuals with criminal convictions to hold a practising certificate, however, the screening conducted by the Law Society Council seeks to prevent such an occurrence. When reviewing applications the Law Society Council considers whether admission of the applicant would bring the profession into disrepute, which includes consideration of criminal history. The Council would consider the type of offence or misconduct committed the length of time that has passed and any steps undertaken by the person to reform themselves. A report with recommendations is prepared by the Law Society Council for the Chief Justice. Admissions must be publicly notified and objections are permitted. There have been instances of applicants being rejected by the Chief Justice. For example, in 2011, an application was received from a Fijian-Cook Islander who had connections to the 2000 coup in Fiji. It was determined that involvement by the applicant was conduct likely to bring the profession into disrepute, even though he had not been charged or convicted of any offence in Fiji.

355. Given there is no professional accreditation for accountants, real estate agents and pearl dealers, no measures are in place to prevent criminals or their associates from operating, or holding a significant controlling interest, in these sectors. While this deficiency should be rectified, the Cook Islands’ NRA assesses the level of threat and vulnerability presented by these DNFBPs to be low.

#### *Supervisors’ understanding and identification of ML/TF risks*

356. Both the FIU and FSC have a comprehensive understanding of ML/TF risks in the Cook Islands, based on their experience in prudential and AML/CFT supervision and the periodic conduct of risk assessments (see IO.1 for further analysis). The FIU led the risk assessment exercises and identifies and understands the ML/TF risks posed to the Cook Islands and across industry sectors.

357. In line with the risk assessments conducted in 2015 and 2017, supervisors classify banks, LTCs and the MVTs provider as high-risk for ML/TF. Lawyers are classified as medium/high-risk, and the accounting, pearl dealer and real estate sectors are viewed as having a low/medium level of ML/TF risk. The insurance and superannuation sectors are classified as low risk. In addition to sectoral risk ratings, the FIU is aware of the varying levels of risk among individual RIs within sectors.

358. As noted in Chapter 1, the risks posed by the legal sector are primarily due to its weak understanding of its AML/CFT obligations, rather than its vulnerability for use as a vehicle for ML/TF activity given the limited role lawyers play in company formation in the Cook Islands. The same rationale applies to the risk ratings of accountants, pearl dealers and real estate agents, with their



weakness in understanding of AML/CFT obligations raising their residual risk rating from low to low/medium.

359. The FIU introduced a risk-based approach to supervision in mid-2015 and has since concentrated primarily on higher risk RIs. The FSC has ML/TF as one of the four risk categories which contribute to assigning risk ratings to each of its licensees.

360. Both supervisors (FIU and FSC) maintain their understanding of ML/TF risk through regular supervision examinations/inspection, the analysis of STRs and the periodic assessments of risk (see IO.1 for further analysis). The context of the Cook Islands, a small jurisdiction with a close-knit community, is also beneficial in supporting supervisors' understanding of ML/TF risk, as they have active relationships and regular interactions with LEAs, RIs and the public.

#### *Risk-based supervision of compliance with AML/CFT requirements*

361. Following adoption of the NRA in mid-2015, the FIU and FSC commenced applying a risk-based approach to their supervisory and compliance functions. The FIU's risk-based supervisory framework is documented in the FTRA Compliance Examination Manual 2016. While this approach is continuing to evolve, supervisors have demonstrated the application of risk-based measures to select RIs for compliance examinations, as illustrated in Table 17 below. The FTRA Compliance Examination Manual 2016 contains the FIU's policy for selecting RIs and the focus of the assessment based on risk. Higher-risk entities are required to be examined on an annual or two-year cycle, however not all high-risk entities were subject to AML/CFT on-site examination in 2016 or 2017 as authorities were focusing on the implementation of the FTRA 2017 and conducting widespread industry consultation and outreach. The FSC did, however, conduct prudential on-sites in 2017 and the process of the implementation of FTRA 2017 was a key focus, along with file sampling and testing for CDD purposes.

362. In January 2016 supervisors commenced conducting thematic reviews on high-risk entities, focused on high-risk areas. For example:

- In 2016 the FIU focused its compliance inspections of banks on accounts held by domestic trusts.
- In 2016 and 2017 the FSC conducted monitoring on bearer share companies held by LTCs, reviewing the nature and purpose of both the company and the structures with which they were placed, the records relating to recorded BO and bearers, and conducted independent checks on those recorded.
- In 2016 the FIU conducted a thematic review on the MVTS focused on cash carrying.
- In 2017 the FSC conducted thematic reviews on LTCs focused on introducers, outsourcing arrangements, and products and business strategies.
- In 2016/17 the FSC targeted the focus of its inspections of LTCs on nominee companies, related parties and IT security.

In 2017/18 the FSC targeted the focus of its inspections of LTCs on intermediary arrangements, corporate conduct and advertising.

363. In 2017 the FIU implemented an AML/CFT Compliance Strategic Plan for 2017-2019, which sets out planned actions aimed at meeting specific goals, including implementing an effective and robust compliance framework, monitoring the implementation of the framework and promoting the capacity and professional development of supervisors.

364. Prior to the June 2017 enactment of the FTRA 2017, AML/CFT compliance was conducted in accordance with the FTRA 2004. Preventive measure obligation were included in this Act, however, it did not cover the full scope of preventive measures as required by the FATF standards (e.g. no comprehensive beneficial ownership obligations), and there was no requirement for RIs to

understand their ML/TF risk. Supervision conducted in accordance with the FTRA 2004 focused on CDD but also included management oversight, record keeping, transaction monitoring, reporting, staff training and general awareness.

365. The FIU has broadened its scope of supervisory examination following the enactment of the FTRA 2017, with an examination conducted on a LTC in September 2017 including review of the LTC's AML/CFT policy, reporting (CTR & STR), CDD, account monitoring, staff screening/vetting, staff training, record keeping and its ML/TF risk assessment. As at 1 December 2017, there had only been one inspection conducted since the FTRA 2017 came into force. Further, RIs have been granted a 12-month window to come into compliance with the new risk assessment requirements. Given the limited implementation at the time of on-site risk-based supervision, it is not possible to confirm the effectiveness of the new approach.

366. Supervisory activity has not regularly included the examination of RIs compliance with TFS obligations. Supervisors noted it was not regular practice to review RIs TFS compliance, however one examination report on a bank from 2016 described the system the bank had in place to implement sanctions monitoring and included the results of sample testing on sanctioned entities undertaken by the FIU. There is no indication that this is intended to be included in the expanded scope of supervision under the FTRA 2017.

**Table 17: AML/CFT on-site examinations conducted by FIU and/or FSC**

Institution	2012	2013	2014	2015	2016	2017 (to 30 Nov)
<b>Financial institutions</b>						
Banks	4+3	4+5	4+3	4+1	4	2
MVTS	1	1	1	1	1	
Insurance brokers and agents						
Superannuation	1	1	1			
<b>DNFBPs</b>						
Trustee Companies	7+6	6+3	6+3	4+3	5	7
Accountants		1	4			
Motor Vehicle Dealers		2	1			2
Real Estates		1				
Lawyers			1		1	2
Pearl Dealers						
NPOs		2	1			1

*Note: '4+3' it means 4 on-site examinations and 3 follow up visits (a total of 7 on-site visits).*

367. As noted above, the FIU's risk-based approach to AML/CFT supervision requires high-risk entities to be subject to on-site examination either annually or every two years. Examinations of high-risk entities (i.e. banks, LTCs and the MVTS provider) are usually conducted back-to-back with FSC prudential inspections, with the FIU Senior Compliance Officer supported by the FSC. Depending on the size and complexity of the entity the on-site visits range from one to five days. Findings are then drafted and issued by the FIU to the RI. If any issues are identified during the examinations, an action plan is required to be prepared by the RI and submitted to the Head of the FIU. Follow-up examinations are conducted, if necessary, to ensure action plan items have been implemented.

368. Supervisors have conducted both comprehensive and thematic AML/CFT examinations. In addition to the risk-based thematic examinations noted above, in 2015 the FIU conducted thematic examination on compliance by banks with CDD requirements. These examinations found high rates of compliance with CDD obligations, as noted in IO.4.

369. Lawyers have been subject to minimal on-site examination (one in 2014, one in 2016 and two in 2017), which is not in line with their medium/high level of ML/TF risk.

370. Lower risk RIs are subject to less frequent supervisory activity, more often in the form of outreach visits from the FIU, however, the FIU has conducted on-site examinations of one real estate agent and five motor vehicle dealers since 2013. While the FIU's current approach is in line with these industries' risk profile, the recent introduction of additional requirements under the FTRA 2017 may warrant additional contact with some industry sector who have to date received minimal attention from supervisors (e.g. insurance and superannuation), to ensure compliance.

371. The FIU has made limited use of offsite supervisory tools, focused on lower risk sectors and mainly prompted by an issue coming to its attention. A contextual factor which explains the FIU's preference for conducting on-site examinations instead of utilising offsite tools on higher risk RIs is the ease of being able to do so given the close physical proximity to FIs and LTCs; with the majority located within walking distance of the FIU. In 2017 the FIU distributed a questionnaire to lower-risk DNFBPs to gather information on their compliance with the FTRA 2017. The questionnaire focused on collecting statistics around the types of business conducted, transaction values, methods and delivery channels and internal controls and policies. Questionnaire responses were utilised in the preparation of the Secondary Risk Review 2017 and the FIU's 2017 typologies report. The FIU Act was amended in June 2017 to require RIs to submit annual reports in relation to their implementation of AML/CFT compliance programs. Once implemented these reports will be a useful offsite supervisory tool for the FIU.

372. There is strong cooperation between the FSC and FIU, with FSC staff supporting FIU AML/CFT on-site examinations of FIs and LTCs. Further, the FIU is housed within the FSC and staff are co-located in an office space, which is conducive to effective cooperation and information sharing. A formal MOU exists between the FSC and FIU. The FSC Commissioner, Deputy Commissioner and Head of FIU meet once a week to discuss pertinent issues and also attend the monthly FSC Board meetings to report on various items. Policies and procedures relating to AML/CFT compliance are developed jointly by the FSC Supervision division and the FIU. Education and outreach on AML/CFT is normally conducted jointly. When the FSC was delegated authority for conducting AML/CFT supervision on the FIU's behalf, it would prepare examination reports for the FIU, as required under the arrangement.

373. While the application of the risk-based approach does not necessarily require additional resources, the FIU currently has only one staff member dedicated to AML/CFT supervision, which presents a vulnerability in the form of 'key person risk' (see further analysis in IO 1), and may not be sustainable given the potential increase in workload following the implementation of the FTRA 2017. A mitigating factor is the support provided by FSC supervision officers, who are experienced in conducting AML/CFT supervision and have a strong understanding of the Cook Islands' FIs and LTCs.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions*

374. There are some deficiencies in the sanctions available to supervisors. As set out in R.35, R.27 and R.28, there are no regulations to implement administrative penalties for breaches of the FTRA 2017, no penalties for non-compliance with R.18 and the penalties for non-compliance with R.14 appear non-proportionate and dissuasive.

375. While the assessment team did not see evidence of significant breaches of AML/CFT obligations which would warrant strong enforcement action in recent years, the legislative framework which contains a comprehensive suite of preventive measures (i.e. the FTRA 2017) has only recently come into force and supervisory activity under this framework has been limited to date. It is noted however that a FSC AML/CFT on-site examination report of a bank from 2010 viewed by the assessment team stated the bank was not adhering to its policy, procedures and practices for the purposes of meeting its obligations under the FTRA 2004 (including CDD inadequacies), and that it

had not complied with instructions issued by the FIU in 2008). The report stated that the examination findings would be reported to the FIU with a view of possible prosecution. However, after receipt of the report, the bank surrendered its licence.

376. Remedial actions related to breaches of AML/CFT obligations have largely been limited to the issuance of warning letters and the requirement to prepare action plans. In 2013 four warning letters (two to banks and two to LTCs) were issued by the Head of FIU.

377. The FSC has imposed sanctions for breaches of prudential obligations, which are proportionate and dissuasive in the circumstances and have been effective in improving compliance. This demonstrates supervisors' general appetite for issuing sanctions when required.

6

**Table 18: Sanctions imposed by FSC relating to various Acts between 2012 and 2017**

	Banking Act	Trustee Companies Act	Insurance Act	Money-Changers & Remittance Businesses Act
Issuing directions or conditions	1	1	1	
Conducting business without a licence				1
Declining Fit & Proper applications	1	1		
Declining auditor		1		

378. In relation to the two businesses found to be providing MVTs and insurance services without a licence, following investigation and meeting with the entities, both were required to provide the FSC with written confirmation that no further business would be conducted. No punitive sanction was applied in response to the previous non-compliance.

379. The FSC has issued directions or conditions to a bank, LTC and an insurance company in response to deficiencies uncovered during inspections. Conditions were placed on a bank in 2016 following the FSC becoming aware that it had lost its US\$ correspondent banking relationship. The FSC was concerned about the ramifications for depositors, and the Cook Islands as a whole, so placed a condition on the banks domestic and international banking licences to prevent any further transactions occurring while the business was being evaluated. These conditions were removed in mid-2016.

#### **Box 19: FSC issuing direction to LTC**

In May 2015, the FSC engaged an expert from New Zealand to investigate a report of suspicion of misappropriation of client funds by an LTC. The investigation found instances of unauthorised transfers of funds from the trustee company's account for further credit to one of the Principal's domestic and overseas accounts. The Principal concerned created a local international limited liability company together with her sister to allow for the opening of an account with the local bank. Transactions out of the account require two signatures, and the principal of the LTC admitted during interviews with the investigator that she forged her sister's signature when making fund transfers from the account to her own personal account in New Zealand.

The investigation uncovered multiple breaches of the Trustee Companies Act 2014. It was determined that the Principal no longer met the fit and proper requirements under the Trustee Companies Act 2014 and should be removed from the business.

The FSC imposed a number of enforcement steps against the LTC, including issuing directions to the company to remove the Principal and for the company to take measures to improve their client account reconciliation system. This was appealed by the company and the matter was taken to court by the LTC. In May 2016 the Court found in the FSC's favour and action against the Principal went

ahead, including the removal of the Principal's ability to work in the financial industry within the Cook Islands.

### *Impact of supervisory actions on compliance*

380. There is good cooperation between supervisors and the private sector. The FIU and FSC are in regular contact with RIs and there is a shared interest in cultivating the Cook Island as a well-regulated jurisdiction, due in part to the increasing threat of counterpart de-risking and to the competitive advantages of being a well-regarded international financial sector. Moreover, the Cook Islands' listing in the FATF's NCCT process in the early 2000's had a positive effect on compliance culture in the country.

381. The assessment team's meetings with the private sector revealed that the small and tight-knit nature of the Cook Islands business community meant that supervisory actions that would otherwise appear to be disproportionate or lenient, appear to have a positive effect on compliance by FIs and DNFBPs.

382. The few instances of remedial sanctions being applied appear to have had a noticeable dissuasive impact on RIs in the particular context of the Cook Islands. The single instance of the FSC requiring a principal to be removed (Box 19 above) demonstrates the FSC's strong response to non-compliance and was raised by numerous RIs in meetings with the assessment team. Furthermore, the assessment team notes that audit reports from AML/CFT examinations contain strong language which sets out the expected level of compliance.

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

383. The Cook Islands was able to demonstrate that authorities' efforts have largely been effective in promoting an understanding and awareness of general AML/CFT obligations and ML/TF risks amongst higher risk RIs. The FSC and FIU use a combination of formal workshops, guidelines, regular consultation and ongoing informal contact to maintain consideration of AML/CFT issues in the minds of FIs and DNFBPs.

384. The FIU has delivered multiple workshops for RIs to raise awareness of ML/TF obligations, risk assessments and to assist with the identification of ML trends both domestically and internationally. FIs and DNFBPs were subject to extensive consultations during the development of the FTRA 2017, including the Act, Regulations and the guidelines.

385. Various industry guidelines which set out RIs obligations under the FTRA 2017 were disseminated in mid-2017 (noting guidance material had previously been issued under the FTRA 2004). RIs who met with the assessment team noted that the new guidelines have been helpful in enhancing their understanding of their obligations and draft their internal AML/CFT policies and procedures. The majority of the high-risk sectors appear to have a good understanding of their obligations and ML/TF risks. Legal professionals, however, appeared to have a weak understanding of their obligations under the FTRA 2017, despite specific industry guidelines being issued. Some lower-risk RIs had minimal knowledge of their obligations, likely due to the FIUs risk-based targeting outreach strategy.

386. The FSC attends the monthly association meeting for LTCs, and attends the Bankers Association meetings when requested, to update industry on regulatory developments. The FSC at times represents the FIU on AML/CFT compliance issues in association meetings.

387. Both RIs and supervisors noted that RIs contact the FIU and FSC if they have any queries regarding the implementation of AML/CFT obligations. Given the context of the Cook Islands, with RIs and authorities in close physical proximity and the relatively low turnover of staff, there is a good

relationship between industry and the supervisors and a free flow of appropriate information between them.

388. Between 2012 and 2017 nine awareness and outreach sessions were held for FIs and DNFBPs on a range of topics covering obligations and risks. The nine events totalled over 24 days with over 200 separate attendances.

*Overall conclusions on Immediate Outcome 3*

389. Market entry controls are well implemented in higher risk sectors to prevent criminals and their associates from operating in higher risk sectors, however, there are limited or no market entry requirements for DNFBPs other than LTCs. Supervisors have a good understanding of risk and focus the vast majority of their attention on higher risk sectors. Some lower-risk sectors have received minimal supervisory attention and would benefit from some form of supervision to enhanced sectoral understanding of risk and obligations. Only one on-site examination has been conducted pursuant to the FTRA 2017, however, the majority of preventive measure obligations were included in the FTRA 2004 and therefore covered in supervisory examinations prior to mid-2017. Compliance with TFS obligations has not been regularly assessed by supervisors. The use of sanctions for AML/CFT breaches has been limited to date, however, the assessment team did not identify any recent significant breaches which may have warranted such action.

390. **The Cook Islands has a substantial level of effectiveness with Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The FSC Registry (international) and the MOJ Registry (domestic), and government websites make information on the creation and types of legal persons and arrangements in the Cook Islands publicly available.
- Abuse of legal persons and arrangements in the Cook Islands' international financial sector has been assessed as the primary ML/TF threat faced by the jurisdiction. However, there is little evidence to indicate that actual levels of abuse of legal persons and legal arrangements are high. The assessment of risk flows from the vulnerability posed by the international financial sector.
- Competent authorities have a sound understanding of ML/TF vulnerabilities posed by international legal arrangements, which are the primary concern from an AML/CFT perspective. There is less awareness of vulnerabilities with respect to legal persons (both domestic and international) and domestic legal arrangements.
- Use of international legal persons and arrangements are subject to robust regulatory oversight by the FSC and the FIU due to the requirement that only licensed trustee companies (LTCs), which are RIs, may form, register and manage these entities. The Cook Islands' regulatory regime and supervision constitute strong mitigating measures to reduce the risk of ML/TF related abuse of legal persons and arrangements.
- Competent authorities are able to obtain access to basic and beneficial ownership information on almost all legal persons and arrangements in a timely manner through CDD collected by RIs. However, understanding of beneficial ownership varies across competent authorities and RIs.

#### **Recommended Actions**

- Institute priority activities to support and supervise the implementation of key new preventive measures introduced in 2017.<sup>23</sup>
- In line with the risk-based approach, monitor LTCs closely to ensure they are maintaining oversight of the assets and transactions of the legal persons and arrangements that they administer. In particular, LTCs should be required to demonstrate that they understand and monitor activities and transactions in relation to legal persons and assets held by the international legal arrangements administered by them.
- Provide training to RIs and competent authorities on accurate identification of the beneficial owner in a variety of contexts. When beneficial ownership information becomes relevant in an enforcement context, the FSC or FIU should support the foreign partner or domestic competent authority by ensuring the beneficial ownership information held by the FI is accurate in each case.
- Continue work on raising awareness of the ML/TF vulnerabilities posed by legal persons and arrangements (domestic and international), particularly amongst LEAs. In this regard, a risk assessment of domestic legal persons and arrangements should be undertaken to complement work done in relation to international legal persons and arrangements.
- Rectify the technical deficiencies noted in R.24 and 25, in particular, the public availability of all elements of basic information and the process for accessing beneficial ownership information.

<sup>23</sup> Measures such as the FTRA 2017, practice guidelines for LTCs, and application of the entity level risk based approach. Anti-money laundering and counter-terrorist financing measures in [country] [year] @ APG [year]

- Exercise greater ongoing vigilance, and apply sanctions where necessary, to ensure that the basic and beneficial information available to competent authorities from RIs is accurate and current.

391. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant to the assessment of effectiveness under this section are R24 & 25.

### *Immediate Outcome 5 (Legal Persons and Arrangements)*

392. While relatively small compared to other offshore financial centres, the offshore financial sector in the Cook Islands is an important part of the country's economy. Further, the context in relation to the Cook Islands offshore financial sector and the risks it poses can be found in Chapter 1.

#### *Public availability of information on the creation and types of legal persons and arrangements*

393. The Cook Islands has publicly accessible mechanisms on the forms and basic features of legal persons and legal arrangements including how to form those entities as follows:

##### *Domestic entities*

394. The Ministry of Justice website contains information on the requirements for registration of domestic companies<sup>24</sup> and incorporated societies.<sup>25</sup> The website does not contain information on domestic trusts. However, all relevant Cook Islands legislation including subsidiary legislation relating to companies and trusts, and Cook Islands case law (including cases relating to trusts), can be accessed at the website of the Pacific Islands Legal Information Institute (PacLII) under "Cook Islands Primary Materials."<sup>26</sup> Recent trust cases, including a significant 2016 case cited in the TC Annex under R 25, may be downloaded at no cost from this site.

##### *International entities*

395. The websites of the Financial Supervisory Commission (FSC) and the Financial Services Development Authority (FSDA) contain information on the basic features, and registered numbers, of international companies, international trusts, limited liability companies (LLCs), foundations and international partnerships.<sup>27</sup> Registration requirements for these entities, including forms and fees, are also available on the FSC website, which operates the registry for international entities.<sup>28</sup> In addition, the FSDA website contains links to all relevant legislation and amendments relating to each of these international entities. As above, the PacLII website contains easily accessible legislation and regulations for all laws in the Cook Islands.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons*

396. Analysis of the Cook Islands' identification, assessment, and understanding of ML/TF risks and vulnerabilities relating to legal persons is divided into two parts – domestic and international.

##### *Risk understanding - domestic*

397. Competent authorities assessed that the threat posed by domestic companies, incorporated societies and domestic trusts for ML and TF is 'negligible' – the threat and vulnerability associated with domestic business structures was rated "low" in the 2015 NRA. Given the numbers of domestic companies, and the relatively small number of domestic trusts (established primarily for estate and

<sup>24</sup> <http://www.justice.gov.ck/index.php/company-registration>

<sup>25</sup> <http://www.justice.gov.ck/index.php/11-registry/26-incorporated-societies>

<sup>26</sup> <http://www.pacii.org/countries/ck.html>

<sup>27</sup> <http://www.cookislandsfinance.com/services.php>

<sup>28</sup> <https://www.fsc.gov.ck/cookislandsFscApp/content/about-us/registrar>



succession purposes) the assessors are of the view that this understanding is reasonable in the circumstances and in the context of the Cook Islands.

398. Notwithstanding this, Cook Islands competent authorities have recently begun to identify and investigate suspected cases of ML/TF and predicate crimes involving the abuse of domestic legal persons to launder proceeds of crime. There was a recent investigation involving a prominent domestic politician who invested proceeds of bribery in a domestic legal person (see Box 11 in IO. 7). Another ongoing investigation (Box 6 in IO. 6) deals with the advancement of a substantial sum from a PEP to a domestic shipping company. Lastly, a series of investigations on the use of domestic companies in the tourism sector for fraud and theft revealed that despite lower risks, there is scope for abuse of domestic entities.

399. Notably, structuring and layering of ownership appears to be uncommon in domestic entities. This has implications for the kinds of mitigating measures, discussed below, implemented by the Cook Islands in relation to domestic entities.

#### *Risk understanding - international*

400. Competent authorities and the private sector consistently confirmed that the offshore financial sector, which primarily comprises international trusts, is “high-risk” for potential ML/TF abuse. This assessment is reflected in the 2015 NRA and the 2017 Review of Risk. There has also been a recent and comprehensive assessment of the ML, TF and PF risk associated with the different forms of international legal persons in the ‘Cook Islands – ML/TF/PF Risk Associated with International Legal Persons in the Cook Islands 2017’ (2017 International Legal Persons Review). This risk assessment was conducted to ensure the understanding of risk for legal persons was as comprehensive as the understanding across stakeholders with respect to legal arrangements.<sup>29</sup>

401. The 2017 International Legal Persons Review issued by the FSDA and the FSC on 1 December 2017 surveys the five types of international legal persons in the Cook Islands. Each form of legal person was separately risk-assessed during that assessment exercise in 2017 and the primary risks were identified for each entity. That assessment concluded that, overall, the ML/TF and PF risk did not vary between legal persons and that the primary risks lie in whether LTCs properly know their customers, understand their customers’ sources of wealth and funds, the purpose for the creation of a legal person, and nature of the activities, transaction and assets held by the legal person. In August 2017, the FIU issued the Financial Transaction Reporting Act 2017 (FTRA) Practice Guidelines to LTCs which comprehensively outline a significant number of risk factors and risk indicators associated with international entities.

402. In general, competent authorities including FIU, FSC and RMD displayed a comprehensive understanding of the inherent vulnerabilities in the offshore financial sector and risks posed international legal persons for the purposes of ML/TF, and associated predicate crimes, within the FIU, FSC and RMD. Tax officials (RMD) specifically noted their awareness of the possibility of abuse through the use of international companies to store tax debts, skew tax liability and generally commit tax crimes. However, LEAs such as the CIP and some elements of the private sector (except the LTCs and banks) had a rudimentary or negligible understanding of risks associated with international legal persons.

403. Even though the Cook Islands has consistently identified the ‘high’ level threat in relation to proceeds from foreign crimes being laundered domestically through legal persons and arrangements,

<sup>29</sup> Core Issue 5.2 in the FATF Methodology is primarily concerned with identification, assessment and understanding of risks posed by legal persons. Accordingly, the analysis here focuses on legal persons, and the risk context of legal arrangements is largely dealt with in Ch. 1 and IO. 1.

law enforcement activity in relation to this threat is very recent. Further analysis on this point is covered under IO. 7 and 8.

#### *Mitigating measures to prevent the misuse of legal persons and arrangements*

404. The Cook Islands has implemented measures to address the risks of ML/TF for legal persons and legal arrangements on a risk-sensitive basis. As indicated above, the risk of ML/TF through domestic entities is low and the risk for international entities is high. Measures to address the latter were and are a policy priority consistent with the approach in the methodology.

#### Domestic legal persons and arrangements

405. The mitigating measures on the domestic sector are less rigorous than those adopted for the offshore financial sector, reflecting the lower numbers and lower ML/TF risks posed by domestic entities.<sup>30</sup> These are limited to obligations on lawyers and requirements in relation CDD on ultimate beneficial ownership for companies and trusts. Further, the higher ML/TF vulnerability posed by lawyers in the Cook Islands (see IO. 1) flows through to domestic entities where lawyers play the traditional TCSP role.

#### **Box 20: Domestic trust accounts (2016)**

In 2016, the FIU commenced a review of domestic trusts in the Cook Islands as previously much the compliance checks had been targeted towards international trusts. The review considered bank accounts held by domestic trusts. The FIU undertook reviews at all three retail banks during their respective on-sites. The FIU requested a random sample of 20 files to review in respect of domestic trusts. It was found that almost all accounts related to funds held in trust (typically a pooled account for families or community groups) but were unconnected to an express trust. It was discovered one of the banks had a large portion of the files not complying with CDD requirements on all signatories on the accounts. A meeting was called by the Head of FIU with the Bank Managing Director and the FSC Commissioner in which the bank was given 3 months to implement an action plan to comply. This was later met by the Bank.

#### International legal persons and arrangements

406. The primary 'gatekeeper' against abuse of legal persons and arrangements in the Cook Islands is the legislated role played by the LTC. In the Cook Islands, the broader role played by the LTCs displaces some of the vulnerability for abuse usually observed in DNFBPs such as lawyers and accountants (see Ch. 1 and IO. 1). However, there is potential for vulnerability in the practice of US lawyers introducing business to Cook Islands LTCs (see IO. 4).

407. While there was considerable discussion of the risks posed by international legal persons and arrangements in the Cook Islands, the assessment team saw little evidence that the instances of abuse of international legal arrangements or international legal persons were widespread, or even frequent. In fact, a hypothesis that there are lower than expected levels of actual abuse is supported by the low numbers of international requests from foreign LEAs (on average, two to three informal requests and one MLA request per one to two years), combined with a lack of widespread findings in supervisory inspections by the FIU and FSC.<sup>31</sup>

408. The mitigating measures for the offshore financial sector can be summarised as follows:

<sup>30</sup> Approximately 11 trusts registered with RMD-Tax

<sup>31</sup> Box 11 in IO.7 (Investigation into laundering through the offshore financial sector) and Box 16 in IO 8 (Proceeds of crime invested in the offshore financial sector) are two instances of identified by the FIU/FSC in the timeframe relevant for this evaluation and both are currently matters under consideration for law enforcement action.

- only licensed LTCs can form international companies and administer international trusts and those LTCs must, at a minimum, act as company secretaries and trustees. These LTCs are regulated and supervised by the FSC and the FIU. These regulators, therefore, have direct supervisory oversight within the company and trusts structures;
- structural mitigating measures in legislation include registration of international legal persons and arrangements, CDD on ultimate beneficial ownership for companies and trusts, immobilisation of bearer instruments through custodial arrangements, disclosure requirements for corporate nominees;
- strong international information sharing arrangements.

#### *Licensed Trustee Companies – mitigating measures*

409. The eight LTCs in the Cook Islands licensed under the Trustee Companies Act 2014 are local Cook Islands companies that provide trustee company business under legislation governing the offshore financial sector.<sup>32</sup>

410. In order to benefit from legislative protections provided for international legal persons and arrangements (see Ch. 1), these entities must be administered by a Cook Islands LTC; and at least one of the trustees of an international trust must be an LTC (and therefore regulated and supervised in the Cook Islands).

411. When the new Trustee Companies Act 2014 came into force on 7 November 2014, all the Trustee Companies operating in the Cook Islands at the time were required to undergo relicensing under the new Act. Since its enactment, the Cook Islands licensed four additional trustee companies (i.e. making a total of 10 LTCs) although as of November 2017 only eight are actively carrying on trustee company business.

412. LTCs are defined as RIs under the FTRA and treated as FIs, as opposed to DNFBPs. LTCs are licensed, regulated and supervised for prudential purposes by the FSC and for AML/CFT purposes by the FIU. This policy and regulatory approach recognises the high-risk nature of the sector. The FSC uses the Group of International Financial Centre Supervisors TCSP Guidelines in conducting supervision.

413. As discussed in IO. 3, the Cook Islands has a sound licensing regime applying stringent fit and proper checks. Instances where senior employees (including a case involving the Principal) of an LTC has been found to fail fit and proper standards, and the regular practice of the FSC to scrutinise new appointments to senior roles in LTCs, mitigate the risk that these RIs will be operated in a manner that permits abuse (see Box 19 in IO. 3). Further, detailed annual supervision of CDD, opening and closing dates for accounts, recordkeeping and other relevant information on LTCs and recorded close to full compliance.

#### **Box 21: Response to non-compliance - FSC Compliance Audit, 2014/2015**

In November 2014, an on-site examination found six customer files at an LTC to be non-compliant with legislative requirements. At a follow-up compliance audit on 25 February 2015, the FSC found no improvement in compliance and issued a letter to an LTC (dated 4 March 2015) instructing it to submit an action plan to the FIU by 18 March 2015 in order to bring into compliance a total of six of its customer files. The deadline for implementation of that plan was 17 April 2015. The LTC was formally warned that failure to submit and implement the plan would result in further enforcement

<sup>32</sup> International Trusts Act 1984; the International Companies Act 1981-82; International Partnerships Act 1984; Foundations Act 2012; and Limited Liability Companies Act 2008.

actions.

The Head of FIU sought legal advice from CLO in respect of taking an injunction against the trustee company to prevent it from doing business should it not meet the required deadline. The Action Plan was submitted to the FSC and to the FIU on 19 March 2015, one day late. Consequently, an injunction was unnecessary. The action plan included the following requirements:

1. Internal changes to key senior management positions within the trustee company.
2. Changing management responsibility for compliance with KYC/CDD procedures: all KYC/CDD matters to be handled in the first instance by a different senior person in the LTC other than the primary senior manager with oversight and support from in-house legal counsel and the incoming General Manager.
3. The trustee company to inform the client trusts of the new requirements and follow-up directly with each of the trusts affected by the audit about remedial action required.
4. The above changes to commence immediately.

The Head of FIU and FSC Commissioner received written confirmation from the LTC that the action plan requirements had all been complied with. The FIU was satisfied with the response and no further action was undertaken.

414. In meetings with the industry association of LTCs and with several LTCs individually, the assessment team formed the impression that LTCs experience close oversight by the FIU and FSC. Instances of action against any one member of the small community of LTCs has a broader dissuasive impact on the sector. Broadly, the LTCs understood their key role in the level of risk posed by the Cook Islands' offshore financial sector. They were supportive of the targeted risk-based supervision exercised by the FIU and FSC since 2015 on legal arrangements (see IO 3).

415. While the recent introduction of legislation requiring LTCs to understand and mitigate ML/TF risks posed by their business remains largely untested, the assessment team noted that at the time of the mutual evaluation, all LTCs which met with the assessment team had commenced their own risk assessments. As noted in IO. 4, most LTCs had taken steps since 2012 to move away from higher risk business lines. Further, as discussed in IO. 3, the FIU/FSC had begun a thematic review of trustee companies' products and business strategies in January 2017 to ensure they had an accurate picture of the type of business that Cook Islands LTCs were engaged in. *Structural mitigating measures*

416. The following mitigating measures are in place specifically in relation to international legal persons and arrangements:

- Must be formed by an LTC;
- Must be registered with the Registrar (FSC);
- Must hold a bank account in the Cook Islands, with associated CDD controls;
- The corporate secretary must be a Cook Islands' LTC (and therefore regulated and supervised);
- All financial transaction records must be held by the resident secretary (LTC) within the Cook Islands.
- Bearer instruments must be immobilized. Bearer instruments must be held and transacted through a licensed financial institution (including LTCs) with associated CDD and information

sharing obligations. Compliance examinations and targeted monitoring (see below) of LTCs by the FSC and the FIU have not detected breaches in relation to this obligation.

- Nominee directors/nominee shareholders are required by s. 56 of the FTRA to disclose their status to RIs (including LTCs) and prohibits them from dealing with LTCs in a way that avoids other requirements of the FTRA to identify another person and verify that identity, or in a manner that conceals the identity of the ultimate natural person who ultimately owns or effectively controls an international legal person. As noted in the TC Annex, LTCs record in their company files whether a director or shareholder is a nominee and the identity of their nominator. Compliance examinations of LTCs and other financial institutions by the FSC and the FIU have not detected breaches in relation to this obligation.

### **Box 22: Targeted Review of Bearer Shares**

In 2014 the Cook Islands commenced targeted monitoring of the international companies that had issued bearer shares. On an annual basis, the FSC requested declarations from all LTCs for companies with issued bearer shares or share warrants. Any international company with bearer shares was placed under enhanced supervision. Under enhanced supervision, a review was conducted of the relevant company's files with the relevant LTC. This file review included the following:

- The following elements of the documents were confirmed: custodian of the bearer share; the bearer certificate; identity of the bearer; beneficial owner of the bearer share; length of time the instrument is to be held by the custodian;
- Review of the activity and transactions recorded on share registry and the bearer share registry, if separate;
- Information on any underlying structures;
- Register of officers (directors, resident secretary);
- Declaration by the beneficial owner(s) confirming ownership of the share(s);
- Customer due diligence on the beneficial owners and other principals are per requirements.

In addition, the Registrar was required to:

- Review a random selection of International Companies on the International Companies Registry to determine which whether the companies issued bearer instruments; and
- Compare results of the above review of the International Companies Registry with the annual declarations provided by the LTCs.

In 2014 there were five companies with bearer shares. This number reduced to four at the time of the on-site, and is one at the time of publication of this report. The FSC released a policy (non-binding) on 15 November 2017 encouraging the Cook Islands' legal persons to phase out bearer instruments by 1 July 2018 for conversion, redemption or surrender of existing bearer instruments.

### *International Information Sharing*

417. In the context of the Cook Islands where international trusts are the primary drawcard, tax evasion is a significant source of ML/TF risk.<sup>33</sup>

<sup>33</sup>The assessment team observes the distinction between proceeds of crime being invested or laundered through Cook Islands trusts, including proceeds of tax evasion and fraud, and activities of persons seeking to obfuscate attempts by creditors in civil proceedings. The assessment team is conscious that the FATF standards limit this evaluation to the former. Anti-money laundering and counter-terrorist financing measures in the Cook Islands 2018 © APG 2018

418. While recognising the possibility of tax evasion as an ML/TF risk through abuse of legal persons and international trusts, generally the Cook Islands' agencies were confident that a combination of FATCA, CRS and other international information-sharing agreements mitigate that risk. In discussions with competent authorities and RIs, the assessment team noted strong awareness and implementation of the FATCA and CRS information sharing frameworks, and the dissuasive effect of enforcement by the U.S. authorities. Given the strength of these regimes and regularity of information sharing with foreign counterparts on tax-related information, (see further analysis in IO 2, particularly Table 25) the risk of tax evasion through abuse of legal persons and arrangements appears to be mitigated to a large extent.

*Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and legal arrangements*

7

*Basic information*

419. As discussed in the TC Annex (c24.3), access to basic information is publicly available through the domestic company registry (Ministry of Justice) and international company registry (FSC). The re-registration of all legal persons and arrangements every 12 months requires an update of the information. The assessment team concluded, on the basis of discussions with competent authorities, that basic information held on the domestic and international registries could be provided to them in a timely manner, without any formal or practical impediments. There is also confidence amongst competent authorities, including those that maintain the registries, regarding the adequacy and accuracy of the basic information available through the registries. However, the assessment team is not aware of any enforcement activity by the MOJ or FSC with respect to possible failures to update information promptly prior to the 12-month re-registration process.

*Beneficial ownership information*

420. Cook Islands' RIs collect beneficial ownership information (see IO.4) and competent authorities have the ability to access and share this information. The FIU regulates and supervises LTCs for AML/CFT compliance which includes compliance with the obligation to collect beneficial ownership information.

421. Beneficial ownership information held by RIs (see c24.6 TC Annex) can be accessed by RMD (Tax), FSC and FIU, under their respective Acts. These agencies provided the assessment team with examples where they had sought, and received, beneficial ownership information from RIs in a short period of time and to a reasonable level of detail. The 2015 High Court case between an LTC and the Collector of Tax (*Ora Fiduciary v Collector of Tax, 2015*) confirmed the broad obligation to provide information as requested by authorities under the terms of the legislation.

422. Other competent authorities, such as CIP, have sought and received information indirectly from FSC or FIU, without approaching the RI directly. There have been no issues of concern in relation to timeliness of information sought indirectly through the FSC or FIU.

423. There are however some misunderstandings about what constitutes beneficial ownership among some RIs and competent authorities. Overall, the understanding of beneficial ownership by some government officials and several RIs was institutions is seen as linked to direct legal ownership and does not extend to considerations of effective control. The accuracy of available beneficial ownership information may not always be reliable. Importantly, key agencies in the AML/CFT such as the FIU, FSC and RMD displayed fluency with the concept of beneficial ownership, as did the majority of LTCs.

424. There is also a small gap in the ability to access beneficial ownership information where a domestic legal person does not hold a bank account or have another relationship with an RI. This is

likely to present a negligible ML/TF risk in the context of the Cook Islands where legal and natural persons have near complete access to the formal banking sector (see Ch 1).

425. Finally, BITB collects beneficial ownership information for domestic legal persons that qualify as foreign enterprises (with over 30% foreign ownership).

426. While there have been high-profile legal proceedings regarding the provision of client information by a bank to a foreign competent authority in alleged breach of Cook Islands' secrecy legislation, RIs expressed no hesitation to direct questions by the assessment team in relation to the ability and practice of local authorities in acquiring client information. The case mentioned above (*Ora Fiduciary v Collector of Tax, 2015*) is the only instance where an information request has been challenged before the courts and the decision of the court here serves as precedent to support the requesting authority in the future.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

427. Sanctions for non-compliance with requirements to maintain accurate and current basic and beneficial ownership information can be divided into two categories:

- supervisory sanctions on LTCs (as a function of the mitigating the risk of ML and TF in domestic and international entities measures); and
- other statutory sanctions.

428. Supervisory sanctions include escalating actions from remedial action plans, warnings, directions to LTCs for compliance, fines, assessing whether directions or conditions of a licence may be imposed, revocation of licence and possible prosecution. Prior to the 2017 FTRA, the FIU's focus of supervisory activity was whether CDD was appropriately collected and records were maintained. The FIU has provided evidence of a strong record of compliance with respect to CDD. The assessment team was provided examples of the limited occasions that warranted sanctions, and the competent authorities applied sanctions with dissuasive effect. As discussed in IO. 3, in the context of the Cook Islands, the limited sanctions activity by supervisors has had the effect of contributing to compliance.

429. In the last five years there have been no cases where sanctions have been applied on LTCs for failure to collect proper beneficial owner information in relation to legal persons and arrangements. This is despite targeted supervision of the LTCs, including inquiries in relation to beneficial ownership.

430. The annual re-registration process provides the FSC with a mechanism to ensure that the basic information that it holds is accurate. There is a consistent application of penalties imposed for failure to comply with registry requirements. The FSC has imposed fines (see Table 19) for failure to renew registration, for international legal persons and arrangements, within 12 months, and provide information regarding any changes to particulars. These penalties are applied at the time the entities' annual re-registration is considered.

**Table 19: Fines imposed by FSC for registration breaches (international entities)**

Entity	Penalty Fee / month	Registry Documents	YEAR 2014 (31-Dec-14)	YEAR 2015 (31-Dec-15)	YEAR 2016 (31-Dec-16)
			<b>Total in NZ\$</b>	<b>Total in NZ\$</b>	<b>Total in NZ\$</b>
<b>International &amp; Foreign</b>	US\$ 20	Renewal of company	21,449	18,516	11,588

<b>Company</b>		registration	(US\$ 14,120)	(US\$ 12,189)	(US\$ 7,630)
	US\$ 20	Changes to particulars of directors and secretaries	-	1,567 (US\$ 1,032)	-
<b>International Trust</b>	US\$ 50	Renewal of trust registration	21,721 (US\$ 14,300)	28,973 (US\$ 19,074)	23,364 (US\$ 15,383)
<b>Limited Liability Company</b>	US\$ 25	Renewal of company registration	2,527 (US\$ 1,664)	3,530 (US\$ 2,325)	2,556 (US\$ 1,683)
<b>Foundation</b>	US\$ 50	Renewal of foundation registration	-	68 (US\$ 45)	902 (US\$ 594)
<b>TOTAL</b>			<b>\$45,697</b> <b>(US\$30,083)</b>	<b>\$52,654</b> <b>(US\$34,666)</b>	<b>\$38,410</b> <b>(US\$25,288)</b>

431. There is limited information regarding activity undertaken by MOJ in relation to the registration of domestic legal persons. No information has been provided on sanctions applied by BTIB in relation to basic and beneficial ownership information collected for foreign enterprises (domestic legal persons with over 30% foreign ownership).

432. Overall, it is difficult to conclude whether the sanctions are having a dissuasive effect on registered entities with respect to re-registration and maintaining information on the registry. It may indicate that the level of non-compliance is low, with a few days' delay, rather than a rampant failure to update information. Either way, the sanctions do not appear to be changing behaviour.

#### *Overall conclusions on Immediate Outcome 5*

433. Competent authorities have a sound understanding of ML/TF vulnerabilities posed by international legal arrangements, which are the primary concern from an AML/CFT perspective. Use of international legal persons and arrangements is subject to robust regulatory oversight by the FSC and the FIU. The FSC Registry (international) and the MOJ Registry (domestic), and government websites make information on the creation and types of legal persons and arrangements in the Cook Islands publicly available. There are some technical deficiencies in basic information that is publicly available. Competent authorities are able to obtain access to basic and beneficial ownership information on almost all legal persons and arrangements in a timely manner through CDD collected by RIs. However, understanding of beneficial ownership varies across competent authorities and RIs.

434. **The Cook Islands has a substantial level of effectiveness for Immediate Outcome 5.**



## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The Cook Islands provide constructive and timely information and assistance when requested by other countries. The number of requests received by the Cook Islands is commensurate with the size of the Cook Islands financial sector, and risks of ML/TF. All formal requests are dealt with on an urgent basis and the processes for the execution of requests are clear.
- The Cook Islands FSC, FIU and RMD (Tax) demonstrate good practice in responding to incoming international requests on beneficial ownership and tax-related matters of importance to the operation of its international financial sector, an area of high ML/TF risk.
- Competent authorities are able to access financial and tax-related information from RIs and share with international counterparts without any impediments from 'secrecy' provisions in legislation.
- The Cook Islands use their informal and treaty-based cooperation framework, as opposed to formal legal assistance mechanisms such as MLA, in their AML/CFT efforts.
- There has been no MLA request prompted by the CIP or other LEAs, except the FIU. This is likely because LEAs are not sufficiently focused on transnational criminal threats to consider MLA as a useful tool in investigations.
- The Cook Islands is extensively engaged in international and regional organisations and utilises those forums appropriately. Limited domestic activity in relation to ML/TF means these networks have not been utilised to that end. Certain agencies in the Cook Islands, such as FSC, FIU, RMD (Tax and Customs) routinely share information with foreign counterparts. The FIU has provided evidence to indicate that it liaises with foreign counterparts in relation to AML/CFT supervision; however, the FSC regularly liaises with foreign counterparts regarding prudential and other licensing matters.

#### **Recommended Actions**

- Ensure that LEAs, particularly the CIP, include MLA requests and international information sharing as part of the investigation process, as appropriate.
- Train investigators, prosecutors and judges on international cooperation in order to increase the use of MLA and extradition.
- Pursue bilateral or other information sharing and cooperation arrangements with strategically important jurisdictions such as the United States and China.
- Maintain statistics on LEAs' use of international cooperation.

435. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant to the assessment of effectiveness under this section are R.36-40.

### ***Immediate Outcome 2 (International Cooperation)***

#### *Providing constructive and timely MLA and extradition*

##### *MLAs received*

436. The Cook Islands provide constructive and timely information and assistance when requested by other countries. All formal requests are dealt with on an urgent basis and the processes

for the execution of requests are clear. Formal requests for assistance, including MLA and extradition requests, are managed and coordinated by the CLO.

437. The Cook Islands can receive MLA requests relating to a criminal matter under section 7 of the MACMA. The Attorney-General is the designated authority. The requests are then referred to the CLO to take appropriate action to respond to the request. An MLA treaty is not required with the Cook Islands before sending an MLA request.

438. All MLA requests are received by the MFAI via diplomatic channels through New Zealand and are treated urgently once received, as required by the Procedures on Requests for Mutual Legal Assistance 2017 of the MFAI. The CLO first reviews the request, before it is submitted for the approval of the Attorney-General. If required, an application is made to the Courts for the appropriate orders, before the relevant LEA implements the Court orders.

439. There are no specific units or designated officers in LEAs to deal specifically with MLA requests. The CIP has instructions in the CIP General Instructions on how to deal with MLA requests, and other forms of formal requests received from other LEAs, including the need for confidentiality and expediency.

440. The Cook Islands has demonstrated that they are capable of responding to MLAs that request the identification, seizure, forfeiture, confiscation and repatriation of proceeds of crime (see Box 13).

441. Over the past five years (2013-2017) the Cook Islands received seven requests in total, six from the United States and one from Russia. The requests from the United States were all in relation to fraud offences, and each involving either ML or proceeds of crime action. An MLA request was also received in 2017 from Russia in a matter involving ML and embezzlement.

**Table 20: MLAs received by the Cook Islands**

Year	2013	2014	2015	2016	2017
MLAs Received and Actioned	4	0	0	1 (pending)	2 (1 pending) <sup>34</sup>

442. Information provided to the assessment team demonstrated that the Cook Islands' response in those cases was broadly timely, and constructive.

443. The Cook Islands take an average of four months to respond to MLA requests, which is considered to be timely. However, responses to MLA requests can potentially be delayed when they are contested in the Courts, especially due to the Court circuit timetable, and the time taken to courier documents overseas, such as to the United States. In general, however, the assessment team is of the view that Cook Islands provide responses to MLA requests in a timely manner. Cook Islands has responded to MLA requests to identify, freeze, seize, forfeit, confiscate and repatriate assets and provide information (including evidence).

444. International counterparts have not raised any concerns regarding the capability of the Cook Islands to receive and respond to MLA requests. Comments made about the Cook Islands' ability to respond to MLA requests included that they had been 'responsive and cooperative'. In some cases, the CLO conducted its own research and found that three cases related to MLA requests resulted in prosecutions and convictions in the United States, and in one case the information provided by the Cook Islands was relied upon by the prosecution in the foreign jurisdiction.

<sup>34</sup> Resolved by the date of publication of the APG Cook Islands MER.

*Extradition requests received*

445. While the Cook Islands has never received an extradition request, they have appropriate legislative and administrative frameworks in place to deal with any extradition requests that they may receive in the future. The Cook Islands' ability to provide constructive and timely responses to extradition requests is therefore untested, and the relevant officials have no experience in extradition so far. However, given the capability demonstrated by the Cook Islands in relation to MLA, it would appear that the relevant competent authorities will be able to respond to extradition requests constructively.

446. The Cook Islands can receive and facilitate extradition requests from countries listed in the Extradition Act as Commonwealth countries, South Pacific countries or treaty countries, or any other country declared by regulation or certified by the Attorney-General to be an extradition country. Further, the CIP General Instructions include the process for dealing with any extradition requests received.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements**MLA requests sent*

447. The Cook Islands has made three MLA requests under the MACMA from 2012 to 2017. In light of the international exposure of the Cook Islands, in terms of ML/TF risks, including a 'high' risk of foreign proceeds, this low level of requests, as compared to a greater number of incoming MLA requests, appears consistent with risk.

448. Broadly, in the context of ML, the limited use of international cooperation appears to be a product of a limited awareness of formal channels of international cooperation and a preference for the easier, less formal international cooperation; the absence of mechanisms amongst Cook Islands authorities to select, prioritise and make requests for assistance; and the lack of a proactive approach to combating ML and pursuing criminal assets in general, as outlined in the analysis of IO.7 (Chapter 3 above).

449. The three MLA requests made by the Cook Islands were initiated by the FIU. There has been no MLA request prompted by the CIP or any other LEA. This is due to reliance or preference by LEAs to use their informal and treaty-based cooperation framework in seeking cooperation with counterparts. While the use of other forms of cooperation may be appropriate and effective in most cases (see further analysis below), the assessment team notes that investigators of ML/CFT and associated predicate offences were not considering using MLA requests as part of the investigation.

450. The following table shows the number of MLA requests that the Cook Islands has sent in the last five years

**Table 21: MLAs sent by the Cook Islands**

Year	2010-2012	2013	2014	2015	2016	2017
MLAs Sent	1	0	1	1	0	0
	New Zealand		New Zealand	Australia		

451. MLA requests were made promptly to foreign countries after the FIU gave instructions to the CLO. Cook Islands authorities provided the assessment team with an average time period of 'within two weeks' from when the CLO received the request from the FIU to when the MLA was officially sent to the foreign jurisdiction.

452. Since the first MLA request was sent the practice has been that the FIU drafts the MLA request, then sends it to the CLO to review and confirm, before it is submitted to the Attorney-General for approval, and then it is conveyed to the MFAI to send through diplomatic channels.

453. So far, responses to MLA requests sent by the Cook Islands has been reported as being prompt, and the information provided has been considered or used in further investigations or prosecutions.

#### *Extradition requests sent*

454. The Cook Islands has never sent an extradition request to a foreign jurisdiction. Therefore the CLO and CIP and other LEAs have no experience in sending extradition requests.

455. The CIP General Instructions outline the process for extradition requests, and the assessment team was informed that the CIP has investigations underway that may involve extradition requests.

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#### *Providing and seeking other forms of international cooperation for AML/CFT purposes*

456. All LEAs and supervisors can provide and seek international cooperation (see R. 40), other than MLA and extradition, and they do so on a regular basis. However, since most competent authorities do not maintain records of international cooperation, the assessment team cannot ascertain whether the cooperation is constructive, regular, timely and appropriately targeted. This is mitigated, to an extent, by the lack of any negative feedback from other jurisdictions, and some positive feedback in relation to the FIU and FSC. The agency-specific information below provides greater detail on the use of other forms of international cooperation for AML/CFT purposes.

#### *CIP*

457. The CIP's priorities are largely focused on domestic offences, including domestic offences that have a transnational element, such as illicit drugs trafficking, illegal fishing and people smuggling. This is not consistent with the ML/TF risks as assessed by the Cook Islands, which indicate a low-level threat in relation to domestic offences, and high-level threats in relation to proceeds from foreign offences. In relation to domestic offences that have a transnational element, the assessment team did not see evidence of the CIP targeting threats arising from foreign offences.

458. The CIP has a close relationship with New Zealand Police and Australia Federal Police, and members of the Pacific Islands Chiefs of Police Network. CIP is not a member of Interpol, but it has access to intelligence and assistance through NZ Police or the Interpol desk in the PTCCC. Contact with the United States is made through the Canberra (Australia) Embassy.

459. While the international networks mentioned above are beneficial, the assessment team did not see evidence of active cooperation between the CIP and these counterparts specifically in relation to ML/TF. Despite active engagement on certain issues of transnational crime such as drug trafficking, illegal fishing and organised crime, CIP was not able to describe its work on these issues fluently to the assessment team.

#### *FIU*

460. The FIU has 10 bilateral information sharing and cooperation MOUs, and is a member of the Association of Pacific Islands FIUs, together with Fiji, Nauru, Niue, Papua New Guinea, Republic of the Marshall Islands, Palau, Samoa, Solomon Islands, Tonga and Vanuatu. The Cook Islands is also a member of the Egmont Group.

461. Under section 38(2) of the FIU Act, the FIU can share information as to financial misconduct with third parties. Under section 39 the FIU can share information with counterparts upon terms and conditions outlined in an existing agreement or agreed to at the time of disclosure. The FIU

demonstrated it seeks informal assistance from foreign counterparts when required. Feedback received from counterparts indicates that the FIU is responsive and provides constructive information, both in its bilateral relationship and within international networks.

### **Box 23: Multi-agency International Cooperation**

In 2015, the FSC noted discrepancies in an LTC's client file while conducting an on-site compliance visit. Further inquiries made by the FIU revealed links between the LTC and the client (Mr F) and a criminal offender in Australia.

The FIU has been in direct, informal, contact with the police and FIU in Australia, and LEAs in four other jurisdictions. The FIU has received useful information from these foreign counterparts and non-counterparts. By Cook Islands' account, there has been no delay, impediment or hesitation in information exchanges amongst the various competent authorities across jurisdictions. In addition to the informal means of international cooperation, the FIU also submitted an MLA request to Australia (court hearing transcripts from previous criminal proceedings) in order to assist with Cook Islands' preparation for potential law enforcement action.

The matter is ongoing with the FIU considering whether the LTC committed ML offences in the Cook Islands. As a result of the cooperation, separate investigations have been initiated in Australia against the LTC's client.

This case is also discussed in IO 8 (Box 18: Proceeds of crime invested in the offshore financial sector).

462. The following shows the number of requests sent and received by the FIU under the APFIU:

**Table 22: Requests Received and Sent by the FIU to/from APFIU**

	2013	2014	2015	2016	2017
Requests Received	0	0	0	2	1
Requests Sent	0	2	2	7	1

463. The FIU disseminates information spontaneously to its counterparts.

**Table 23: Spontaneous STR disclosures to foreign jurisdictions**

2012	2013	2014	2015	2016	2017
7	15	8	6	22	?

### **Box 24: Spontaneous FIU-FIU information sharing**

In early 2017 a local bank alerted the FIU (by phone) that an email was received by the local bank from the local business instructing it to remit money overseas to pay two invoices to two separate accounts, but for one beneficiary. The amounts were more than NZ\$ 20,000 (US\$ 13,170) for one, and more than US\$ 19,000 for the other.

The email system of the local business had been hacked, and this was a scam email. Once the local bank learnt of the hacking they issued recall messages, but the money had already been sent by the local bank to bank accounts in another country.

The FIU immediately shared this information with the relevant foreign FIU, who then managed to track down the funds in the bank accounts in their territory.

The funds had not been withdrawn and had been administratively frozen by the relevant foreign banks because of the recall message from Cook Islands local bank

The funds were eventually repatriated to the Cook Islands local bank and credited to the local business account.

464. The FIU has not made or received any requests in relation to AML/CFT supervision. Given the inter-connectedness of Cook Islands financial sector with other jurisdictions, this does not appear consistent with risk.

#### *FSC*

465. Positive feedback from counterparts indicated that FSC has responded in a constructive and timely manner to requests made by foreign counterparts. Requests were received from a wide range of jurisdictions around the world, including the United States, Malta, Cayman Islands and New Zealand.

466. As mentioned in Chapter 1, the FSC is an active participant in GIICS, GIFCS and ICBS. The FSC has one bilateral MOU, signed in November 2017 with the National Reserve Bank of New Zealand.

467. The FSC can exchange information with counterparts using the FSC Act, or non-counterparts using the Banking Act (see Box 25). Sometimes the FSC utilises the FIU to cooperate with non-counterparts. An example of this occurred in 2015 when an LTC applied for a change in shareholding. The analysis of the application was undertaken by the FSC, and a request was made to the FIU on 2/2/2015 asking if any information on the individuals could be sought from the FIU in India. The FIU made the request to FIU India on 3/2/2015 and a response was received on 12/2/2015 and forwarded to the FSC. There were no adverse findings and the application was recommended for approval.

#### **Box 25: FSC and FIU cooperate with non-counterpart**

In 2017 the FIU was contacted by foreign law enforcement, which was seeking information in relation to an entity suspected of laundering over NZ\$ 300 million (US\$ 197.5 million) in criminal proceeds. According to the foreign LEA, two individuals controlling the entity were involved in the operation of a previously licensed bank in the Cook Islands. Foreign LEAs travelled to the Cook Islands to view the FSC's files of the previously licensed bank. The officers reviewed the relevant files and requested copies of specific documents, which the FSC agreed to, following assurances on further disclosure and use of the documentation.

468. The number of requests made by the FSC to foreign counterparts has been appropriate and timely, and consistent with the risk profile relating to financial crimes. Outgoing requests relate mainly to licensing and fit and proper checks, including ownership structure queries.

469. The following is a table illustrating the number of requests received and sent by the FSC.

**Table 24: Requests received and sent by the FSC**

	2012	2013	2014	2015	2016	2017
Requests Received	0	0	2	2	1	3
Requests Sent	0	0	1	6	6	6

470. The FSC contacts its foreign counterparts as standard practice when it conducts prudential inspections. It has participated in supervisory colleges for ANZ (with the Australian Prudential Regulatory Authority) and BSP (with Bank of Papua New Guinea) and is an active member of GIFCS, GIICS, the Association of Financial Supervisors for Pacific Countries and the Forum of Corporate Registries.

#### *RMD (Tax)*

471. In discussions, the RMD appeared to be conversant in their ability to seek and offer assistance to foreign counterparts.

**Table 25: TIEA requests**

Year	Countries requesting sharing of information with the Cook Islands RMD through (TIEA)	Number of entities linked to TIEA requests
2012	AU, NZ	59
2013	Korea	4
2014	Norway, Sweden, Germany	6
2015	NZ	7
2016		0
2017	Norway, NZ	6
Total		95

472. The RMD has Tax Information Exchange Agreements (TIEA) with 21 countries that span most of the Cook Islands important economic and financial partners but not the United States and China. The Cook Islands is also a signatory to the information sharing agreement under the Convention on Mutual Administrative Assistance in Tax Matters with 160 countries. The Cook Islands has sought discussions for, but has been unable to conclude, a TIEA with the United States (see Chapter 1).

473. Requests from non-TIEA countries have only related to criminal tax matters thus far and have been made through MLA processes as opposed to requests to RMD.

474. Requests for international cooperation received by RMD are first screened and then processed with a response to be provided depending if it is a 'normal' request, within 24 hours, and outside the normal information that they have could take up to three months.

#### **Box 26: Assisting foreign counterparts – Criminal investigation**

In 2012 RMD received a TIEA request from a foreign counterpart, regarding a high wealth individual under investigation for tax evasion, who had absconded to take up residence in a tax haven country.

The foreign counterpart requested the Cook Islands assistance in obtaining files of the international company registered in the Cook Islands which administered companies and funds on behalf of the foreign tax evader.

A bank (now a former bank) administered a company registry business for international companies registered in the Cook Islands (the Trust Company). It was noted that the Trust Company was requested by the entities (under investigation) to make available an officer of the former bank for appointment as the Resident Secretary. XXLTD and XYLTD were appointed as their nominated Secretary. The secretarial companies are regularly changed. It was also noted that the name of the Beneficial Owner was absent from the statutory documents held on file. Its absence was noticeable.

The only reference to the BO was an email communication held on file between a shadow director (friend) and the BO forwarded to the secretary giving instructions. After providing the foreign counterpart with the relevant copied documents, the foreign counterpart requested the Cook Islands give its consent to use the documents in court to which the Cook Islands gave its approval.

**Box 27: Assistance to foreign counterpart B - Debtor hiding assets**

In 2017 the RMD received a TIEA request from a foreign counterpart regarding a high wealth individual, following an avoidance investigation whereby the tax office was owed NZ\$ 23 million (US\$ 15.1 million). The request sought information from the Cook Islands of the entities held by the debtor and to provide any property information for the debtor. The information was provided within four weeks.

*Customs*

475. Customs has international cooperation MOUs with 10 countries, including NZ Customs, which outlines operation, information sharing and capacity building. Customs can also provide international cooperation as a member of the Oceania Customs Organization along with 26 other Pacific countries, including Australia and New Zealand and the French territories. Customs is heavily engaged with its Pacific counterparts to ensure that their portfolio benefits from a well-coordinated regional approach.

**Box 28: Operation Bread**

In 2013 Cook Islands Customs, the FIU and other LEAs participated in a transnational operation to build capacity between Customs and other LEAs to identify and report cross-border carriage of currency and bearer negotiable instruments (BNI) in order to promote cooperation amongst these countries regarding the declaration of currencies and BNI.

During the operation, the participating countries reported identified instances of cross-border movements of cash and BNI (both declared and non-declared) to the other affected participating country.

Identification and timely communication were critical elements of the Operation. There was no increase of seizures or detections of undeclared currency by Customs as a result of the operation; however, information and intelligence gathering and sharing was improved which was a main outcome.

*Immigration*

476. The Immigration Division of the MFA has no formal cooperation arrangements with other jurisdictions; however, it is a member of the Pacific Immigration Directors Conference.

477. Requests for information are sent to the Director of Immigration, who then designates an immigration officer to provide the assistance. There are no standard operating procedures for responding to requests for assistance, and responses are based on practice.



478. Immigration does not have a case management system, however, requests are sent within 3 to 5 days.

479. The assessment team received no statistics or case studies to evaluate the effectiveness of Immigration's international cooperation. However, movement of people does not pose an identified risk of ML/TF for the Cook Islands, with human trafficking being assessed as a 'low' level ML/TF threat in the 2015 NRA.

#### *Ministry of Marine Resources*

480. The MMR is part of a wide international network that provides international cooperation in relation to the management of marine areas and resources. This is provided under UNCLOS at an international level, and at a regional level, the Western Central Pacific Fisheries Commission with 35 countries, and the Niue Treaty Subsidiary Agreement involving 20 Pacific countries, but not all. There are different information sharing rules with different countries. MMR also facilitates bilateral agreements that CI has with countries, such as the Shiprider Agreement with the United States, and bilateral agreements with NZ and France, respectively.

481. Requests for international cooperation are received through the Secretary for MMR, who then assigns designated officers to compile the data requested to be sent by the Secretary to the overseas counterpart. MMR does not have standard operating procedures for responding or sending requests for international cooperation, however, an in-house legal counsel provides legal advice in conjunction with the CLO.

482. The assessment team heard that any request for international cooperation is given strict confidentiality by the Secretary and in-house legal counsel and authorised officers. A case file is generated for each request and actioned appropriately.

483. Environmental crimes, including illegal fishing, pose a medium level ML/TF threat to the Cook Islands. In light of the significance of Cook Islands marine resources, the sophisticated networks maintained by MMR in this respect provide appropriate avenues for informal international cooperation. However, the assessment team did not receive any statistics or case studies to demonstrate that ML/TF issues are considered by MMR in their recourse of international cooperation.

#### *International exchange of basic and beneficial ownership information of legal persons and arrangements*

484. The CI is able to identify and exchange basic and beneficial ownership information. The assessment team heard anecdotal evidence from the Cook Islands that the FSC or FIU are often contacted with requests for information on international legal persons and legal arrangements, and the Cook Islands plays a cooperative and constructive role.

485. While the assessment team was not provided with comprehensive statistical information on exchanges of beneficial ownership information, case studies (Box 26 and 29) appear to support the Cook Islands assertion that such information has been exchanged regularly and promptly.

486. As discussed in IO 5, there may be deficiencies in identifying accurate beneficial ownership information in some competent authorities, although the FSC, FIU and RMD (tax) appear to have a strong understanding of the concept. Given the risk profile of the Cook Islands, the ability and willingness of competent authorities to identify and exchange beneficial ownership information in a timely and constructive manner is important.

**Box 29: Timely Access to BO Information**

In July 2014, the Cook Islands tax authority (RMD) received a request from the Swedish tax authorities seeking information on a Cook Islands trust and whether it was linked to a Swedish taxpayer who was under investigation by the Swedish tax authorities for criminal tax matters. The information sought by Sweden included the following held by a licensed trustee company in relation to an international trust:

- trust deed.
- customer due diligence information on the settlor and beneficiaries.
- copies of instructions received.
- financial records and transactions by the trustees.

On 26 August 2014, the Collector of Tax requested the information pursuant to his powers under section 220(4) of the Income Tax Act 1997. The request was disputed by the trustee company and proceedings were filed in court by the trustee. The matter was heard on 22 September 2015 and the Court upheld the Collector's request for information. The information including beneficial ownership was provided to the Collector and forwarded to the Swedish tax authorities.

*Overall conclusions on Immediate Outcome 2*

487. The Cook Islands provides constructive and timely assistance when requested. The level of international cooperation provided by the Cook Islands is consistent with its size and ML/TF risks. Its use of international cooperation channels is limited by the low level of domestic law enforcement activity in relation to ML/TF. However, Cook Islands utilises formal and other forms of cooperation well in relation supervision and regulation of RIs.

488. **The Cook Islands has a substantial level of effectiveness for Immediate Outcome 2.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis concerning the level of technical compliance for the Cook Islands with the FATF 40 Recommendations. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

### ***Recommendation 1 - Assessing Risks and applying a Risk-Based Approach***

2. This is a new Recommendation, which was not assessed in the 2009 MER.

3. *Criterion 1.1* - The Cook Islands published its second National Risk Assessment (NRA) on ML/TF in March 2015. The methodology used for the assessment broadly follows FATF Guidance on Risk Assessment (Feb 2013). The inclusion of both ML and TF in the NRA is appropriate under the FATF standards, even though the Cook Islands has a comparatively low TF risk. The purpose, scope and audience for the NRA are clearly identified and the NRA received whole-of-government commitment through its adoption by the Cabinet of the Cook Islands. The 2015 NRA reasonably depicts the Cook Islands' risk context.

4. The 2015 NRA is based on quantitative and qualitative information drawn from both private and public sector stakeholders and does identify the ML/TF risks for the jurisdiction. However, no analysis was performed to identify information gaps or how these gaps might impact the assessment; notably, the Cook Islands' small evidence base of STRs, and zero ML or POC cases prosecuted has necessarily resulted in a greater reliance upon qualitative and subjective information to inform the NRA. It does not appear that ML/TF risk assessments conducted by RIs were analysed for the NRA and trans-national risks were only captured through consultation with Cook Islands stakeholders which collaborate with international counterparts. These issues are counter-balanced by the methodical collection and analysis of data in line with the approach provided by the Organization for Security and Cooperation in Europe (OSCE) Handbook on Data Collection in support of ML/TF NRAs.

5. The 2015 NRA is supplemented by the 2017 Financial Institutions and Designated Non-Financial Businesses and Professions Sectors Review of Risk (2017 Review of Risk) which comprises a further analysis on primary threats and high-risk sectors identified in the NRA conducted by an external expert, as well as an analysis of secondary threats and low risk sectors conducted by the FIU. These reports take the form of expert analysis and commentary on threats and vulnerabilities to RIs rather than adopting sufficient methodological rigour to be considered a supplementary risk assessment. Within this scope, the 2017 Review of Risk provides a detailed examination of threats facing RIs in CI and common risk controls.

6. Despite some shortcomings in methodology, the NRA 2015 and 2017 Review of Risk generally present a reasonable analysis of the ML/TF threats facing the Cook Islands, although the lack of an explicit assessment of cyber-enabled crime is a notable gap considering the main threats to the Cook Islands stem from foreign criminal actors. Both reports are publicly available on the FSC website

7. *Criterion 1.2* - The FIU is designated as the lead for coordinating action to assess ML/TF risks through its role as Chair of the National AML/CFT Coordinating Committee (NACC), which comprises all relevant AML/CFT stakeholder agencies.

8. *Criterion 1.3* - The 2015 NRA was an update of the first NRA conducted in 2008. The 2015 NRA was supplemented by the 2017 Review of Risk.

9. *Criterion 1.4* - There is only an unclassified version of the NRA 2015 which is available on the FSC's website (as at 15 August 2017). Annex I to the NRA 2015 is not published on the website. Annex I contains a risk assessment form used to analyse risks identified, description, number of cases reported, its probability of occurrence, impact, mitigation strategy, additional measure and any contingency plan to mitigate the identified risk. The results of the risk assessment exercise are contained in the body of the NRA and are publicly available.

10. A final version of the NRA 2015 as endorsed by the Cook Islands Cabinet was circulated to NACC member agencies and to all banks and TCSPs via the FIU on 31 March 2015. The FTR Guidelines encourage RIs to incorporate the findings of the NRA into their own ML/TF risk assessment. Further outreach sessions were conducted in October 2017, which also included the findings of the 2017 Review of Risk.

11. *Criterion 1.5* - The findings of the NRA 2015 have been used by the FIU to inform its supervisory activities, such as a program of audits on customer due diligence performed by TCSPs (identified as a high-risk sector) in 2016. More broadly, the FIU applies a risk-based approach to all aspects of its supervisory activity (FTRA Compliance Examination Manual). It is also evident in minutes from the NACC that the findings of the NRA 2015 and an explicit discussion around ML/TF risks inform the development and prioritisation of AML/CFT related policy and legislation. However, there is little evidence that a risk-based approach to prevent or mitigate ML/TF is routinely applied by the Cook Islands National Intelligence Taskforce (CINIT) or the Cook Islands Combined Law Agency Group (CLAG), or by individual agencies other than the FIU specifically acting in its capacity as a regulator.

12. *Criterion 1.6* - The FTRA 2017 provides two powers to exempt financial institutions or DNFBPs from obligations under the FTRA. The FIU may exempt RIs from Part 2 of the FTRA 2017 (which deals with ML/TF risk assessment and controls other than CDD and transaction reporting) only if the Head of FIU is satisfied that the ML/TF risk is low (section 22 FTRA 2017). However, section 64 grants a general power to exempt by Regulation in accordance with a recommendation of the FSC.

13. *Criterion 1.7* - The FTRA 2017 provides that financial institutions and DNFBPs must apply enhanced customer due diligence for high-risk customers (section 29 FTRA 2017). The FTRA Practice Guidelines provide that business risk assessments should be performed annually for businesses rated 'high-risk' in the NRA (FTRA 2017 Guidelines p12) and for customers assessed by the RI as high-risk (FTRA 2017 Guidelines p14), compared to triennially for other RIs and other customers respectively. The Guidelines also extend the risk-based approach to other areas such as ongoing customer due diligence and transaction monitoring for high-risk customers (FTRA 2017 Guidelines p21). Notably, failure to follow Guidelines is not, in itself, a breach of the FTRA, but a consideration to be taken into account by courts, the FIU or the FSC in considering broader breaches of the Act (sections 65 and 66 of the FTRA 2017).

14. *Criterion 1.8* - Simplified customer due diligence is provided under section 27 of the FTRA 2017 with an explicit requirement for an adequate assessment of ML/TF risk.

15. *Criterion 1.9* - FIU has conducted regular education and awareness sessions to assist RIs to implement the new risk-based requirements provided under the recently introduced FTRA 2017. Standard operating procedures at the FIU provide that the FIU as a matter of routine audits the appropriateness of a RIs risk assessment and its application within the business to inform risk mitigation and management (FTRA Compliance Examination Manual p12). In September 2017 the FIU conducted its first supervisory examination which included an assessment of the RIs ML/TF risk assessment. It is noted that only one such inspection had occurred at the time of the on-site. Most RIs officially remain subject to a 12 month non-enforcement period for the requirement to conduct a business risk assessment (s19 FTRA 2017).

16. *Criterion 1.10* - The FTRA 2017 requires RIs to perform an ML/TF risk assessment (Sections 18 FTRA 2017) that is documented, kept up to date and considers all relevant risk factors before determining overall risk and risk mitigation. However, this requirement cannot be enforced for most RIs until 23 June 2018 (s19 FTRA 2017). Evidence presented during the on-site assessment indicated that in practice all RIs had attempted to achieve full compliance with s18 obligations prior to 1 December 2017. While section 18(2) provides an inclusive definition of relevant risk factors, the explicit inclusion of geographic, delivery channel and employee risk as relevant risk factors in either the FTRA 2017 or the Practice Guideline would

enhance this requirement. Risk assessment information must be provided to the FIU upon request (Part 3 FIU Act 2015).

17. *Criterion 1.11* - An RI's risk-based approach as articulated in its compliance programme must be approved by senior management (section 12 FTRA 2017) and be subject to regular independent testing (section 15 FTRA 2017). The FTRA 2017 prescribes enhanced due diligence measures in high-risk situations (sections 29 to 32) and this is supported by the general requirement in section 12 to implement risk-based controls to detect and prevent financial misconduct. While the FTRA Practice Guidelines provide guidance on enhanced measures for customer due diligence, there is little explicit guidance on common business risk enhanced controls such as imposing or embedding transaction limits into financial products.

18. *Criterion 1.12* - Simplified customer due diligence measures and reliance on third-party identification may only be applied in accordance with a RI's risk assessment (section 23 FTRA 2017) and do not apply in circumstances where there is a suspicion of ML/TF (section 30).

### *Weighting and Conclusion*

19. The Cook Islands' ML/TF risk assessment process demonstrates some methodological shortcomings but nonetheless results in outcomes that have a meaningful utility to financial institutions, DNFBPs and regulatory agencies. **Recommendation 1 is rated largely compliant.**

### ***Recommendation 2 – National Cooperation and Coordination***

20. The Cook Islands was rated largely compliant with R.31 in its 2009 ME. The ME assessed that the Cook Islands had sufficient mechanisms in place for national cooperation and coordination, but that the effectiveness of operational cooperation was an area for improvement. Recommendation 2 contains new requirements that were not assessed under the 2004 methodology.

21. *Criterion 2.1* - The Cook Islands adopted a National AML/CFT Strategy in November 2017. The Strategy is explicitly tied to the findings of the NRA 2015 and its implementation addresses a specific recommendation in the 2017 Review of Risks to adopt a national strategy. The Strategy outlines five key objectives for the period 2017-2020, identifying measures to be taken to achieve the objectives. The Strategy provides a requirement to report annually to Cabinet on progress towards objectives, and provides that the Strategy is a dynamic document that will evolve in response to changing risks.

22. *Criterion 2.2* - The NACC, chaired by the FIU, is responsible for determining national AML/CFT policies.

23. *Criterion 2.3* - The NACC includes representation from policy agencies, the FIU, LEAs and supervisors and political officials and is used as a forum to cooperate and coordinate the development and implementation of AML/CFT policy. Operational level coordination may be conducted through the CLAG, CINIT and ACC, although these bodies have a broader mandate than only ML/TF. Formal reporting relationships are in place between the NACC and the CLAG/CINIT.

24. *Criterion 2.4* - As the NACC is responsible for proliferation financing, in addition to ML/TF, the mechanisms discussed for Criterion 2.3 are used to cooperate and coordinate mechanisms to combat proliferation financing.

### *Weighting and Conclusion*

25. **Recommendation 2 is rated compliant.**

### ***Recommendation 3 - Money laundering offence***

26. In the 2009 MER the Cook Islands was rated largely compliant with former R.1 and R.2. While the threshold approach adopted ensured that the ML offence extended to a very broad range of predicate offences, not all designated categories of offence were covered.

27. *Criterion 3.1* - The Cook Islands acceded to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 22 February 2005 (entered into force on 23 May 2005) and the 2000 Convention against Transnational Organised Crime (the Palermo Convention) on 4 March 2004 (entered into force on 3 April 2004).

28. The form of the current ML offence is consistent with the terminology and elements proposed by those conventions, but also extends the requisite mental element to conduct where the person “had reason to believe” or was “wilfully blind” (subsections 280A(2) and 280A(3) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) refer).

29. Sections 280A(2)(d) & 280A(3)(d) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) both specifically provide criminal liability for persons who render assistance to anyone that undertakes money laundering. In addition sections 68 (aiding, abetting, inciting, counselling and procuring the commission of money laundering), 333 and 334 (conspiracy and attempt to conspire, commit or procure money laundering) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) provide for the ancillary offences for any offence under the Act (and under any other enactment) and this includes the money laundering offence under section 280A.

30. Cook Islands confirmed that, depending on the factual circumstances, sections 68(1), 280A(2) and 280A(3) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) cover “participation and facilitation” of money laundering and section 333 covers “association with”.

31. *Criterion 3.2* - The predicate offences for ML include all ‘serious offences’ as set out in section 280A(1) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004). These are all offences punishable by imprisonment of not less than 12 months or a fine of more than NZ\$ 5,000 (US\$ 3,293). The assessment team confirmed a statutory basis for domestic offences in relation to all categories of predicate offences, except some offences in the category of illicit arms trafficking.

32. *Criterion 3.3* - The Cook Islands has adopted a threshold approach for predicate offences by making all offences that are punishable by not less than 12 months’ imprisonment or a fine of more than \$5,000 “serious offences” for the purposes of the ML offence provisions.

33. *Criterion 3.4* - “Property” is broadly defined in section 2 of the Crimes Act as including real and personal property, and any estate or interest in any real or personal property, any debt, and anything in action, and any other right or interest. There is no limitation on the value of the property the subject of the offence. The term “proceeds” is however not used in the ML offences specified at sub-section (2) and (3) of section 280A, nor defined in the Crimes Act. The reference to property relevant to the ML offence includes property “derived directly or indirectly from a serious offence”.

34. *Criterion 3.5* - Sub-section 280A(5) of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) specifically provides that persons may be convicted of the offence of ML “notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered”.

35. *Criterion 3.6* - By virtue of subsection 280A(1)(b) of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004), the definition of ‘serious offence’ covers an act or omission that constitutes an offence against the law of another country, which, had that act or omissions occurred in the Cook Islands would have constituted an offence against the law of the Cook Islands punishable by the threshold of imprisonment of not less than 12 months or a fine of more than \$5,000. However, predicate offences for ML do not extend to illicit arms trafficking that occurred in another country.

36. *Criterion 3.7* - Persons who commit the predicate offence may also be punished in the Cook Islands for laundering property derived from that offence. According to subsection 280A(8) of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004), a person may be found guilty of an offence under subsections 280A(2) or 280A(3) even if the property involved in the offence is property that is derived directly or indirectly from a serious offence committed by that person.

37. *Criterion 3.8* - In line with the Palermo and Vienna Conventions, the Cook Is. Provides that the requisite mental element of “knowledge, intent or purpose” can be inferred from objective factual circumstances. Sub-section 280A(4) of the Crimes Act (as amended by the Crimes Amendment Act 2004) provides that knowledge, intent or purpose required as an element of the offence under subsections 280A(2) or 280A(3) may be inferred from objective factual circumstances.

38. *Criterion 3.9* - In the case of a natural person who knowingly engages in ML activities, the maximum penalty for ML specified in subsection 280A(2) of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) is a maximum of imprisonment of up to five years or a fine of \$50,000 (US\$ 32,900) (subsection 280A(6) refers). Relevant penalties for other offences involving dishonesty or corruption range between three and 10 years.

39. The penalty in respect of natural persons compares with that of receiving stolen goods (section 281 of the Crimes Act refers), conspiracy to defraud (section 280 of the Crimes Act refers) and conversion or attempted conversion of property (section 250 of the Crimes Act refers).

40. In light of the lucrative and transnational nature of ML, in absolute terms, the penalties are unlikely to deter potential launderers, particularly as there is no relationship between the quantum of proceeds laundered and the fine applied, where the proceeds exceed \$50,000 (US\$ 32,900). Further, in comparison to other serious offences, the sanctions do not appear proportionate to the seriousness of ML activity. As such, the assessment team is of the view that the sanctions are not adequately proportionate and dissuasive.

41. *Criterion 3.10* - Criminal liability for ML under section 280A of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) extends to legal persons by virtue of the definition of “person” under section 2(1) of the Crimes Act. In the case of a legal person, the maximum penalty for ML specified in subsection 280A(2) of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) is a fine up to five times the fine applicable to a natural person. These are all offences punishable by imprisonment of not less than 12 months or a fine of more than NZ\$ 5,000 (US\$ 3,292). Legal persons are also subject, notwithstanding the provisions of any other Act, to suspension or cancellation of any licence held to carry out their business as determined by the Court in addition to the imposition of any fine. The sanctions on legal persons, particularly the amount of corporate fines, are unlikely to be proportionate and dissuasive in light of the lucrative nature of ML. For example, a maximum fine of NZ\$ 150,000 (US\$ 98,762) is unlikely to be proportionate and dissuasive when the amount laundered by a legal person is comparatively very high or substantial.

42. The Crime Act provisions do not expressly preclude the possibility of parallel civil or administrative proceedings. Section 417 of the Crimes Act (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) does provide that civil remedies for any act or omission shall not be suspended by reason that the act or omission amounts to an offence.

43. *Criterion 3.11* - Accessorial liability for ML offences is provided by sub-sections 280A(2)(d) and 280A(3)(e)<sup>35</sup> of the Crimes Act (as amended by the Crimes Amendment Act

<sup>35</sup> It is noted that sub-paragraph 280A(3)(d) is absent.

2003 and the Crimes Amendment Act 2004) which make it a money laundering offence to “render assistance to another person” for any of the conduct specified in subsections 280A(2) or (3).

44. General categories of accessorial liability are covered by subsection 68(1) of the Crimes Act which including aiding, abetting, inciting, counselling or procuring the commission of an offence.

45. Sections 74 (attempts), 333 (conspiring to commit offence) and 334(attempt to commit or procure commission of offence) of the Crimes Act deal with attempts to commit offences, conspiracy to commit offences and attempt to commit or procure commission of offence respectively, including the ML offence created under section 280A of the Crimes Act.

46. The Cook Islands confirm that section 68 covers “participation and facilitation” and section 333 of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) covers “association with”.

47. The Cook Islands considers that, depending on the factual circumstances, sections 68(1), 280A(2) and 280A(3) of the Crimes Act 1969 (as amended by the Crimes Amendment Act 2003 and the Crimes Amendment Act 2004) cover “participation and facilitation” of money laundering and section 333 covers ‘association with’.

### *Weighting and Conclusion*

48. Minor shortcomings: the ML offence does not include the predicate offence of illicit arms trafficking and applicable penalties are not proportionate or dissuasive. Recommendation **3 is rated largely compliant.**

### *Recommendation 4 - Confiscation and provisional measures*

49. In the 2009 MER, the Cook Islands was rated partially compliant with former R.3. The report found that the Cook Islands had a framework for conviction-based confiscation but its effectiveness was limited by certain definitions and a lack of cohesion or consistency in the various provisions of the Proceeds of Crime Act.

50. The Proceeds of Crime Amendment Act 2004 made it mandatory for the Solicitor-General to apply to the Court for either or both of (a) a forfeiture order against tainted property; and (b) a pecuniary penalty order against the person for benefits derived by the person from the commission of the offence, if a person is convicted of a serious offence committed (section 11(a) refers). However, it does not refer to proceeds of serious offences.

51. *Criterion 4.1* - The Proceeds of Crimes Act 2003 (as amended by the Proceeds of Crime Amendment Act 2003, the Proceeds of Crime Amendment Act 2004 and the Proceeds of Crime Amendment Act 2017) (POCA) is the primary Act, which provides for the confiscation of proceeds of crime in the Cook Islands. Section 2 outlays the objectives of the Act, which is: (a) to deprive persons of the proceeds of, and benefits derived from, the commission of serious offences; (b) to provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and (c) to enable law enforcement authorities to trace those proceeds, benefits and property.

52. Other than illicit trafficking of arms (in respect of the importation of arms as prohibited goods, weapons of mass destruction, cluster munitions and chemical weapons), for the purpose of the Proceeds of Crime Act, the term ‘serious offence’ covers all predicate offences.

53. Serious offence means any offence in the Cook Islands with a maximum penalty of 12 months imprisonment or more, or a fine of \$5000 or more. It includes offences committed overseas if that offence had been committed in the Cook Islands would meet the aforementioned criteria. This includes property laundered or proceeds or property used (or intended for use) for serious offences.



54. Property is liable to forfeiture and other orders under the POCA is defined as “tainted property” (section 3(1), as amended in 2017), namely, any of the following property, whether located in the Cook Islands or elsewhere:

- (a) any proceeds of an offence;
- (b) property that is or has been used in or in connection with the commission of a serious offence;
- (c) property that is intended to be used, or is allocated to be used, in or in connection with the commission of a serious offence.

55. The definition of ‘proceeds’ under section 3(1) of the Proceeds of Crimes Act 2003 (as amended by the Proceeds of Crime Amendment Act 2017) covers “any property, whether located in the Cook Islands or elsewhere, that is derived, obtained or realised, directly or indirectly, from or through the commission of a serious offence, and includes (without limitation) –

- (a) any property into which such property is converted, transformed, or intermingled, whether in full or in part; and
- (b) any interest, income, capital gains, or other economic gains derived or realized from the use of such property.”

56. There is no restriction regarding whether the property is held by the criminal defendant or by third parties. However, forfeiture orders cannot be made against native freehold land or rights of occupation (section 16 of the POCA).

57. With respect to the requirements of c 4.1(b) and (c), the definition of ‘tainted property’, as described above, also extends to other proceeds of ML, TF or predicate offences (including terrorism), and property that is an instrumentality or in or intended for use in ML, TF or predicate offences.

58. Lastly, with respect to c 4.1(d), section 23 provides for the forfeiture of property of corresponding value upon conviction of a serious offence. In addition to the POCA a number of other pieces of legislation provide for the forfeiture of tainted property as set out below:

- Sections 25 – 26 of CTPA 2004 relates to forfeiture of property related to terrorist financing and proliferation financing.
- Part 4 (section 20) of the Currency Declaration Act 2015-16 provides for forfeiture of currency detained at the borders.
- Sections 80-86 of Narcotics and Misuse of Drugs Act 2004 provides for Courts to impose fines which reflect illicit gains. This includes provision to allow the Court to use evidence of previous drug dealing and where the defendant is unable to explain their source of wealth.
- Part 16 of the Customs Revenue and Border Protection Act 2012 provides for forfeiture of property (section 286) for customs-related offences.
- Section 81 of the Marine Resources Act 2005 provides for forfeiture of property for illegal fishing activity including the proceeds generated from illegal fishing activity. Illegal fishing activity has a broad definition and includes activities which support fishing activity such as fuel bunkering, transshipment.
- Section 17 of the Terrorism Suppression Act 2004 provides for the confiscation of (i) property that has been, is being, or is likely to be used to commit a terrorist act or by a terrorist group and (ii) property owned or controlled, derived or generated from property owned or controlled, by or on behalf of a specified entity. This definition has been incorporated into Cook Islands’ POCA regime (by Amendment Act 2004) and the provisions

in POCA related to search and seizure of tainted property extend to 'terrorist property' (clauses 10-16 of the Terrorism Suppression Amendment Act 2004)

59. *Criterion 4.2* - Under the Cook Islands' legislation, the Solicitor-General has responsibility for making applications for restraining orders and confiscation orders and an Administrator (who may be the Solicitor-General or other person appointed by the Attorney-General) is obliged to manage seized and restrained property and to enforce forfeiture and pecuniary penalty orders.

60. The Cook Islands Police (CIP) is the sole competent authority provided with enabling powers under the POCA. Other relevant competent authorities can approach the Solicitor-General to take actions under the POCA but they do not have the ability to apply confiscation or provision measures. Under the POCA, only a police officer may apply to a Judge for a warrant to search (sections 35-47) and a production order (sections 78-86). Under Part 3 of the POCA, the CIP is granted powers intended to facilitate investigations and preserving property.

61. While there is currently nothing in legislation which designates a Cook Islands authority to consider proceeds for predicate crimes in the Cook Islands, in practice this is a function of the Combined Law Agency Group (CLAG).

62. Legislation for identifying, tracing and other coercive measures includes:

- POCA - search and seizure (sections 35 and 85), restraining orders (section 50 and section 63 (foreign interim restraining order)), production orders (sections 80 and 86) and monitoring orders (section 88). Under POCA the Solicitor-General is the designated authority to apply for measures, however, they may only be affected by a Police Constable.
- Criminal Procedure Act 1980-81 - search warrants (section 96) and intercepting communications (section 96A (organised crime groups)). Any person may apply for a search warrant under section 96, however, they must be executed by a Police Officer.
- FIU Act - production orders (sections 22 -24), search (section 26), obtaining communications (section 29) and restraining orders (sections 34-35). Provisions under the FIU Act may only be executed by the Head of FIU or a person with a delegation from the Head.
- Narcotics and Misuse of Drugs Act - intercepting communications (section 59).
- Currency Declaration Act 2015-2016 - search and seizure (sections 9-11 which may only be exercised by authorised officers; Police, Customs or FIU).
- Customs Revenue and Border Protection Act - questioning (sections 178-180), search warrants (section 54 (information relating to border-crossing craft, border-crossing persons) and sections 173-174, 177, 188-190, 215-216), seizure (sections 191,193-194, 208-211) and production orders (sections 202-203).
- See also general LEA powers in R.31.

63. *Criterion 4.3* - Property may be subject to a forfeiture order or be used to satisfy a pecuniary penalty order (in limited circumstances) regardless of whether the property is the property of a third party. Third parties do however retain certain rights to exclude or have their interest repaid to them. The fundamental laws in the Cook Islands to protect third party interests are in Articles 40 and 64 of the Constitution.

64. In considering whether to make a forfeiture order against property, the Court may take into account, *inter alia*, any right or interest of a third party in the property (section 17(4) of the Proceeds of Crime Act).

65. Third parties who claim an interest in the subject property may, in any event, 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 an administrator to return 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 (section 20 of the Proceeds of Crime Act).

66. A person who claims an interest in the property may apply to the Court for an order that the property be returned to the person (section 37 of the Proceeds of Crime Act). 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 (section 44 of the Proceeds of Crime Act).

67. Further, protection for third parties is provided under various pieces of legislation, including the CPTA (sections 21-22, 27), the FIU Act (section 37), the Criminal Procedure Act 1980-81 (section 97(3)), the Customs Revenue and Border Protection Act 2012 (sections 292-297) and the Marine Resources Act 2005 (section 55).

68. *Criterion 4.4* - Under the Proceeds of Crime Act, section 102 provides that the Attorney-General may appoint an administrator to administer any property that is restrained or forfeited. On forfeiture, section 19(2)(b) provides that the property may be disposed of or dealt with as directed by the administrator. For restrained property, the court may make orders under sections 50 and 53 for the property to be managed by the administrator and section 71 provides that the administrator may take custody of foreign restrained property. Section 100 also provides for the establishment of the confiscated assets fund.

69. Under sections 54(3) and 74(3), the Court may direct the administrator to sell or otherwise dispose of a part of the property that the Court specifies to enable the administrator to comply with a direction to satisfy a pecuniary penalty order by payment to the Crown out of the property.

70. While it depends on the type of property being confiscated or restrained as to would be most appropriate to take custody, in previous cases, it has been the Financial Secretary when the subject property was in a bank account.

71. Under other various pieces of legislation, seized or restrained property is held in the custody of the Head of that agency, for example, the Comptroller for Customs or Secretary for Marine Resources. Section 291 of the Customs Revenue and Border Protection Act 2012 provides the Comptroller may sell certain seized goods before they are condemned. Sections 55 and 84 of the Marine Resources Act 2005 also set out how seized goods are to be managed by the Secretary.

### *Weighting and Conclusion*

72. The shortcomings primarily relate to the lack of a mechanism to dispose of property frozen if an administrator is not appointed. **Recommendation 4 is rated largely compliant.**

### *Recommendation 5 - Terrorist financing offence*

73. In the 2009 MER, the Cook Islands was rated LC under the former SRII. The factors underlying the rating was: (1) A penalty was required to be specified for corporations convicted of terrorism financing and other TSA offences; and, (2) the additional limb of the definition of "terrorist act" may limit the effectiveness of the offences generally.

74. In June 2017 the Cook Islands enacted an amendment to the Terrorism Suppression Act 2004. The legislation came in to force on 24 June 2017. The amendment changed the name of the TSA to Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004 (CTPA 2004).

75. *Criterion 5.1* - Sections 11 and 12 of the CTPA criminalise TF on the basis of article 2 of the Terrorist Financing Convention.

76. There are three features different from the definition in article 2 of the Terrorist Financing Convention. First, there is no reference to providing or collecting by “any means”. Secondly, the mental element extends to recklessness. Thirdly, “property” is used rather than “funds”.

77. Neither of these disturbs the compliance of the CTPA with the TF Convention. In particular, the term ‘property’ is defined broadly in section 3 as “(a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and (a) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interests in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.” Section 4 defines “terrorist acts” to include all the offences provided in the terrorism conventions listed in the Annex to the Convention.<sup>36</sup>

78. *Criterion 5.2* - Section 11 makes it an offence to finance terrorist acts. A person must not provide or collect (directly or indirectly) any property intending, knowing or being reckless as to whether: the property will be used to carry out a terrorist act; the property will benefit an entity that the person knows is a terrorist group or group that plans, carries out or participates in carrying out terrorist acts. Section 12 makes it an offence to provide property or services to a terrorist group. A person must not, directly or indirectly, make available any property, or other financial or related services to, or for the benefit of, a terrorist group or related entity knowing, intending or being reckless as whether the entity is a terrorist group or related entity.

79. No link to a specific terrorist act is required.

80. *Criterion 5.2bis* - There is no criminal provision in the CPTA to specifically cover the financing of travel of individuals to a State other than their States of residence or nationality for the purpose of the preparation, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The Cook Islands would seek to rely on the broader offence in section 12 of the CTPA, in conjunction with the definition of ‘terrorist group’, to cover instances where individuals are financed to travel as ‘foreign fighters’. The term ‘terrorist group’ (section 3(1)) includes individuals that attempt, conspire or threaten to carry out a terrorist act; and section 12 prohibits the provision of any property to a terrorist group, knowingly, intentionally or recklessly. However, this provision does not directly cover the instances referred to in c5.2bis and may in certain circumstances impose a higher evidentiary burden than that envisaged the Recommendation 5.

81. *Criterion 5.3* - The definition of “property” in section 3 of the CTPA is broadly in line with the definition of funds in Article 1 of the TF Convention. It covers assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and legal documents and instruments in any form evidencing title to, or interest in, such assets. This definition of ‘property’ does not cover property ‘however acquired’. It is, therefore, not explicit that the TF offence extends to property from both legitimate and illegitimate sources. However, there is nothing in the Law that limits the application of the offence to property from an illegitimate source.

<sup>36</sup> The Cook Islands has undertaken reservations in respect of the Convention on the Physical Protection of Nuclear Material; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed platforms located on the Continental Shelf; and International Convention for the Suppression of Terrorist Bombings. While the impact of these reservations on the annexed treaties is not clear, the Cook Islands FSC has expressed the view that these reservations do not limit the scope of offences under the CTPA.

82. *Criterion 5.4* - Section 11(3) of the CTPA provides that in a prosecution for a TF offence, it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.

83. *Criterion 5.5* - Under Cook Islands law, intent and knowledge can be inferred from circumstantial evidence. Sub-section 280A(4) of the Crimes Act (as amended by the Crimes Amendment Act 2004) provides that knowledge, intent or purpose required as an element of the offence under subsections 280A(2) or 280A(3) may be inferred from objective factual circumstances.

84. *Criterion 5.6* - The penalty for TF offences was increased in 2017 to up to 20 years' imprisonment for an individual and a fine not exceeding \$1 million in any other case. The penalty for murder is life imprisonment, and the penalty for attempted murder is imprisonment for a term not exceeding 14 years, and the penalty for manslaughter is imprisonment for life. The sanction is proportionate and dissuasive to other similarly serious crimes.

85. *Criterion 5.7* - Section 43 of the CTPA provides that the CTPA applies to a company in the same way as it applies to an individual, and so a body corporate may be found guilty of any offences under the CTPA, in addition to the liability of any person for the same offence.

86. The conduct or state of mind of an employee, agent or officer of a body corporate is taken to be attributed to the body corporate if that person was acting within the scope of their employment, or actual or apparent authority, or with the consent or agreement of a director, servant of agent of the legal person, and giving that consent is within the actual or apparent authority of the director, servant or agent.

87. The sanction that can be imposed on a company is a fine not exceeding \$1m, which sits at the highest threshold for penalties in all Cook Islands legislation for any type of offence. The penalty can be applied cumulatively across offences. Given the context of the Cook Islands, this sanction appears to be dissuasive.

88. Legal liability appears to be limited to a body corporate (i.e. all incorporated entities, section 43]) and does not include other entities that are "legal persons" such as foundations, anstalts, partnerships or any other similar entities.

89. *Criterion 5.8* - Under section 74 of the Crimes Act, it is an offence to attempt to commit an offence. Under section 68 of the Crimes Act every one is a party to and guilty of an offence who does or omits an act for the purpose of aiding any person to commit an offence, or to abet any person in the organisation of an offence, or to incite, counsel or procure any person to commit an offence. Under section 333 of the Crimes Act, it is an offence to conspire to commit any offence, or to do or omit, in any part of the world, anything of which doing or omission in the Cook Islands would be an offence. Section 334(1) of the Crimes Act provides the penalty for attempting to commit an offence where no punishment for the attempt is expressly prescribed under law, and section 334(2) of the Crimes Act provides the punishment for anyone who incites, counsels, or attempts to procure any person to commit an offence, when that offence is not in fact committed. Under section 335 of the Crimes Act, it is an offence to be an accessory after the fact to any crime punishable by imprisonment.

90. *Criterion 5.9* - TF offences under the CTPA are predicate offences under section 280A(1) of the Crimes Act, as amended by the Crimes Amendment Act 2004.

91. *Criterion 5.10* - Section 41 of the CTPA sets out the jurisdiction of the CTPA to cover TF offences committed in or outside the Cook Islands.

### *Weighting and Conclusion*

92. The Cook Islands has made significant progress in establishing a robust legal framework to deal with terrorist financing. However, there is also no provision in the CPTA to cover the financing of travel of individuals to a State other than their States of residence or

nationality for the purpose of preparation, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. It is also not clear under the CTPA whether criminal liability can be imposed on all legal persons, other than incorporated entities. However, the sanctions applicable for incorporated entities are the highest available in all Cook Islands legislation for any type of offence and can be applied cumulatively across offences. **Recommendation 5 is rated largely compliant.**

***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

93. The Cook Islands was rated largely compliant for SR.III in its 2009 MER, with minor shortcomings noted in the coverage of property jointly owned or controlled by relevant entities, access to frozen property for basic expenses in accordance with UNSCR 1452, and the process by which RIs are apprised of sanctions listings and related actions. The Cook Islands is not a Member State of the United Nations.

94. *Criterion 6.1* - The Cook Islands Attorney-General is the competent authority to propose persons or entities to the 1267/1989 and 1988 Committees (s10A CTPA 2004) which are submitted to the relevant committees via the Ministry of Foreign Affairs and Immigration (s10 CTPA 2004) and will necessarily involve a request for assistance to the New Zealand Ministry of Foreign Affairs and Trade. Targets for designation would be identified by the FIU, Cook Islands Police Service (CIPS) or the Revenue Management Division (RMD). Any person or entity may be proposed for designation providing the Attorney-General “considers” a person or group “meets the criteria” established by the UNSC. As per s10(2) of the CTPA 2004, a proposal to the relevant UNSC committee must be made in accordance with any procedures specified by the UNSC, include all information that the Attorney-General considers relevant to the designation and specify whether the relevant the Cook Islands’ designating state status may be known.

95. *Criterion 6.2* - The Attorney-General is the competent authority for designating entities in line with UNSCR 1373 “if satisfied on reasonable grounds” the proposed designation meets the requirements of s5 of the CTPA 2004. Targets for designation may be identified domestically by the FIU, CIPS or the RMD (s10A CTPA 2004) and must be referred to the Attorney-General for consideration. The Attorney-General may also designate a person or entity upon consideration of requests from other countries received by the MFAI (s5 CTPA 2004). There are no provisions explicitly empowering the Attorney-General or MFAI to directly provide information to another country in support of a request to that country to designate an entity, although if information is provided to the Solicitor-General it may be disclosed under s34 of the CTPA 2004 and the Attorney-General may also seek to provide information via other mechanisms such as FIU or police information sharing arrangements.

96. *Criterion 6.3* - The FIU has power under sections 18 and 19 of the FIU Act 2015 to collect information on potential targets for designation and is required to communicate it to the Attorney-General under s10A of the CTPA 2004. Section 5(2) of the CTPA 2004 provides that designation of entities may be made without prior notice to the entity concerned.

97. *Criterion 6.4* - A prohibition from dealing in terrorist property or providing financial services to a terrorist group is instantly implemented upon the designation of an entity by the UN or the Attorney-General (s5 and ss11-13 of the CTPA 2004). There is no statutory requirement for RIs to review and monitor accounts for designated entities and/or property, however, the penalty is applicable if an RI is reckless as to whether the entity is designated and the FTRA Guidelines inform RIs that they must monitor for customers sanctioned by the UN. The FIU circulates consolidated lists of sanctioned entities to RIs. RIs may also source up-to-date consolidated sanctions lists directly from the UN website or by request to the FIU.

98. *Criterion 6.5* - All natural or legal persons are required to freeze funds and other assets without prior notice immediately upon the designation of an entity by the UN or the Attorney-

General (s5 and ss11-13 of the CTPA 2004). The definition of terrorist property provided in section 3 of the CTPA 2004 extends the obligation to freeze to property owned or controlled by or on behalf of a designated entity. While this definition does not explicitly cover funds or assets derived or generated from property owned or controlled by a designated entity, Regulation 3 of the Countering Terrorism and the Proliferation of Weapons of Mass Destruction (Targeted Financial Sanctions) Regulations 2017 require a person to immediately and without delay freeze any property connected to the specified entity that is in their possession or control (whether held directly or indirectly). Sections 12-13 of the CTPA 2004 prohibits the making available of property or other financial or other related services to, or for the benefit of, designated entities. The Attorney-General is required to ensure that an up-to-date list of all specified entities is publicly available (s5 CTPA 2004); a page on the FSC website provides links to the UN consolidated list which given no "CI specified entities" currently exist is exhaustive and authoritative. The details of assets frozen and any attempted transactions must be reported to the FIU and Solicitor-General (s3 CT/PF (TFS) Regulations 2017, ss47-49 FTR Act 2017 and FTR Practice Guidelines part 6.2.3). Further actions taken by an RI in relation to frozen assets are not subject to a formal requirement to periodically report to or update relevant competent authorities although in practice this would likely occur.

99. There are no formal measures to protect the rights of bona fide third parties acting in good faith when implementing the freezing of funds.

100. *Criterion 6.6* - Requests for de-listing of entities pursuant to UN Sanctions Regimes may be made by the Cook Islands MFAI with the assistance of NZ MFAT, although this may only be initiated upon request from a UN-sanctioned entity (s9 CTPA 2004) and not upon the initiative of the MFAI. Procedures relating to the right to appeal to the UN Office of the Ombudsperson are publicised on the FSC website. Entities designated under UN Sanctions Regimes cease to be subject to freezing measures instantly upon de-listing by the UN (s5(4) CTPA 2004) unless the entity remains designated as a CI specified entity by the Attorney-General. CI specified entities (s5 CTPA 2004) may apply to the Attorney-General for delisting or apply for judicial review of the decision of the Attorney-General to list the entity (s8 CTPA 2004). Section 7 of the CTPA 2004 requires regular review of current designations of CI specified entities to confirm that grounds remain for designation. The Attorney-General must provide public notice and written notification of de-listing to the previously specified entity (s6(3) CTPA 2004). Property that is frozen by operation of ss12-13 of the CTPA 2004 can be unfrozen by authorisation of the Attorney-General (s6(2) or s16C CTPA 2004) or under a UNSC resolution, and advice to this effect currently appears on the FSC website.

101. *Criterion 6.7* - The Attorney-General may authorise access to frozen property (s16C CTPA 2004). Section 12 of the CTPA 2004 also provides that property and financial services may be provided if authorised by UNSC resolution. The Attorney-General is required to give public notice upon delisting a CI specified entity (s6 CTPA 2004) but only implicit notice of the delisting of UN specified entities (s5(6) CTPA 2004). As identified in the 2009 MER there are no formal procedures to ensure that authorisations made by the Attorney-General under s16C CTPA 2004 meet the requirements of UNSCR 1452.

### *Weighting and Conclusion*

102. There are minor deficiencies in meeting the requirements of R.6. There are no formal measures to protect the rights of bona fide third parties acting in good faith when implementing the freezing of funds and there are no formal procedures to ensure that authorisations made by the Attorney-General to access frozen property meet the requirements of UNSCR 1452. Noting Cook Island's low TF risk, the mechanisms provided by the CTPA 2004 provide an adequate framework to implement targeted financial sanctions relating to terrorism and TF. **Recommendation 6 is rated largely compliant.**

**Recommendation 7 – Targeted Financial sanctions related to proliferation**

103. Targeted financial sanctions relating to the financing of proliferation is a new Recommendation added in 2012.

104. *Criterion 7.1* - Targeted financial sanctions relating to the prevention, suppression and disruption of the proliferation of WMD are implemented without delay through the CTPA (as amended). Section 5(4) of the CTPA deems any entities designated by the UNSC, acting under a resolution relating to proliferation, to be a UN specified entity. The definition of UN specified entity includes both individuals and entities designated by the UNSC. Sections 12 and 13 of the CTPA 2004 prohibit providing property or services to terrorist groups or dealing with terrorist property. The definitions of 'terrorist group; and 'terrorist property' relate to identification of an entity as a 'specified entity' (see section 5(4)), which includes UN specified entities designated under resolutions relating to terrorism and proliferation. Terrorist property is defined broadly to include assets of every kind (corporeal or incorporeal, moveable or immoveable, tangible or intangible) and legal documents or instruments in any form that is owned, held, controlled (directly or indirectly) by or on behalf of a terrorist group, whether wholly or jointly. Therefore, the designation process is automated by the CTPA 2004. The Attorney-General is required to ensure that an up-to-date list of all specified entities is publicly available (section 5(6) CTPA 2004). The list is available from the website of the Financial Supervisory Commission at [www.fsc.gov.ck](http://www.fsc.gov.ck), and is also distributed by the FIU to all RIs.

105. 'Without delay' is not defined in law, however, the obligation to implement targeted financial sanctions relating to proliferation financing is automated through the CTPA. In practice, the process is identical to that for TFS for TF and would occur in a matter of hours during business hours.

106. *Criterion 7.2* - (a) The relevant requirements on all natural or legal persons are in section 11-13 of the CTPA and the CTPA Regulations. The CTPA prohibits using or dealing, described broadly, with terrorist property or property related to a terrorist group or a terrorist act. The sanction for contravening s12 and 13 of the CTPA 2004 is imprisonment of up to 20 years and a fine up to NZ\$ 1,000,000 (US\$ 659,680). Furthermore, the CTPA Regulations require property connected to a specified entity to be frozen immediately and without delay. There is no requirement to give prior notice ahead of freezing.

107. (b) The definition of terrorist property (s 3 of the CTPA 2004) extends the obligation to freeze to property owned or controlled by or on behalf of a designated entity. Terrorist property includes property that is wholly or jointly owned, held, or controlled (directly or indirectly) by or on behalf of a terrorist group (which includes UN specified entities) without any connection to a specific act. Regulation 3 of the Countering Terrorism and the Proliferation of Weapons of Mass Destruction (Targeted Financial Sanctions) Regulations 2017 broadens the scope of this obligation, requiring a person to immediately and without delay freeze any property connected to the specified entity that is in their possession or control (whether held directly or indirectly).

108. (c) Sections 12 and 13 of the CTPA 2004 prohibit the making available of property or other financial or other related services to, or for the benefit of, designated entities. Dealing with property under the authorisation or direction of the Attorney-General is permitted under sections 13(3) and 16C of the CTPA.

109. (d) As noted above, the Attorney-General is required to ensure that an up-to-date list of all specified entities is publicly available (section 5(6) CTPA 2004), which is located on the FSC website. The FIU also circulates list updates to RIs.

110. The guidelines on the obligations of the CTPA Act 2004 provides guidance to RIs and other persons or entities that may be holding targeted funds or other assets on their obligations to take action under freezing mechanisms.



111. (e) The details of assets frozen and any attempted transactions must be reported to the FIU and Solicitor-General (s3 CT/PF (TFS) Regulations 2017, ss47-49 FTR Act 2017 and FTR Practice Guidelines part 6.2.3). Further actions taken by an RI in relation to frozen assets are not subject to a formal requirement to periodically report to or update relevant competent authorities, although in practice this would likely occur

112. (f) There are no formal measures to protect the rights of *bona fide* third parties acting in good faith when implementing the freezing of funds. However, section 12(2) and 13(3) allow providing property or services to terrorist groups, or dealing with terrorist property, respectively, if the activity is authorised by the Attorney-General. Authorisations by Attorney-General can be made without any restrictions under section 16C.

113. *Criterion 7.3* - The FIU is mandated to monitor compliance and conducts periodic compliance inspections on RIs, however, it has not conducted any supervision activity on TFS requirements. The offences in the CTPA 2004 and FTRA 2017 apply for non-compliance.

114. *Criterion 7.4* - (a) Section 9 of the CTPA 2004 sets out the mechanism for UN-specified entities applying for review. A UN specified entity may request the MFAI to submit information to the relevant UN Sanctions Committee on their behalf in respect of an application for delisting as a UN specified entity. The MFAI must submit the request to the relevant UNSC as soon as practicable using any procedures specified by the UNSC. Procedures relating to the right to appeal to the UN Office of the Ombudsperson are set out in the guidelines on the obligations of the CTPA 2004.

115. (b) There is no publically known procedure to unfreeze the funds or other assets of persons or entities with the same or similar name as a designated entity.

116. (c) There is no explicit mechanism to authorise access to funds or other assets where countries have determined that the exemption conditions set out in UNSCR 1718 and 1737 are met. Section 16C of the CTPA 2004 does, however, allow the Attorney-General to issue a notice to permit a transaction which would otherwise have been prohibited by sections 12-13 of the CTPA 2004 (providing property or services to a terrorist group and dealing with terrorist property) under certain conditions specified by the Attorney-General, however no conditions have been specified.

117. (d) Entities designated under the UN Sanctions Regimes cease to be subject to freezing measures instantly upon de-listing by the UN (section 5(4) CTPA 2004). While the FSC website contains the list of current sanctioned entities and the FIU circulate list updates to RIs, there is no mechanism for communicating de-listings or reversal of freezing obligations to RIs or any guidance to RIs or other person that may be holding targeted funds or assets on their obligations to respect a de-listing or reversals of freezing.

118. *Criterion 7.5* - There is no requirement to permit the addition to accounts frozen pursuant to UNSCR 1718 or 1737 in specific circumstances, or any provision which allows a designated entity to make a payment due under a contract entered into prior to listing.

### *Weighting and Conclusion*

119. There are moderate deficiencies in meeting R.7, including the absence of mechanisms to protect the *bona fide* rights of third parties; lack of publicly known procedures to reverse freezing of funds or other assets where persons or entities have the same or similar name as a designated entity; lack of mechanisms to authorise access to property in certain circumstances; and absence of any requirement to permit the addition to frozen accounts in certain circumstances, or the payment of a contract entered into prior to listing. **Recommendation 7 is rated partially compliant.**

**Recommendation 8 – Non-profit organisations**

120. The Cook Islands was rated partially compliant with SR.VIII in 2009. The 2009 ME noted that the Cook Islands' NPO sector was not fully understood, monitoring of the NPO sector was not robust and sanctions available to enforce NPO regulation were ineffective. The 2009 ME noted problems with regulating NPOs as 'friendly societies' for the purposes of the FTRA 2004. Recommendation 8 contains new requirements that were not assessed under the 2004 methodology.

121. *Criterion 8.1* - (a) The Cook Islands does not have a set criterion that regulates all NPOs. The Cook Islands has 194 incorporated societies, which must only demonstrate that they do not operate for pecuniary gain, but otherwise may operate for any lawful purpose (s3 Incorporated Societies Act 1994); and this requirement does not extend to other legal persons or arrangements. The Revenue Management Division grants special tax status to the organisations it determines operate for a charitable purpose (s2 Income Tax Act 1994), although this status is not a requirement to operate as an NPO. There are 80 charities registered for special tax status.

122. The Cook Islands identifies a subset of four charities that present a level of TF risk sufficient to warrant consideration for R.8, using two indicia: annual income greater than NZ\$ 25,000 (US\$ 16,467) per annum, of which 33% or more comprise international donations/grants or distributions. Prior to the introduction of the FTRA 2017, these charities were regulated by the FIU as RIs. At the time of assessment, these NPOs were not subject to regulation under the FTRA 2017 as the requisite Regulations had not been made.

123. (b) The 2015 National Risk Assessment (NRA) identified three possible TF typologies that could affect Cook Island NPOs but assessed that these typologies are unlikely to be observed.

124. (c) The Cook Islands is currently reviewing NPO sector legislation with a view of making regulations under the FTRA 2017 to regulate high RG risk NPOs.

125. (d) Cook Islands periodically reassesses the NPO sector and is due to update its assessment in the 2017 NRA. To date, Cook Islands has assessed that the TF risk and vulnerabilities associated with NPOs are low and stable.

126. *Criterion 8.2* - (a) and (b) The Cook Islands does not have a specific policy to promote accountability, integrity and public confidence in the administration and management of NPOs, although the intent to regulate high TF risk NPOs under the FTRA 2017 may promote these outcomes to a limited extent. FIU has delivered AML/CFT training to the NPO sector in 2012 and 2016 and high-risk NPOs have undergone AML/CFT examinations over the last five (5) years. However, no programmes have been run within the donor community about the potential vulnerabilities of NPOs to TF abuse. Further, there have been no programmes conducted for NPOs to understand the steps they can take to protect themselves against TF abuse.

127. (c) and (d) The FIU has assisted some NPOs with their ML/TF risk assessment and implementing risk-based controls. No specific work has been done to encourage NPOs to use regulated financial channels but in practice, this is not an issue for NPOs in the Cook Islands.

128. *Criterion 8.3* - Four high-risk NPOs have been subjected to AML/CFT examination by FIU in the last five years as a consequence of being regulated as RIs under the FTRA 2004. However, the continuation of this program will require high-risk NPOs to be specified by regulation under the FTRA 2017, which at the time of the on-site had not occurred. Therefore, at the time of the on-site, there was no process in place to ensure high-risk NPOs are effectively supervised or monitored.

129. *Criterion 8.4* - While high-risk NPOs have received examination visits over the last five years, there is no clear policy or strategy that seeks to ensure compliance of NPOs with this Recommendation or the application of risk-based measures.

130. A range of minor sanctions are available for non-compliance by relevant NPOs with requirements incidental to R.8, although the ability of Cook Islands authorities to apply these sanctions in practice is mostly untested. The Head of FIU may temporarily freeze the accounts of an NPO suspected of financial misconduct and the Court may order extensions to the freezing order (s34 FIU Act 2017). Charitable status under the Income Tax Act 1997 may be revoked by the Minister (presumed implicit to s70(6) Income Tax Act 1997). NPOs operating as an incorporated society on unjust or inequitable grounds may be wound up by court order on application from the Registrar of Incorporated Societies (s27 Incorporated Societies Act 1994), or if this behaviour is beyond the scope of the objects of the society as defined in its rules, the Registrar may order the questionable activity to cease (s21 Incorporated Societies Act 1994). Monetary penalties under the Incorporated Societies Act 1994 are not dissuasive. It is not clear whether NPOs operating within or through the Cook Islands under a legal structure other than an incorporated society may be wound up or decertified on grounds of TF risk or other malfeasance relating to its operation as an NPO.

131. *Criterion 8.5 - (a)* FIU, CIPS, RMS, the Ministry of Justice and other government departments cooperate to share intelligence and expertise about NPOs, and conduct investigations into NPOs, using the mechanisms assessed in R.2 and R.29-R.31.

132. *(b)* No information was provided to demonstrate that sufficient investigative expertise is possessed by Cook Islands authorities to investigate potential TF through an NPO. The Cook Islands is able to draw upon investigative expertise and capability possessed by New Zealand authorities in relation to TF.

133. *(c)* Annual financial statements lodged by incorporated societies may be accessed at the Ministry of Justice but otherwise, all financial, programmatic and other administrative records for an NPO, to the extent that they exist, must be obtained from the NPO itself through the exercise of investigative powers.

134. *Criterion 8.6* - The FIU is the identified point of contact for international requests for information about NPOs suspected of TF. Information may be shared through information-sharing arrangements between FIU and its international counterparts (s18(2) FIU Act 2015) or through a mutual legal assistance request under the MACMA. Other information sharing arrangements such as those implicit within the Police Act may also be used.

### *Weighting and Conclusion*

135. The Cook Islands' shortcomings on the regulation of NPOs at the time of assessment were only minor in the context of the sector. The Cook Islands does not have a set criterion that regulates all NPOs. No specific work has been done to encourage NPOs to use regulated financial channels but in practice, this is not an issue for CI NPOs. Draft legislative amendments to ensure compliance of NPOs with this Recommendation or the application of risk-based measures have not yet been implemented. The Cook Islands is able to draw upon investigative expertise and capability possessed by New Zealand authorities in relation to TF through an NPO. **Recommendation 8 is rated largely compliant.**

### *Recommendation 9 – Financial institution secrecy laws*

136. The Cook Islands was rated compliant with former R.4. The 2009 MER concluded that secrecy provisions did not operate to prevent competent authorities accessing the sharing information, conducting criminal or proceeds of crime investigations or providing mutual assistance in respect of ML or TF offences. Since the 2009 MER, the secrecy laws for financial institutions in the Cook Islands have been amended by the FTRA 2017.

137. *Criterion 9.1* - The Cook Islands has secrecy provisions within the international products enactments: International Companies Act 1981-21 section 227(2), International Partnerships Act section 74(2), Limited Liability Companies Act section 72(5) and International Trust Act section 23(2). The secrecy provisions in these Acts are however overwritten in certain

circumstances. They do not apply if disclosure is: required or authorised by the Court, made for the purpose of discharging any duty, performing any function or exercising any powers under any Act or if it is made as required by or under a search warrant.

138. Section 59 of the FTRA 2017 requires RIs to comply with the provisions in the FTRA 2017 despite any other obligations relating to secrecy or other restrictions on the disclosure of information that may be imposed, whether by any other law or otherwise. If there is a conflict between the FTRA and any other Act, the FTRA 2017 prevails. The FIU has powers under section 24 of the FIU Act 2015 to obtain information from RIs and powers under section 39 to share information with domestic and foreign counterpart agencies. The FIU also has additional powers under section 44 of the FTRA 2017 to obtain information from RIs relating to reports, investigations or requests made on behalf of a counterpart agency (both domestic and foreign agencies). Furthermore, the FTRA 2017 obligates RIs to report SARs.

139. The FIU Act 2015 also includes a provision which overrides secrecy or other restrictions on the disclosure of information. Section 43 prescribes that RIs, respondents (defined as a RI, compliance officer, money laundering reporting officer, director or manager of a RI or person who appears to be in possession of information regarding the business and transitions of a RI), the Crown and every instrumentality of the Crown must comply with the disclosure requirements of the FIU Act 2015, despite any obligations that may arise under common law or be imposed by any written law, with the exception of legal professional privilege and the deliberations of Cabinet.

140. The FSC has powers to request information from FIs (including LTCs) under section 20 of the FSC Act. Section 20(3) explicitly provides for the obtaining of information in response to a request from an overseas authority.

141. RMD has powers to obtain records for tax purposes (including to facilitate requests under TIEAs) under section 219 of the Income Tax Act 1997, which states the limitations within the abovementioned Acts which contain secrecy provisions are subject to requests under that section.

142. It is noted that the Foundations Act 2012 does not have secrecy provisions. The Banking Act 2011 also does not have secrecy provisions but requires all banks to keep customer information confidential under section 54. This is subject to disclosure made in certain circumstances, including if it is made for the purpose of discharging any duty, function or in the exercise of any power under an Act, or is made to the Commissioner or a law enforcement agency for the investigation or prosecution of a criminal offence, amongst others.

### *Weighting and Conclusion*

143. **Recommendation 9 is rated compliant.**

### ***Recommendation 10 – Customer due diligence***

144. The Cook Islands was rated partially compliant with former R.5 in its 2009 MER. The report noted the key factors underlying the rating were that there was no explicit requirements which required RIs to: (i) identify and verify persons acting on behalf of customer that was a legal person or legal arrangement, principal owners or beneficiaries, (ii) determine whether a customer was acting on behalf of another person, (iii) determine who the natural persons that ultimately owned or controlled the customer when it is a legal person or legal arrangement, (iv) obtain information on the purpose and intended nature of the relationship. Also, there was no legal requirement for (i) data, documents or information collected under the CDD process to be reviewed, (ii) enhanced CDD to be undertaken for higher risk customers, business relationship or transactions, and (iii) RIs to undertake a review of customers to ensure that the CDD requirements of the FTRA were met.

145. *Criterion 10.1* - Section 54 of the FTRA 2017 prohibits RIs from opening or operating an anonymous account, or knowingly or recklessly opening and operating an account in a fictitious or false name.

146. *Criterion 10.2* - (a) Section 25(1) of the FTRA 2017 sets out that RIs must conduct CDD before entering into an ongoing business relationship. The FTRA 2017 defines “ongoing business relationship” to mean a relationship between two or more parties in which one party is an RI and the parties have an arrangement where the purpose of that arrangement is to facilitate the carrying on of business of a frequent, habitual, or regular basis.

147. (b) Section 25(1) of the FTRA 2017 requires RIs to conduct CDD before conducting an isolated transaction with or on behalf of a customer. An “isolated transaction” is defined as a transaction of the threshold amount or more, or its foreign equivalent, that takes place outside an ongoing business relationship including two or more transactions that appear to be linked. The threshold amount is NZ\$ 10,000 (US\$ 6,587) or foreign equivalent.

148. (c) Section 37 of the FTRA 2017 requires RIs to identify and verify the originator of an EFT greater than the EFT threshold amount if the RI has not already conducted CDD. Section 35 of the FTRA 2017 sets the EFT threshold amount as NZ1,500.

149. (d) Section 30 of the FTRA 2017 requires CDD be undertaken if a RI has reasonable grounds to suspect a prospective customer or proposed isolated transaction is connected with financial misconduct (including ML/TF) or a serious offence, despite any exemption or threshold for transaction provided under the FTRA 2017 (unless doing so would tip off the customer in which case a suspicious activity report must be lodged). There is a minor deficiency in that this obligation relates only to prospective customers and proposed isolated transactions rather than all customers and transactions.

150. (e) Section 32(2) of the FTRA 2017 requires RIs to carry out ongoing and effective monitoring including the review information held for the purposes of CDD to ensure it is up to date and appropriate. Section 33(c) requires RIs to undertake CDD measures on existing customers where appropriate, taking into account the adequacy of the information, documents or data obtained.

151. *Criterion 10.3* - Section 25(1) of the FTRA 2017 requires an RI to conduct CDD on a customer, or person acting on behalf of a customer, before entering into an ongoing business relationship or an isolated transaction with that person. A “customer” is defined as a person in whose name the account is opened, in whose name a transaction is conducted, to whom an account or transaction is assigned or transferred or on whose behalf the account or transaction is being conducted. A “person” is defined as a natural person, legal person or body of persons, whether corporate or unincorporated.

152. Section 25(2) of the FTRA 2017 requires RIs to obtain identification information and verify this information using reliable independent source documents. Section 24 of the FTRA 2017 states that verification of identity or information must be done on the basis of documents, data, or information issued by a reliable and independent source.

153. *Criterion 10.4* - Section 25(1) of the FTRA 2017 requires CDD to be conducted on persons acting on behalf of the customer, who are required to be identified and verified as per 10.3. In addition, section 25(2) of the FTRA 2017 require RIs to verify the authorisation of a person to act on behalf of the customer.

154. *Criterion 10.5* - Section 25(2)(d) of the FTRA 2017 states that where a customer is not a natural person, the RI must identify and verify any ultimate principal of the customers, obtain sufficient information to understand the customer’s ownership and control structure, and obtain information concerning the persons(s) by whom, and the method by which, binding obligations may be imposed on the customer. There is a deficiency in that this requirement applies only to non-natural persons, therefore excluding situations where a natural person is

the beneficial owner of an account that is operated by another natural person. While the definition of “customer” in Section 4 includes a person on behalf of whom an account is opened or transaction conducted, this does not satisfy the requirement to record information about the beneficial owner.

155. “Ultimate principal” is defined in section 8 of the FTRA 2017 as one or more natural persons who ultimately owns or effectively controls the customer on whose behalf a transaction or activity is being conducted and includes:

(a) in the case of a legal person, other than a company whose securities are listed on a recognised stock exchange, any natural person who ultimately owns or effectively controls (whether through direct or indirect ownership or control, including through bearer share holdings) 25% or more of the shares or voting rights in the legal person,

(b) in the case of any legal person, any natural person who otherwise exercises effective control over the management of the legal person,

(c) in the case of a legal arrangement or similar type of arrangement, the trustee, or any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership.

156. As noted in c.10.3, verification must be undertaken using documents, data, or information issued by a reliable and independent source.

157. *Criterion 10.6* - Section 25(2)(c) of the FTRA 2017 requires RIs to obtain information on the nature and intended purpose of the ongoing business relationship or isolated transaction. While it is not explicit that RIs must understand the purpose and intended nature of the business relationship, this is the implicit purpose of section 25(2)(c).

158. *Criterion 10.7* - (a) Under section 32(2) of the FTRA 2017, an RI is required to conduct ongoing and effective monitoring of ongoing business relationships including appropriate scrutiny of transactions to ensure that they are consistent with the RIs knowledge of the customer, its business and level of risk, and where appropriate the source of funds.

159. (b) As part of the ongoing due diligence requirements under section 32(2) of the FTRA 2017, RIs must review the information held for the purpose of CDD to ensure it is up to date and appropriate. Section 32(3) requires RIs to ensure the extent and frequency of such monitoring appropriate reflects the customer’s level of risk, in particular, whether a customer poses a higher risk of ML/TF.

160. *Criterion 10.8* - Section 25(2)(d)(iii) of the FTRA 2017 requires that for any customer that is not a natural person, the RI must obtain sufficient information to understand the nature of the customer’s business and its ownership and control structures.

161. *Criterion 10.9* - Regulation 5 of the FTR Regulations 2017 sets out the requirements for identity information for CDD. For legal persons, RIs must obtain the name, legal form, official identification number, the powers that regulate and bind the legal person, the identification information on each ultimate principal (including natural persons who exercise effective control over the management of the legal persons (which includes senior management positions)) and any notional person acting on behalf of the legal person, and the address of the registered office and principal place of business if different to the registered office.

162. For legal arrangements, RIs must obtain the name of the trust, official identification number (if applicable), the powers that regulate and bind the legal arrangements and identify information on each ultimate principal and any national person acting on behalf of the legal arrangement.

163. *Criterion 10.10* - (a) Section 25(2)(d) of the FTRA 2017 requires RIs to identify and verify any ultimate principal of the customer (when the customer is not a natural person). “Ultimate principal” (defined in section 8 of the FTRA 2017) is broadly defined to capture all

natural persons who ultimately own or effectively control the customer (however the deficiency identified in 10.5, though not applying here, is noted).

164. (b) and (c) An ultimate principal is defined to include one or more natural person who otherwise exercises effective control over the legal arrangement or over the management of a legal person. Therefore, the obligation to identify and verify the identity of a natural person exercising control of the legal person or arrangements and a natural person holding the position of senior managing official is captured by Section 25(2)(d) of the FTRA 2017.

165. *Criterion 10.11* - (a) Under section 25(2)(d) of the FTRA 2017, where a customer is not a natural person, the RI must identify and verify any ultimate principal of the customer and verify the legal status of the customer using relevant information obtained from reliable independent source, and obtain sufficient information to understand the nature of the customer's business and control structure. As noted above, "ultimate principal" includes any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership.

166. Regulation 6(1) of the FTR Regulations 2017 require RIs to identify and take reasonable steps to verify the trustees or any other person having power to direct the customer's activities, the settler or any other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed, and any known beneficiaries. Known beneficiaries means a natural person who is entitled to a vested interest in the assets of the legal arrangements, unless there is more than 10 beneficiaries, in which case the RI must obtain sufficient information about the beneficiaries characteristics or class to satisfy itself that it will be able to identify and verify the identity of a beneficiary in accordance with the CDD requirements set out in the FTRA.

167. The conduct of protectors is captured by FTR Regulation 6(1)(a)(i) and (ii), with RIs being required to identify and verify "any other person having power to direct the customer's activities, and "the settler or other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed".

168. (b) The definition of "legal arrangement" includes trusts and any other arrangements that have a similar legal effect. Therefore, the provisions in 10.11(a) also apply to other types of legal arrangements.

169. *Criterion 10.12* - Regulation 9 of the FTR Regulations 2017 sets out requirements for due diligence for life insurance beneficiaries. (a) As soon as a beneficiary is identified by an RI, the RI must conduct CDD as per section 25 of the FTRA 2017, which includes collecting the name of the person.

170. (b) Once a beneficiary is designated, the RI must obtain sufficient information concerning the beneficiary characteristics, class or others means to satisfy itself that it will be able to identify and verify the beneficiary at the time of payout.

171. (c) There is, however, no requirement stating that the verification of the identity of the beneficiary should occur at the time of payout.

172. *Criterion 10.13* - Regulation 9(1)(b) of the FTR Regulations 2017 sets out that as soon as a beneficiary of a life policy is identified, the RI must conduct CDD measures. Section 31 of the FTRA 2017 requires FIs to determine, on payout, whether a beneficiary of a life insurance policy is a PEP, and if so take enhanced measures. There is no requirement for FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. Other than for identified PEPs, there is no requirement for FIs to take enhanced measures on a beneficiary who is a legal person or arrangement that presents a higher risk.

173. *Criterion 10.14* - Section 25 of the FTRA 2017 requires RIs to identify and verify customers prior to entering into an ongoing business relationship or isolated transaction.

Section 28, however, allows an RI, in circumstances where it considers it essential in the circumstances to enter into a transaction so that the normal course of business is not interrupted, to conduct verification after the business relationship has been established, so long as certain conditions are met. These conditions include that the verification be completed as soon as possible, that the risks of financial misconduct are effectively managed, that suspicious activity not be identified, and that a member of senior management approves the conduct of delayed verification.

174. *Criterion 10.15* - As per section 28 of the FTRA 2017, in order for RIs to conduct delayed verification, RIs must effectively manage the risks of financial misconduct through procedures of transaction limitations and account monitoring, and obtain senior management approval.

175. *Criterion 10.16* - Section 33 of the FTRA 2017 requires RIs to conduct CDD and enhanced CDD as appropriate in relation to existing customers, based on its assessment of their materiality and risk, taking into account any previous due diligence undertaking, when that due diligence was undertaken and the adequacy of the information, documents or data obtained.

176. *Criterion 10.17* - Section 29(1)(d) requires RIs to conduct enhanced CDD if it considers that the level of risk involved is such that enhanced CDD should be applied.

177. *Criterion 10.18* - Section 27 of the FTRA 2017 sets out the conditions for undertaking simplified CDD on a customer or person acting on behalf of a customer. Those conditions include that lower risk have been identified and supported by an adequate, documented assessment of the risk by the RI and that simplified CDD cannot be performed if the RI suspects that the ongoing business relationship or transaction is in any way connected with financial misconduct (including ML/TF) or a serious offence, or in situations where enhanced customer due diligence is warranted. Regulation 7 in the FTR Regulations 2017 sets out the identification information required for simplified due diligence.

178. RIs are permitted to conduct simplified CDD on a legal person whose securities are listed on a recognised stock exchange, however, there are currently no stock exchanges designated for this exemption.

179. In 2016 the FIU conducted a scoping exercise which identified that some larger hotels provided limited foreign exchange services, typically on the weekend or in the evenings when regular banking and foreign exchange services were unavailable. Each hotel was found to have an internal restriction on the transaction amount (i.e. NZ\$ 500 (US\$ 330) or less). The FIU determined that the number of transactions conducted by hotels was nominal (less than NZ\$ 2,000 (US\$ 1,317) a year across all hotels in the Cook Islands). In response, the FSC issued a Notification of Exempted Persons pursuant to section 28 of the Money Changing and Remittance Business Act 2009, exempting accommodation providers from the licensing requirements of the Money-Changing and Remittance Act 2009 provided such services are only provided to in-house guests and total no more than NZ\$ 1,000 (US\$ 659) per guest per stay. Such transactions are therefore exempt from CDD requirements.

180. *Criterion 10.19* - Section 26 of the FTRA 2017 requires RIs to terminate the ongoing business relationship or isolated transaction and consider whether to submit a suspicious activity report if they cannot undertake CDD in accordance with the FTRA 2017.

181. *Criterion 10.20* - Section 26(2) of the FTRA 2017 provides that if an RI reasonably believes that undertaking CDD may tip off the customer, it must then within 24 hours submit a suspicious activity report. There is no explicit provision permitting RIs to not pursue the CDD process if there is a risk of tipping-off, however, this appears to be the intention of Section 26(2).



*Weighting and Conclusion*

182. There are minor deficiencies in meeting R.10, including that there is no requirement for the identity of a life insurance beneficiary to be verified at the time of payout, no requirement to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, no requirement for FIs to take enhanced measures (except when identified as a PEP) on a beneficiary who is a legal person or arrangement and presents a higher risk, no explicit provision permitting RIs not to pursue the CDD process if there is a risk of tipping-off and RIs are not required to identify the beneficial owner of a natural person (noting however that they are required to identify a person who acts on behalf of a customer). **Recommendation 10 is rated largely compliant.**

*Recommendation 11 – Record-keeping*

183. In its 2009 MER, the Cook Islands was rated largely compliance with former R.10. The main technical deficiency was the requirement in the FTRA 2004 for institutions to retain records relating to transactions and not to business correspondence. The Cook Islands recently amended the FTRA.

184. *Criterion 11.1* - Under Section 41 of the FTRA 2017 (as amended by the FTR Amendment Act 2017), RIs must retain records of all transactions carried out in the course of business for the specified activity. Specified activity is prescribed in the FTR Regulations to include all financial and DNFBP activities set out in the FATF standards.

185. Section 32 of the Banking Act 2011, section 20 of the Money Changers and Remittance Businesses Act 2009 and section 53 of the Insurance Act 2008 require licensees to keep and maintain records that are sufficient to show and explain its transactions. Section 27C of the International Trusts Act 1984 requires trustees to keep accurate and current financial records for six years from the date of termination of the trusteeship. In addition, section 217A of the Income Tax Act 1997 requires every resident trustee of a foreign trust to keep records of the trust that include evidence of creation and constitution of the trust, particulars of the settlements made on and distributions made by the foreign trust, the name and addresses of settlors and recipients of distributions, name and contact of foreign trustees and financial records.

186. *Criterion 11.2* - Section 41 of the FTRA 2017 requires RIs to retain identification information, account files, business correspondence records and the results of any analysis undertaken for six years following the completion of an isolated transaction or the end of an ongoing business relationship.

187. *Criterion 11.3* - Section 41(1)(c) (as amended by the FTR Amendment Act 2017) requires records to be sufficient to permit the reconstruction of individual transactions to provide evidence for the prosecution of a serious offence. This is narrower than the FATF requirement to permit reconstruction for evidence for the prosecution of all criminal activity.

188. *Criterion 11.4* - Section 41 of the FTRA 2017 requires FIs to retain evidence or information that allows a copy of CDD information to be obtained without significant delay (no longer than five working days) unless the information is held outside the Cook Islands, in which case it must be sent to the Cook Islands within three days (section 42(2)). Section 42(1) requires records to be kept English, or so as to enable the record to be readily accessible and translated into English.

*Weighting and Conclusion*

189. There is a minor shortcoming in meeting R.11, being that the requirement for records to be sufficient to permit the reconstruction of individual transactions to provide evidence for the prosecution of a serious offence is narrower than the FATF requirement. **Recommendation 11 is rated largely compliant.**

**Recommendation 12 – Politically exposed persons**

190. In the 2009 MER, the Cook Islands was rated largely compliant with R.6. There was no requirement in the FTRA 2004 for RIs to obtain senior management approval where a customer was accepted and the customer or beneficial owner was subsequently found to be, or subsequently became a PEP. Recommendation 12 contains new requirements that were not covered under the 2004 methodology.

191. *Criterion 12.1* - Under subsection 31(1) of the FTRA 2017, RIs must maintain procedures and controls to determine whether any of the following is a PEP: (a) a customer; (b) a natural person who has power to direct the activities of a customer; (c) where a life insurance policy is to be paid out, the beneficiary of a life insurance policy (or an ultimate principal of a beneficiary); (ba) an ultimate principal(s) of the customer (as amended by the FTR Amendment Act 2017).

192. The definition of PEP only applies to persons who have held office within the last year, which is restrictive.

193. Section 31(2) of the FTRA 2017 requires RIs to maintain procedures and controls that require senior management to approve: (a) establishing an ongoing business relationship with any foreign PEP; (b) undertaking an isolated transaction with any foreign PEP; (c) continuing an ongoing business relationship with any foreign PEP.

194. Under the section 31(3) of the FTRA 2017, if an RI determines a person referred to in subsection (1) is a foreign PEP, the RI must take reasonable measures to establish the source of wealth and the source of funds of that PEP, and conduct enhanced ongoing monitoring where there is an ongoing business relationship with that PEP.

195. *Criterion 12.2* - Section 31 of the FTRA 2017 includes both foreign PEPs and domestic PEPs who have been identified as posing a higher risk of financial misconduct. Domestic PEPs (but not foreign) include members of senior management of an international entity or organisation. When a domestic PEP is identified as posing a higher risk of financial misconduct (which includes ML/TF), RIs are required to implement procedures to obtain senior management approval (s31(2) of the FTRA 2017), take reasonable measures to establish the source of wealth and source of funds (31(3)(a) of the FTRA), and conducted on-going enhanced monitoring where there is an ongoing business relationship with the PEP (31(3)(b)).

196. As per criterion 12.1 above, the length of time after which a person stops being a PEP is restrictive

197. *Criterion 12.3* - Under the FTRA 2017, the definition of the PEPs extends to family members and close associates of all types of PEPs. The FTRA 2017 defines family members to include a spouse or partner, a child, or spouse or partner of a child, sibling, parent or grandparent. The FTRA 2017 defines close associates to mean a person who:

- (a) is known to have joint beneficial ownership of a legal entity or legal arrangements, or any other close ongoing business relationships, with that person;
- (b) who has sole beneficial ownership of a legal entity or legal arrangement known to have been set up for the benefit of that person;
- (c) known to be beneficiary of a legal arrangement of which that person is a beneficial owner or beneficiary; or
- (d) known to be in a position to carry out substantial financial transactions on behalf of that person.

198. The definitions of family member and close associates makes the scope narrower than the FATF requirement.

199. *Criterion 12.4* - Under section 31(1)(c) of the FTRA 2017, RIs must, at the time of payout, determine whether the beneficiary of a life insurance policy (or an ultimate principal of a beneficiary) is a PEP. Section 31(3)(c) requires that where a foreign PEP or, a domestic PEP who has been identified as posing a higher risk of financial misconduct is identified in such circumstances, senior management must be informed before pay-out of the policy proceeds, enhanced scrutiny must be conducted on the whole business relationship with the policyholder and the RI should consider whether to make a suspicious transaction report.

#### *Weighting and Conclusion*

200. There are minor shortcomings in relation to R.12, including that the definition of PEP only applies to persons who have held the office within the last year. **Recommendation 12 is rated largely compliant.**

#### *Recommendation 13 – Correspondent banking*

201. The Cook Islands was rated partially compliant with former R.7 in its previous MER 2009. There was no requirement for RIs to determine whether the correspondent bank has been subject to an ML/TF investigation or regular action and also no requirement for RIs to ascertain that the AML/CFT controls of the respondent institution are adequate and effective.

202. *Criterion 13.1* - Section 40 of the FTRA 2017 sets out correspondent banking requirements for FIs, including the requirement to obtain sufficient information about the respondent institution to fully understand the nature of its business, determine from publicly available information the reputation of the institution, quality of supervision and whether it has been subject to investigation or regulatory action with respect to financial misconduct (which includes ML/TF), ensure senior management approval of the relationship and clearly understand the responsibilities of each institution

203. *Criterion 13.2* - Section 40(2) of the FTRA 2017 sets out measures for corresponding services involving a payable-through account. This includes that the FI must be satisfied that the respondent institution has taken measures that comply with CDD requirements contained in the FTRA 2017 with respect to every customer having direct access to the account, and that the respondent institution will provide the FI with the relevant evidence upon request. There is a minor deficiency in the way s40(2) is written, as the respondent bank isn't subject to the FTRA 2017; however, it is clear that the meaning of the requirement is for FIs to ensure that the respondent bank conducts CDD to the standard set out in the FTRA 2017.

204. *Criterion 13.3* - Section 55 of the FTRA 2017 states RIs must not establish, continue or conduct a business relationship or isolated transaction with a shell bank. Section 40(4) of the FTRA 2017 requires RIs to take appropriate measures to satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks. In addition, section 46 of the Banking Act 2011 prohibits licensed banks from dealing with shell banks.

#### *Weighting and Conclusion*

205. There is a minor deficiency in the drafting of the obligation for FIs to ensure that with respect to payable-through accounts, FIs should be satisfied that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank. **Recommendation 13 is rated largely compliant.**

#### *Recommendation 14 – Money or value transfer services*

206. The Cook Islands was rated partially compliant with former SR.VI in its previous MER 2009, due to the fact that there was no legal, regulatory and supervisory framework for MVTS and there was an absence of a range of proportionate sanctions for non-compliance. The Cook Islands has enacted relevant legislation since the 2009 MER.

207. *Criterion 14.1* - The FSC is the designated authority to licence money changers and remittance businesses and to ensure compliance with the requirements of the Money-Changing and Remittance Businesses Act 2009.

208. The Money-Changing and Remittance Act 2009 prohibits any person from carrying on a money-changing business (section 5) or remittance business (section 6) without a licence.

209. *Criterion 14.2* - In 2016 the FIU undertook a review of different sectors to identify areas where MVTs may be undertaken, however, no such activity was identified.

210. No sanctions have been applied for carrying out MVTs without a licence, however any person who contravenes section 5 and section 6 of the Money-Changing and Remittance Act 2009 shall be guilty of an offence and shall be liable to a fine not exceeding NZ\$ 5,000 (US\$ 3,293) or to imprisonment for a term not exceeding two years, or both, and in the case of a continuing offence to a fine not exceeding NZ\$ 100 (US\$ 66) for every day during which the offence continues after conviction.

211. *Criterion 14.3* - MVTs providers are RIs captured by the FTRA 2017 (as set out in Regulation 4 of the FTR Regulations 2017) and are therefore subject to the requirements of the FTRA 2017 and are monitored by the FIU for their compliance.

212. *Criterion 14.4* - Sections 5 and 6 of the Money-Changing and Remittance Businesses Act 2009 specify that no person can carry on a money changing or remittance business without a license. There is currently one licensed remittance business in the Cook Islands, which is also a licensed money-changing business.

213. *Criterion 14.5* - Agents are required to be licensed separately and are required to meet the requirements relating to AML/CFT programs separately.

#### *Weighting and Conclusion*

214. **Recommendation 14 is rated compliant.**

#### ***Recommendation 15 - New technologies***

215. The Cook Islands was rated partially compliant with former R.8 in its 2009 MER. While guidance was provided in Prudential Statement No. 08-2006, there was no legal requirement for RIs to take measures to prevent the misuse of technological developments in ML/TF schemes. Furthermore, there was no requirement for RIs to have in place policies and procedures to address the specific risks associated with non-face to face business relationships or transactions.

216. *Criterion 15.1* - Section 20 of the FTRA 2017 requires RIs to identify and assess the risk of financial misconduct before implementing new products, business practices, delivery methods or systems, or when using developing technologies for new and pre-existing products and services.

217. The FSC considers new products or technologies as part of its operational risk assessments of FI, which includes an AML/CFT component; however, this assessment may occur after implementation of the product or technology.

218. *Criterion 15.2* - Section 20 of the FTRA 2017 requires RIs to identify and assess risk prior to the implementation of new products, practices or technologies or before the use of developing technologies for both new and pre-existing products and services. It also requires RIs to take appropriate measures to manage and mitigate risks.

#### *Weighting and Conclusion*

219. There is a minor deficiency in meeting this recommendation, being that while authorities undertake a risk assessment on new products or technologies, it does not always

occur prior to the implementation of the product or technology. **Recommendation 15 is rated largely compliant.**

### **Recommendation 16 – Wire transfers**

220. In its 2009 MER, the Cook Islands was rated partially compliant with former SR.VII. The MER identified that there was no detailed instruction issued by the competent authorities to the banks on the requirements of SR.VII, there was no detailed instruction on what constituted full originator information, there was no requirement for beneficiary FIs to adopt effective risk-based procedures for identifying and handling wire transfers without complete originator information and there is no appropriate sanction mechanism related to the implementation of SR.VII.

221. *Criteria 16.1* - The electronic funds transfer (EFT) threshold amount is defined in the FTRA 2017 as NZ\$ 1,500 (US\$ 987) or its equivalent value in foreign currency. Under section 37 of the FTRA 2017, FIs are required to identify the originator and verify that identity and ensure that all cross-border electronic funds transfer of NZ\$ 1,500 (US\$ 987) or more are accompanied by the required and accurate originator information and required beneficiary information. Section 37 requires FI to ensure that the cross-border transfer is accompanied by the following information about the originator: name, account number or unique transaction reference number if no account exists, address, national identification number and date and place of birth, or incorporation or registration. Section 37 also requires FIs to ensure that the following information about the beneficiary accompanies the wire transfer: name and account number or unique transaction reference number if no account exists.

222. *Criterion 16.2* - Section 37(4) of the FTRA 2017 require RIs to ensure that batched transfers contain the complete originator information and beneficiary information (as set out in 16.1), which is fully traceable within the beneficiary jurisdiction.

223. *Criterion 16.3* - Under 37(2) section of the FTRA 2017, transfers of below NZ\$1,500 (US\$ 987) are required to be accompanied by the name and account number or unique transaction reference number of both the originator and beneficiary.

224. *Criterion 16.4* - Under section 30 of the FTRA 2017, despite any exemption or threshold for transactions provided under this Act, if an RI has reasonable grounds to suspect financial misconduct (including ML/TF), the RI must undertake CDD in accordance with section 25 (standard CDD) and section 30 (enhanced CDD), which includes verification.

225. *Criterion 16.5* - For domestic electronic funds transfer, section 37 of the FTRA 2017 stipulate that an RI may include only the originator's account number or unique transaction reference, if that information will permit the transaction to be traced back to the originator and beneficiary, and the RI must provide the originator information within three working days on request to the beneficiary institution or a competent authority, or immediately on request of a competent authority for law enforcement purposes.

226. *Criterion 16.6* - Section 37(5) of the FTRA 2017 stipulate that for domestic electronic funds transfer, the ordering institution may include only the originator's account number or unique transaction reference if that information will permit the transaction to be traced back to the originator and beneficiary. The RI must provide the originator information within three working days of a request being made by the beneficiary institution or a competent authority, or immediately on request of a competent authority for law enforcement purposes.

227. *Criterion 16.7* - There is no requirement regarding the obligation of the ordering FI to maintain all originator and beneficiary information. However, under section 41 of the FTRA 2017, there is a general requirement that RIs must retain a record of all transactions carried out in the course of business for the specified activity. There are minor gaps with the recordkeeping requirements as set out in R.11.

228. *Criterion 16.8* - There is no explicit prohibition on executing wire transfers where criterion 16.1 to 16.7 cannot be met, however, section 37(6) of the FTRA 2017 stipulates that an RI that breaches this section commits an offence and is liable to penalties.

229. *Criterion 16.9* - Section 39(1) of the FTRA 2017 requires intermediary institutions to retain all the required originator and beneficiary information which accompanies the electronic funds transfer.

230. *Criterion 16.10* - Section 39(2) of the FTRA 2017 states that if technical limitations prevent the required originator and beneficiary information accompanying a cross-border electronic funds transfer from remaining with a related domestic electronic funds transfer, a record must be kept, for at least six years, by the receiving intermediary institution of all the information received from the ordering institution or another intermediary institution.

231. *Criterion 16.11* - Section 39(3) of the FTRA 2017 requires the intermediary institution to take reasonable measures, which are consistent with straight-through processing, to identify cross-border electronic funds transfers that lack the required originator or beneficiary information.

232. *Criterion 16.12* - Section 39(4) of the FTRA 2017 requires intermediary institutions to implement appropriate internal risk-based policies, procedures and controls for determining when to execute, reject or suspend an electronic funds transfer lacking the required originator or beneficiary information; and the appropriate follow-up action.

233. *Criterion 16.13* - Section 38(1)(a) of the FTRA 2017 requires beneficiary financial institutions to take reasonable measures, including post-event monitoring or real-time monitoring where feasible, to identify electronic funds transfers that lack originator or beneficiary information in relation to all cross-border electronic funds transfers.

234. *Criterion 16.14* - Section 38(1)(b) of the FTRA 2017 states that for any electronic funds transfer over the EFT threshold amount, the beneficiary financial institution should identify the beneficiary and verify that identity if the RI has not already done so.

235. *Criterion 16.15* - Section 38(2) of the FTRA 2017 requires beneficiary institutions to implement appropriate internal risk-based policies, procedures and controls for determining when to execute, reject or suspend an electronic funds transfer lacking required originator or beneficiary information; and the appropriate follow-up action.

236. *Criterion 16.16* - Section 36 of the FTRA 2017 notes that the requirements relating to electronic funds transfers apply to RIs that undertakes banking business, or money or value transfer services, or other similar arrangements.

237. *Criterion 16.17* - There is no explicit requirement for an MVTS provider that controls both the ordering and beneficiary side of the wire transfer to take into account the information and determine whether an STR has to be filed, or file an STR in any country affected by the suspicious wire transfer.

238. *Criterion 16.18* - As per criterion 6.5, RIs are required to freeze funds and other assets without prior notice immediately upon the designation of an entity by the UN or the Attorney-General (s5 and ss11-13 of the CTPA 2004). Under the section 12 of the CTPA 2004, a person must not knowingly make available any property or other financial or other related services to, or for the benefit of, a terrorist group or related entity, knowing, intending, or being reckless as to whether the entity is a terrorist group or related entity, which includes specified entities listed UN Security Council.

#### *Weighting and Conclusion*

239. There are minor deficiencies in meeting R.16, including the minor gaps with the recordkeeping requirements as set out in R.11; no explicit prohibition on executing wire transfers where criterion 16.1 to 16.7 cannot be met and there is no explicit requirement for an

MVTS provider that controls both the ordering and beneficiary side of the wire transfer to file an STR in any country affected by the suspicious wire transfer. **Recommendation 16 is rated largely compliant.**

#### *Recommendation 17 – Reliance on third parties*

240. In its 2009 MER, the Cook Islands was rated largely compliant with R.9. Two deficiencies were noted; that the FTRA 2004 did not provide a list of countries or territories which the FSC considered adequately meet the FATF Recommendations, and that the FTRA 2004 did not place ultimate responsibility for customer identification and verification with the RI.

241. *Criterion 17.1* - Under section 34(4) of the FTRA 2017, an RI which relies on a third party to conduct customer due diligence measures, and not the third party, is responsible for ensuring that customer due diligence is carried out. There is no explicit requirement with respect to RIs which rely on a third party to introduce business, however, the conduct is captured under the broader requirements relating to RIs reliance on third parties.

242. (a) Under section 34(3)(b) of the FTRA 2017, if an RI relies on a third party to undertake CDD procedures, it must obtain the necessary information required for the relevant level of customer due diligence before entering into the transaction or business relationship.

243. (b) Under section 34(3)(c) of the FTRA 2017, an RI relying on a third party must ensure that copies of necessary information obtained in relation to the customer or transaction or both will be made available to it from the third party upon request without delay

244. (c) Under section 34(2)(a) of the FTRA 2017, the RI must be satisfied that the third party it intends to rely upon is subject to and supervised for compliance with combating money laundering, financing of terrorism and proliferation of weapons of mass destruction consistent with the standards set by the FATF and has adequate measures in place to comply with those requirements..

245. *Criterion 17.2* - Under the section 34(2)(b) of the FTRA 2017, an RI should take appropriate steps to identify, assess and understand the financial misconduct risks particular to the jurisdictions that the third party operates in.

246. *Criterion 17.3* - The section 34(1) of FTRA 2017 defines “third party” to include a member of a financial services group of which the RI is also a member, making the provisions set out in 17.1 and 17.2 applicable to financial groups. Section 34(2)(a) requires that the RI be satisfied that the third parties which an RI replies upon must have adequate measures in place to comply with the measures set out in the FATF standards and that the third party is supervised for compliance with the FATF standards. There is no explicit provision requiring such measures to be supervised at a group level, or for any higher country risk to be adequately managed by the group’s AML/CFT policies.

#### *Weighting and Conclusion*

247. There are minor deficiencies in meeting R.17. In the context of the Cook Islands, where there are potential vulnerabilities given LTCs reliance on third party introducers, more weight has been placed on compliance with 17.1. While it is noted that there are no explicit requirements with respect to RIs reliance on a third party to introduce business, this conduct is captured under the broader requirements for RIs who rely on third parties. Criterion 17.3 has been given less weighting as there are currently no financial groups with headquarters operating out of the Cook Islands. Some banks and LTCs are members of financial groups, but no financial group has more than one RI currently operating in the Cook Islands. **Recommendation 17 is rated largely compliant.**

**Recommendation 18 – Internal controls and foreign branches and subsidiaries**

248. In its 2009 MER, the Cook Islands was rated to largely compliant with former R.5. The main deficiency was that the insurance sector has not been provided with guidelines and nor has training specific to this industry been provided.

249. *Criterion 18.1* - Under the section 12 of the FTRA 2017, RIs are required to establish, operate and maintain adequate internal procedures, policies and controls (known as a compliance programme) based on their risk.

250. (a) Under section 13 of the FTRA 2017, an RI must appoint a natural person as a Money Laundering Reporting Officer (MLRO) to administer and maintain its compliance programme. The MLRO must be a member of senior management or have appropriate work experience, which the Practical Guidelines set out as three years relevant experience. It is accepted practice in the Cook Islands that three years experience is suitable for such positions. Other than the appointment of the MLRO, there are no further compliance management arrangements specified in the FTRA 2017.

251. (b) An RI must establish the screening procedures to confirm the integrity of new staff whose role involves overseeing or conducting duties related to obligations in the FTRA 2017. There is no requirement specifying the competence of employees; the obligation is limited to integrity. It is noted however that relevant officials in FIs are subject to fit and proper checks by the FSC, as set out in R.26.

252. (c) In accordance with section 17 of the FTRA 2017, an RI must take all appropriate steps to ensure that its employees and officers are regularly and appropriately trained

253. (d) A RI must maintain appropriate procedures and adequate resources to, independently and periodically, test and assess the effectiveness of the RI's compliance programme under section 15 of the FTRA 2017.

254. *Criterion 18.2* - Under the section 14 of the FTRA 2017, an RI must ensure that all the requirements of this Act extend to all of its branches and subsidiaries. However, there are no requirements regarding information sharing, providing information when necessary, and adequate safeguards on the confidentiality and use of information exchange for RI in the same financial group. As noted in 17.3, there are currently no financial groups that have more than one RI currently operating in the Cook Islands.

255. *Criterion 18.3* - Section 14 of the FTRA 2017 set out the requirements for group policies. An RI must ensure that all the requirements of this Act extend to all of its branches and subsidiaries to the extent permitted by the laws of the host country. An RI must inform the FIU when a branch or subsidiary is unable to meet any of the requirements of this Act if it is prohibited by the laws of the jurisdiction in which it operates.

*Weighting and Conclusion*

256. There are minor deficiencies in meeting R.18. Other than the requirement to appoint an MLRO, there are no compliance management arrangements; screening procedures for new staff are limited to integrity, excluding competence and there are no requirements regarding information sharing and safeguards on the information exchange for RIs in the same financial group. As there are currently no financial groups with more than one RI operation in the Cook Islands, this deficiency has been given less weighting. **Recommendation 18 is rated largely compliant.**

**Recommendation 19 – Higher-risk countries**

257. In its 2009 MER, the Cook Islands was rated partially compliant with former R.21. The report noted that there was insufficient information provided to RIs on countries of concern to the FIU and FSC and that there was no provision for the application of counter-measures.



258. *Criterion 19.1* - Under the section 29(1) of the FTRA 2017, an RI must establish, maintain and operate procedures to ensure enhanced customer due diligence (ECDD) is conducted if the ongoing business relationship or isolated transaction is with a customer, or person acting on behalf of a customer from or in a jurisdiction on List A. List A is defined as the list published by the FIU specifying jurisdictions with the FATF (or a FATF-style regional body) has made a call on its members and other jurisdictions to apply countermeasures.

259. *Criterion 19.2* - Under section 65(1)(d) of the FTRA 2017, the FIU, in consultation with the FSC, may publish practice guidelines to provide RIs with lists detailing the jurisdictions which the FATF, FATF-style regional body, or the Cook Islands has made a call to apply countermeasures.

260. *Criterion 19.3* - The FSC website includes a link to the FATF Public Statement. Under section 65(2) of the FTRA 2017, an RI must ensure it has regular access to the FSC website and that it reviews the information published by the FIU on a regular basis. There are however no other measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries.

#### *Weighting and Conclusion*

261. There is a minor deficiency in meeting R.19, being that there are limited measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries. **Recommendation 19 is rated largely compliant.**

#### ***Recommendation 20 – Reporting of suspicious transaction***

262. The Cook Islands was rated largely compliant with former R.13 and SRIV in its 2009 MER. The 2009 MER noted that not all predicate offences were covered.

263. *Criterion 20.1* - Part 4, Section 47 of the FTRA 2017 requires RIs to report to the FIU any activity that it has reasonable grounds to suspect is suspicious activity. The suspicious activity must be reported to the FIU as soon as possible but no later than two working days upon forming the suspicion (s47), unless than suspicious relates to a person of interest, in which case it must be reported to the FIU as soon as possible but no later than 24 hours after the suspicion is formed (s48). Section 49 of the FTRA 2017 requires a supervisory body or auditor of an RI to report suspicious activity identified in their dealings with an RI in circumstances where the RI had not reported the suspicious activity. Suspicious activity is defined to include information or activity that causes the RI to know or suspect that financial misconduct or a serious offence is intended or has occurred. Not all predicate offences are included in the ML offence, as set out in R.3.

264. *Criterion 20.2* - Section 47 of the FTRA 2017 requires RIs to report any activity that it has reasonable grounds to suspect is suspicious activity. There is no requirement linking this obligation to a transaction amount. The definition of suspicious activity in the FTRA 2017 includes attempted transactions.

#### *Weighting and Conclusion*

265. There is a minor shortcoming as the predicate offence category of arms trafficking is not covered in the ML offence. **Recommendation 20 is rated largely compliant.**

#### ***Recommendation 21 – Tipping-off and confidentiality***

266. The Cook Islands was rated compliant with former R.14 in its 2009 MER.

267. *Criterion 21.1* - Section 61 of the FTRA 2017 protects a RI, a supervisory body, the auditor, each officer, director, employee and independent contractor of the auditor or the supervisory body acting in the course of that person's work, from civil, criminal or disciplinary proceedings for complying with a direction given by the FIU or any obligations imposed by or under the FTRA 2017, including the obligation to report suspicious activity.

268. *Criterion 21.2* - Section 53 of the FTRA 2017 prohibits a monitor, an employee or agent of a monitor, a director, officer or principal of a monitor from disclosing to any person that a suspicious activity or related information is reported to the FIU. Section 63 of the FTRA 2017 makes disclosure a punishable offence. A monitor is defined as a person who has reporting obligations under the FTRA 2017 and includes RIs, supervisory bodies of RIs, authorities of RIs and the money laundering reporting officer of an RI.

*Weighting and Conclusion*

269. **Recommendation 21 is rated compliant.**

***Recommendation 22 - DNFBPs: Customer due diligence***

270. In its 2009 MER, the Cook Islands was rated partially compliant with former R.12. The following deficiencies were noted; there was no explicit legal requirement to collect information on beneficiaries of trusts, there were no ongoing due diligence requirements on the settlor, beneficiaries and transactions for trust arrangements in cases where the trustee has no control over the administration of the trust, the FTRA 2004 was silent on CDD for existing customer and neither implementing regulations nor guidance had been issued, effectiveness was not fully ascertained since compliance audits has recently begun and time was being given by the FIU for RIs to comply with the FTRA CDD requirements, there was a lack of effective implementation among lawyers, real estate agents and dealers as the FIU had not addressed the issues highlighted by these entities.

271. *Criterion 22.1* - (a) Casinos are captured as RIs through section 4(1)(q) of the FTR Regulations 2017, which lists “operating a gambling house, casino or lottery, including an operator who carries on operations through the internet or based on a ship” as a prescribed specified activity. There is no threshold for the conduct of CDD, however, gambling in the Cook Islands is regulated under the Gaming Act 1967 which prohibits the operation of a gaming house in the Cook Islands.

272. (b) Real estate agents are captured as RIs through section 4(1)(r) of the FTR Regulations 2017, which specifies that “dealing in real estate” is a prescribed specified activity.

273. (c) Dealers in precious metals and precious stones are captured when they engage in transactions above NZ\$ 10,000 (US\$ 6,585), under section 4(1)(u) of the FTR Regulations 2017.

274. (d) Lawyers, notaries, other independent legal professionals and accountants are captured under section 4(1)(t) of the FTR Regulations 2017. There is a minor scope deficiency in the coverage, with “organisation of contributions for the creation, operation or management of companies” not captured.

275. (e) TSCPs are captured by section 4(1)(s) of the FTR Regulations 2017.

276. With respect to CDD, DNFBPs are subject to the same requirements as FIs and therefore have the same deficiencies (see Recommendation 10).

277. *Criterion 22.2* - DNFBPs are subject to the same recordkeeping requirements as FIs, as set out in section 41 of the FTRA 2017. There are minor gaps with the recordkeeping requirements, as set out in R.11.

278. *Criterion 22.3* - DNFBPs are subject to the same requirements as FIs, as set out in section 31 of the FTRA 2017. There are minor gaps with the PEP requirements, as set out in R.12.

279. *Criterion 22.4* - DNFBPs are subject to the same requirements as FIs with respect to new technologies, as set out in section 20 of the FTRA 2017. There are minor gaps in the new technologies requirements, as set out in R.15.

280. *Criterion 22.5* - DNFBPs are subject to the same requirements as FIs with respect to the reliance of third-parties, as set out in section 34 of the FTRA 2017. There are minor gaps with the reliance on third-parties requirements, as set out in R.17.

#### *Weighting and Conclusion*

281. There are minor deficiencies in meeting R.22, including a minor scope gap with respect to the coverage activities conducted by lawyers, notaries, other independent legal professionals and accountants, and the minor deficiencies set out in R.10, R.11, R.12, R.15 and R.17 are also applicable to DNFBPs. **Recommendation 22 is rated largely compliant.**

#### *Recommendation 23 – DNFBPs: Other measures*

282. Cook Islands was rated partially compliant with former R.16 in its 2009 MER. Special attention and countermeasures for countries with deficiencies in their AML/CFT systems had not been implemented, systems of monitoring unusual transactions were generally based on cash thresholds rather than analysis of transaction against client profile and other than trustee companies, independent audit to test compliance had not been effectively implemented.

283. *Criterion 23.1* - DNFBPs are subject to the same requirements as FIs with respect to STR requirement, as per sections 47 & 48 of the FTRA 2017, and therefore the same minor deficiencies apply (see Recommendation 20).

284. *Criterion 23.2* - DNFBPs are subject to the same requirements as FIs with respect to internal controls and foreign branches and subsidiaries requirements and consequently, suffer the same deficiencies (see Recommendation 18). In relation to c.18.1(b), while the staff screening requirements contained in the FTRA 2017 only cover integrity, key persons in LTCs are required to be approved by the FSC, which must be satisfied that these persons are 'fit and proper'.

285. *Criterion 23.3* - DNFBPs are subject to the same requirements as FIs with respect to higher-risk country requirements and consequently, the same minor deficiency applies (see Recommendation 19).

286. *Criterion 23.4* - DNFBPs are subject to the same requirements as FIs with respect to complying with tipping-off and confidentiality requirements, and therefore the same minor deficiencies apply (see Recommendation 21).

#### *Weighting and Conclusion*

287. There are minor deficiencies in meeting R.23. There is a minor scope gap with respect to the coverage activities conducted by lawyers, notaries, other independent legal professionals and accountants, and the deficiencies identified in R.18, R.19, R.20 and R.21 are also applicable to DNFBPs. **Recommendation 23 is largely compliant.**

#### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

288. The Cook Islands was rated partially compliant on R. 33 in their 2009 MER. The 2009 report noted, among other things, that measures were not adequate to ensure that there is sufficient and accurate information held on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. It also noted that information on company registers for domestic companies pertains only to legal ownership/control (as opposed to beneficial ownership). Information obtained by registries was not verified and not necessarily reliable. The manual system for recording and updating information for domestic companies was an impediment to ensuring timely access to records. At the time (2009) there was also no requirement in the Companies Act to disclose nominee shareholders and there was no express prohibition on the issuance of bearer shares.

289. **Application of New Zealand law:** Under s2 of the Companies Act 1970-71:

- the Companies Act 1955 of New Zealand, including amendments - but only to and including the 1967 amendments - extend to the Cook Islands except as altered by the Cook Islands Act. The New Zealand Act was repealed in 1993 by the New Zealand Companies Act 1993. The Cook Islands has not incorporated the 1993 legislation as part of its legislation.
- the Cook Islands Companies Act 1970-71 amended the New Zealand legislation (as applicable in the Cook Islands) by the Companies Amendment Act 1999 No. 5 and the Companies Amendment Act 2000, No. 5. References in this Annex to these amending Acts are made separately as they are not consolidated within the principal Act.

290. *Criterion 24.1* - (a) The Cook Islands has publicly accessible mechanisms to identify information on the different types, forms and basic features of domestic legal persons and international legal persons. The information is discoverable through legislation and through government websites (MOJ, FSDA, and FSC). There are a number of differing forms of legal persons in the Cook Islands as follows:<sup>37</sup>

#### *Domestic Legal Persons*

291. *Private Companies* are incorporated under the Companies Act 1970-71 as under Part VIII of the NZ Act. A private company is a closely held company consisting of not more than 50 individual persons, as shareholders, who have subscribed to the articles of association and not less than two shareholders. The MoJ website contains information on the requirements for registration of domestic companies.<sup>38</sup>

292. *Overseas Companies* are foreign companies registered under Part III of the Companies Act 1970-71. These are companies with at least 30% foreign ownership.

293. *Incorporated Societies* are established under the Incorporated Societies Act 1994. Section 3 of that Act sets minimum membership in such an entity at 15 persons. Members do not have any personal interest in the property or assets owned by the society and the societies do not distribute profits to its members. The MoJ website contains information on the requirements for registration of incorporated societies.<sup>39</sup>

#### *International Legal Persons*

294. The websites of the FSC and the FSDA contain information on the basic features, and registered numbers, of international companies, international trusts, limited liability companies (LLCs), foundations and international partnerships.<sup>40</sup>

295. *Foundations* are incorporated under the Foundations Act 2012 on application only by a trustee company (s. 4(2)) to the Registrar of International and Foreign Companies (s 46). On approval, it is a legal person (s 34). A foundation is formed by a person known as the founder (who may be either an individual or corporate body who instructed the trustee company) who “endows” assets (s3) to be administered by the foundation. Those assets are administered through contractual, rather than proprietary, principles. A foundation is managed by a council (s 22). A minimum of only one council member is required and corporate council members are permitted under the Act

296. *Overseas Foundations* are registered under Part 5 of the Foundations Act 2012 with the same Registrar as above.

297. *International Companies* are established under the International Companies Act 1981-82. Resident Cook Islanders are prohibited from holding an interest in an international

<sup>37</sup> “International Partnerships” established under the International Partnership Act 1984 are not legal persons by virtue of s 19 of the Act which provides that “every partner in a firm is liable jointly and severally with the other partners for all debt and obligations [... etc].”

<sup>38</sup> <http://www.justice.gov.ck/index.php/company-registration>

<sup>39</sup> <http://www.justice.gov.ck/index.php/11-registry/26-incorporated-societies>

<sup>40</sup> <http://www.cookislandsfinance.com/services.php>

company. All registrations must be conducted through a trustee company (s 9(1)) and there is no requirement for a resident director but, if one is appointed, that resident director must be a trustee company (s 83). An international company must have a resident secretary, which must be an LTC (s 90).

298. *Registered Listed Companies* are foreign listed companies (or international companies established under the International Companies Act) listed on one of 16 approved (foreign) stock exchanges as stated in the International Companies Act s 126A. They may register under Part VIA of the International Companies Act 1981-82.

299. *Limited Liability Companies* are formed under the Limited Liability Companies Act 2008. Upon establishment, they do not require a registered office in the Cook Islands, although an agent in the Cook Islands is required. Company records are not publicly available.

300. (b) Domestic entities: The domestic registry, operated under the MOJ, contains information such as incorporation certificate, name of shareholders, directors, secretary, registered address, share capital, and annual return. Information on the process for creation of domestic legal persons and information on basic ownership for all domestic legal persons is held in the registry under the MoJ, and is publicly available (searchable for \$5).

301. International entities: The websites of the FSC and FSDA contain information on the process for creation of international legal persons.<sup>41</sup> The 'Information Requests' section of the FSC website sets out the process for obtaining some basic information such as the name of entity, date of registration, registration number, registered office and the relevant administering trustee company contact details.<sup>42</sup> However, there is no publicly available information on the process for obtaining basic regulating powers and list of directors. Further, the information on the process to access beneficial ownership information with respect to international legal persons is not publicly available.

302. *Criterion 24.2* - The NRA 2015 does not assess the risk of ML and TF with respect to *all types* of legal persons (listed above). The NRA simply states that "the threat and vulnerability presented is low for domestic business structures and high for international trusts and companies". This deficiency has been recently rectified to a significant degree by the 2017 International Legal Persons Review issued by the FSDA and the FSC on 1 December 2017. This Review surveys the five types of international legal persons in the Cook Islands, and each of these was separately risk-assessed with the primary risks identified for each entity.

303. No such ML/TF risk assessment has been conducted for domestic legal persons.

### **Basic Information**

304. *Criterion 24.3* -

305. *Domestic Registries*: The MoJ maintains a registry of directors, office bearers, financial reports, company name changes, copies of certificates of incorporation, notices of registered office, and nominal capital and company charges for all domestic legal persons (listed above) and is publicly available.

306. *International Registry*: The FSC maintains a registry for international and foreign companies, LLCs and foundations. The registry contains registration numbers, company names, entity types, registration status, registration dates, registered office addresses, names of directors and officers, share capital, applications for renewal, annual returns, notices of changes. The FSC website explains that in terms of public accessibility of the information held on the registry, the Registrar, upon receiving a request, may confirm the name of entity, date of registration, registration number, registered office and the relevant administering trustee company contact details.

<sup>41</sup> <http://www.cookislandsfinance.com/services.php>

<sup>42</sup> <https://www.fsc.gov.ck/cookislandsFscApp/content/contact-us>

307. There is no publicly available information regarding access to basic regulating powers and the list of directors. While this information is held by the legal person, secrecy provisions in relation to international legal persons mean this information is not available 'publicly' and may be limited to competent authorities seeking to access it in the discharge of their duties or to members of the public seeking access under a law or court order.

308. *Criterion 24.4 -*

*Domestic Legal Persons:*

*Domestic companies:* Under s 39 of the Companies Act 1970-71 and s 118(1) of the (NZ) Act, domestic companies are required to keep a register of members (shareholders) including the following information: (a) names, addresses, and descriptions of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member; (b) the date at which each person was entered in the register as a member; and (c) the date at which any person ceased to be a member. The register is required to be kept at the registered office of the company (s 118(2)) and must be kept in a place in the Cook Islands and the Registrar must be notified where it is kept.

309. *Overseas companies:* Part XII of the relevant (NZ) Act applies to overseas companies (foreign registered companies in the Cook Islands). This part requires overseas companies to provide the Registrar with a number of documents (incorporation documents, seals etc) but there is no requirement in this Part or the rest of the Act applicable in the Cook Islands for maintaining a shareholder or member register in the Cook Islands.

310. *Incorporated Societies:* Under s 8 of the Incorporated Societies Act the members of such entity are required to apply to the Registrar (MoJ) including their names, addresses, and occupations of those members, and the dates at which they became members (s 24). Public access to the register of members is provided in the Act at s 37 on payment of a prescribed fee.

*International Legal Persons:*

311. *Foundations:* A foundation does not have shareholders but has a foundation council that make decisions on its assets in accordance with the foundation instrument and objectives of the foundation. Under s 42 of the Foundations Act 2012, foundations are required to keep certain records at their registered offices which include: a register showing the names and addresses of the members of its council. That section also requires that the foundation keep and maintain a register of the names and address of all "dedicators" (contributors of funds) to the foundation.

312. *Overseas Foundations.* A foundation incorporated in a foreign jurisdiction may apply to undertake business in the Cook Islands under Part 5 of the Foundations Act 2012. To register it must provide the Registrar with a statement of the foundations' current council membership; business address or registered office in the foreign jurisdiction in which it was established and the name of the foundation to be used in the Cook Islands.

313. *International Companies:* Section 105 of the International Companies Act 1981-82 requires the LTC registering international companies to have a register and index of members. Except with respect to bearer shares issued by international companies (specifically exempted by s 105), the register must contain the names and addresses of the members, and a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member; (b) the date at which the name of each person was entered in the register as a member; (c) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and (d) the date of every allotment of shares to members and the number of shares comprised in each allotment.

The register/index is required to be kept at the company's register office in the Cook Islands (s 106). The Registrar must receive notice of the register if it is not in the registered office (s 106(2)).

314. *Registered Listed Companies:* Where the applicant is a foreign listed company there is nothing in the International Companies Act 1981-82 that requires the foreign company to keep a register of its shareholders/members within the Cook Islands.

315. *Limited Liability Companies:* Section 32 of the LLC Act 2008 provides that every limited liability company shall keep a current list of the full name and business, residence, or mailing address of each member and manager at its registered office. This information must be kept for a minimum of six years and is subject to inspection and copying by the Registrar. Section 18 of the LLC Act sets out that all LLCs must be registered by a trustee company. Under section 5(1) of the FTRA 2017, all licensed trustee companies are RIs and are required to undertake CDD on their clients and abide by recordkeeping obligations with respect to customer information.

316. *Maintaining information set out in c24.3:* In light of the annual updates required by the MoJ and FSC registries (see c24.5), companies maintain the information required in 24.3 as part of their registration requirements. However, the deficiencies highlighted in c24.2 on information held by the registries flows through here.

317. *Criterion 24.5 -* The following outlines the requirements for keeping the information required under c24.3 and c24.4 up to date and accurate. However, deficiencies identified in the maintenance of requisite information on domestic and international legal persons, as above, flow into the assessment of compliance under c24.5.

318. *Domestic Companies:* changes within the company, e.g. share transfers, changes in directors, nominal capital must be filed with the Registrar. Under Part XV of the Companies Act 1970-71 (and Cook Islands Companies Amendment Act 1999 s 6) annual returns must be filed 12 months after a company has formed and then by the 1st July each year after that. When the annual return is submitted, it is reviewed by staff against the company file for any changes in the company. If changes have been made and are not reflected in the company file, the annual return is returned for required changes.

319. *Other domestic legal persons:* similar reporting requirements are provided in governing laws applicable to foreign enterprises (s34 (annual filing) Development Investment Act; and s 24 (transfers of shares or interest)) and incorporated societies (sections 23, 24 and 25 of Incorporated Societies Act).

320. *International Companies:* under s 112(4) of the International Companies Act 1981-82 annual returns for an international company must be filed with the Registrar each year. The trustee company which administers the company must ensure that among other information the registered address and directors' details are inserted. Annual returns also require confirmation of, among other information, the following: whether an auditor has been appointed; whether the company has entered into any transactions; whether bearer shares have been issued, whether it has issued any public prospectus for shares or debentures. The same renewal procedures apply to international companies, banks and insurance companies and if any changes are made in shareholding directors, compliance officers for banks and insurance. The entity has to apply for FSC's approval prior to the lodgement of a notice of change with the registrar. Changes made to international companies are filed with the registrar by the LTC as resident secretary.

321. *Limited Liability Companies:* under s20 (1) of the LLC Act 2008 at the time of its annual renewal of registration, limited liability companies must file a company report with the name of the company, the place where it is organised and the name and business address of the registered agent.

**Beneficial Ownership Information**

322. *Criterion 24.6* - Cook Islands relies on sub-criteria 24.6(a) and (c) (each of the sub-criteria (a)- (c) being available for compliance in the alternative) as follows:

323. (a) - Companies that are characterised as foreign enterprises (determined by the level of foreign ownership) must provide beneficial ownership information to BITB upon incorporation. However, there is no requirement for BITB to maintain this information. Further, none of the relevant statutes referred to in c. 24.1 require the collection and recording of information on the legal person's beneficial ownership beyond the direct owner of shares by either the legal person itself or the relevant registry. The mechanism in c24.6(c) is thus the primary means by which beneficial ownership information is accessible in the Cook Islands.

324. (c) - Pursuant to FTR Act 2017 s 25(2)(d), when dealing with a customer that is not a natural person, RIs are required to do the following:

- identify and verify any ultimate principal of the customer;
- verify the status of the customer using relevant and reliable independent information;
- obtain sufficient information to understand the of the customer's business and its ownership structure; and
- obtain information concerning the person(s) by whom, and the method by which, binding obligations may be imposed on the customer.

325. As discussed under R.10, the term "ultimate principal" in s 25(2)(d) is defined in s 8 of the FTR Act 2017 as one or more natural persons who ultimately own or effectively control the customer, or on whose behalf a transaction or activity is being conducted. This definition includes (but does not appear in the Act to be limited to) in the case of a legal person, other than a company whose securities are listed on a recognised stock exchange, any natural person who owns 25% or more of the shares or voting rights in a legal person. It also includes any natural person who exercises effective control over the management of a legal person. The obligations stated are enforceable by substantial penalties stipulated in s 63 of the Act.

326. The information collected by RIs can be obtained by competent authorities in a timely manner. Anecdotally, the FIU and FSC state that in practice beneficial ownership information from RIs, including trustee companies, can be obtained by them within a matter of hours. Further, the FIU Act (sections 19, 24) provides mechanisms for the FIU to obtain beneficial ownership information from any RI (not just trustee companies) and crown agencies (including the Registrar, FSC, MOJ, BTIB and Tax) regardless of where the location of the information. Relevantly, the BTIB collects beneficial ownership information from any legal person with more than one-third foreign ownership [Cook Is – please provide legislative reference]. There are established mechanisms for agencies to share information amongst themselves.

327. In addition to the FSC (FSC Act – s18, 20), RMD (Tax) (s219, 220), and Police (s96 Criminal Procedure Act, s80 POCA) are also empowered to obtain this information from RIs.

328. There is also a gap in the ability to access beneficial ownership information where a domestic legal person does not hold a bank account or have another relationship with an RI. The likelihood of this scenario taking place is small in the context of the Cook Islands where legal and natural persons have near complete access to the formal banking sector (see Ch 1).

329. *Criterion 24.7* - Under s32(2)(a) of the FTRA 2017 RIs are required to review the information held for the purpose of ongoing CDD to ensure that it is "up-to-date and appropriate" (this is enforceable by substantial penalties in s 63 of the FTRA 2017).

330. *Criterion 24.8* - International legal persons (administered by a trustee company), under s22 of the FIU Act 2015, LTCs who are required to offer services to international legal persons are RIs under the Act. As such, they are required under s27 of that Act to comply with any



request of the FIU (without warrant) to examine the records and inquire into their business and affairs regardless of any secrecy provisions in the relevant legislation under which the international legal person was established. The owner or person in charge of premises must give the FIU or any authorised person all reasonable assistance to enable them to carry out their responsibilities and must furnish them with any information that they may reasonably require with respect to the administration of Parts 2 and 3 of the FIU Act or any regulations made under it.

331. For domestic legal persons, the situation is different. There is no legal requirement that domestic legal persons use a trust company service provider or other RI such as a lawyer or accountant. Domestic legal persons (other than overseas foundations) are required to have resident directors and/or secretaries. But unless those officers are RIs there is no power in the FIU Act to compel their cooperation to provide basic and available beneficial ownership information. Only law enforcement authorities acting under statutory power to compel disclosure of that information could get access to it.

332. *Criterion 24.9* - Section 41 of the FTR Act 2017 requires that all records relating to customers for RIs<sup>43</sup> must be kept for at least 6 years. In addition with respect to legal persons, s 197 of the International Companies Act 1981-82 requires the Registrar to keep records of companies struck-off for a period of 6 years. For LLCs, section 32 of the LLC Act 2008 requires all LLCs to keep records at their registered office for a period of 6 years after the dissolution of the company. For foundations, sections 42 and 43 of the Foundations Act 2012 requires all foundations to keep records at their business address for a period of 6 years after the dissolution of the foundation.

333. In addition all international legal persons are required keep records with their registered Cook Islands agent (LTCs) financial accounts which give a true and accurate record of, and will enable at any time to get the, financial position of the legal entity for a period of 6 years from the date of completion of the transaction:

- Foundations: section 42(2) of the Foundations Act 2012 (as amended by the Foundations Act 2012);
- International Companies: section 113 of the International Companies Act 1981-82 (as amended by the International Companies Amendment Act 2013);
- International Partnerships: section 7A of the International Partnerships Act 1984 (as amended by the International Partnerships Amendment Act 2013);
- International Trusts: section 27C of the International Trusts Act 1984 (as amended by the International Trusts Act 2013);
- Limited liability companies: section 31A of the Limited Liability Companies Act 2008 (as amended by the Limited Liability Companies Amendment Act 2013)

334. Domestic legal persons are obliged under section 151 of the Companies Act 1955 (NZ) to keep books of account which shall be kept full, true and complete accounts of the affairs and transactions of the company. These must be kept at the registered office or such other place that the directors think fit. If there are kept overseas there must be kept in the Cook Islands such accounts and returns as will disclose with reasonable accuracy the financial position of that business in the last six months. Section 328 of the Companies Act 1955 (NZ) sets out that provision may be made by the Registrar to prevent the destruction of all or any of the company's books and papers for a period not exceeding five years.

<sup>43</sup> LTCs are required to register international entities, and are RIs.

**Other Requirements**

335. *Criterion 24.10* - The primary means for competent authorities to obtain beneficial ownership information is through the wide-ranging powers of the FSC (FSC Act – s18, 20). While not specifically related to beneficial ownership, the FSC is able to, for example, seek any information, enter premises, use or cause to be used any computer system from licensed financial institutions (defined to include trustee companies) for the purpose of ensuring compliance with the FSC Act. Importantly, section 15(2) of the FSC Act sets out broad duties for the FSC in relation to review and monitoring of the operation of legislation relating to licensed financial institutions, and assessing the effectiveness of related supervision of such institutions.

336. Further, other competent authorities such as Tax (s219, 220), and Police (s96 Criminal Procedure Act, s80 POCA) are also empowered to obtain this information from RIs. The BITB collects beneficial ownership information under regulation 3(d) of the Development Investment Regulations 1996 whereby every application for registration as a foreign enterprise must include the legal and beneficial shareholding and the names, addresses and passport numbers of all the legal and beneficial owners of the enterprise together with the same details of directors, key management and expatriate personnel.

337. There are established mechanisms for agencies to share information amongst themselves. This is important as it provides each of the competent authorities with access to information available to particular agencies, e.g. FSC and BITB.

338. However, whether the powers of the FIU allow timely access to beneficial ownership information is likely but unclear in legislation. The FIU Act (sections 18, 19, 23 and 24) does provide for information gathering powers but is limited to inquiries made by the FIU directly related to a transaction report (s19(2)(e)) or transactions of an RI (s24). There is no specific duty that allows the FIU to seek information or conduct inquiries unrelated to transaction reports or other listed information. Importantly, however, the definition of a transaction includes monitored transactions, which include opening an account, and actively maintaining an account, creating any form of trust, entering into a trust, nominee or similar fiduciary relationship for the purpose of holding property. Given the FTRA obliges RIs to collect beneficial ownership at the time of creating a customer relationship (see analysis in c10.10 and 10.11), the transaction of opening or maintaining an account or creating a trust may give rise to the FIU's powers to seek information from the reporting entity.

339. *Criterion 24.11* -

340. *International Companies including Registered Listed Companies:* section 35 of the International Companies Act 1981-82 provides that an international company may issue bearer shares (upon incorporation or otherwise). Where an international company issues bearer shares, the company must issue a share certificate in respect of the bearer share endorsed with the word "bearer". In addition, the holder of a registered nominated share may have it re-designated (converted) to a bearer share under s 35. Bearer shares may carry coupons or other rights for dividend payments. Further, bearer share warrants may be issued under section 36.

341. However, under s 35A, issued bearer instruments (bearer shares and bearer share warrants) must be delivered to a custodian and not the person entitled to it. A custodian is defined as a licensed financial institution (sections 2(1) and 35A(1)(a)). A "licensed financial institution" has the same meaning given in s 2(1) of the Financial Supervisory Commission Act 2003, i.e.

- the holder of an international or restricted licence granted under the Banking Act 2011;
- an insurance company licensed pursuant to the Insurance Act 2008;
- a captive insurance company licensed pursuant to the Captive Insurance Act 2013;

- a company licensed under the Trustee Companies Act 2014 to carry on trustee company business.

342. Custodians are, therefore, subject to the general customer due diligence requirements and other obligations imposed by the FTRA 2017. Custodians shall not hold bearer instruments unless the custodian has first received satisfactory evidence as to the identity of the bearer of the bearer instrument. Moreover, a custodian shall not deliver a bearer instrument to any person other than another Custodian or to the international company which issued the bearer instruments for the purpose of surrendering that instrument.

343. If the bearer instrument is to be converted, redeemed or transferred, the Custodian must first acquire evidence of the identity of every person who, as a result, will be paid the redemption proceeds by the international company, or become a registered shareholder or ordinary debenture holder (s35A(2)).

344. A custodian holds bearer shares subject to the directions of the bearer who can direct the custodian in any manner they deem fit.

345. Each year in submitting their annual returns international companies must indicate whether they have issued bearer shares but, importantly, not to whom.

346. *Limited Liability Companies:* Capital is not allocated through share structures hence bearer shares cannot be issued by these legal persons.

347. *Private and overseas companies.* There are no prohibitions in the Companies Act 1970-71 on the issuance of bearer shares. While sections 84 and 87 of the (New Zealand) Companies Act provide that shares in a company must be transferred by the entry of the name of the transferee on the share register, this does not preclude a number of bearer share transfers prior to entry. In effect, a bearer shares issued can change hands a number of times without a request for registration (or redemption of the bearer instrument). Moreover, there are no measures in the Companies Act which restricts or places measures on foreign companies registered under the Act which are permitted in the originating jurisdiction (where they were originally incorporated) from issuing bearer shares under their law in the Cook Islands. There are no measures in the Companies Act to address the risks associated with bearer shares.

348. *Incorporated Societies.* These legal persons cannot issue shares. Bearer shares are therefore not possible.

349. Given the high-risk nature of bearer shares and bearer share warrants, the Financial Supervisory Commission has implemented a policy to actively discourage any licensed trustee company from issuing bearer shares. But this is not binding, and as such has limited effect as a mitigating measure.

350. *Criterion 24.12* - Under the Incomes Tax Act sections 3(3) and (4) where a nominee holds shares, or voting power in a company, or has by any other means whatsoever any power of control of a company, then those shares or that voting power or that power of control shall be deemed to be held by that person, and in every such case that person and the nominee or nominees of that person shall be deemed to be one person. "Nominee" means any other person who may exercise voting power or who holds shares directly or indirectly and includes the spouse.

351. Nominee shareholders and directors are permitted/not prohibited for international companies, registered listed companies, private companies and overseas companies. There are, however, measures in place under section 56 of the FTRA titled 'Concealing identity through nominee or trustee arrangements'. Section 56(1) requires any person dealing with an RI in a trustee or nominee capacity to disclose such status. Section 56(2) then prohibits a person from dealing with an RI in a way that avoids other requirements of the FTRA to identify another person and verify that identity, or in a manner that conceals the identity of the ultimate principal(s) being disclosed where such is required to be disclosed. In this regard, Section

25(2)(d) of the FTRA is relevant as it requires RIs to identify and verify any ultimate principal of the customer. "Ultimate principal" (defined in section 8) captures all natural persons who ultimately own or effectively control the customer.

352. Further, Section 91 of the International Companies Act 1981-82 requires an international company to maintain a register of directors. The nominee is recorded in the register held by the LTC but not the principal. It is a practice to record in the company file held by the licensed trustee company whether a director or shareholder is a nominee and the identity of the nominator. However, there is no explicit legal requirement to enforce the disclosure of the nominator.

353. *Criterion 24.13* - The ability of competent authorities to access basic and beneficial ownership information is largely based on the powers of the FIU and FSC (see c24.10 above). The Part 7 of the FIU Act lists various offences that arise out of failure to appropriately comply with the FIU's directives seeking information. Similarly, section 21 of the FSC Act makes it an offence to fail to successfully comply with any information sought under the FSC Act.

354. Liabilities under the FSC and FIU Acts extend to natural and legal persons but the sanction are not proportionate or dissuasive. The penalties on commission of offences under the FIU Act are NZ\$ 50,000 (US\$ 32,900) and/or two years' imprisonment in the case of a natural person, and a penalty of NZ\$ 100,000 (US\$ 65,830) in the case of a legal person. Under the FSC Act are NZ\$ 20,000 and/or two years' imprisonment in the case of a natural person or legal person.

355. Mitigating measures in respect of bearer instruments and nominee roles lie in the FTRA 2017 and section 63 of that Act sets out the general penalties for offences. They are in the case of an individual a maximum fine of NZ\$ 250,000 (US\$ 164,639) or a term of imprisonment of up to five years (or both) and a fine of NZ\$ 1,000,000 (US\$ 659,680) in any other case (i.e. legal persons). These fines appear to be proportionate to the offences, and if applies at the higher end of the scale, dissuasive.

356. *Criterion 24.14* - Section 23 of the FSC Act 2003 provides broad powers for the Commission to provide assistance to overseas authorities when requested. Assistance may be provided by disclosing information to an overseas authority. There are no restrictions on the kind of information that can be shared. The Commission may take into account the dual legality of the issue being inquired about by the authority and the seriousness of the matter, the importance of the information to the inquiry. The Commission must ensure the overseas authority is subject to legal restrictions around further disclosures and must agree to get the consent of the Commission before any further disclosure is made.

357. Similarly, section 40 of the FIU Act 2015 provides that FIU may assist foreign counterparts. At the request of another counterpart agency, the FIU may (a) conduct an investigation (b) make inquiries. The other counterpart agency must be lawfully engaged, under their respective legislation to investigate financial misconduct. Under this section, the FIU may exercise all powers conferred on it by and under this Act. The Head of the FIU may refer the matter to another counterpart agency (whether in the Cook Islands or in another jurisdiction) if the Head forms the view that the matter is more appropriately dealt with by that other agency. The Head has no obligation to monitor the matter further once it has been referred to that other agency."

358. In addition, a request by a foreign jurisdiction can be implemented by obtaining a Court Order pursuant to the Mutual Assistance in Criminal Matters Act 2003.

359. Information relating to tax matters may also be sought under a Tax Information Exchange Agreement (TIEA) request pursuant to the Income Tax Act 1997. The Cook Islands has entered into 21 TIEAs and all financial institutions undertake FATCA reporting. The Cook Islands is currently establishing its framework for the implementation of CRS scheduled to come online in 2018.

360. While there are broad powers for information sharing with foreign counterparts, there is nothing to evidence that the cooperation provided is 'rapid'.

361. *Criterion 24.15* - While no formal mechanism is in place, the primary authorities in the Cook Islands that make requests demonstrate a practice of recording and analysing the quality of information received. The low numbers of requests made by the Cook Islands translate to ease in monitoring and recalling the quality of assistance received from foreign counterparts. The FIU has made one formal mutual legal assistance request relating to an investigative matter however most requests by the Cook Islands for assistance are made informally via contact networks and the informal requests are actioned in a prompt manner. The FSC regularly makes informal requests for due diligence purposes in licensing and approvals. Most requests are actioned promptly and the information sought is readily provided. The MoJ and the BTIB do not make or regularly receive requests for assistance from outside the Cook Islands. Most requests of either agency typically come from domestic LEAs.

#### *Weighting and Conclusion*

362. There are minor shortcomings related to the lack of a risk assessment of domestic legal persons, public availability of some basic information and the process to access beneficial ownership information, certain recordkeeping requirements and inadequate mitigation of the risks associated with bearer shares and bearer share warrants. **Recommendation 24 is rated largely compliant**

#### ***Recommendation 25 - Transparency and beneficial ownership of legal arrangements***

363. The Cook Islands was rated partially compliant for R 34 in their 2009 MER. The 2009 report noted, among other things, that there were no legal requirements for RIs to ascertain the ultimate beneficial owners/beneficiaries of domestic and international trusts. There were obligations on TCSPs to identify the parties to a trust other than the settlor who is the client of the TCSP. The regime of international trusts establishes a number of ML/TF risks which are not mitigated by other legal measures in Cook Islands' law. The system of central registration of international trusts is not accompanied by other measures to mitigate money laundering and terrorist financing risks and in fact establishes some serious risks that the system could be exploited for these crimes. The regime of international trusts raised concerns in relation to international cooperation and the enforcement of foreign confiscation orders/judgments.

364. The common law of trusts in the Cook Islands is substantially similar to the law of trusts in New Zealand (based on British common law). The Cook Islands also applies New Zealand's Trustee Act 1956 and Trustee Amendment Act 1957.

365. Two general types of trusts can be formed in the Cook Islands:

366. Domestic trusts are governed by the common law applicable in the Cook Islands and the New Zealand Trustee Act 1956 as amended. There is no registration requirement for domestic trusts under the common law and the New Zealand Trustee Act 1956. A trust is valid once settled.

367. International trusts are provided for separately in the International Trusts Act 1984 (and a series of amendments). Common law and the New Zealand Trustee Act 1956 apply to the extent that they are not inconsistent with the Act (s 3). International trusts must be registered by an LTC, under the Act within 15 days of settlement (s 15, 1989 amendment) for them to be valid; the beneficiaries (s 22) must not be resident in the Cook Islands; international trusts must have a registered office (s 18) and a name for the trust displayed at the registered office (s 18(3));

368. *Criterion 25.1* - This criterion has three sub-criteria each of which are discussed separately.

369. (a) and (b) There are no express requirements in legislation in the Cook Islands that require trustees of domestic trusts to obtain and hold adequate accurate and current information on the identity of the settlor, trustee(s), protector, and beneficiaries or class of beneficiaries, and any other natural persons exercising ultimate effective control over a trust, or regulated agents and service providers. However, the Cook Islands relied on a body of case law that founds the common law of trusts with respect to the ‘irreducible core of obligations’ imposed on trustees that cannot be overridden by trust deeds or other directions given to trustees, including the case of *Webb v Webb* (2017) in the Court of Appeal of the Cook.<sup>44</sup>

370. Further, under the *Income Tax Act*, trustees are under a general obligation for tax purposes to maintain information that is necessary, relevant and likely to provide information for purposes of collecting any duty or tax which Collector is authorised to collect (section 219(1)).

371. With respect to international trusts, the registration of an international trust must be arranged through an LTC, which is an RI for the purposes of the FTRA. Under section 25(2)(d) of the FTRA 2017, where a customer is not a natural person, the RI must identify and verify any ultimate principal of the customer and verify the legal status of the customer using relevant information obtained from reliable independent sources, and obtain sufficient information to understand the nature of the customer’s business and control structure. As noted above, “ultimate principal” includes any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership.

372. Further, regulation 6(1) of the FTR Regulations 2017 requires RIs to identify and take reasonable steps to verify any other person having power to direct the customer’s activities, the settlor or any other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed, and any known beneficiaries. Known beneficiaries means a natural person who is entitled to a vested interest in the assets of the legal arrangements, unless there are more than 10 beneficiaries, in which case the RI must obtain sufficient information about the beneficiaries’ characteristics or class to satisfy itself that it will be able to identify and verify the identity of a beneficiary in accordance with the CDD requirements set out in the FTR Act.

373. (c) The FTRA requires information to be kept by professional trustees for a period of six years (s41).

374. *Criterion 25.2* - The fiduciary obligations at common law (see discussion above) extend to maintaining accuracy and currency of the information regarding trusts. With respect to international trustees, while s31(2)(a) of the FTRA requires trustees to conduct on-going CDD and keep CDD information “up-to-date and appropriate”.

375. *Criterion 25.3* - Section 56 of the FTRA requires trustees to disclose their trustee status in establishing a business relationship with RIs, or in conducting an occasional transaction. Further, that section prohibits concealment of that status. With respect to international trustees, s 56(1) of the ITA requires trustees to disclose their status.

376. *Criterion 25.4* - There is no provision in the Cook Islands which prohibits trustees of domestic trusts from providing information to competent authorities or FIs and DNFBPs. Regarding international trusts, sections 23 and 27B of the International Trusts Act 1984 provides that the secrecy provisions (see c9.1), which are inapplicable where:

- the disclosure is required or authorised by a Court of the Cook Islands;
- the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under any Act;
- the disclosure is made as required by or under a search warrant; or

<sup>44</sup> The Cook Islands courts have applied the leading UK case of *Armitage v Nurse* [1998] Ch 241 (CA) in this regard.

- where disclosure is required by the FTRA to competent authorities or other RIs.

377. *Criterion 25.5 - (a)* The due diligence requirements in FTRA 2017 sections 8 and 25; and the FTR Regulations (regulation 5, 6 and 8) require the collection of beneficial ownership information by RIs in relation to customers. Therefore, trustees conducting a transaction for a legal arrangement (see regulation 5(c), FTR Regulations) would disclose information regarding the identification of each 'ultimate principal' to the reporting entity. The definition of the term 'ultimate principal' (see section 8 FTRA 2017) is sufficiently broad to cover beneficial owners.

378. The information collected by RIs can be obtained by competent authorities in a timely manner. The FIU Act (sections 19, 24) provides mechanisms for the FIU to obtain beneficial ownership information from any RI (not just trustee companies) and crown agencies (including the Registrar, FSC, MOJ, BTIB and Tax) regardless of the location of the information. Relevantly, the BTIB collects beneficial ownership information from any legal person with more than one-third foreign ownership.

379. In addition, the FSC (FSC Act – s18, 20), Tax (s219, 220), and Police (s96 Criminal Procedure Act, s80 POCA) are also empowered to obtain this information from RIs.

380. (b) Under regulation 5 of the FTR Regulations, information regarding the residence of the trustee (as a natural person or a legal person) must be collected by the RI as standard due diligence. Further, the competent authorities, particularly the FIU, have broad information-gathering powers in relation to RIs including LTCs (see information above in 25.5(a)).

381. (c) The competent authorities, particularly the FIU, have broad information-gathering powers in relation to RIs including trustee companies, with nothing prohibiting the collection of information regarding assets held or managed by the entity.

382. *Criterion 25.6 -* Authorities may exchange available information domestically on trusts with foreign counterparts. FIU may also share information with foreign counterparts as part of respective functions. Investigative measures to obtain beneficial ownership can be taken upon foreign request. However, there is no information available that the Cook Islands actually does provide rapid cooperation (see R.40 for information sharing arrangements).

383. Beneficial ownership information for international trusts can be obtained for law enforcement purposes or regulatory purposes at the request of a foreign competent authority by the FIU (s40, Mutual Legal Assistance, FIU Act) and FSC (s23, Disclosure to overseas regulatory authority, FSC Act). Beneficial ownership information can also be obtained under the Mutual Assistance in Criminal Matters Act, which will be actioned as an application for production order under sections 79-80 of the POCA. Competent authorities state that these requests are progressed immediately (1-2 days) once they are received.

384. Beneficial ownership information can also be obtained by the Collector for Tax purposes under a TIEA request (sections 86, 220 Income Tax Act). The Cook Islands currently has 21 TIEA's with other jurisdictions. There is no limitation on the RMD with respect to sharing information with a country that does not have a TIEA with the Cook Islands.

385. *Criterion 25.7 -* Section 63 of the FTRA 2017 sets out the general penalties for offences under the Act applicable to RIs, which include trustee companies of international trusts, including a maximum fine of NZ\$ 250,000 (US\$ 164,638) or a term of imprisonment of up to five years (or both) and a fine of NZ\$ 1,000,000 (US\$ 659,680) in any other case (i.e. in the case of legal persons). However, under the Regulations, the scope of this Act is limited by Regulation 4 (Specified activity prescribed). Penalties therefore extend to LTCs for offshore financial entities (Reg 4 (s) (i), (ii), (iii)) or trustees for express (domestic and international) trusts (Reg 4 (s) (iv)). Penalties also extend to any lawyer or accountant creating, operating or managing legal persons or legal arrangements (Reg 4 (t) (ii)). Separately, section 252 of the Crimes Act 1969 sets out the offence of criminal breach of trust in respect of trustees. The penalty is seven years' imprisonment.

386. *Criterion 25.8* - Sections 45, 46 and 47 of the FIU Act 2015 provide for offences relating to non-compliance of the provision of information in relation to international trusts, where most of the risks in the Cook Islands context lie. While there are no specific sanctions in place for failure to grant competent authorities timely access to domestic trust-related information, the competent authorities are able to use their powers under the FTRA, with associated penalties for non-compliance, to procure information about domestic trusts from RIs that have a relationship with the trustee acting on behalf of the beneficiaries (for example through a bank account).

*Weighting and Conclusion*

387. There are minor shortcomings in relation to transparency and beneficial ownership of legal arrangements. As an area of considerable global attention for the Cook Islands, regulation of its trustees, particularly in relation to international trusts, has been enhanced. Notably, the revised FTRA 2017, the adoption of the FIU Act in 2015 and amendments to the International Trusts Act in 2013 contribute to the significant improvements in the Cook Islands' technical compliance in relation to transparency and beneficial ownership of legal arrangements. **Recommendation 25 is rated largely compliant.**

***Recommendation 26 – Regulation and supervision of financial institutions***

388. The Cook Islands was rated largely compliant with former R.23 in its MER 2009. The factors underlying the rating were that no on-site examinations had been undertaken on the insurance sector and that non-bank money changers and the money value transfer operator were not registered or licensed and were not subject to a regulatory regime other than for AML/CFT under the FTRA 2004.

389. *Criterion 26.1* - Section 17 of the FIU Act sets out that the functions of the FIU, which include administering and enforcing the oversight acts, investigating financial misconduct (defined to include ML and TF), and conducting related inquiries, investigations, analysis and enforcement oversight. The FTRA 2017 is an oversight act of the FIU Act and sets out FI's AML/CFT obligations. Furthermore, the FIU is empowered to conduct compliance visits (s21 of FIU Act 2015) on FIs and has powers to enforce FI's compliance (s31 FIU Act 2015).

390. *Criterion 26.2* - All Core Principles financial institutions are licensed by the FSC (section 5 of the Banking Act 2011; section 5 & 6 of the Money Changing and Remittance Businesses Act 2009; section 5 of the Insurance Act 2008 and section 6 of the Captive Insurance Act 2013). The Cook Islands does not have a securities market.

391. Section 29 of the Banking Act 2011, requires a banking licensee to maintain a physical presence in the Cook Islands while operating under a license. The FSC must approve the physical premises to be occupied by a licensee, and approval will not be granted unless the FSC is satisfied that the licensee will carry on banking business under its licence from its fixed address in the Cook Islands and that the premises adequately symbolises the physical presence of the licensee in the Cook Islands. FSC Prudential Statement BPS01 on Bank Licensing sets out that an applicant for a banking license must demonstrate to the satisfaction of the FSC that meaningful mind, management and records of the proposed bank, if approved, will be physically present in the Cook Islands. Therefore, it is not possible to have a bank with no physical presence in the Cook Islands.

392. *Criterion 26.3* - The FSC takes measures to prevent criminals and their associates from holding or being a significant or controlling interest in, or holding a management function in, a financial institution. *Banks:* Section 7 of the Banking Act 2011 sets out criteria for issuing a license, including that the FSC must be satisfied that each officer of the applicant is a fit and proper person and has sufficient experience in banking to be involved with the operations or management of a bank, and that each associate of the applicant is a fit and proper person to have an interest in a bank. An "officer" is defined to include a director, manager or company secretary. An "associate of the applicant" is defined as a person who has a significant interest in



the applicant, is a subsidiary of the applicant or is a holding company of the applicant. A “significant interest” is defined as a person having a legal or equitable interest in the company or in a holding company of that company and the interest directly or indirectly: (i) enables the person to control 10% or more of the voting stock of the company at a general meeting of the company; or (ii) entitles the person to a share of 10% or more in dividends declared and paid by the company; or (iii) entitles the person to a share of 10% or more in any distribution of the surplus of the assets of the company.

393. FSC Prudential Statement BPS06 on Fit and Proper Persons sets out the characteristics, competence and financial integrity required to constitute a fit and proper person. BPS06 provides a wide basis for the regulator to judge fit and proper by setting out criteria that includes if a person has been or are being subject to enforcement action by a supervisor in any jurisdiction, if they have been censured, warned, disciplined or prosecuted by any court (domestic or foreign) within the past 15 years. The prudential standard also considers the source of capital and whether there are questions about applicants’ past or current activities or whether they are acting on behalf of other undisclosed parties. BSP06 allows for the FSC to take criminal records into account and notes that convictions for dishonesty are especially relevant, but the FSC also has regard for other types of offences given the need for the person responsible for managing an FI to be of the highest integrity. While the criteria does not explicitly reference associates of criminals, it allows the FSC to take a broad approach to establish whether the applicant meets the expected high standards of integrity.

394. Section 34 of the Banking Act 2011 gives the FSC the power to remove officers who do not meet the fit and proper conditions specified by the FSC.

395. *Money Changers and Remitters:* Sections 7 and 9 of the Money-Changing and Remittance Business Act 2009 requires the FSC to be satisfied as to the general character of the management of money-charger or remittance provider applicants, and that each director and manager be a fit and proper person. The FSC may at any time vary or revoke any remittance licence conditions or impose new conditions.

396. Sections 12 of the Money-Changing and Remittance Business Act 2009 sets out that the FSC must approve the appointment of directors to a money-changer or remittance licensee.

397. Section 13 of the Money-Changing and Remittance Business Act 2009 sets out that no person shall become a substantial shareholder of the licensee unless he has obtained approval from the FSC.

398. FSC Prudential Statement No.12-2010 on Money-Changing and Remittance Businesses Licensing Requirements, Policies and Procedures sets out the criteria for issuing a licence, which includes the FSC being satisfied that all significant shareholders, directors, officers or manager are fit and proper persons for their respective roles. Prudential Statement No.12-2012 includes competence and character in its assessment of fit and proper persons, and requires police clearances from applicants.

399. *Insurance:* Section 26 of the Insurance Act 2008 specifies that a licensed insurer cannot appoint a director or key functionary without approval by the FSC. The FSC must not grant approval unless it is satisfied that the person concerned satisfies its fit and proper criteria. Section 28 of the Insurance Act 2008 sets out that a person cannot acquire a significant interest in a licensed insurer unless approved by the FSC, which takes into account whether the person satisfies the FSC’s fit and proper criteria.

400. Section 15 of the Captive Insurance Act 2013 sets out that the FSC must approve the appointment of a director to a licensed captive insurer, and in doing so the FSC must be satisfied that the person concerned is a fit and proper person. Section 16 of the Captive Insurance Act 2013 sets out that a person cannot acquire a significant interest in a licensed insurer unless approved by the FSC, which takes into account whether the person satisfies the FSC’s fit and proper criteria. Section 17 of the Captive Insurance Act 2013 states that a licensed captive

insurer must have an approved insurance manager who is either licensed under the Insurance Act or is approved by the FSC upon the FSC being satisfied that the person has the necessary expertise and personnel to effectively carry on the role.

401. Prudential statement No.11.1-2009 on Insurance Licensing Requirements, Policies and Procedures includes competence, honesty, integrity and reputation in its assessment of fit and proper persons, and requires police clearances from applicants.

402. *Criterion 26.4* - Sections 21 and 22 of the FIU Act 2015 empowers the FIU to undertake compliance visits and collect information relating to an RI and its compliance with its obligations.

403. FSC conducts risk-based supervision of its licensed FIs in accordance with the core principles of banking supervision and insurance supervision. The FIU undertakes risk-based AML/CFT compliance monitoring of FI in coordination with the FSC. There is no consolidated group supervision as there are no financial groups with more than one RI currently operating in the Cook Islands.

404. FSC conducts offsite supervision, mainly focused on market entry, for money changers and remittance providers, who are required to reapply for licences annually. Licence applications must be accompanied by financial accounts, compliance declarations and any changes in policies or business activities.

405. *Criterion 26.5* - The FIU conducts risk-based supervision on FIs, with annual on-site compliance visits being undertaken to high-risk FIs. In addition, off-site monitoring, while limited, is also conducted on certain high-risk entities in accordance with their specific risk profile.

406. *Criterion 26.6* - The FIU first assessed the risks posed by FIs during its 2015 NRA. Areas of higher risk were reviewed in 2017 and the Cook Islands intends on releasing an updated NRA in late 2017. While the FIU has been conducting sectorial risk-based supervision since 2015, the FIU is currently developing a Risk Assessment Procedure, which will set out a procedure to assess the reach of each individual FI, as they are currently only assessed by type of FI. There is no evidence to show that the FIU reviews the ML/TF risk profile of an FI or group when there are major events or developments in the management and operations of the FI or group.

### *Weighting and Conclusion*

407. There are minor deficiencies in meeting this recommendation, including that risk profiles of individual FI are not assessed periodically or when a major event or development occurs. **Recommendation 26 is rated largely compliant.**

### *Recommendation 27 – Powers of supervisors*

408. The Cook Islands was rated PC with former R.29 in its MER 2009, with supervisors' powers of enforcement and sanction found to be inadequate.

409. *Criterion 27.1* - Section 3 of the FIU Act 2015 empowers the FIU to administer and enforce certain statutes that concern financial misconduct and to conduct enforcement oversight. Section 21 of the FIU Act empowers the FIU to conduct compliance visits, section 22 empowers the FIU to obtain information relating to an FI and its compliance with any obligations imposed by the FIU Act, and sections 31 and 33 empower the FIU to enforce an FI's compliance. Prior to 2015, the Head of FIU delegated powers to the FSC to undertake on-site AML/CFT compliance visits on FIs and trustee companies, however, this power was rescinded in 2015, with the FIU compliance division now conducting compliance assessment, supported by FSC supervisors when requested.

410. *Criterion 27.2* - Section 21 of the FIU Act 2015 authorises the FIU to undertake compliance visits. The FSC is empowered under s18 of the FSC Act 2013 to enter any premises that contain records relevant to ensuring compliance with the FSC Act 2013.

411. *Criterion 27.3* - Under section 23A of the FIU Act 2015 (as inserted by FIU Amendment Act 2017), the FIU may require an RI to provide information relevant to its compliance with the requirements of the FIU Act 2015 or FTRA 2017. The FIU must give the RI at least 14 working days' written notice when requesting such information or may require an RI to report information to the FIU on a six-month, annual or bi-annual basis in such form required by the FIU.

412. The FSC also has powers to compel information from licensed FIs under section 18(2)(b) and section 20 of the FSC Act 2003.

413. *Criterion 27.4* - The FIU Act 2015 gives the Head of the FIU the power to enforce compliance through:

- (a) issuing a warning
- (b) giving directions to ensure future compliance
- (c) entering into an agreement as to how compliance will be achieved
- (d) seeking orders to apply special powers
- (e) prosecuting or taking any other action authorised under the FIU Act 2015, FTRA 2017, Proceeds of Crime Act 2003 or Mutual Assistance in Criminal Matters Act 2003.

414. As per section 63 of the FTRA 2017, the penalties for offences set out in the FTRA 2017 for an individual is a fine not exceeding NZ\$ 250,000 (US\$ 164,460) or imprisonment for a term not exceeding five years, or both. In other cases (e.g. legal persons) the fine is up to NZ\$ 1,000,000 (US\$ 659,680).

415. As per section 51 of the FIU Act 2015, the fine for offences under the FIU Act 2015 are a fine up to NZ\$ 50,000 (US\$ 32,900) or up to two years' imprisonment or both for individuals and a fine not exceeding \$100,000 in other cases.

416. The FSC is provided powers under the following Acts to suspend or revoke a licence:

- Banks – Section 14 and 20 of the Banking Act 2011
- Captive Insurers – sections 26 & 27 of the Captive Insurance Act 2013
- Insurance Providers – sections 71 & 72 of the Insurance Act 2008
- MVTs Providers – section 18 of the Money Changing and Remittance

417. Section 51 of the FIU Act 2015 and section 63 of the FTRA 2017 set out penalties for offences committed by any person under these respective acts.

418. Some deficiencies noted in R.35 apply here, including that there are no regulations to implement administrative penalties for breaches of the FTRA 2017, there are no penalties for non-compliance with R.18 and that the penalties for non-compliance with R.14 appear non-proportionate and dissuasive.

### *Weighting and Conclusion*

419. There are minor deficiencies in meeting this recommendation, including that some deficiencies identified in R.35 apply. **Recommendation 27 is rated largely compliant.**

### ***Recommendation 28 – Regulation and supervision of DNFBPs***

420. The Cook Islands was rated PC with former R.24 in its MER 2009. The underlying factors related a lack of an effective enforcement framework to ensure compliance and lack of technical training for the staff in understanding the product and services offered by DNFBPs.

421. *Criterion 28.1* - The Gaming Act 2017 prohibits the operation of a gaming house in the Cook Islands, therefore there are no casinos operating in the Cook Islands. Despite this, casinos are however captured as an RI and are therefore technically subject to supervision by the FIU.

*DNFBPs other than casinos*

422. *Criterion 28.2* - The FIU is designated under section 3 of the FIU Act 2015 as the national central unit for administering and enforcing certain statutes that concern financial misconduct and conduct enforcement oversight. It is empowered to conduct compliance visits (s21 of FIU Act 2015) on DNFBPs and has powers to enforce DNFBPs' compliance (s31 FIU Act 2015).

423. *Criterion 28.3* - DNFBPs are subject to risk-based supervision by the FIU, which includes on-site examinations (predominately on higher-risk DNFBPs) and offsite supervisory tools such as compliance questionnaires for lower risk DNFBPs. Furthermore, the FSC regulates licensed trustee companies in accordance with the Group of International Financial Centre Supervisors' (GIFCS) international standard for supervision of trust and corporate service providers, which includes elements of AML/CFT.

424. *Criterion 28.4* - (a) Section 3 of the FIU Act 2015 empowers the FIU to administer and enforce certain statutes that concern financial misconduct and to conduct enforcement oversight.

425. (b) Fit and proper requirements are set out for the principal and compliance officer of trustee companies in section 31 of the Trustee Company Act 2014, which requires the FSC to approve the appointment upon being satisfied that the applicant is fit and proper to be a key person. As set out in section 34, the FSC must approve a person becoming a shareholding controller in a trustee company, upon being satisfied that the person is both fit and proper to be a shareholder controller and is capable and competent to exercise the holding and control. Section 11 sets out the criteria for fit and proper persons for LTCs, which includes honesty, integrity, financial standing, experience and qualifications, and competence.

426. Lawyers admitted to the Bar in the Cook Islands must first be admitted in another Commonwealth jurisdiction and therefore must undergo vetting and admission procedures in that jurisdiction (usually NZ, Australia or Fiji). To be admitted in the Cook Islands, a Cook Islands solicitor and/or barrister must move the application, which must be accompanied by the applicant's legal experience and background as well as a certificate of good standing from the other jurisdiction(s) in which they are admitted. The application is reviewed by the Law Society Council which provides recommendations on the application. It is notified publicly before it is considered, and then approved or declined by the Chief Justice.

427. There are no market entry requirements for real estate agents, accountants, motor vehicle dealers or pearl dealers.

428. (c) As noted in 27.4, Section 51 of the FIU Act 2015 sets out options to deal with non-compliance with the FTRA 2015. This includes prosecution of which the penalty is a fine not exceeding NZ\$ 50,000 (US\$ 32,900) or a term of imprisonment not more than two years for individuals or a fine not exceeding NZ\$ 100,000 (US\$ 65,830) for body corporates.

429. Section 63 of the FTRA 2017 sets out the general penalties for offences committed under this act. They are in the case of an individual, a maximum fine of NZ\$ 250,000 (US\$ 164,618) or a term of imprisonment for a term not exceeding five years, or both, or in any other case, to a fine not exceeding NZ\$ 1,000,000 (US\$ 659,680). The deficiencies identified in R.35 as noted in c.27.4 above are also applicable to 28.4(c).

430. *Criterion 28.5* - The FIU implemented a risk-based supervision model in July 2015 following the release of the 2015 NRA findings. Given the risk posed, the focus of DNFBP supervision is on the offshore financial sector, particularly licensed trustee companies. The

majority of DNFBPs are classified as low risk and on-site supervision is resultantly conducted on a periodic basis.

### *Weighting and Conclusion*

431. There are minor deficiencies in meeting this recommendation, including that there are no market entry requirements for accountants, real estate agents, motor vehicle dealers or pearl dealers and that some deficiencies identified in R.35 are applicable here. **Recommendation 28 is rated largely compliant.**

### *Recommendation 29 - Financial intelligence units*

432. In the 2009 MER, the Cook Islands was rated largely compliant with former R.26. The key factor underlying the rating was the FIU's limited ability to undertake in-depth analysis as a result of issues with the electronic database. Furthermore, the assessment team noted that the FIU had not published or circulated any Annual Reports.

433. *Criterion 29.1* - The FIU was originally established under the MLPA 2000 and is now legislated under section 6 of the FIU Act 2015. The FIU is housed within the FSC. Subpart 2 of the FIU Act 2015 sets out the functions, duties and powers of the FIU. Section 18 sets out the duties of the FIU, which include to 'receive and analyse transaction reports and information, and distribute information and reports to the relevant authorities in the Cook Islands.' Section 17 of the FIU Act 2015 gives the FIU the power to investigate financial misconduct and to conduct related inquiries, investigations, analysis and enforcement oversight. The FIU also receives currency declaration reports under the Currency Declaration Act 2015-2016. The FIU is a hybrid FIU which has administrative, law enforcement, and supervisory functions.

434. *Criterion 29.2* - FIU is mandated under Section 18(2)(a) of the FIU Act 2015 to be the central agency to receive transaction reports which include suspicious activity reports (SARs). Section 47 of the FTRA 2017 sets out the obligation for RIs to submit SARs to the FIU. Section 48 of the FTRA 2017 requires RIs to report suspicious activity relevant to a person identified by an RI as a person of interest. Section 49 of the FTRA 2017 requires a supervisor or auditor of an RI to report suspicious activity to the FIU.

435. The FIU is mandated under Section 18(2)(a) of the FIU Act 2015 to be the central agency to receive transaction reports which include a currency report, any other report, declaration or return that relates to a transaction and is made in accordance with an oversight act. Part 4 of the FTRA 2017 states the obligation for RIs to submit to the FIU any cash transaction reports (CTRs) and electronic fund transfer reports (EFTRs). The FIU also receives border currency reports under Part 2, Section 7(4) of the Currency Declaration Act 2015-2016.

436. *Criterion 29.3* - (a) Section 19(2)(e) of the FIU Act 2015 allows the FIU to obtain information from an RI that the FIU needs to analyse a report that the FIU has received. The FIU is able to obtain and use additional information from any RI that might hold relevant information, not just the RI that submitted the particular STR, which is set out in Part 3 of the FIU Act 2015.

437. Section 30 of the Terrorism Suppression Act 2004 obligates RIs to advise the Solicitor-General about the existence of any property that is in the RI's possession or control that is owned or controlled by a terrorist group. RIs must further report to the FIU any activity that they undertake for any person or entity where the RI has reasonable grounds to suspect that such activity may relate to the commission of a terrorism-related activity.

438. (b) Section 18 (2)(e) of the FIU Act (amended by FIU Amendment Act 2017) gives the FIU powers to obtain information from a ministry, department or agency of the Crown that the FIU needs to analyse a report the FIU has received. Cook Islands FIU has MOUs and information sharing arrangements with domestic partner agencies and foreign counterpart FIUs. In relation to domestic coordination and exchange of information/intelligence, the FIU has MOUs with the FSC, the Cook Islands Police Service, the Department of Customs of the Cook Islands and the

Ministry of Justice. The FIU does not have online or direct access to any databases of other law enforcement or Government authorities. The FIU can also access information that is publicly available, including commercially available databases or information that is collected or maintained by the Government.

439. *Criterion 29.4* - The FIU conducts operational analysis pursuant to the legal provisions under the FIU Act 2015. Subpart 2, Section 18(2) of the FIU Act 2015 states that the FIU must receive and analyse transaction reports and carry out any investigation needed as a result of that analysis. The FIU distributes the information/reports to relevant authorities in the Cook Islands. Furthermore, Section 19(2)(e) of the FIU Act 2015 allows the FIU to obtain information from an RI that the FIU needs to analyse a report that the FIU has received. Section 18 (2)(e) of the FIU Act (amended by FIU Amendment Act 2017) gives the FIU powers to obtain information from a ministry, department or agency of the Crown that the FIU needs to analyse a report the FIU has received.

440. Operational analysis is based on information received from RIs and other information available to the FIU which is disseminated to law enforcement agencies. In practice, the FIU analyses suspicious activity reports and other relevant information provided by RIs and authorities. The FIU Policy & Procedures for the Receipt and Processing of SARs provides a broad overview framework for conducting Tactical analysis. Part 7.4 of the FIU Investigation Manual 2017 lists down the procedures for undertaking operational/tactical analysis.

441. Sections 19(2)(f) and (h) of the FIU Act 2015 allow the FIU to conduct research into trends and developments in financial misconduct and to educate the public and create awareness on matters relating to financial misconduct. Part 7.5 of the FIU Investigation Manual 2017 sets out the procedures for undertaking strategic analysis. The FIU has published a trends, typologies and case studies report called the Cook Islands Typologies Report 2016. Cook Islands stated that a standard operating procedure on strategic analysis is under development and that the FIU intends to work with Customs to undertake a strategic assessment of trade-based money laundering. The FIU does not conduct comprehensive strategic analysis, which may affect the Cook Islands' understanding of emerging ML/TF trends and risks.

442. *Criterion 29.5* - Sections 18(2)(e) and (g) of the FIU Act 2015 allows the FIU to distribute and disseminate (with necessary restriction) information and reports received, and statistics and analyses derived, from the information and reports. Section 54 of the FIU Act 2015 and the FIU Information & System Protection Policy 2015 provides guidance on the transmission and dissemination controls to ensure dedicated and secure channels for dissemination of FIU information and intelligence.

443. The FIU follows the Egmont Group of FIU's Principles for information exchange between FIUs.

444. *Criterion 29.6* - Section 54 of the FIU Act 2015 addresses this criterion. The FIU Information & System Protection Policy 2015 contains procedures to govern the security and confidentiality of information, including procedures for handling, storage, dissemination and protection of, and access to, information.

445. Section 54 (4) of the FIU Act 2015 states that the Head of the FIU must ensure that every employee, contractor and any other person acting on behalf of the FIU takes a confidentiality oath.

446. The FIU Information & System Protection Policy 2015 contains procedures, necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information. All staff recruited by the FIU undergo criminal background checks and are required to sign a confidentiality agreement which sets out clear procedures in relation to the protection of FIU information.

447. The FIU Information & System Protection Policy 2015 provides a section on access to information including demarcation of access levels to specific information. All financial and personal information held by the FIU is maintained in a stand-alone, secure database, and hard copies of reports are kept in secure storage. The FIU has five drives which are backed up daily. The back-up is stored on a separate server at the FIU and a physical copy is kept in the FIU's safe. Another backup copy is kept in a fire-proof safety deposit box off-site. The FIU strongly discourages the use of laptops to store any sensitive data and has only one official laptop which is held by the Head of the FIU.

448. *Criterion 29.7* - In 2012 the FIU was merged with the FSC for administrative purposes. The Head of FIU is accountable to the Board of the FSC, however, section 7 of the FIU Act 2015 specifically provides that in intelligence, investigative and related operational matters the FIU operates independently of the FSC. The FSC, along with the FIU, is independent of core government processes and operates independently of public funding. The Head of FIU sets the FIU budget based on the needs of the FIU and provides the required budget figure to the Board of the FSC, which instructs the FSC Commissioner to allocate this budget to the FIU accordingly. A board policy paper titled "Board policy directions for the Head FIU relating to operational independence" clearly specifies the operational independence of the FIU.

449. Sections 38 and 39 of the FIU Act 2015 empower the FIU to engage independently with other authorities.

450. As noted above, while the Head of FIU is accountable to the Board of the FSC, section 7 of the FIU Act 2015 provides that in intelligence, investigative and related operational matters, the FIU operates independently of the FSC.

451. Section 7 of the FIU Act 2015 sets out that the FIU acts independently of the FSC in intelligence, investigation and related operational matters. The FIU is able to obtain and deploy the resources needed to carry out its functions to ensure operational independence from the FSC.

452. *Criterion 29.8* - The FIU has been a member of the Egmont Group since 2004.

#### *Weighting and Conclusion*

453. There are minor deficiencies in meeting R.29, being that the FIU does not conduct comprehensive strategic analysis, which may affect the Cook Islands' understanding of emerging ML/TF trends and risks. **Recommendation 29 is rated largely compliant.**

#### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

454. The Cook Islands was rated partially compliant with former R.27 in 2009. The 2009 ME noted that the Cook Islands had not used the opportunities presented to conduct ML prosecution. There was also a lack of knowledge and understanding observed in the application of the POCA 2003 by both the CIP and CLO. Greater skills in the area of financial investigation were sought by the assessment team to build sustainable long-term capability in this area. Further, the ME recommended a closer relationship between the CIP and the FIU to ensure timely and effective responses to reported suspicious financial activity.

455. *Criterion 30.1* - The CIP is the primary law enforcement agency for the investigation of ML/TF offences within the Cook Islands as the administering agency of the Crimes Act. The CIP is mandated under the Police Act 2012 to investigate all offences under laws of the Cook Islands. Section 7(1)(c), (d) and (f) of the Police Act 2012 specifically provides it is a function of the CIP to conduct law enforcement, crime prevention and national security. However, no specific mention is made of ML/TF or predicate offences. Further, in section 7(2) the Police Act clarifies that the listed functions of the Police do not affect the powers, functions or other duties of any agency other than the Police.

456. Under the FIU Act 2015, the FIU has amongst its functions 17(2), the investigation of 'financial misconduct' and is also a supporting agency for the investigation of ML/TF. Under section 4 of the FIU Act, the term 'financial misconduct' is defined to include misconduct relating to ML, acts of TF and PF. Section 19(2) provides the FIU with specific powers to investigate any suspected financial misconduct. Therefore, while the CIP is the primary investigating agency, the FIU is also a designated authority to ensure ML/TF is properly investigated.

457. The Revenue Management Division of the Ministry of Finance and Economic Management also undertakes financial investigations for all tax matters, including tax evasion and in most cases, prosecutes their own cases.

458. Broadly, the CIP, FIU and CICS all participate in the Combined Law Enforcement Agency Group (CLAG). The objective of this group is to share information to enhance the delivery of law enforcement through a multi-agency approach. The CIP, FIU and CICS are also all members of the Cook Islands Financial Intelligence Network (CIFIN) which has a more focused mandate to address specific operational objectives.

459. *Criterion 30.2* - The CIP is the primary law enforcement agency for the investigation of ML/TF offences and can pursue ML/TF offences whether or not during a parallel financial investigation. While the FIU is not the law enforcement investigator of predicate offences, section 19(2)(b) of the FIU Act empowers the FIU to investigate any suspected financial misconduct that comes to its attention. Further, section 19(2)(a) gives the FIU all powers necessary to carry out its duties, which include financial analysis (see section 18(2)). Further, the CIP seeks the assistance of the FIU where appropriate in the investigation of ML/TF, and predicate offences through their Memorandum of Understanding or the exchange of information/intelligence and the provision of operational support.

460. Other law enforcement investigators can refer cases to the CIP to follow up with the investigation of any related ML/TF offences.

461. Whilst there is nothing to prevent the CIP from undertaking parallel financial investigations, the practice is for CIP to refer the matters to FIU for financial investigation.

462. *Criterion 30.3* - While not a specific designation as such, Part 3 of the POCA grants the CIP the ability to search and seize evidence for the purposes of restraining or forfeiting proceeds.

463. Further, under the FIU Act 2015, the FIU has the power:

- to instruct RIs to either proceed with the transactions in a particular way or hold off proceeding with the transaction for a period of not more than 28 days (section 34);
- to segregate the money (including interest) in an interest-bearing account controlled by the Financial Supervisory Commission or take steps to make sure that money (and any interest) is not paid out; transferred; or allowed to pass out of the custody and control of that RI for a period of not more than 60 days (section 35 refers).

464. Powers are also granted to Customs under the Customs Revenue and Border Protection Act 2012 (Part 14) to conduct investigations and to seize anything found on or about a person when carrying out a search (s 191) or goods suspected to be tainted property (s209).

The Ministry of Marine Resources is empowered to undertake investigations into illegal fishing activities (sections 46-52 of the Marine Resources Act 2005-07), including powers of entry and search, powers to question persons and require production of documents, power of arrest, power to use reasonable force and take copies of documents, and powers of seizure. However, this does not specifically extend to financial investigations.

465. *Criterion 30.4* - The Audit Office is not a law enforcement agency and cannot undertake criminal investigations, but it may undertake investigations into misuse of public resources including (a) misuse of public funds and resources by public officials; (b) purchase and tender



irregularities; (c) financial mismanagement; (d) conflicts of interest; and (e) misuse of government assets. These are not criminal investigations but financial investigations. However, if the Audit Office considers a criminal offence has been involved or committed, the matter is then referred to the CIP for further investigation. The Audit Office has no authorisation to identify, trace, freeze and seize property.

466. The Office of the Public Expenditure Review Committee and Audit also undertakes audits, investigations (including financial investigations) and inquiries into matters referred to it by the Public Expenditure Review Committee and Audit. It has no authorisation to identify, trace, freeze and seize property.

467. *Criterion 30.5* - The Cook Islands Anti-Corruption Committee has been designated by Cabinet to be a policy-making body, it is not empowered or authorised to undertake investigations or prosecutions. The Public Expenditure Review Committee and Audit is also not empowered or authorised to undertake criminal investigations. There is no other specific anti-corruption enforcement authority. The FIU and CIP have the mandate to investigate corruption and financial misconduct.

#### *Weighting and Conclusion*

468. Other competent authorities (the Audit Office), which are not LEAs do not have the ability to expeditiously identify, trace, freeze and seize property. **Recommendation 30 is rated largely compliant.**

#### ***Recommendation 31 - Powers of law enforcement and investigative authorities***

469. The Cook Islands was rated largely compliant with former R.28. The 2009 MER found that a number of relevant powers are available in various laws including the POCA, but the effectiveness of the powers has not been tested.

470. *Criterion 31.1* - The CIP is the primary competent authority for conducting investigations of ML/TF and predicate offences. Other agencies that conduct investigations into ML/TF and predicate offences are the FIU, Customs, the Revenue Management Division of the Ministry of Finance and Economic Management and the Ministry of Marine Resources.

471. The CIP has the power to apply for production orders, to search people in police custody and to seize tainted property or terrorist property under the Proceeds of Crime legislation (sections 35-47, 78-86 of the Proceeds of Crime Act 2003 as amended by the Proceeds of Crime Amendment Act 2004).

472. Under the POCA, a Judge can issue production orders requiring any person (natural and legal, including FIs and DNFBPs) to produce documents to a police officer (sections 79-80). The CIP has authority to apply to the Court for a production order to seize and obtain records as they relate to property-tracking documents pursuant to section 79 of the POCA. However, the production orders only apply to persons convicted of a serious offence or suspected of having committed a serious offence. Notably, ML/TF and almost all predicates fall within the category of 'serious offence'.

473. Further, the CIP may apply for search warrants, warrants to seize property and an order for the taking of evidence of any person under the Police Act (section 50) and the Criminal Procedures Act 1980-81 as amended by the Criminal Procedure Amendment Act 2000 (sections 32-35, 96, 117A). Sections 50, 53 and 54 of the Police Act 2012 provide the circumstances in which a person may be searched. Section 50 provides for general power to search persons in police custody. Sections 53 and 54 are limited to circumstances in which a person is suspected of having firearms, restricted weapons or explosives. There are certain other provisions which provide specific search powers in relation to searching persons such as those contained in the Narcotics and Misuse of Drugs Act 2004. Any person can be summoned to appear in any criminal proceeding other than the wife of an accused who, although competent, cannot be compelled to give evidence against that accused. The CIP has an investigation manual (best

practice manual) which sets out the procedures for taking witness statements, obtaining statements from witnesses outside the Cook Islands, and interviewing suspects.

474. The primary information gathering tool for the CIP includes conducting searches of places (including financial institutions) and seizing any relevant records that relate to any criminal matter including ML/TF investigations or prosecutions (section 96 of the Criminal Procedures Act 1980-81 refers). Section 96(3)(c) of the Criminal Procedures Act 1980-1981 provides the police with the authority to seize anything where there are reasonable grounds to believe that it amounts to evidence concerning the commission of an offence. In addition, sections 53-54 of the Police Act 2012 also provide the CIP with powers to seize evidence in limited circumstances such as in relation to suspected firearms, restricted weapons or explosives and in cases of great emergency where immediate action is required.

475. These powers are supplemented by powers granted to the FIU, which is mandated to detect and investigate financial misconduct, under the FIU Act 2015, including powers to obtain information, entry and search of premises by warrant, retain records, obtain records and accounts of communications, enforce compliance by RIs, (sections 19, 22-29 and 31-33 of the FIU Act 2015). Part 3 of the FIU Act 2015 (as amended by the FIU Amendment Act 2017) sets out the powers of the FIU to obtain information from RIs without first having to apply to a Court.

476. Extensive powers are also granted to Customs under the Customs Revenue and Border Protection Act 2012 (Part 14). Under Part 14 of the Customs Revenue and Border Protection Act 2012, Customs officers are empowered to conduct a wide range of actions to obtain access to necessary documents and information for use in investigations and to seize anything found on or about a person when carrying out a search (s 191) or goods suspected to be tainted property (s209). Sections 202 and 203 specifically provides for the Comptroller to make requisition to produce documents and to require any person (including any officer employed in or in connection with any banks) to produce documents and answer questions.

477. The Revenue Management Division of the Ministry of Finance and Economic Management is empowered under the Tax Acts (Income Tax Act 1997 & Value Added Tax Act 1997) to investigate tax matters and under the Customs Revenue and Border Protection Act 2012 to investigate customs matters.

478. The Ministry of Marine Resources is empowered under the Marine Resources Act 2005 to investigate marine resources and related matters. It has the powers of entry and search, powers to question persons and require the production of documents, power of arrest, power to use reasonable force and take copies of documents and powers of seizure (Part 5 of the Marine Resources Act 2005). Under part 5 of POCA, the Solicitor-General may direct the disclosure of any information held by any government department (despite any other law) if that information has relevance to establishing whether an offence has been or is being committed or for the making or proposed or possible making of forfeiture or pecuniary penalty orders. Such a provision permits the use of taxation information in proceeds of crime matters.

479. Additional powers relating to the monitoring of accounts (Monitoring Orders, Part 4) and the search and seizure of "tainted property" (used to commit a serious offence or the proceeds of a serious offence) are also contained within the POCA.

480. *Criterion 31.2* - The powers relevant to this criterion are largely held by CIP and FIU. There are also limited explicit provisions that grant power to other competent authorities that investigate ML/TF and predicate offences, e.g. TSA empowers Customs and Immigration officials. At the operational level, the Combined Law Agency Group (CLAG) can be instigated at any time by the CIP for any multi-agency efforts required for any operational matters such as investigations, undercover, monitoring or surveillance.

### Undercover operations

481. Section 65 of the Police Act 2012 provides powers to the CIP to undertake undercover operations in relation to offences with a term of imprisonment of one year or more.

482. The CIP has the ability to undertake static surveillance (and has done so in respect of predicate offending) but does not have the capability to undertake mobile surveillance. There is nothing in law that prohibits such activities, though there are issues of resources and limitations associated with the practicalities (such as undercover operations) of undertaking such techniques in such a small jurisdiction.

### Intercepting communications

483. The CIP may apply for warrant to intercept private communication where there are reasonable grounds for believing that any member of an organised criminal group is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence of the kind referred to in section 109A(2) of the Crimes Act 1969 (section 96A of the Criminal Procedure Act 1980-1981 as amended by the Criminal Procedure Amendment Act 2003).

484. Sections 28 and 29 of the FIU Act 2015 allow the FIU to retain and obtain the records and accounts of a person's communications if that person is under investigation for financial misconduct. The FIU has successfully applied for real-time transcripts in the past under section 28 of the FIU Act 2015.

485. Section 58 of the Narcotics and Misuse of Drugs Act 2004 empowers the police to apply for a warrant to intercept private communications for drug-related predicate offences.

### Accessing computer systems

486. Section 96 of the Criminal Procedure Act 1980-81 allows the CIP to access computer systems in order to obtain evidence.

487. Section 80 of the Proceeds of Crime 2003 allows a Judge to make production orders enabling a police officer to access information in the form of computer files, including receiving passwords from persons subject to the order and using any computer software necessary to access documents in the form of computer files.

### Controlled delivery

488. Controlled delivery is only available in relation to terrorism and drugs, and in a limited way in the work of the FIU.

489. Section 31 of the Terrorism Suppression Act 2004 (TSA) permits any constable, customs official or immigration official who has reasonable grounds to believe that a person has committed or is about to commit an offence against the TSA to undertake a controlled delivery of property. Section 31 (2) of the TSA allows property believed to have been used or is being or may be used to commit an offence under the TSA to enter, leave or move through the Cook Islands for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence. There has been no need to utilise these provisions to date.

490. Section 43 of the Narcotics and Misuse of Drugs Act 2004 allows for the controlled delivery of unlawfully imported drugs by a proper officer of Customs acting in the course of his official duties whilst section 43 allows the use of tracking devices by CIP and Customs officers

491. The FIU, under section 34 of the FIU Act 2015, may instruct RIs to act in a certain way in relation to financial transactions where the Head of FIU suspects the transaction or intended transaction relates to financial misconduct.

492. *Criterion 31.3 -*

*To identify, in a timely manner, whether natural or legal persons hold or control accounts*

493. The FIU serves as the mechanism to identify assets held or controlled through Part 3 of the FIU Act 2015 (Powers of the FIU to obtain information). In terms of the collection of relevant information, the Financial Transactions Reporting Regulations 2017 provide that an RI must obtain identification information for a legal person or a legal arrangement, including identification information on each “ultimate principal” (ultimately owns or effectively controls) and any natural person acting on behalf of the legal person or legal arrangement, as the case may be [Regulation 5]. Further, there are additional due diligence requirements for legal arrangements and foundations that the RI must also identify and take reasonable steps to verify any known beneficiaries, which means a natural person who is entitled to a vested interest in the assets of the legal arrangement or foundation [Regulation 6].

494. Further, section 25 of the Financial Transactions Reporting Act 2017 requires an RI to establish, maintain and operate standard procedures to ensure it conducts customer due diligence before entering into an ongoing business relationship or an isolated transaction with or on behalf of a customer, on (a) a customer and (b) a person acting on behalf of a customer. When a customer is not a natural person, the RI must, *inter alia*, identify and verify any ultimate principle (1 or more natural persons) of the customer (section 8 of the Financial Transactions Reporting Act 2017).

*To ensure that competent authorities have a process to identify assets without prior notification to the owner*

495. *Ex parte* production orders can be made under the Proceeds of Crime Act 2003 (section 79). Further, the FIU Act 2015 grants the FIU the inherent power to obtain information directly from an RI.

496. Section 38 of the Money Laundering Prevention Act 2000 criminalises tipping-off conduct.

497. *Criterion 31.4 -* Sections 38-40 of the FIU Act 2015 establishes a framework for the FIU to share information and cooperate with other competent authorities (whether in the Cook Islands or foreign) by providing information or conducting an investigation at their request.

*Weighting and Conclusion*

498. A comprehensive set of powers, with minor gaps in relation to requirements under R.31, is granted in relation to investigations of ML/TF and predicate offences to the CIP, FIU and Customs authorities. There is less explicit provision of powers for other competent authorities to investigate predicate offences relevant to their portfolios (e.g. Tax, MMR). **Recommendation 31 is rated largely compliant.**

***Recommendation 32 – Cash Couriers***

499. The Cook Islands was rated partially compliant with former SR.IX in its 2009 MER. The deficiencies included an absence of policy for the implementation of cross-border reporting legislation; cross-border reporting only relating to carriage by an individual, and not extending to all forms of physical cross-border movement of currency and BNIs; negligible levels of reporting and detection of false or failed declarations; and no coverage of precious metals and stones in the reporting requirements. The Cook Island has since implemented new legislation, the Currency Declaration Act 2016.

500. *Criterion 32.1 -* There is a declaration system in place for cross-border movement of currency under the Currency Declaration Act 2016. For the purpose of the Currency Declaration Act 2016, ‘currency’ covers, *inter alia*, paper money, coin money, collector’s coin money, bearer negotiable instruments, precious metal, precious stone, natural pearls, cultivated pearls,

jewellery of any sort, mixed currency and postage stamps. The obligation to declare currency covers travellers, mail and cargos (section 7 of the Currency Declaration Act 2015)

501. According to section 7 of the Currency Declaration Act 2016, a person must make a truthful declaration in the prescribed form:

- each time the person enters the Cook Islands with currency;
- each time the person leaves the Cook Islands with currency;
- each time the person sends currency out of the Cook islands by postal service, by courier service, on or aboard any craft or by any other prescribed means; and
- each time the person receives currency out of the Cook Islands by postal service, by courier service, on or aboard any craft or by any other prescribed means.

502. *Criterion 32.2* - Section 7 of the Currency Declaration Act 2016 sets out a written declaration system for all travellers entering or leaving the Cook Islands with currency and all senders and recipients of currency. The declaration form identifies the threshold as \$10,000 or more. It is an offence under section 24 of the Currency Declaration Act 2016 if a person knowingly or recklessly makes a currency declaration that is false, misleading or incomplete in a material particular.

503. *Criterion 32.3* - The Cook Islands has a declaration requirement, in a prescribed form, for incoming and outgoing travellers and for currency sent or received across Cook Islands' borders (section 7).

504. *Criterion 32.4* - Section 9 of the Currency Declaration Act 2016 provides that an authorised officer, (customs officer, police officer, the Head of FIU or a delegate of the Head of FIU) may question a person who enters or leaves the Cook Islands with currency of any value, whether or not the officer has reasonable grounds for suspecting a breach of the Currency Declaration Act 2016, in respect of one or more of the following:

- whether or not the person is entering or leaving the Cook Islands with currency of any value;
- the value of any currency the person is carrying; and
- if the currency has a value that is or exceeds the minimum amount, details of its source, its ownership, its acquisition, its intended use, its intended destination and unlawful conduct that relates in any way to the currency.

505. Section 25 makes it an offence to refuse or fail to provide information upon request (except if it relates to the privilege against self-incrimination under section 9) or provide a response that is false.

506. *Criterion 32.5* - It is an offence under section 24 of the Currency Declaration Act 2016 to knowingly or recklessly make a currency declaration that is false, misleading, or incomplete in a material particular. According to section 29 of the Currency Declaration Act 2016, the penalty for an individual is a fine not exceeding NZ\$ 20,000 (US\$ 13,155) or imprisonment of a term not exceeding two years, or both, and the penalty for a legal entity is a fine not exceeding NZ\$ 50,000 (US\$ 32,900).

507. The fines and term of imprisonment appear dissuasive in their quantum. However, it is not clear if they are proportionate given there is no link to the amount undeclared.

508. *Criterion 32.6* - A copy of all declarations made under section 7 of the Currency Declaration Act 2016 must be submitted by border control agencies (customs) within 24 hours to the FIU (section 7(4) of the Currency Declaration Act 2016 refers).

509. *Criterion 32.7* - In addition to the referral of border declarations to the FIU (see analysis for c32.6), the Customs authorities can conduct targeted operations based on

intelligence from other competent authorities, including immigration. Customs also has a Memorandum of Understanding with the Cook Islands Port Authority and the Airport Authority.

510. Under Part 14 of the Customs Revenue and Border Protection Act 2012, a customs officer can question persons and employees and he or she may do so on the basis of intelligence received from other competent authorities.

511. *Criterion 32.8* - Under section 10 of the Currency Declaration Act 2016, an authorised officer may exercise the powers of search if he or she has reasonable grounds for suspecting that the search may disclose one or more of (a) currency of any amount if the currency is recoverable currency or any person intends to use the currency for unlawful conduct; (b) currency that has not been truthfully declared as required by section 7 and that has a value that is equal to or exceeds \$10,000 or has a lesser value, but appears to be distributed currency; (c) currency that is the proceeds of financial misconduct, has been or is being used in financial misconduct or is intended or allocated for use in financial misconduct; and (d) undeclared currency.

512. An authorised officer is also empowered to seize and detain such currency (where it exceeds NZ\$ 10,000 (US\$ 6,590)) under sections 11 and 13 of the Currency Declaration Act 2016. Section 11 of the Currency Declaration Act 2016, provides the grounds for seizure of currency if an authorised officer has reasonable grounds to suspect any currency in a person's possession is 'recoverable currency', intended for unlawful conduct, has not been truthfully declared (and is a value exceeding the NZ\$ 10,000 (US\$ 6,590) or currency equivalent threshold), is proceeds of or being used in financial misconduct, or is allocated for use in financial misconduct, then the currency may be seized and then detained. Notably, the Currency Declaration Act 2016, adopts the definition of "financial misconduct" provided under the FIU Act 2015.

513. Further, recoverable currency is defined very broadly to include currency obtained through unlawful conduct (section 5 of the Currency Declaration Act 2016) so consideration obtained through all ML/TF predicates (except trafficking of arms) criminalised is covered.

514. *Criterion 32.9* - A copy of all declarations made under section 7 of the Currency Declaration Act 2016 must be submitted by border control agencies (customs) within 24 hours to be FIU and retained by Customs (section 7(4) of the Currency Declaration Act 2016). The FIU is able to provide assistance to its international counterparts under section 40 of the FIU Act 2015.

515. *Criterion 32.10* - Part 5 of the Customs Revenue and Border Protection Act 2012 deals with access to and use of information about border-crossing goods, persons and craft, and Part 14 of the same governs the powers of Customs officers. Further, section 363(2) of the Customs Revenue and Border Protection Act 2012 provides that Customs may for certain purposes collect, use or disclose information for, among other purposes, prevention, detection, investigation, prosecution and punishment of offences that are punishable by imprisonment.

516. Section 363(3) further provides that if the information is personal information and is disclosed by Customs to an agency, body or person for a purpose specified in section 363(2), then the agency, body or person is authorised to obtain and collect that information for that purpose but may keep, use or disclose that information to another enforcement agency with the approval of Customs.

517. The Public Service Act 2009 also provides that every employee and every head of department of the Cook Islands Public Service must, in the course of their employment, use official information only for official purposes (section 22 and Schedule 4). Corrupt use of official information is an offence under section 116A of the Crimes Act 1969 (as amended by Crimes Amendment Act 2003).

518. There is no provision relating to trade payments between countries for goods and services or the freedom of capital movement.

519. *Criterion 32.11* - A person who commits an offence against the Currency Declaration Act 2016 or regulations made under it is liable, on conviction, to a fine not exceeding NZ\$ 20,000 (US\$ 13,155) or imprisonment of a term not exceeding two years, or both, for an individual, and a fine not exceeding NZ\$ 50,000 (US\$ 32,900) for a legal entity. The fines and term of imprisonment appear dissuasive in their quantum. However, it is not clear that they are proportionate given there is no link to the amount undeclared. The detained currency may be forfeited if it has been or is intended to be used in unlawful conduct (Part 4 of the Currency Declaration Act 2016).

#### *Weighting and Conclusion*

520. It is unclear whether all the information required for effective international cooperation is retained and shared between agencies. Further, there is no relationship between the quantum of the penalty and the amount of currency involved in the breach, which makes it difficult to conclude that the penalties are proportionate. **Recommendation 32 is rated largely compliant.**

#### *Recommendation 33 – Statistics*

521. The Cook Islands was rated partially compliant with former R.32 under the 2009 MER. The following deficiencies were noted: inability to generate year-by-year statistics for CTRs, EFTRs, lack of statistics regarding informal international cooperation, some uncertainty as to completeness/accuracy of statistics for formal international cooperation.

522. *Criterion 33.1 – (a)* Statistics on STRs (received and disseminated) are maintained by FIU and published in the FSC Annual Report. Under section 18(2) of the FIU Act it is one of the duties of the FIU to compile statistics and records relating to compliance with the oversight acts (section 18(2)(f)) and to make such statistics and records available to third parties (section 18(2)(g)).

523. (b) Statistics on ML/TF investigations, prosecutions and convictions are maintained by the FIU of the Crown Law Office.

524. Under section 18(2) of the FIU Act it is one of the duties of the FIU to compile statistics and records relating to compliance with the oversight acts (section 18(2)(f)) and to make such statistics and records available to third parties (section 18(2)(g)).

525. The Cook Islands has recorded nil prosecutions for ML. There are no TF investigations, prosecutions or convictions in the Cook Islands, which is consistent with the 2015 NRA Findings that there *remains no evidence of any person or group operating in the Cook Islands for the purpose of raising funds, or undertaking any transaction to fund, any terrorist person, group or activities.*

526. (c) Statistics on freezing instructions exercised are maintained by the Crown Law Office.

527. (d) Statistics on mutual legal assistance or other international requests for cooperation made and received are maintained by the Crown Law Office. LEAs do not collect and maintain statistics on police to police international cooperation.

#### *Weighting and Conclusion*

528. Statistics of some aspects of international cooperation between LEAs are not maintained. **Recommendation 33 is rated largely compliant.**

**Recommendation 34 – Guidance and feedback**

529. In the 2009 MER, the Cook Islands was rated largely compliant with former R.25. The assessment team noted that guidelines providing information on methods and trends were not issued to the insurance sector. There was also no evidence of general or specific feedback being provided by the FIU to the insurance sector in respect of STRs.

530. *Criterion 34.1* - Section 18(2)(h) & (i) of the FIU Act 2015 provides that the FIU has specific duties to “issue guidelines to reporting institutions” and “to provide feedback, at its discretion, regarding outcomes in cases that relate to the reports or information obtained by or under this Act”. The phrase “by or under” is defined in section 4 of the FIU Act 2015 as referring to oversight Acts, which include the FTRA 2017. Section 65 of the FTRA 2017, the FIU, in consultation with the FSC, may publish practice guidelines of applying AML/CFT measures to RIs. The FTRA 2017 and the FTRA 2017 Regulations are accompanied by comprehensive practice guidelines on their implementation.

531. Industry-specific guidelines have been made available to DNFBPs for further guidance. Information sheets and workshops on both the FTRA 2017 and Currency Declaration Act 2016 are also to be made available to all financial institutions and DNFBPs. The FIU has run in-country workshops for RIs to assist with the identification of ML trends both domestically and internationally, risk assessments and implementation of the FTRA 2017. Guidelines have also been disseminated by the FIU for the FTRA 2004, the most recent being issued in 2015. FIU has provided Financial Transactions Reporting Guidelines to the RIs in 2008. Guidance on implementation of suspicious reporting by Cook Islands’ reporting institutions is covered in the FTRA Practice Guidelines 2017 as well as each sector’s specific guidelines.

532. The FIU has noted that the quality of feedback provided on STRs could be improved.

**Weighting and Conclusion**

533. There are explicit requirements for establishing guidelines and providing feedback and the FIU have provided some guidelines and feedback to RIs in practice. The quality of feedback provided by FIU on STRs could be improved. **Recommendation 34 is rated largely compliant.**

**Recommendation 35 – Sanctions**

534. The Cook Islands were rated partially compliant for the previous R.17 in the 2009 MER on the grounds that section 31 of the Financial Transactions Reporting Act 2004 (FTRA 2004) and criminal sanctions provided elsewhere in the FTRA 2004 did not provide effective, proportionate or dissuasive sanctions for failure to comply with AML/CFT requirements.

535. *Criterion 35.1* - The primary sanction for failure to adhere to AML/CFT requirements is criminal penalties of up to five years’ imprisonment and a fine of NZ\$ 250,000 (US\$ 164,605) for natural persons, or a fine of NZ\$ 1 million (US\$ 658,389) for non-natural persons (s63 FTRA 2017). For non-natural persons, the maximum penalty is dissuasive when viewed in the context of the size and profitability of financial institutions in the Cook Islands.

536. The following criteria are explicitly sanctioned by reference to section 63 of the FTRA 2017: R.10 (excluding 10.16, 10.19), R.11, R.12, R.13, R.15, R.16 (excluding 16.17, 16.18), R.17, R.19, R.21, R.22 and R.23 (excluding 23.2). R.9, R.10 (10.16 and 10.19 only); and R.16 (16.17(a) only) is indirectly sanctioned by reference to provisions that provide explicit offences tied to section 63. Non-compliance with R.18 is not subject to penalties under s63 of the FTRA 2017 due to a drafting issue that omits an offence clause from ss12-17 of the FTRA 2017, and this issue extends to DNFBPs per criteria 23.2.



FATF Recommendation/Criteria	Offence in FTRA 2017 tied to section 63 penalties
9	Section 59 provides that no other obligation to secrecy or restriction on disclosure of information may inhibit the imposition of sanctions for non-compliance with the FTRA.
10.1-10.15	Sections 25(4), 28(3), 29(4), 31(4), 32(4), 54 (3)
10.16	Section 33 provides a requirement enforceable under section 25(4)
10.17-10.18	Sections 27(6), 29(4)
10.19	Section 30 provides requirements enforceable under Sections 25(4), 27(6), 28(3), 29(4), 32(4) or 47(3).
10.20	Section 47(3)
11	Sections 41(4), 42(3), 43(5), 44(4)
12	Section 31(4)
13	Section 40(5)
15	Section 20(3)
16.1-16.16	Sections 29(4), 37(6), 38(3), 39(5), 41(4)
16.17(a)	Failure to use all relevant information is enforceable under s32(4)
17	Section 34(5)
19.1	Sections 29(4), s40(5)
19.2	To the extent countermeasures are imposed by s29 they may be enforced under s29(4)
20	Sections 47 and 48
21.2	Section 53(7)
22	Same provisions as R.10, 11, 12, 15, 17 for all DNFBPs
23.1, 23.3-23.4	Same provisions as R.19, 20, 21 for all DNFBPs

537. Sanctions for non-compliance with R.6 and criterion 16.18 include maximum criminal penalties of 20 years (individual) and/or NZ\$ 1 million fine (US\$ 659,680) (other cases) (ss12-13 CTPA 2017), which are dissuasive and proportionate to the predicate offence of terrorism financing (also ss12-13 CTPA 2017).

538. Sanctions for non-compliance with R.14 include maximum retrospective criminal penalties of two years and/or NZ\$ 5,000 (US\$ 3,292) fine (ss5-6 Money-changing and Remittance Businesses 2009).

539. Other relevant criminal offences include penalties for failure to comply with monitoring and supervision of AML/CFT requirements spanning R.6 and 8 to 23 of a maximum of two years and/or NZ\$ 50,000 (US\$ 32,900) (for an individual) or NZ\$ 100,000 (US\$ 65,830) (for non-individuals) (s51 FIU Act 2015). When considered in context with offences provided by the FTRA 2017 and administrative powers to enforce compliance, these sanctions are proportionate. However, they may not be dissuasive in light of the lucrative nature of ML in a transnational context and have no application to historical offending prior to the issuance of directions by the FIU. The Crimes Act 1969 also provides a generic criminal offence (s118) for “wilfully omitting” to do an act that is required by law where no penalty or punishment is expressly provided in that law (such as ss12-17 of the FTRA 2017). The offence attracts a maximum penalty of one year’s imprisonment for an individual; there is no prescribed maximum penalty for a legal person, although a Court may at its discretion impose a fine (s108(3) Criminal Procedure Act 1980-81). With respect to the requirements of R.18 and

criterion 23.2, penalties under s118 of the Crimes Act are not proportionate or dissuasive and the requirement under s118 to prove wilful omission hampers the practical application of this sanction of breaches of ss12-17 FTRA 2017.

540. Besides criminal sanctions, the FTRA 2017 also provides for administrative penalties of up to NZ\$ 1000 (US\$ 658) for breaches of the FTRA 2017 (section 64 of the FTRA 2017) however, regulations to implement this regime have not been made. It is plausible these regulations could apply penalties to ss12-17 of the FTRA 2017 if made. Other administrative penalties to enforce the requirements of R.6 and 8 to 23 include section 31 of the Financial Intelligence Unit Act 2015 (FIU Act 2015) which gives FIU effective powers to make and enforce directions (e.g. issue warnings, give directions, enter into agreements as to how compliance will be achieved, seek orders) for post-hoc remediation of compliance breaches of the FTRA 2017 or CTPA 2017. Upon application by FIU, a court may make orders to enforce non-compliance with a direction as it sees fit, with contempt of such orders punishable by a penalty of up to NZ\$ 1000 (US\$ 658) per day of non-compliance. The power to withdraw, restrict or suspend licenses is generally provided to the respective regulators of licensed financial institutions and NPOs as discussed under criterion 35.2.

541. No effective sanctions are currently available for non-compliance with R.8 due to the coverage gap assessed for criterion 8.3 above.

542. *Criterion 35.2* - To the extent that the FTRA 2017 provides offences as assessed in Criterion 35.1 above, section 62 of the FTRA 2017 provides that directors or officers of legal persons who hold knowledge of, or reckless disregard for, contraventions of the FTRA 2017 may be liable for conviction. Because the liability of directors relies upon offences in the FTRA 2017, directors and officers are not criminally liable for contraventions of R.8, R.18 or R.23 (Criterion 23.2) due to gaps discussed earlier. Directions under section 31 of the FIU Act 2015 in the course of monitoring compliance for R.6 and 9 to 23 may be enforced by court order directed to named officers, employees or agents of an RI (section 33 of the FIUA 2015).

543. Administrative powers to remove, suspend or disqualify directors or senior management are generally provided to the respective regulators of licensed financial institutions and NPOs. AML/CFT non-compliance is not listed as an explicit ground for the removal of a license, however, license suspension and cancellation is explicitly provided as a penalty for money laundering (s280A(6)-(7) Crimes Act 1969) and other grounds such as practices that are unsound (s20(1)(a)(ii) Banking Act 2011) or against the public interest (s71(1)(a)(ii) Insurance Act) or in breach of law (s10(1)(a)(b) Trustee Companies Act 2014).

### *Weighting and Conclusion*

544. The implementation of the FTRA 2017 has improved the proportionality and dissuasiveness of sanctions for a range of AML/CFT deficiencies but gaps remain for deficiencies relating to R.8, R.18 and R.23. Of most concern, the FTRA 2017 provides no criminal or civil sanction for historical offending in breach of ss12-17. The Cook Islands is yet to implement administrative penalties for breaches of the FTRA 2017. **Recommendation 35 is rated partially compliant.**

### *Recommendation 36 – International instruments*

545. In the 2009 MER, the Cook Islands was rated LC under the former R.35 and SRI. Under both R35 and SRI relevant articles were largely implemented, but had some technical deficiencies.

546. *Criterion 36.1* - The Cook Islands is a party to the Vienna Convention since 23 May 2005, the Palermo Convention since 3 April 2004, the Merida Convention since 16 November 2011 and the Terrorist Financing Convention since 3 April 2004.

547. *Criterion 36.2* - Cook Islands has implemented the Terrorist Financing Convention through the CTPA and its amendment in 2017. The Vienna and Palermo Convention has been

implemented through the Crimes Act. According to the 2014 Report of the Implementation Review Group of the Cook Islands under the Merida Convention, the Merida Convention is implemented through the Crimes Act, the Police Act, the Secret Commission Act, the Constitution, Financial Transaction Reporting Act, the Financial Intelligence Unit Act, the PERCA, the Public Service Act, the Ministry of Finance Economic Management Act, and the Proceeds of Crime Act.

548. The various pieces of legislation referred to above implement almost all the provisions of these conventions. There are minor gaps which are described here:

- Article 10 (International cooperation and assistance for transit states) of the Vienna Convention;
- Article 25 (Assistance to and protection of victims), Article 26 (Measures to enhance cooperation with law enforcement authorities) and Article 30 (Other measures: implementation through economic development and technical assistance) of the Palermo Convention;
- Article 16 (Bribery of foreign public officials and officials of public international organizations) and Article 50 (Special investigative techniques) of the Merida Convention; and
- Article 9 (Detection of suspects) of the TF Convention.

549. For these provisions, the assessment team has not been provided with any evidence that relevant Cook Islands legislation is in place to implement the obligations.

#### *Weighting and Conclusion*

550. The Cook Islands has ratified all the relevant conventions and has implemented most of its obligations. **Recommendation 36 is rated largely compliant.**

#### *Recommendation 37 - Mutual legal assistance*

551. In the 2009 MER the Cook Islands was rated LC for each of the former R36 and SR.V. In relation to R36 there were deficiencies in the offence provisions and the consequent applications of the Proceeds of Crime Act could limit effectiveness. In relation to SR.V, it was identified that the broad range of assistance that was available, was subject to dual criminality and any deficiencies in the offence provisions.

552. *Criterion 37.1* - The Mutual Assistance in Criminal Matters Act (MACMA) provides the legal basis for the provision of mutual legal assistance in criminal matters to all foreign countries, regardless of an MLA treaty. A 'criminal matter' is defined as an offence against a provision of law in the Cook Islands or of a foreign country, in relation to acts or omissions which would constitute an offence under Cook Islands law if they had occurred in the Cook Islands, and for which the maximum penalty is imprisonment for a term of not less than 12 months or a fine of more than NZ\$ 5,000 (US\$ 3,292). There is a minor gap in relation to arms trafficking which is not included as a predicate offence. The MACMA allows for assistance relating to the taking of evidence and production of documents and other articles, search and seizure of evidence, arrangements for persons to give evidence or assist investigations, custody of persons in transit, and assistance regarding proceeds of crime.

553. *Criterion 37.2* - Under sections 6 and 7 of the MACMA, the central authority for the transmission and execution of mutual assistance requests (MARs) is the Attorney-General (head of the CLO), and such requests are then referred to the Solicitor-General and CLO to review for legality and purpose, and implementing the request, including submitting it to the Courts where required. The Cook Islands receive MARs through its Ministry of Foreign Affairs or the CLO, and then it is referred to the Crown Law Office to action the appropriate response. The MAR is dealt with under the normal case management system of the CLO.

554. *Criterion 37.3* - Section 9 of the MACMA sets out the grounds for refusing a request for mutual assistance. The Attorney-General may refuse the request in whole or in part, on the ground that to grant the request would likely prejudice the sovereignty, security or other essential public interest of the Cook Islands, or, after consulting with the relevant authority of the foreign country, postpone the request, in whole or in part, on the grounds that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands. These are not unreasonable or unduly restrictive conditions to prohibit or subject requests.

555. *Criterion 37.4* - There is no provision in section 9 of the MACMA to refuse a request on the ground that the offence involves fiscal matters or due to secrecy or confidentiality requirements on financial institutions or DNFBPs.

556. *Criterion 37.5* - Section 61 of the MACMA prohibits the intentional disclosure of information which is the subject of a mutual assistance request.

557. *Criterion 37.6* - Dual criminality is a requirement under the definition of a 'criminal matter' in section 3 of the MACMA, and there are no exceptions for requests that do not involve coercive actions.

558. *Criterion 37.7* - The dual criminality test provided under the definition of 'criminal matter' under section 3 of the MACMA does not require the same category of offence, or to denominate the offence by the same terminology. It assesses the alleged conduct of the person to determine whether, if the relevant act or omission had occurred in the Cook Islands, it would be an offence attracting a maximum penalty of 12 months' imprisonment or a fine of NZ\$ 5,000 (US\$ 3,293).

559. *Criterion 37.8* - Sections 11 to 16, and 18 to 20 of the MACMA provides specific powers for the production, search and seizure of information, documents or evidence (including financial records from financial institutions), or other natural or legal persons, and the taking of witness statements. Sections 30 to 33 provide for a prisoner or person in custody in the Cook Islands to be taken to a foreign jurisdiction to give evidence.

#### *Weighting and Conclusion*

560. There are minor shortcomings in relation to the requirement of dual criminality where no coercive actions are involved and the gap in relation to arms trafficking which is not included as a predicate offence. **Recommendation 37 is rated largely compliant.**

#### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

561. In the 2009 MER, the Cook Islands received an LC rate for the former R38.

562. *Criterion 38.1* - Section 18 of the MACMA allows the Cook Islands to respond to a request from a foreign country to search and seize anything which is located in the Cook Islands that is relevant to the investigation or proceeding in a foreign country. Section 38 of the MACMA gives the Attorney-General the authority to apply for the registration of a foreign forfeiture order in relation to a serious offence, against property that is believed to be in the Cook Islands, or a foreign pecuniary order, in relation to a serious offence, if some or all of the property available to satisfy the order is believed to be located in the Cook Islands, and if the Attorney-General is satisfied that a person has been convicted of the offence and the conviction and the order are not subject to further appeal in the foreign country.

563. The Attorney-General may also apply to the Courts under section 38(3) of the MACMA to register a foreign restraining order against property that is believed to be located in the Cook Islands.

564. Under section 3 of the MACMA, the definition of 'serious offence' in section 3(1) of the Proceeds of Crime Act is adopted and used in the MACMA, as meaning any offence which is punishable for not less than 12 months or the imposition of a fine of more than \$5,000. ML

offences, predicate offences and TF offences are serious offences. There is a minor gap in relation to arms trafficking which is not included as a predicate offence.

565. Section 3 of the MACMA also adopts the definition of 'property' in section 3(1) of the Proceeds of Crime Act which "includes money and all other property, real or personal, whether situated in the Cook Islands or elsewhere, including an enforceable right of action and other intangible or incorporeal property". This covers laundered property, proceeds, instrumentalities and instrumentalities intended for use in ML offences, predicate offences or TF offences. However, there is no coverage of 'property of corresponding value'.

566. *Criterion 38.2* - The MACMA and the POCA provide for non-conviction-based confiscation. Section 15 of the Proceeds of Crime Act 2003 provides that the Solicitor-General may, within six months of a person absconding, or when a person dies, apply to the Court for a forfeiture order for any tainted property. However, it is not clear that this provision extends to requests by a foreign government. There is no provision to deal with a situation when the perpetrator is unknown or has died.

567. It is, however, possible for the Cook Islands to accept requests for restraining orders, a related provisional measure to confiscation, on the basis of section 45 of MACMA. The Attorney-General may, in response to a request, apply to the Court for a restraining order under POCA against property for a serious offence if a proceeding has commenced, or is likely to commence, in a foreign country in relation to property that is located in the Cook Islands, and may be made or is about to be made subject to a foreign restraining order.

568. *Criterion 38.3* - Under section 102 of the POCA, the Attorney-General can appoint an Administrator to administer any property that is restrained or forfeited, including disposing of such property. The Cook Islands can enter into arrangements with the relevant authority from the foreign jurisdiction on a case-by-case basis in liaison between the Solicitor-General, as the delegated authority from the Attorney-General, and Police, and if necessary the FIU.

569. *Criterion 38.4* - Section 40(3) of the MACMA provides for the Attorney-General to enter into an arrangement with a foreign country to share with that country the amount forfeited under a registered foreign forfeiture order or paid under a registered foreign pecuniary order.

### *Weighting and Conclusion*

570. There is a minor gap in relation to arms trafficking which is not included as a predicate offence. There is also no coverage of 'property of corresponding value' in the authority provided in response to foreign requests to identify, freeze, seize or confiscate property. **Recommendation 38 is rated largely compliant.**

### *Recommendation 39 – Extradition*

571. In the 2009 MER, the Cook Islands received an LC rating for the former R39.

572. *Criterion 39.1* - Extradition in the Cook Islands is provided under the Extradition Act 2003. ML/TF are extraditable offences under section 5 whereby an extraditable offence is any offence which is punishable by a term of imprisonment of 12 months or more, or the imposition of a fine of more than NZ\$ 5,000 (US\$ 3,292), and if the conduct that constitutes the offence, if committed in the Cook Islands, would constitute an offence, however described, in the Cook Islands by death or imprisonment for not less than 12 months or the imposition of a fine of more than NZ\$ 5,000 (US\$ 3,292).

573. The Cook Islands has not provided any evidence of a case management system, however, CIP has General Instructions applied in relation to extradition matters. These set out the procedures for Police to follow where extradition of an offender is sought from another country or where a country has requested extradition of an offender from the Cook Islands. There have been fewer than two cases of extradition over the last 15 years and so extradition requests are managed on a case-by-case basis.

574. The Extradition Act provides that a request must first be an extraditable offence (see above, section 5) and made by an 'extradition country'. The definition of an extradition country (section 4) is broad and includes any Commonwealth country, a South Pacific country, a treaty country or a comity country declared by regulations or by the Attorney-General.

575. Section 19(2) of the Extradition Act provides that an extradition may be refused if it is of a trivial nature, there has been considerable passage of time since the person is alleged to have committed the offence or to have become unlawfully at large, or the accusation against the person is not made in good faith, and in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to extradite, and the person is charged or convicted of an offence not punishable by death in the Cook Islands but that person could be or has been sentenced to death for that offence in the country which made the request for the return. These are not unreasonable or unduly restrictive conditions on the extradition requests.

576. *Criterion 39.2* - Section 62 of the Extradition Act provides for the extradition of Cook Islands nationals at the discretion of the Attorney-General. Under section 62(2) of the Extradition Act, the Cook Islands can refuse an extradition request if the person is a national of the Cook Islands, however, section 62(1) of the Extradition Act allows the Cook Islands to prosecute and punish such a person even though the offending act took place outside the Cook Islands, and such conduct of the person amounts to or is equivalent to an offence under a law in force in the Cook Islands.

577. *Criterion 39.3* - Dual criminality is required for an extradition request to be considered. Section 5(1)(b) of the Extradition Act provides that conduct of the offence determines whether such conduct constitutes an offence under Cook Islands law, however described. Section 5(2) of the Extradition Act further provides that in determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct.

578. *Criterion 39.4* - The Cook Islands has simplified extradition mechanisms in place for consenting persons who waive formal extradition proceedings. A request is received directly or indirectly by the Attorney-General, who then submits it to the Court for a provisional arrest warrant. The Attorney-General then issues an authorisation to proceed with the request, and the accused is then arrested and given an option to consent to be extradited. If no consent is provided by the accused, then extradition proceedings are instigated in the High Court to determine whether the accused can be extradited to the requesting country. The accused and the Crown can appeal against any decision of the High Court. If the Courts determine that an accused person can be extradited, then the Attorney-General has the final authority to approve the extradition of the accused.

### *Weighting and Conclusion*

579. **Recommendation 39 is rated compliant.**

### ***Recommendation 40 – Other forms of international cooperation***

580. The Cook Islands was rated largely compliant with former R.40 and SR.V. The assessment team noted that it had insufficient information about the effectiveness of the mechanisms in place.

581. *Criterion 40.1* - Provisions exist in various pieces of legislation, including the FTRA, the FSC Act, the TSA and the Extradition Act, which permit competent authorities to offer international cooperation. In addition to the information provided in response to requests, CIP and Customs engage in international cooperation through regional bodies such as the Pacific Transnational Crime Network and the Oceania Customs Organisation.

582. The broad functions of the CIP include participation in authorised regional and international policing outside the Cook Islands (section 7 of the Police Act 2012). In this capacity, it participates in the Forum Regional Security Committee of the Pacific Islands, the Pacific Transnational Crime Network and Pacific Transnational Crime Coordination Centre

(including access to Interpol). Commissioner-to-commissioner requests for assistance are also common. CIP's maritime police also participate in the joint fisheries and law enforcement operations under the Niue Treaty between members of the Pacific Islands Forum Fisheries Agency.

583. The Ministry of Marine Resources is a member of the Forum Fisheries Agency from which the Forum Fisheries Agency Vessel Monitoring System operates to provide intelligence to all members regarding fishing activity across the Pacific. It is also an active member of treaty-based regional fisheries management organisations under the United Nations Fish Stocks Agreement.

584. The FIU is a member of the Association of Pacific Island Financial Intelligence Units and has signed 11 MOUs with other FIUs (sections 38-40 of the FIU Act 2015). Further, the FIU is a member of the Egmont Group and is able to cooperate with other FIUs through that forum.

585. The FSC is a member of the Association of Financial Supervisors of Pacific Countries, Group of International Financial Centres, Group of International Insurance Centres (section 23 of FSC Act 2003, section 53(4) of the Banking Act 2011, section 9 of Insurance Act 2008 and section 25 of the Captive Insurance Act 2013). It has signed MOUs with the Group of International Financial Centres, Australian Prudential Regulation Authority for Australian and New Zealand Supervisory College and the Bank of Papua New Guinea for the Bank South Pacific Supervisory College.

586. The Cook Islands is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and also a member of Convention on Mutual Administrative Assistance in Tax Matters. A total of 21 tax information exchange agreements have been signed with different jurisdictions (section 86 of the Income Tax Act).

587. Customs is also a member of the Pacific Transnational Crime Coordination Centre and the Oceania Customs Organisation. It facilitates the exchange of information through these networks.

588. While the Cook Islands appears to have agencies that are connected and responsive in terms of cooperation with international partners, there is no evidence to suggest that such cooperation is provided on a spontaneous basis (without a formal request).

589. There is a small gap in relation to arms trafficking which is not included as a predicate offence.

590. *Criterion 40.2 -*

*Have a lawful basis for providing cooperation*

591. The FIU, FSC, CIP, Customs and Tax authorities within the Cook Islands have a lawful basis for providing international cooperation across legislative instruments.

592. Under section 39 of the FIU Act, the FIU can disclose a report or information that relates to 'financial misconduct'<sup>45</sup> under previously established or spontaneously agreed terms and conditions. The term does not extend to all predicate offences (e.g. arms trafficking), however, the most significant acts in the Cook Islands' context are included.

593. The FSC is granted broad discretion under section 23 of the FSC Act to disclose information to overseas regulatory authorities.

594. A similar discretion is granted to the Comptroller under the Customs Revenue and Border Protection Act (section 361).

<sup>45</sup> The term 'financial misconduct' is defined under section 4 of the FIU Act to include misconduct relating to ML, fraud involving cross-border financial transactions, acts of TF and PF, bribery and corruption and tax evasion. Through oversight Acts, the term financial misconduct extends the ambit of FIU powers to matters under the MACMA, POCA and FTRA.

595. In addition to formal mutual assistance, section 34 of the Terrorism Suppression Act 2004 (TSA) enables the Solicitor-General (SG) to disclose information relating to terrorist groups and terrorist acts in certain circumstances.

596. Where a foreign country determines to prosecute in lieu of extradition, section 63 of the Extradition Act 2003 also provides that the Attorney-General (by his delegate, the SG) can provide the foreign country with all the available evidence to support the prosecution.

597. Section 86 of the Income Tax Act 1997 also provides that the Minister responsible for Finance and Economic Management may, from time to time, enter into agreements for relief from double taxation and the exchange of information with the Government of any country or territory outside the Cook Islands (contracting state).

*Be authorised to use the most efficient means to cooperate*

598. There is nothing to prevent the competent authorities from employing the most efficient means of cooperating, except for the limitations in the cooperation competent authorities are able to provide under legislation, as detailed above.

*Have clear and secure gateways, mechanisms or channels that will facilitate and allow for the transmission and execution of requests*

599. The FIU uses the Egmont Secure web channel as a primary means of international exchange. Information gained through this channel is treated under the FIU Act 2015 as confidential information. The CIP uses secured channels such as the PTCCC and Interpol for secured information exchange. Other competent authorities such as Customs use secured email systems for the transmission and execution of requests.

*Have clear processes for safeguarding the information received*

600. Section 60 of the Mutual Assistance in Criminal Matters Act 2003 restricts the use of information sent to the Cook Islands by a foreign country and section 61 prohibits the disclosure of any requests for international assistance without the approval of the Attorney-General.

601. *Criterion 40.3* - The standard practice for entering into a Memoranda of Understanding or cooperation agreements for all law enforcement agencies is for the head of the agency to negotiate and agree upon the terms of the arrangement. These Memoranda of Understanding and cooperation agreements need to be approved by the Cabinet prior to their endorsement unless the cooperation relates to the arrangement of a specific investigation which can be approved by the head of the agency.

602. The Cook Islands has a wide range of bilateral and multilateral agreements to allow international cooperation. This includes 21 bilateral Tax Information Exchange Agreements in place with various countries and a number of regional agreements such as the Pacific Transnational Crime Network for Police, Egmont Group, ARIN-AP, Oceania Customs Network, Pacific Islands Law Officers Network and the Pacific Islands Police Chief network.

603. *Criterion 40.4* - There are no legal restrictions for the law enforcement agencies to provide feedback to its counterparts when so requested. However, there is no documented legal or policy basis that evidences the ability to provide such feedback in a timely manner or systems in place for the provision of feedback. The Cook Islands has provided the assessment team with assurances that the provision of feedback is routine, and is certainly provided in instances where it is requested.

604. *Criterion 40.5* - The provisions (detailed above) that provide the legal basis for international cooperation by competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance, and do not refuse requests for assistance on any of the four grounds listed in c40.5. The primary concern in responding to a



request is the relevance of the information to an investigation or prosecution or to financial misconduct generally.

605. It is, however, noted in the Memoranda of Understanding with the UAE FIU, the New Zealand FIU, the Papua New Guinea FIU, the Republic of the Philippines FIU, the Fiji FIU and the Vanuatu FIU that there is no obligation to give assistance if judicial proceedings have already been initiated concerning the same facts as the request, regardless of whether assistance would impede the judicial proceedings.

606. *Criteria 40.6* - Sections 38 and 39 of the FIU Act 2015 governs the information sharing arrangements with third parties and counterpart agencies. There is a limitation on the information that the FIU can share. The FIU must have reasonable grounds to believe it would be relevant to the investigation or prosecution of financial misconduct.

607. Section 23 of the FSC Act 2003 sets out the ambit of information that can be disclosed by FSC to an overseas regulatory authority. The permission of FSC must be sought for disclosure of information to any third party or use of information for other purposes.

608. Sections 361-363 of the Customs Revenue and Border Protection Act 2012 govern the disclosure of information overseas, information that may be disclosed and the collect, use and disclosure of certain information by Customs.

609. Section 7 of the Income Tax Act 1997 (as amended by the Income Tax Amendment Act 2017) requires the Collector and every other officer of the Revenue Management Division to maintain and aid in maintaining the secrecy of all matters that come to his or her knowledge in the performance of his or her official duty.

610. Section 53(4) of the Banking Act 2011 provides that information must not be disclosed to a law enforcement authority or a foreign supervisory authority unless the Financial Supervisory Commission is satisfied that (a) the law enforcement authority or foreign supervisory authority is subject to adequate legal restrictions on further disclosure; and (b) the information disclosed is reasonably required by the law enforcement authority or foreign supervisory authority for the purpose of its regulatory or law enforcement functions.

611. *Criteria 40.7* - Generally, confidentiality obligations are in place for public servants (the Public Service Act 2009 and employees of FIU (section 54 of the Financial Intelligence Unit Act 2015), FSC (section 22 of the Financial Supervisory Commission Act 2003), RMD ((section 7 of the Income Tax Act 1997) and Customs (section 363 of the Customs and Revenue and Border Protection Act 2012). Corrupt use of official information is an offence under section 116A of the Crimes Act 1969 (as amended by Crimes Amendment Act 2003).

612. Further, section 60 of the Mutual Assistance in Criminal Matters Act 2003 protects the confidentiality of material sent to the Cook Islands by a foreign country. Under section 61, it is an offence to intentionally disclose (a) the contents of a request for international assistance made by a foreign country under the Mutual Assistance in Criminal Matters Act 2003, the fact that a request has been made; or the fact that a request has been granted or refused.

613. The Cook Islands FIU has signed a Memoranda of Understanding on information exchange concerning ML/TF with its counterparts which ensures that intelligence exchanged is subject to the confidentiality provisions under these memoranda.

614. While on-site, the assessment team had the opportunity to visit the office of the Cook Islands FIU, which has a secured facility to store and maintain information, including requests for cooperation and the information exchanged.

615. *Criterion 40.8* - The FIU is empowered by the mutual legal assistance provisions set out in section 40 of the FIU Act 2015 to conduct an investigation or make inquiries on behalf of counterpart agencies. In addition to the FIU, the FSC and the CIP also handle inquiries relating to AML/CFT on behalf of their foreign counterparts and exchange with their foreign counterparts

all information that would be obtainable by them if such inquiries were being carried out domestically.

616. The Cook Islands Police are able to make inquiries on behalf of foreign police if such a request is received through the Pacific Transnational Crime Coordination Centre, Interpol or other informal networks. Other competent agencies are also able to conduct inquiries on behalf of and exchange information with their counterparts through their respective regional law enforcement networks.

*Exchange of Information Between FIUs*

617. *Criterion 40.9* - The FIU has lawful authority under Part 6 of the FIU Act 2015 to conduct an investigation or to make inquiries at the request of another counterpart agency in respect of financial misconduct provided the other counterpart is lawfully engaged to investigate financial misconduct. As discussed in c40.2, there is a possibility that the term 'financial misconduct' does not extend the powers of the FIU to exchange information relating to all predicate offences. However, the most significant acts in the Cook Islands' context are included.

618. *Criterion 40.10* - There is no specific requirement for the FIU to provide feedback to foreign counterparts. The assessment team has no information to indicate that providing feedback is practice within the FIU.

619. *Criterion 40.11* - The legal basis for information sharing with a counterpart agency is found in section 39 of the FIU Act 2015, which empowers the FIU to share information to its counterpart agencies even without a Memorandum of Understanding. There are no restrictions with respect to the information that can be shared.

620. The FIU has also signed Memorandum of Understanding on information exchange concerning money laundering and terrorist financing with its counterpart FIUs in Fiji, the Republic of the Philippines, New Zealand, Papua New Guinea, UAE and Vanuatu

*Exchange of Information Between Financial Supervisors*

621. *Criterion 40.12* - Section 23(1) of the FSCA allows the FSC to disclose to any overseas authority any information, including information relating to the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority. However, under subsection (4) the FSC must be satisfied before a disclosure is made that the intended recipient authority is subject to adequate legal restrictions on further disclosures, which shall include the provision of an undertaking of confidentiality; the FSC has received an undertaking from the recipient authority to not, without the consent of the FSC, disclose the information provided; the FSC is satisfied that the assistance required by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's lawful regulatory functions, including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and, the FSC is satisfied that the information provided will not be used in criminal or other proceedings against the FSC or any other person providing the information.

622. *Criterion 40.13* - The FSC is allowed under section 23(1) to exchange with foreign counterparts information domestically available to the FSC. While it is not clear whether such information includes information held by financial institutions, there is no explicit limitation to sharing such information.

623. *Criterion 40.14* - The FSC is allowed under section 23(1) to exchange regulatory information, prudential information and AML/CFT information.

624. *Criterion 40.15* - The FSC Act does not expressly allow the FSC to conduct inquiries on behalf of foreign counterparts. Section 19(1) of the Banking Act (BA) permits the FSC, upon

request of a foreign supervisory authority, to allow such foreign supervisory authority to take part in a compliance inspection of a bank undertaken by the FSC.

625. *Criterion 40.16* - There is no provision in the FSC Act that provides for the FSC to obtain the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes. There is also no provision requiring the FSC to inform the requested financial supervisor that it has a legal obligation to disclose or report the information.

*Exchange of Information Between Law Enforcement Authorities*

626. *Criterion 40.17* - There is no express provision under the Police Act to allow Cook Islands Police to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences or terrorist financing, including the identification and tracing of the proceeds and instrumentalities of crime. However, this can be done pursuant to the general Police functions set out in section 7 of the Police Act to conduct law enforcement, crime prevention and national security. CIP is not a member of Interpol, but it has a relationship with Interpol through NZ Police and Interpol offices in Canberra and Suva.

627. Section 361 of the Customs Revenue and Border Protection (CRBPA) allows the Comptroller of Customs to disclose any information specified in section 362(1) of the CRBPA to an overseas agency, body or person, whose functions include the prevention, detection, investigation, prosecution, or punishment of offences that are, or that if committed in the Cook Islands, would be Customs offences of any kind or other offences punishable by imprisonment, or the processing of international passengers at the border by public authorities, or border security, or the enforcement of a law imposing a pecuniary penalty, or the protection of public revenue.

628. *Criterion 40.18* - The CIP (Parts 3 & 4, MACMA), FIU (s40, FIU Act), Customs (ss361-362, CRBP Act) and tax authority (TIEAs and MAAC) and Immigration can conduct inquiries and obtain information on behalf of foreign counterparts. The restrictions on the use of such information depend on applicable legislation and also established practices or regimes under relevant international bodies. The Cook Islands is not a member of Interpol but it does access INTERPOL framework through NZ Police or regional Interpol offices in Canberra or Suva.

629. *Criterion 40.19* - Section 7 of the Police Act provides a function for Cook Islands Police to participate in authorised regional and international policing operations outside the Cook Islands. The Cook Islands asserts that other law enforcement authorities, including FIU, Customs, MMR, Tax and Immigration, are also able to, on an ad hoc basis, form joint investigative teams to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations. The Cook Islands law enforcement authorities have been involved in joint criminal investigations, as permitted under agreement with overseas counterparts to detect organised criminal groups.

*Exchange of Information Between Non-Counterparts*

630. *Criterion 40.20* - There are provisions in the Customs and Border Protection Act (s348) and FSC Act (s23) allowing competent authorities to exchange information indirectly with non-counterparts. Section 39 of the FIU Act allows the FIU to share a report or information that relates to financial misconduct to a counterpart agency, on the terms and conditions regarding disclosure of that sort that are set out in an agreement or arrangement between the FIU and the counterpart agency, or, if there is no agreement or arrangement addressing disclosure, then on terms and conditions agreed upon by the FIU and the counterpart agency at the time of disclosure. In relation to foreign agencies, a “counterpart agency” is limited to a foreign agency or institution that has powers and duties, or an international organisation that has functions, powers and functions, in respect to financial misconduct that is similar to those of the FIU. This

does not include non-counterpart agencies. The other law enforcement agencies do not have processes or procedures for sharing information with non-counterpart agencies.

### *Weighting and Conclusion*

631. The Cook Islands has a robust legislative framework underpinning international cooperation. There are minor shortcomings that relate to the scope of the legal framework in place. It is unclear whether all relevant competent authorities have MOUs or another basis for cooperation with international counterparts, or the ability to cooperate without existing frameworks, and there is no specific requirement for the FIU to provide feedback to its foreign counterpart. There is also scope for improvement in the legal provisions related to international cooperation by the FSC: there is no provision that requires the FSC to seek prior authorisation from a requested financial supervisor before the FSC can disseminate or use exchanged information for supervisory or non-supervisory purposes. While there are comprehensive powers for the FSC to make inquiries, it is not explicitly permitted to do so on behalf of a foreign counterpart. Lastly, there is insufficient provision for competent authorities to share information with non-counterparts.

632. **Recommendation 40 is rated largely compliant.**

*Summary of Technical Compliance – Key Deficiencies*

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>▪ Cook Islands' ML/TF risk assessment process demonstrates some methodological shortcomings but nonetheless results in outcomes that have a meaningful utility to financial institutions, DNFBPs and regulatory agencies.</li> </ul>
2. National cooperation and coordination	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>▪ The predicate offences for ML do not include the offence of illicit arms trafficking.</li> <li>▪ The penalties applicable are not proportionate or dissuasive.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>▪ As no administrator has been appointed, there is lack of a mechanism to dispose of frozen property.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>▪ No provision in the CTPA to cover the financing of travel of individuals to a State other than their States of residence or nationality for the purpose of preparation, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.</li> <li>▪ Not clear under the CTPA whether criminal liability can be imposed on all legal persons, other than incorporated entities.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> <li>▪ No provisions explicitly empowering the Attorney-General or MFAL to directly provide information to another country in support of a request to that country to designate an entity.</li> <li>▪ No formal procedures to ensure that authorisations for delisting made by the Attorney-General under s16C CTPA 2004 meet the requirements of UNSCR 1452.</li> </ul>
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> <li>▪ Absence of mechanisms to protect the bona fide rights of third parties.</li> <li>▪ Lack of publicly known procedures to reverse freezing of funds or other assets where persons or entities have the same or similar name as a designated entity.</li> <li>▪ Lack of mechanisms to authorise access to property in certain circumstances, and absence of any requirement to permit the addition to frozen accounts in certain circumstances, or the payment of a contract entered into prior to listing.</li> </ul>
8. Non-profit organisations	LC	<ul style="list-style-type: none"> <li>▪ Draft legislative amendments to ensure compliance of NPOs or the application of risk-based measures have not yet been implemented.</li> </ul>
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met.</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>▪ No requirement for the identity of a life insurance beneficiary to be verified at the time of payout.</li> <li>▪ No requirement to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable.</li> <li>▪ No requirement for FIs to take enhanced measures (except when identified as a PEP) on a beneficiary who is a legal person or arrangement and presents a higher risk.</li> <li>▪ RIs are not required to identify the beneficial owner of a natural person (noting however that they are required to identify a person who acts on behalf of a customer).</li> <li>▪ No explicit provision permitting RIs not to pursue the CDD</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>process if there is a risk of tipping-off.</li> <li>Obligation that RIs must understand the purpose and intended nature of the business relationship could be made more explicit.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>The requirement for records to be sufficient to permit the reconstruction of individual transactions to provide evidence for prosecution of a serious offence is narrower than the FATF requirement.</li> </ul>
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>The definition of a PEP only applies to persons who have held the office within the last year.</li> </ul>
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>Drafting of the obligation for FIs could better ensure that with respect to payable-through accounts, FIs should be satisfied that the respondent bank has performed CDD obligations on customers that have direct access to the accounts of the correspondent bank.</li> </ul>
14. Money or value transfer services	C	<ul style="list-style-type: none"> <li>This recommendation is fully met.</li> </ul>
15. New technologies	LC	<ul style="list-style-type: none"> <li>While authorities undertake a risk assessment on new products or technologies, it does not always occur prior to the implementation of the product or technology.</li> </ul>
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>Minor gaps with the recordkeeping requirements and no explicit prohibition on executing wire transfers where relevant criteria is not met.</li> <li>No explicit requirement for an MVTs provider that controls both the ordering and beneficiary side of the wire transfer to take into account the information and determine whether an STR has to be filed, or file an STR in any country affected by the suspicious wire transfer.</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>No explicit requirements with respect to RIs' reliance on a third party to introduce business.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>Other than the requirement to appoint an MLRO, there are no compliance management arrangements.</li> <li>Screening procedures for new staff are limited to integrity, excluding competence and there are no requirements regarding information sharing and safeguards on the information exchange for RIs in the same financial group.</li> </ul>
19. Higher-risk countries	LC	<ul style="list-style-type: none"> <li>Limited measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries.</li> </ul>
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> <li>Not all predicate offences (arms trafficking) are included in the ML offence.</li> </ul>
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> <li>The recommendation is fully met.</li> </ul>
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> <li>Scope gap with respect to the coverage activities conducted by lawyers, notaries, other independent legal professionals and accountants.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>Scope gap with respect to the coverage activities conducted by lawyers, notaries, other independent legal professionals and accountants.</li> </ul>
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> <li>Lack of a risk assessment of domestic legal persons.</li> <li>Deficiencies in relation to the public availability of some basic information and the process to access beneficial ownership information.</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>Inadequate mitigation of the risks associated with bearer, shares and bearer share warrants.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	LC	<ul style="list-style-type: none"> <li>Due to reliance on common law for certain requirements, there is some ambiguity on the obligations on trustees in the Cook Islands.</li> <li>While there is stringent regulation on trustees for international legal arrangements, similar regulation does not exist for trustees for domestic legal arrangements.</li> </ul>
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> <li>Risk profiles of individual FI are not assessed periodically or when a major event or development occurs.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>Sanctions are not appropriate.</li> </ul>
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> <li>No market entry requirements for accountants, real estate agents, motor vehicle dealers or pearl dealers.</li> </ul>
29. Financial intelligence units	LC	<ul style="list-style-type: none"> <li>The FIU does not conduct comprehensive strategic analysis, which may affect the CI's understanding of emerging ML/TF trends and risks.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>Competent authorities, which are not law enforcement authorities do not have the ability to expeditiously identify, trace, freeze and seize property.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>Less explicit provision of powers for other competent authorities are can investigate predicate offences relevant to their portfolios (e.g. Tax, MMR).</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>It is unclear whether all the information required for effective international cooperation is retained and shared between agencies.</li> <li>There is no relationship between the quantum of the penalty and the amount of currency involved in the breach, which makes it difficult to conclude that the penalties are proportionate.</li> </ul>
33. Statistics	LC	<ul style="list-style-type: none"> <li>Statistics of some aspects of international cooperation between LEAs are not maintained.</li> </ul>
34. Guidance and feedback	LC	<ul style="list-style-type: none"> <li>There are no explicit requirements for establishing guidelines and providing feedback.</li> <li>The quality of feedback provided by FIU could be improved.</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>FTRA 2017 provides no criminal or civil sanction for historical offending in breach of ss12-17.</li> <li>The Cook Islands is yet to implement administrative penalties for breaches of the FTRA 2017.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>Insufficient evidence provided in relation to the implementation of the relevant conventions.</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>Dual criminality is required where no coercive actions are involved.</li> <li>Gap in relation to arms trafficking, which is not included as a predicate offence.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>Gap in relation to arms trafficking, which is not included as a predicate offence.</li> <li>No coverage of 'property of corresponding value'.</li> </ul>
39. Extradition	C	<ul style="list-style-type: none"> <li>The recommendation is fully met.</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>▪ Unclear whether all relevant competent authorities have MOUs or another basis for cooperation with international counterparts, or the ability to cooperate without existing frameworks.</li> <li>▪ No specific requirement for the FIU to provide feedback to foreign counterparts.</li> <li>▪ No provision that requires the FSC to seek prior authorisation from a requested financial supervisor before the FSC can disseminate or use exchanged information for supervisory or non-supervisory purposes. No explicit permission required to do so on behalf of a foreign counterpart.</li> <li>▪ There is insufficient provision for competent authorities to share information with non-counterparts.</li> </ul>



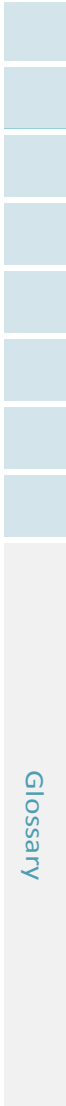
## Glossary

ACC	Anti-Corruption Committee
ADB	Asia Development Bank
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
APIFIU	Association of Pacific Island FIUs
APG	Asia/Pacific Group on Money Laundering
ARIN-AP	Asset Recovery Interagency Network – Asia-Pacific
BNI	Bearer Negotiable Instrument
BO	Beneficial Owner
BTIB	Business Trade and Investment Board
C	Compliant
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CICS	Cook Islands Customs Service
CINIT	Cook Islands National Intelligence Taskforce
CIP	Cook Islands Police
CLAG	Combined Law Agency Group
CLO	Crown Law Office
CT	Counter-Terrorism
CTPA	The Countering Terrorism and Proliferation of Weapons of Mass Destruction Act 2004
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Profession
DPMS	Dealers in Precious Metals and Stones
DPRK	Democratic People’s Republic of Korea
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FATF Standards	FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012, as updated from time to time)
FA	Foundation
FATCA	Foreign Account Tax Compliance Act 2010 (United States)
FC	Foreign company
FI	Financial Institution
FIU	Financial Intelligence Unit
FSC	Financial Supervisory Commission
FSDA	Financial Services Development Authority
FTRA	Financial Transaction Reports Act
GDP	Gross Domestic Product
GIICS	Group of International Insurance Centre Supervisors
GIFCS	Group of International Finance Centre Supervisors
IC	International Company
ICBS	International Conference of Banking Supervisors
ICRG	International Cooperation Review Group (of the FATF)
Interpol	International Criminal Police Organization
IO	Immediate Outcome
IP	International partnership
IT	International trust

ITA	International Trusts Act 1984
LC	Largely Compliant
LEA	Law Enforcement Agency
LLC	Limited Liability Company
LTC	Licensed Trustee Company
MACMA	Mutual Assistance in Criminal Matters Act 2003
MER	Mutual Evaluation Report
Merida Convention	United Nations Convention Against Corruption 2002
MFAI	Ministry of Foreign Affairs and Immigration
MFEM	Ministry of Finance and Economic Management
ML	Money Laundering
MLA	Mutual Legal Assistance
MMR	Ministry of Marine Resources
MOJ	Ministry of Justice
MoT	Ministry of Transport
MOU	Memorandum of Understanding
MVTS	Money or Value Transfer Service
NACC	National AML Coordination Committee
NC	Non-compliant
NCTC	National Counter Terrorism Committee
NPO/NGO	Non-Profit Organisation/Non-Government Organisation
NRA	National Risk Assessment
NZ\$	New Zealand Dollar
Palermo Convention	The United Nations Convention against Transnational Organized Crime 2000
PC	Partially Compliant
PEP	Politically Exposed Person
PF	Proliferation Financing
PIF	Pacific Islands Forum
POCA	Proceeds of Crime Act 2003
PTCCC	Pacific Transnational Crime Coordination Centre
PTCN	Pacific Transnational Crime Network
RBA	Risk-Based Approach
R.	Recommendation
RI	Reporting Institution
RMD	Revenue Management Division
SRB	Self-Regulatory Body
STR	Suspicious Transaction Report
TC	Technical Compliance
TIEA	Tax Information Exchange Agreements
TF	Terrorist Financing
TF Convention	United Nations International Convention for the Suppression of the Financing of Terrorism 1999
TFS	Targeted Financial Sanctions
TPP	Third Party Processor
TCSP	Trust and Company Service Provider
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
US\$	United States Dollar

Vienna Convention  
WMD

The United Nations Convention against Illicit Traffic in Narcotic Drugs and  
Psychotropic Substances 1998  
Weapons of Mass Destruction







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# September 2018

Anti-money laundering and counter-terrorist financing measures – Cook Islands

## *3rd Round APG Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in the Cook Islands as at December 2017. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Cook Islands' AML/CFT system, and provides recommendations on how the system could be strengthened.