



Timor-Leste ME1

Mutual Evaluation Report

Anti-Money Laundering and Combating the
Financing of Terrorism

Timor-Leste

July 2012

Timor-Leste is a member of the Asia/Pacific Group on Money Laundering (APG). This evaluation was conducted by the APG and was adopted as a 1st mutual evaluation by its Plenary on 19 July 2012.

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CONTENTS

Page

Acronyms	iii
Preface	1
Executive Summary	2
1. GENERAL	9
1.1. General Information on Timor-Leste	9
1.2. General Situation of Money Laundering and Financing of Terrorism	15
1.3. Overview of the Financial Sector and DNFBPs	17
1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements ..	23
1.5. Overview of strategy to prevent money laundering and terrorist financing	23
a. AML/CFT Strategies and Priorities	23
b. The Institutional Framework for Combating Money Laundering and Terrorist Financing	24
c. Approach Concerning Risk	25
d. Progress since the Last Mutual Evaluation	26
2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES	27
2.1 Criminalization of Money Laundering (R.1 & 2)	27
2.2 Criminalization of Terrorist Financing (SR.II)	37
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	40
2.4 Freezing of funds used for terrorist financing (SR.III)	44
2.5 The Financial Intelligence Unit and its Functions (R.26)	48
2.6 Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)	55
2.7 Cross Border Declaration or Disclosure (SR.IX)	68
3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS	78
3.1 Risk of money laundering or terrorist financing	81
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	82
3.3 Third Parties and Introduced Business (R.9)	98
3.4 Financial Institution Secrecy or Confidentiality (R.4)	99
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	101
3.6 Monitoring of Transactions and Relationships (R.11 & 21)	105
3.7 Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)	107
3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)	112
3.9 Shell Banks (R.18)	118
3.10 The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)	120
3.11 Money or Value Transfer Services (SR.VI)	130
4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS ..	133
4.1 Customer Due Diligence and Record-keeping (R.12)	133
4.2 Monitoring Transactions and other Issues (R.16)	135
4.3 Regulation, Supervision, and Monitoring (R.24-25)	136
4.4 Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)	138
5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS	140
5.1 Legal Persons—Access to Beneficial Ownership and Control Information (R.33)	140
5.2 Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)	145
5.3 Non-Profit Organisations (SR.VIII)	146
6. NATIONAL AND INTERNATIONAL CO-OPERATION	152
6.1 National Co-Operation and Coordination (R.31)	152
6.3 Mutual Legal Assistance (R.36-38, SR.V)	157

6.4.	Extradition (R.37, 39, SR.V).....	166
6.5.	Other Forms of International Co-Operation (R.40 & SR.V).....	168
7.	OTHER ISSUES	173
7.1.	Resources and Statistics	173
7.2.	Other relevant AML/CFT Measures or Issues	173
7.3.	General Framework for AML/CFT System (see also section 1.1).....	173
	Table 1: Ratings of Compliance with FATF Recommendations	174
	Table 2. Recommended Action Plan to Improve the AML/CFT System	184
	Annex 1: Authorities' Response to the Assessment	193
	Annex 2: Details of All Bodies Met During the On-Site Visit	197
	Annex 3: List of All Laws, Regulations, and Other Material Received	198
	Annex 4: Training courses attended by BCTL staff	200

Acronyms

ACC	Anti-Corruption Commission
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APG	Asia/Pacific Group on Money Laundering
BCTL	Central Bank of Timor-Leste
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Businesses and Profession
DPR	Director of Public Registration
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FONGTIL	Forum on Non-Governmental Organisations of Timor-Leste
FSRB	FATF-style Regional Body
FT	Financing of terrorism
GDP	Gross Domestic Product
IMF	International Monetary Fund
KYC	Know Your Customer
MED	Ministry of Economy and Development
MOU	Memorandum of Understanding
MoJ	Ministry of Justice
ML	Money laundering
MLA	Mutual legal assistance
MTCI	Ministry of Tourism, Commerce and Industry
MTO	Money Transfer Operator
NPO	Non-profit organisation/Non-governmental organisation
NITL	National Insurance Timor-Leste
ODTI	Other Deposit-taking Institution/Non-bank deposit taker
PEP	Politically-exposed person
PNTL	National Police of Timor-Leste
PPO	Public Prosecutor's Office
SRO	Self-regulatory organisation
STR	Suspicious Transaction Report
UN	United Nations
UNMIT	United Nations Integrated Mission to Timor-Leste
UNSCR	United Nations Security Council Resolution
UNTAET	United Nations Transitional Administration in East Timor

Preface

Information and methodology used for the evaluation of Timor-Leste

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Timor-Leste was based on the Financial Action Task Force (FATF) Forty Recommendations (2003) and Nine Special Recommendations (2001), and was prepared using the AML/CFT Assessment Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Timor-Leste, and information obtained by the Evaluation Team during its on-site visit to Timor-Leste from 21 November to 2 December 2011, and subsequently.
2. During the on-site the Evaluation Team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.
3. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

Legal expert

- Mr José Carapinha, Legal Counsel, Financial Intelligence Office (Macao, China)

Financial experts

- Mr Syahril Ramadhan, Director of Compliance, PPATK, (Indonesia)
- Ms Fernanda Carvalho, Senior Adviser, Legal Enforcement Department, Banco de Portugal (Portugal)

Law enforcement experts

- Sgt Steven Barker, National Security Criminal Operations Branch, Anti-terrorist Financing Team, Royal Canadian Mounted Police (Canada)

APG Secretariat

- Mr Eliot Kennedy, Assistant Secretary
- Ms Dhayani Yogesvaran, Executive Officer

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

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

Executive Summary

6. This report summarises AML/CFT measures in place in Timor-Leste as of the time of the on-site mutual evaluation visit (November 2011) and shortly thereafter. The report describes and analyses those measures and provides recommendations on how the system could be strengthened. It also sets out Timor-Leste's levels of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

Key Findings

7. While Timor-Leste has not conducted a national risk assessment, independent assessments make it clear that Timor-Leste is vulnerable as a target for organised crime smuggling and potentially terrorist activities, particularly given that the economy is 'dollarised' and cash-based, providing an attractive environment for the placement and layering of funds. The risks are intensified given controls at the land border with Indonesia are weak as are the maritime border controls in respect to the cross border movement of currency, goods and/or persons. In this environment, assessments suggest that the majority of proceeds of crime could stem from corruption, tax avoidance, smuggling, human trafficking, counterfeiting of currency, illegal gambling and prostitution.

8. Money laundering (ML) and terrorist financing (FT) have been autonomous offences in Timor-Leste since 2009. Timor-Leste has had no prosecutions or convictions for ML or FT. Three investigations in relation to ML are currently underway.

9. A significant and positive development for Timor-Leste's AML/CFT regime was the passage in December 2011 of a new AML/CFT Law, Law n° 17/2011. The AML/CFT Law greatly expands and deepens the AML/CFT measures that were previously only provided in regulation. The law allows for preventative measures including customer due diligence (CDD) and suspicious transaction reporting (STR) as well as a proper legal basis to establish a financial intelligence unit (FIU) within the Central Bank of Timor-Leste (BCTL). The practical establishment of the FIU and supervision of new regulatory requirements have yet to occur and it is, overall, too early to assess the implementation of this nascent AML/CFT regime.

10. Timor-Leste plans to develop a comprehensive National AML/CFT Strategy in keeping with national priorities. Plans are underway to promote implementation of the new regime, including developing and updating on-site examinations manuals and procedures for financial institutions as well as provide additional training for supervisors.

Legal Systems and Related Institutional Measures

11. **Timor-Leste has criminalised ML in Article 313 of the Penal Code, approved by Decree Law n° 19/2009 of 8 April 2009.** The AML/CFT Law, Law n° 17/2011, enacted in December 2011, defines ML in Article 37 by reference to Article 313 but adds corporate criminal liability to the ML offence.

12. **The ML offence meets the physical and material elements of the offence as required by the Vienna and Palermo Conventions.** Timor-Leste's ML offence uses a combined (list and minimum threshold) approach to predicate crimes but does not cover almost half of the required designated categories. The definition of "serious crime" which is used to determine what constitutes a predicate offence uses a four year minimum threshold of imprisonment. This threshold is relatively high and consequently excludes a number of categories of predicate offences. Ancillary offences to

the ML offence are covered by the Penal Code. Terrorist financing is designated as a predicate to the ML offence.

13. **The mental element of the ML offence and criminal liability of legal persons is covered by the AML/CFT Law as required by the FATF standard.** There have only been three ML investigations and no prosecutions and convictions for ML in Timor-Leste since the enactment of the offence in 2009.

14. **Timor-Leste criminalised terrorist financing, terrorist acts and offences by terrorist organisations in the Penal Code in 2009.** Article 38 of the new AML/CFT Law defines FT with reference to Article 133 of the Penal Code, rather than separately criminalising it.

15. **The new AML/CFT Law provides for the freezing, seizing and confiscation of laundered property, proceeds of money laundering, terrorist financing or predicate offences; instrumentalities used in or intended for use in the commission of these offences and property of corresponding value.** In Timor-Leste, however, it is not possible to apply any provisional measures *ex parte* or without prior notification due to a fundamental principle of domestic law. Under the Criminal Procedure Code, the freezing of the assets of a suspect requires that a person be formally accused of the commission of an offence (“arguido”) which therefore makes it impossible to impose a freezing order either *ex parte* or without prior notice. As there have been no prosecutions or convictions for ML/FT in Timor-Leste, no statistics are available regarding cases or the amount of property frozen, seized and confiscated relating to ML/FT and no statistics are available for property relating to predicate offences.

16. **Article 36 of the new AML/CFT Law provides a mechanism for the freezing without delay of funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the relevant UN Security Council Resolutions.** The Central Bank of Timor-Leste (BCTL) has sent the 1267 list to financial institutions, and there is an active obligation for institutions to check for and notify the FIU of any matches. The AML/CFT Law requires the BCTL to issue notifications and instructions to give effect to the legal framework for freezing terrorist funds, which has not yet occurred. Until these instructions are issued by BCTL, the freeze provisions are not in effect.

17. **Article 4 of the new AML/CFT Law establishes the FIU as a separate entity within the BCTL.** The Decree Law which details the nature, organisation and function of the FIU had not, however, been enacted at the time of on-site or shortly thereafter and in practice, therefore, the FIU had not been established at the time of the evaluation. Timor-Leste intends to set up the FIU under the BCTL as an independent body, initially staffed with two staff from the BCTL, and one each from the National Police of Timor-Leste (PNTL), the Anti-Corruption Commission and the Public Prosecutor’s Office (PPO).

18. **The BCTL has performed the role of interim FIU since 2008, receiving suspicious transaction reports (STRs) from banks and disseminating to the PPO without conducting further analysis.** Since 2008 the BCTL has received a total of 20 STRs. Three STRs are currently the subject of further investigation by the PPO for money laundering. The BCTL has not issued guidelines to reporting entities. The Supervision Department staff of the BCTL has dedicated two staff to fulfil the function of receiving and disseminating STRs. Timor-Leste confirmed that, once it is functional, the new FIU will apply for membership of the Egmont Group.

19. **The PPO (as lead agency), the Anti-Corruption Commission (ACC) and the PNTL are the primary law enforcement authorities with responsibility for ML/FT investigations and prosecutions in Timor-Leste and may have the necessary powers.** The PPO and PNTL are developing the capacity of their officers to develop financial intelligence and ‘follow the money’ to investigate ML cases.

20. **The PPO and PNTL have not utilised existing powers to compel production of records held by financial institutions and other persons, for the search of persons or premises and for the seizure and obtaining of evidence.** There are three ML related investigations being carried out by the PPO. While this number is low when compared to the incidence of predicate crimes, the investigations were initiated prior to the AML/CFT Law. It is anticipated that the rate of ML investigations conducted parallel to predicate offence investigations and derived from the dissemination of STRs will increase as the regime becomes more robust.

21. **The declaration system for the cross-border transportation of currency and bearer negotiable instruments (BNIs) is set out in the new AML/CFT Law and in Public Instruction 4/2009. The necessary Decree Law to implement the new regime in the AML/CFT Law has not been issued.** Without implementing the Decree Law, (which now sets a threshold of USD 10 000) obligations do not yet extend to include BNIs. Timor-Leste’s border with Indonesia is porous and difficult to monitor and is a prime area of concern, though measures have been taken recently by the Customs Service to improve the level of control at the main border points.

22. **The Custom Service is the primary monitoring authority with respect to the cross-border movement of currency and has made three cash seizures since 2002.** Customs staff require further training including in maintaining high professional standards and standards concerning confidentiality.

23. **There is currently no arrangement for coordinated exchange of information between domestic agencies in Timor-Leste or with other countries in relation to cross-border declarations and cash seizures.** Under the new regime, copies of declaration forms will be shared with the FIU immediately. The fines for violations in the exportation /importation of cash are not dissuasive especially in a cash economy such as Timor-Leste (the fines consist of 10 % of the amount of cash being transported, up to a maximum of US \$5,000).

Preventive Measures—Financial Institutions

24. **While Timor-Leste has not undertaken a national AML/CFT risk assessment, there are number of factors which suggest that the domestic financial sector presents a moderately low risk of ML and FT.** These factors include: the small size of the financial sector which is dominated by four banks that are supervised for AML/CFT purposes (three of which are branches of Australian, Indonesian and Portuguese banks and the fourth a locally incorporated, government-owned bank); limited use of the banking system as cash remains the main means of payment in the economy; bank policies and procedures which prevent non-face-to-face account opening; the absence of correspondent banking relationships; and no use of third party intermediaries by the banking sector.

25. **CDD requirements are set out in the AML/CFT Law and Public Instructions 03/2003 and 02/2004.** The four licensed banks, which had a total of \$403 million in assets as at December 2011, are the dominant participants in the sector. Practices and procedures vary across the banking industry. In practice, banks indicated that they follow home-country AML/CFT requirements.

26. **While the enactment of the AML/CFT Law has significantly enhanced the legal requirements regarding CDD, significant gaps remain in the legal requirements in relation to the scope and depth of CDD and related preventative measures.** CDD requirements have been issued to banks and other deposit taking institutions. Some basic CDD requirements are not set out in law or regulation as required by the FATF standard (but rather by Public Instruction) such as the requirement to undertake CDD when establishing a business relationship and to conduct ongoing CDD throughout the business relationship. There is no explicit provision for reduced or simplified CDD. On-site examinations conducted by the BCTL have found significant CDD deficiencies.
27. **Enhanced due diligence requirements for foreign politically exposed persons (PEPs) are contained in Public Instruction 02/2004 but are limited to banks. The new AML/CFT Law does not define PEPs but does require financial institutions to have appropriate measures to determine if a customer is involved in special duties or holds political office.** These measures are not however defined in the law.
28. **There is no requirement for banks to obtain approval from senior management before establishing new cross-border correspondent banking relationships or to document the respective AML/CFT responsibilities of each institution.** Outside the banking sector, financial institutions in Timor-Leste do not have correspondent relationships with other financial institutions.
29. **There is an obligation in Article 10(5) of the AML/CFT Law which requires financial institutions and non-financial businesses and professions to take measures to address the increased risk of ML and FT when conducting non-face to face business relationships or transactions.** The requirements need to be broader to comply with the FATF standards: there is no requirement for banks to obtain approval from senior management before establishing new correspondent relationships or to document the respective AML/CFT responsibilities of each institution.
30. **There is no enforceable instruction in Timor-Leste that permits banks or other financial institutions to rely upon third party services to perform CDD and this does not occur in practice.**
31. **UNTAET Regulation 2000/8 on Bank Licensing and Supervision protects the confidentiality of customer information for banks. There is currently no mechanism for information sharing among competent authorities and financial institutions. This may impede the ability of authorities to access information required to combat ML or TF.** While no request has been made by a law enforcement agency to a financial institution regarding a ML investigation, future requests by law enforcement will require approval from the BCTL or a court.
32. **The main record-keeping requirements are set out in Article 15 of the new AML/CFT Law and Article 9 of Public Instruction 03/2003 and largely meet the FATF standards.** There are some provisions of the law, however, which may benefit from further clarification via regulation. Effective implementation of the record-keeping requirement across all sectors cannot be established yet as the requirements are new.
33. **Article 13 of the AML/CFT Law provides requirements with regard to wire transfers.** The legal obligations apply to all wire transfers, regardless of the amount. The remittance sector has yet to be captured by these provisions in practice as this sector remains unregulated until the Public Instruction for Money Transfer Operators is approved.

34. **Timor-Leste requires financial institutions to monitor unusual transactions and transactions from high risk countries.** Foreign banks already comply with this regulation against home-country AML/CFT requirements or group standards. This requirement is not yet being effectively implemented in local bank and non-bank financial institutions. Timor-Leste does not require financial institutions to pay specific attention to business relationships and transactions with counterparts from or in countries not sufficiently applying the FATF Recommendations.
35. **The AML/CFT Law creates obligations for financial institutions (and non-financial business and professions) to report suspicious transactions for ML and TF, including attempted transactions, to the FIU.** Prior to the introduction of the new regime, Public Instructions 02/2004 and 06/2010 placed some reporting obligations on banks and non-bank deposit taking institutions. There have been 20 STRs submitted (all from two of the four banks) prior to the enactment of the new law but nil STRs since its passage. The deficiencies in the list of predicate offences and in the FT offence affect the scope of the requirements to report STRs.
36. **Even allowing for the small size of the financial sector, the rates of STR reporting are very low although it is hoped that the number will continue to gradually increase.** The recent passage of the AML/CFT Law, which increases the powers of the BCTL, as regulator, will enhance its ability to assess AML/CFT compliance and the effectiveness of internal controls and reporting requirements of banks and other financial institutions.
37. **The new AML/CFT Law defines satisfactory requirements for financial institutions to establish internal control systems for AML/CFT.** No regulations or orders have been issued yet and the level of implementation is not tested.
38. **Article 8 of the AML/CFT Law prohibits shell banks from operating in Timor-Leste.**
39. **The BCTL is exclusively responsible for the regulation, licensing, registration, and supervision of all financial institutions in Timor-Leste.** While a broad range of sanctions is available, only two sanctions have been imposed by the BCTL for the violation of AML/CFT rules. The BCTL has conducted six examinations on AML/CFT compliance. The BCTL needs adequate human and technical resources to ensure the effective implementation of the new regime.
40. **The informal remittance sector continues to operate without regulation but Article 28 of the AML/CFT Law now requires their registration.** The BCTL is currently finalising a Public Instruction on MTOs to further address this regulatory gap.

Preventive Measures—Designated Non-Financial Businesses and Professions (DNFBPs)

41. **Not all DNFBPs are currently subject to the requirements of the AML/CFT Law including CDD, monitoring, suspicious transaction reporting.** Dealers in precious metals and precious stones, lawyers and notaries and trust and company service providers are not included in the definition of “non-financial businesses and professions” contained in the law, though the definition includes “any other activities and professions may be designated by law” (none have been designated as yet). That said, very few DNFBPs currently exist or operate in Timor-Leste: there are no accountants, real estate agents, trust and company service providers, casinos or dealers in precious metals or precious stones. There are 180 lawyers and two notaries. No AML/CFT obligations have yet been implemented in any DNFBP sectors.

Legal Persons and Arrangements & Non-Profit Organizations

42. **Timor-Leste's legal framework for corporate entities requires the registration of corporations and Article 9 of the AML/CFT Law requires legal persons to provide competent authorities with all necessary information to identify the ultimate beneficial owner and the control structure.** Implementation of this new obligation is not established. It is uncertain whether in practice beneficial ownership information can be obtained in relation to foreign legal persons. Both the Commercial Code and Article 9(2) of the AML/CFT Law articulate mechanisms for the identification of ownership and control of shareholders with bearer shares.

43. **Timor-Leste does not allow for the creation of trusts and does not recognise foreign trusts.**

44. **No review has been undertaken of the adequacy of existing laws and regulations that relate to non-profit organisations (NPOs) that can be abused for the financing of terrorism or of the TF/ML risks to the sector.** No outreach, supervision or monitoring for AML/CFT purposes has been undertaken with the NPO sector with a view to protecting the sector from TF abuse. There is, however, a legal framework in place regulating the establishment and registration of NPOs.

National and International Co-operation

45. **Timor-Leste has acceded to the Palermo Convention but is not a party to the Vienna Convention or the Terrorist Financing Convention. Timor-Leste has not yet effectively implemented the Palermo Convention or UNSCRs 1267 and 1373.**

46. **Law 15/2011 and Article 46 of the AML/CFT Law are broadly comprehensive in providing for mutual legal assistance (MLA) in relation to ML and FT. The gaps in coverage of domestic predicate offences for ML may limit MLA coverage.** Timor-Leste has never received or made an MLA request.

47. **Article 30 of Law 15/2011, supplemented by the Criminal Procedure Code, includes ML as a basis for extradition. Article 46 of the AML/CFT Law provides the legal basis for FT as a basis for extradition.** The extradition process in Timor-Leste is efficient and in line with international practices. Timor-Leste has never received or made a request for extradition.

48. **There is nothing precluding FIU to FIU international cooperation - Article 46 of the AML Law allows competent authorities to aim for the 'broadest possible cooperation' with foreign counterparts on criminal matters.** Timor-Leste is a member of Interpol and some police to police international cooperation including through bilateral MoUs has already commenced in Timor-Leste. Further steps are underway to deepen regional cooperation with other police forces and FIUs.

Priority Next Steps / Primary Recommendations

49. Based on its assessment of risks and its review of the AML/CFT regime, the assessment team suggests the following essential priority action over the next 18 – 24 months:

- a) Pass the Decree Law to support implementation of the AML/CFT Law.
- b) Review existing Public Instructions to ensure consistency with AML/CFT Law.
- c) Establish and staff the FIU within the BCTL as quickly as possible, and consult with Government agencies to facilitate access to information by the new FIU to their databases.

- d) Develop FIU standard operating procedures for: (i) analysis; (ii) safe receipt and dissemination of information from/to agencies; and (iii) co-ordination and liaison with domestic law enforcement agencies, financial institutions in respect to accessing their records for analysis.
- e) FIU to issue guidance to reporting institutions on the manner/form of reporting STRs.
- f) Establish a forum for regular consultation with the financial sector on AML/CFT measures including the new AML/CFT Law.
- g) Utilise the additional powers under the new AML/CFT Law to continue to pursue investigations of corruption and other predicate crimes with a view to pursuing the proceeds of predicate crimes to enable prosecutions and convictions for ML offences under the new regime.
- h) Lower the threshold required for an offence to be considered a “serious crime” to broaden the scope of predicate offences to the ML offence and take steps to criminalise the remaining nine types of conduct to enable full coverage of all 20 designated categories of offence.
- i) Issue legal and procedural framework to effectively implement SRIII.
- j) Commence regulation of the alternative remittance sector as soon as possible
- k) Amend the AML/CFT Law or issue a regulation to require all financial institutions to: (i) undertake CDD measures when establishing business relations; and (ii) conduct ongoing due diligence on the business relationship.
- l) Issue law, regulations or enforceable instructions regarding core CDD measures requiring non-bank financial institutions to: (i) ensure that data collected under the CDD process is kept up-to-date and relevant; (ii) perform enhanced due diligence for higher risk categories of customer, business relationship or transaction; (iii) determine the extent of the CDD measures on a risk sensitive basis; and (iv) verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship.
- m) Issue a guidance document on what beneficial ownership is, especially for corporate customers and ensure effective implementation of core CDD measures, in particular verification of the identity of natural persons, legal entities and the beneficial owner of accounts.
- n) Consider the future function and scope of the AML/CFT Working Group and develop a national AML/CFT strategy commensurate with the resources available to the government
- o) Ratify and become a party to the Vienna Convention and the Terrorist Financing Convention.
- p) Establish and maintain an updated and comprehensive system for recording statistics regarding the ML offence and the corresponding predicate offences that will allow for a better understanding of the overall effectiveness of the AML/CFT regime.

1. .GENERAL

1.1. General Information on Timor-Leste

Geography and demography

50. The Democratic Republic of Timor-Leste (“Timor-Leste”) is located in South East Asia and occupies an area of 15,410 km² comprising the eastern half of the island of Timor, and includes Atauro Island, Jaco Island and Oecusse (an enclave surrounded by West Timor, Indonesia on the north-western side of Timor island). The north of Timor is bounded by the Ombai Strait, Wetar Strait and the greater Banda Sea. South of Timor is the Timor Sea which separates Timor from Australia, while to the west lies the Indonesian province of East Nusa Tenggara.

51. Timor-Leste’s population is approximately 1.1 million, approximately 300,000 of whom live in the capital city of Dili. The official languages are Portuguese and Tetum, while English and Bahasa Indonesia are working languages. The predominant religion is Roman Catholicism (95% of the population).

History

52. Timor-Leste was colonised by Portugal in the 16th century and was under Indonesian administration from 1975 to 1999. Following the August 1999 referendum sponsored by the United Nations, in which 78.5 per cent of the population voted for independence, Timor-Leste gained formal independence on 20 May 2002.

53. The United Nations Transitional Administration in East Timor (UNTAET) was established in 1999 after the violence that followed the independence vote. UNTAET administered Timor-Leste until formal independence in 2002 when its mandate expired.

54. As a newly independent state, Timor-Leste has encountered many challenges, not least of which has been to build institutions of state and a legal and financial framework. Three other UN missions have followed to assist with this process: United Nations Mission of Support in East Timor (UNMISSET) was established to provide assistance to the government in the areas of public administration, law and order and external security. UNMISSET was replaced by the United Nations Office in Timor-Leste (UNOTIL) on 20 May 2005 which carried out peace-building activities and supported capacity building of state institutions, including the national police.

55. In mid-2006 Timor-Leste experienced violence and civil unrest which was concentrated mainly in the capital city of Dili. The violence caused thousands of people to leave their houses and disrupted both private and public sector economic activity. Consequently, the Government had to resettle tens of thousands of an estimated 100,000 internally displaced persons, a process which was not completed until mid-2009. Also in response to this unrest, on 25 August 2006, UNOTIL was replaced by the third and current mission – United Nations Integrated Mission to Timor-Leste (UNMIT) which supports the government by focusing on policing, police training, election assistance and humanitarian relief services.

56. Timor-Leste has been relatively stable over the last few years but remains a state in transition. Timor-Leste is considered a low capacity country which confronts long-term development challenges such as a severe lack of resources including a skilled workforce and an overall weakness in legal enforcement and public governance. Other challenges include poor infrastructure in the transportation, telecommunication and electricity sectors as well as a private sector hampered in its early development by a lack of a skilled workforce and regulatory capacity.

Economy

57. Timor-Leste is not a regional or offshore financial centre. It has a small and open economy dependent primarily on petroleum and natural gas export revenue and international donor assistance.

58. The main exports are oil and gas (US\$2.1 billion in 2010 – royalties and taxes only), and coffee (US\$16 million in 2010). Timor-Leste's main trading partners are Indonesia, Australia, Singapore, and China.

59. In 2005 Timor-Leste passed the Petroleum Fund Law which established a Petroleum Fund to manage its petroleum resources and act as a saving mechanism. The fund has no separate legal status and is formally a government account held in the Central Bank of Timor-Leste (BCTL). As at 30 September 2011, the fund was valued at over US\$8 billion, or more than ten times the IMF estimate of non-oil GDP in 2011. Non-oil GDP per capita in 2011 is estimated by the IMF to have been US\$708.

60. The US dollar was adopted as the official currency of Timor-Leste in 2000. Timor-Leste coins in denominations of 1, 5, 10, 25 and 50 *centavos* were introduced in November 2003. During the on-site visit, there was no indication from officials that Timor-Leste has plans to change the official currency from the US dollar. Commercial banks are permitted to accept deposits in other currencies, but those deposits account for less than 2% of Timor-Leste's total bank deposits. Timor-Leste is primarily a cash based economy. It is estimated that only 16% of the population has direct access to banking facilities and that only 1.3% per cent of Timorese regularly use banking facilities.

Government and political system

61. The Timor-Leste Constitution took effect when Timor-Leste officially became independent in May 2002 and is modelled on Portugal's constitution. It provides for a democratic republic with the President as Head of State and the Prime Minister as Head of Government. The unicameral Timorese parliament is the National Parliament, whose members are elected by popular vote for a five-year term. The number of parliamentary seats is determined by a system of proportional representation and varies from a minimum of 52 to a maximum of 65.

62. The National Parliament is responsible for making laws on issues concerning the country's domestic and foreign policy as well as other functions set out in the Constitution. The Government also has legislative authority, through the passing of decree-laws. As discussed further below, the Constitution establishes the areas in which the two entities may exercise their legislative authority.

63. At the time of the on-site visit, the Head of State was President HE Dr José Ramos-Horta and the Head of Government was Prime Minister Mr Kay Rala Xanana Gusmao. The Prime Minister leads a coalition government called the Alliance of the Parliamentary Majority (AMP). Elections for both President and Parliament will take place in 2012.

Legal system (including courts)

64. The legal system in Timor-Leste is somewhat complex in relation to how the various legal instruments in force apply to AML/CFT matters. Sections 2 and 3 of this report provide an analysis of the laws and instruments which are in force for AML/CFT purposes. Following is a brief summary of the broad legal framework currently in place in Timor-Leste:

65. Timor-Leste has a civil law legal system, the primary feature of which is that laws are written into a collection, codified and not, as in common law systems, interpreted by judges. Materially, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of law. The court system is usually

inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited authority to interpret law.

66. Legislation is promulgated by the Timor-Leste government in Portuguese and published in the Official Gazette. English versions are produced by UNMIT and have no official status and are for information and reference only.

67. Following Timor-Leste's independence, the new Constitution allowed for the continued operation of some Indonesian laws and United Nations instruments in conjunction with Timor-Leste legislation. This means that there are three legal frameworks that are concurrently in operation in Timor-Leste to varying degrees. Chronologically, the three frameworks are:

- Indonesian legislation passed during Indonesia's occupation of Timor-Leste (1959- 25 October 1999);
- UNTAET instruments passed during the term of UN administration of Timor-Leste (October 1999 – May 2002); and
- Timor-Leste legislation passed following independence (May 2002 onwards).

68. By way of example, the Evaluation Team was informed by Timorese authorities that, where no statute from Timor-Leste specifically criminalises certain conduct, Indonesian law applies to the extent that its application does not contradict the Constitution of Timor-Leste (as prescribed by Article 1 of Law 2/2002 of 7 August 2002). Evidence was provided to the Evaluation Team of a case related to drug trafficking in which Law n° 22 of 1997 from the Republic of Indonesia was applied in the absence of a specific statute criminalising drug trafficking in Timor-Leste¹.

69. Following is a more detailed outline of the hierarchy and categories of legislation within the three frameworks:

Timor-Leste Legislation (May 2002 onwards)

70. Constitution of the Democratic Republic of Timor-Leste (2002) – the highest law of Timor-Leste with which all other laws must comply.

71. Laws of the National Parliament – laws made by the National Parliament covering both domestic and foreign policy matters as outlined in Article 95 of the Constitution. Article 96 of the Constitution outlines matters which are within the original competence of the National Parliament but which the Parliament may delegate to the Government based on a Legislative authorisation,

72. Government Decree Laws – laws made by the Government in the areas referred to in Article 115 of the Constitution (areas within the exclusive competence of the Government).

73. Organic Laws – particular types of legislation that deal with the organisation and operation of a certain public service; for example, the organic law of a ministry or public entity. For example, under Article 5 of Law 17/ 2011 - Legal Regime on the Prevention and Combating of Money Laundering and Combating of Terrorism Financing, 28 December 2011 (the AML/CFT Law), the Parliament has authorised the Government to regulate the nature, organization and functioning of the FIU by Decree-Law. This is now a matter for the Government to determine.

74. Government secondary legislation – Government decrees, ministerial orders, ministerial instructions and government resolutions.

¹ This was however the only offence from the list of designated categories of offences for ML in relation to which Indonesian law was applied where there were gaps in the internal legal system of Timor-Leste.

75. Regulations/Public Instructions –issued by a competent authority under a Law of the National Parliament or a Government Decree Law. The BCTL in accordance with Law 5/ 2011 has the authority to issue:

- i. Circulars and/or Instructions – binding legal instruments which apply to more than one institution issued by the Bank in the performance of its functions.
- ii. Internal rules and decisions of the Governing Board –regulatory instruments which implement the Bank’s decisions in relation to monetary policy, intermediate monetary objectives, primary interest rates, the money supply in Timor-Leste, and decisions on internal procedures.
- iii. Orders – binding regulatory instruments which apply to a single institution issued by the bank in the performance of its functions.
- iv. Regulations – regulatory acts necessary for carrying out the powers and performing the functions of the Bank.

UNTAET Instruments (October 1999 – May 2002)

76. UNTAET Regulation 1/1999 “Establishing the Authority of the Transitional Administration in East Timor” vested all legislative power in the Transitional Administrator, UNTAET. There are two types of instruments provides for by Sections 4 and 6 of that regulation:

- i. Regulations
- ii. Administrative directives (in relation to the implementation of regulations).

77. These instruments are issued by UNTAET in English and Portuguese. In case of differences in translation, the English text shall prevail.

78. In addition to UNTAET regulations and directives, Timor-Leste authorities also advised of a further two categories of UNTAET instruments which are not defined in regulation but used in practice:

- i. Executive Orders – declarations which have the force of law, usually based on existing statutory powers, and requiring no action by the state legislature.
- ii. Notifications - eg notifications of appointments, setting fees, declaring holidays or days of commemoration.

79. Some UNTAET instruments still apply post-independence (including some in relation to AML/CFT matters) and are considered to be ‘law or regulation’ according to the meaning of these terms under the FATF standards. Article 4, Law 2/2002 On the Interpretation of Applicable Law allows for the continued application of UNTAET instruments valid on 19 May 2002 until they are replaced in accordance with Timor-Leste law.

Indonesian Legislation (1959 – October 25 1999)

80. Some legislation promulgated by the Indonesian government will continue to apply in Timor-Leste.

81. UNTAET Regulation 1/1999 provides that the laws that applied in East Timor prior to 25 October 1999 shall apply in East Timor in so far as they do not conflict with human rights (section 2) and have not been repealed (section 3).

82. This situation was confirmed by Article 165 of the Timor-Leste Constitution of March 2002 which states that “Laws and regulations in force in Timor-Leste shall continue to be applicable to all

matters except to the extent that they are inconsistent with the Constitution or the principles contained therein”.

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

Transparency and good governance

83. The 2010 Corruption Perception Index (CPI) ranked Timor-Leste at 127 out of 178 surveyed countries, with a score of 2.5². Timor-Leste’s ranking improved from the 2008 ranking by 14 places but still indicates that corruption is a serious problem.

84. Statistics provided by Timor-Leste authorities on corruption show a growth in corruption cases since 2005. Public perceptions of corruption are growing quickly and indicate that corruption in Timor-Leste is widespread and consists of both petty and high level corruption.

85. The capacity of government institutions in Timor-Leste to deliver services and develop policy is increasing through efforts, in partnership with international donors, to invest in staff and develop systems and processes of public sector management. Some agencies are still new and lack clear mandates and gaps remain in the availability of experienced, qualified staff.

86. A Civil Service Commission has been established to develop a more professional, effective and efficient civil service in Timor-Leste and is intended to have authority over public sector recruitment, promotion, standards, and discipline. The Civil Service Law, No. 8/2004, establishes a Code of Ethics for all civil servants in the discharge of their duties as well as disciplinary actions by the Civil Service Commission in cases of a breach to the Code.

Culture of AML/CFT Compliance

87. A culture of AML/CFT compliance is beginning to develop within the private sector but this is restricted largely to the commercial banks. With the enactment of the AML/CFT Law only occurring in December 2011, the task of building a broader culture of AML/CFT compliance remains. The new law extends AML/CFT measures to a wider range of banking and non-banking entities and provides a legal basis for the establishment of Timor-Leste’s new Financial Intelligence Unit (FIU) within the BCTL. As this key public sector institution is staffed and becomes a fully functioning entity, a culture of AML/CFT compliance can be further developed.

Anti-Corruption Measures

88. As stated above the 2010 CPI ranked Timor-Leste at 127 out of 178 surveyed countries, with a score of 2.5, indicating that corruption is a serious problem.

89. Timor-Leste ratified the United Nations Convention against Corruption in November 2008 through National Parliament’s Resolution no. 25/2008.

90. In 2009, the National Parliament also passed Law 08/2009 to establish the Anti-Corruption Commission (ACC). The ACC is an independent, specialised criminal police body. The mission of the ACC is to undertake preventive and criminal investigative action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs. The ACC is working closely with the Office of the Prosecutor General and the police to handle investigations to conduct investigations and prepare cases for prosecution. The ACC is

² CPI score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). According to Transparency International, a score of less than 3.0 out of 10.0 indicates there is “rampant” corruption.

continuing to develop its internal capacity and may consider the development of a national anti-corruption strategy.

91. Timorese authorities are also working closely with international donors, in particular the United States, to strengthen Timor-Leste's anti-corruption systems. USAID's program aims to reduce corruption by strengthening a network of effective anti-corruption institutions and actors with the capacity to deter, detect, and sanction corruption. The program aims to build human and institutional capacity and develop linkages among the various Timorese institutions and actors to create a coordinated approach to fighting corruption. This includes provision of support to the ACC, the Office of the Prosecutor General, audit officials and the Office of Inspector General, procurement officials and the National Parliament.

92. Timor-Leste has passed a law to establish an asset disclosure regime for parliamentarians and senior members of the Executive – Law 07/2007 on the Statute of the Holders of Sovereignty allows for the establishment of a public register of assets and interests at the Supreme Court of Justice. In practice, however, the Supreme Court of Justice in Timor-Leste has not become operational. Timor-Leste advised that Article 110 of Law 8/2002 on the Statutes of Judicial Magistrates, provides that until the establishment of the Supreme Court, assets and interests should be registered with the Court of Appeal. Timor-Leste also confirmed that, in practice, government officials do make declarations of their interests with the Court of Appeal.

Efficiency of court systems and enforcement of judicial decisions

93. Timor-Leste has a small judiciary consisting of a Court of Appeal in Dili and four District Courts located in Dili, Baucau, Suai and Oecussi. There is a new Audit Court which was provided for in the Constitution but was only established in August 2011 (Law No 9/2011). The Audit Court is empowered to examine the legality of public income and expenditure (including private entities which have received any public funding), evaluate financial management and impose penalties. Some of the institutions provided for in the Constitution have yet to be established, including the Supreme Court of Justice.

94. There are about 14 judges (and a small number of foreign judges from other countries) in Timor-Leste. This number is considered too small to serve the increasing demand from the population and ensure the rule of law. Timor-Leste has several international judges, prosecutors and public defenders from Portugal, Brazil and Cape Verde whose experience is used in more complex cases such as those relating to financial crimes.

95. Timor-Leste advised that following arrest, a case is usually heard within six months, but in cases requiring complex research, this period may be extended once for another six months by decision of the prosecutor. If there is no arrest made, the period within which the case must be heard is doubled to 12 months. Persons who are arrested for serious crimes (eg terrorism) usually wait for their case to be heard in custody.

96. There are a number of ongoing challenges for the court system: a lack of staff, lack of specialised training, inadequate infrastructure, inadequate case management, lack of public awareness of the formal justice system and a significant language barrier for those trying to access the justice system.

97. Since independence, the government of Timor-Leste has worked to establish a fully-functioning judicial sector. This has involved the enactment of major pieces of legislation, such as the Penal Code and extensive training of judges, prosecutors, and others involved in the judicial process.

98. For example the Legal Training College (LTC) offers a two-and-a-half year postgraduate training program for law degree holders to become a judge in Timor-Leste. Since 2007 a total of 65 Timorese judges, prosecutors and public defenders have graduated from the LTC and gone on to work

in the country's justice sector institutions. This is a remarkable achievement, given that in 1999, there was not a single Timorese judge, prosecutor or public defender in the country.

99. The government has also developed a Strategic Plan for the Justice Sector (2011-2030), an initiative of the Minister of Justice and supported by the Council of Coordination for Justice (an advisory body). It is intended as a prioritization and implementation plan to guide the ongoing strengthening of Timor-Leste's justice system.

Ethical requirements for police, judges, etc

100. Two Superior Councils have been established by statute and are operational: the Superior Councils of the Judiciary and of the Prosecution Service. Their function is to support the professional development and act as supervisory and disciplinary bodies for judges and prosecutors but their competencies still require development.

101. Decree-Law No. 13/2004 of 16 June 2004 - Disciplinary Regulation of the National Police of Timor – requires PNTL members to honour their oath of impartiality, detachment, objectivity and respect for democratic legality (see 2.6.1 regarding the integrity of competent authorities). There is a Justice Unit in the PNTL which investigates complaints against police officers in all the districts and has the power to refer matters to the PPO for criminal investigation.

Systems for professional standards of accountants, lawyers, auditors

102. There are no registered accountants in Timor-Leste.

103. The Association of Lawyers of Timor-Leste (AATL) reports that of 180 lawyers registered in Timor-Leste, around half are engaged in private practice or work with national NGOs in the justice sector. The remainder are employed within government, the Ministry of Justice, National Parliament, and international NGOs. There is no legal framework as yet that allows lawyers to be self-regulated by a bar association or similar body. Lawyers were recently regulated by law (Law 11/2008), which relates to private advocacy and training of lawyers.

1.2. General Situation of Money Laundering and Financing of Terrorism

104. It is difficult to accurately determine the extent of ML and FT in Timor-Leste. The government of Timor-Leste has not conducted a national AML/CFT risk assessment and the Evaluation Team had some difficulty in obtaining comprehensive crime statistics. The authorities also indicated that there is no accurate information available on the possible level of ML or FT being conducted through Timor-Leste. There have been no prosecutions for ML or FT in Timor-Leste, although three ML investigations are under way.

105. However, some independent, general assessments of the ML/FT situation have been conducted and the law enforcement and the supervisory authorities are aware of the vulnerabilities of Timor-Leste as a target for criminal activities, particularly given that the economy is 'dollarised' and cash-based, providing an attractive environment for the placement and layering of funds. Controls at the land border with Indonesia are weak as are the maritime border controls in respect to the cross border movement of currency, goods and/or persons and is a prime area for concern, making Timor-Leste potentially vulnerable to organised crime, smuggling and terrorist activities. Timor-Leste advised however that efforts are currently being made to strengthen the land border – in January 2012 an "Integrated Post" was introduced at Batugade (the main land border crossing with Indonesia) which includes officials from Customs, Immigration, Quarantine (Ministry of Health), Ministry of Transport, and the Border Patrol Police. The post now has 24-hour CCTV cameras and X-ray facilities for luggage and containers. Smaller mobile x-ray for container and trucks will soon be installed in the other border areas - Salele (Suai) and Oecusse (Winie).

106. An independent risk assessment conducted in June 2011 by the French Cooperation Bureau concluded that ML and FT risks appear limited in Timor-Leste and there was no strong evidence of a large presence of organised crime or terrorist groups, but that the environment was certainly conducive to an increased risk. The assessment suggested that the majority of proceeds of crime could stem from corruption, tax avoidance, smuggling, human trafficking, counterfeiting of currency, illegal gambling and prostitution.

107. Based on its 2009 visit, the UN Counter-Terrorism Committee Executive Directorate (UNCTED) monitoring report concluded that the potential to hide the source or use of funds to finance terrorism and related ML activities exists but that despite being close to a region that continues to suffer the effects of extremism and terrorism, the terrorist threat to Timor-Leste was considered to be low.

108. The United States government's Overseas Security Advisory Council (OSAC) report of August 2011 notes that: there is a high frequency of crimes of opportunity (pick-pocketing, car invasions/thefts and assaults). There are no indigenous terrorist organizations operating in Timor-Leste but there are organized criminal gangs and some martial arts gangs involved in extortion operations. There are no known transnational terrorist groups operating in Timor-Leste. Drug trafficking is not a serious problem in Timor-Leste although recreational drugs are available.

109. Other open sources of information also indicate the following vulnerabilities in Timor-Leste:

110. Drug trafficking - More recent reports also confirm that drug trafficking is not considered a significant source of illegal proceeds, but note that the inadequacy of reporting and data systems makes it difficult to track cross-border activities.³

111. Human trafficking – Timor-Leste is a destination country for women subjected to forced prostitution and men and boys subjected to forced labor. Transnational traffickers may be members of organised crime syndicates. The authorities have increased efforts to address human trafficking - the PPO has commenced an anti-trafficking education campaign, and the government financially supports other anti-trafficking programs with assistance from local NGOs. Several cases of trafficking were being investigated in 2011. No prosecutions or convictions of trafficking offenders have occurred to date.⁴

112. Corruption – The authorities publicly acknowledge that official corruption is a serious problem. While there are criminal penalties for official corruption, effective implementation is lacking and officials frequently engaged in corrupt practices. The Anti-Corruption Commission has transferred several high-profile corruption cases to the PPO⁵.

113. The Evaluation Team was not provided comprehensive crime statistics. The limited information obtained did however complement the findings of earlier risk assessments in relation to the potential for ML and FT activities.

114. The PPO provided the following statistics:

³ “Money Laundering and Financial Crimes Country Database”, Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State, May 2012, p.334.

⁴ Trafficking in Persons Report 2011, US Department of State 2011.

⁵ Human Right Report: Timor Leste, US Department of State 2011.

Table 1: Selected Crime statistics 2005-2011*Corruption and connected cases*

Description	Years							Total
	2005	2006	2007	2008	2009	2010	2011	
Indictment	1	2	0	6	3	18	12	42
Archived	0	0	9	7	3	23	12	54
Pending	0	0	14	8	14	35	49	49
Total	1	2	23	21	20	76	73	145

Illegal Gambling

Description	Years							Total
	2005	2006	2007	2008	2009	2010	2011	
Indictment	1	0	4	10	15	3	4	38
Archived	1	0	3	11	16	5	1	38
Pending	0	0	1	4	11	29	12	12
Total	2	0	8	25	42	37	17	88

Human Trafficking

Description	Years							Total
	2005	2006	2007	2008	2009	2010	2011	
Indictment	0	0	0	0	0	1	0	1
Archived	0	0	0	4	2	0	0	6
Pending	0	0	0	2	1	1	1	1
Total	0	0	0	6	3	2	1	8

Drugs

Description	Years							Total
	2005	2006	2007	2008	2009	2010	2011	
Indictment	0	0	0	0	2	0	0	2
Archived	0	0	0	1	1	0	0	2
Pending	0	0	0	3	0	0	0	4
Total	0	0	0	4	3	0	0	8

115. The most noteworthy aspect of these statistics is the relatively high number of corruption and corruption-related cases, particularly in 2010 and 2011. This increase would appear to reflect, at least in part, the establishment of the ACC in 2010 and its close working relationship with the Prosecutor General in pursuing corruption cases.

1.3. Overview of the Financial Sector and DNFBPs

116. The financial system of Timor-Leste currently comprises four registered banks, two other deposit taking institutions (microfinance type activities), two general insurers (no life insurance), one currency exchange bureau, 11 remitters (money transfer operators or MTOs) and 29 credit cooperatives. No financial market or exchange market operates in Timor-Leste.

117. The registered banks, which had a total of US\$403 million in assets as at December 2011, are the dominant participants in the sector. The total assets of the non-bank deposit taking institutions is approximately \$10 million. Credit cooperatives had a total of approximately \$1.2 million in assets as at December 2010.

118. The following tables set out the financial institutions operating in Timor-Leste and their assets.

Table 2: Number and size of financial institutions operating in Timor-Leste as at December 2011

Type of institution	Number as at December 2011	Total assets (US\$)
Banks	4	403 m
Insurance companies	2	4 m
Securities companies	N/A	N/A
Other deposit taking (microfinance)	2	10.1 m
Currency exchange	1	N/A
Money transfer operators	11	N/A
Credit cooperatives	29	1.2m

Table 3: Financial Institutions operating in Timor-Leste

Types of financial activities to which the FATF Recommendations apply	Types of financial institutions in Timor-Leste that conduct these specified activities
Acceptance of deposits and other repayable funds from the public	Banks and Other Deposit Taking Institutions (ODTIs)
Lending	Banks, ODTIs and cooperatives
Financial leasing	N/A
The transfer of money or value	Banks, MTO and ARS
Issuing and managing means of payment (<i>e.g.</i> credit cards and debit cards, cheques, traveller's cheques, money orders and banker's draft, electronic money)	N/A
Financial guarantees and commitments	Banks
Trading in money market instruments (cheques, bills, CDs, derivatives etc.)	Banks (licensed to engage in these activities but do not currently do so)
Trading in foreign exchange	Banks (licensed to engage in these activities but do not currently do so)
Trading in exchange, interest rate and index instruments	Banks (licensed to engage in these activities but do not currently do so)
Trading in transferable securities	Banks (licensed to engage in these activities but do not currently do so)
Trading in commodity futures trading	Banks (licensed to engage in these activities but do not currently do so)
Participation in securities issues and the provision of financial services related to such issues	Banks (licensed to engage in these activities but do not currently do so)
Individual and collective portfolio management	N/A
Safekeeping and administration of cash or liquid securities on behalf of other persons	N/A
Otherwise investing, administering or managing funds or money on behalf of other persons	N/A
Underwriting and placement of life insurance and other investment related insurance	N/A. Only general insurance companies currently operate in Timor-Leste
Money and currency changing	Banks and money changer

Banks

119. The banking system is almost entirely foreign owned, with about 95.1% of the total banking assets being held by branches of foreign banks. There are four licensed commercial banks operating in Timor-Leste: three foreign banks and one local bank. The three foreign banks are branches of Australian, Indonesian and Portuguese owned banks – the ANZ Bank, PT Bank Mandiri and Caixa Geral do Depositos (CGD) respectively. Banks are required to follow relevant instructions issued by BCTL.

120. Where there are specific matters that are not regulated in Timor-Leste, banks are permitted by Timor-Leste authorities to adhere to the requirements issued by their home country supervisory authorities. This is in line with the BCTL's requirements for banks to establish policies and procedures based upon the minimum requirements established in the BCTL's Public Instructions.

121. The ANZ Bank has one branch which was established in 1999-2000. It has eight ATMs and 40 EFTPOS facilities in Dili (but which are rarely used) and one remote ATM facility. The ANZ has plans to extend its banking services to rural areas but these have not yet been implemented.

122. PT Bank Mandiri is a state-owned Indonesian bank and is Indonesia's largest bank. It has one branch in Dili which was established in 2004 and mainly provides banking services to Indonesian businesses in Timor-Leste. It rarely provides credit to micro or small businesses and is mainly focused on commercial enterprises.

123. CGD is a state-owned Portuguese bank which has one branch in Dili, established in 1999-2000, and six district branches in Baucau, Gleno, Malian, Oecusse, Viqueque and Suai.

124. There is only one locally incorporated bank – Banco Nacional de Comercio de Timor-Leste (BNCTL) – which is owned by the Government of Timor-Leste and specialises in providing banking services to small and medium enterprises and microfinance operations. Most of the investments made by the banks are in overseas assets.

125. The registered banks are permitted to offer nearly all banking services, including deposit-taking, loans, transfers of money, payment and collection services and money and currency changing. Although some of the registered banks are allowed to engage in buying and selling of debt securities (including futures and options), issuing/managing means of payments (e.g. credit or debit cards) and credit reference and guarantees services because of the level of licence they hold, only some issue debit cards and none of the banks currently engage in buying and selling of debt securities.

126. Articles 29 and 31 of Law 5/2011 give exclusive powers to BCTL to license, regulate and supervise financial institutions and payments system. The BCTL therefore supervises and regulates the banks, other deposit-taking institutions, insurance companies and the currency exchange bureau.

Other Deposit-taking Institutions or non-bank financial institutions

127. For the purposes of this report, the term "Other Deposit-taking Institution" (ODTI), the term used in Timor-Leste, will be used. It is noted that this term basically equates with the FATF term 'Non-bank Financial Institutions' (NBFI) but the term ODTI is commonly used in Timor-Leste legislation.

128. At the time of the on-site visit, two unlicensed ODTIs (both microfinance institutions) were operating to take deposits. Both institutions are in the process of obtaining ODTI licenses.

129. ODTIs are regulated under BCTL Public Instruction 06/2010 on the Licensing and Supervising of Other Deposit Taking Institutions. The scope of this Instruction only covers

institutions that accept deposits from the public or those that have guarantee deposits⁶ of up to US\$500,000. In addition to obtaining a license from the BCTL, ODTIs are required to be registered at the Ministry of Justice (MoJ) and the Ministry of Tourism, Commerce and Industry (MTCI).

Insurance

130. The insurance industry is still small and in the very early stages of development. As of December 2011 only two general insurance companies were licensed by BCTL to operate in Timor-Leste. Life insurance products are not yet offered.

131. Insurance companies are required to register at the MoJ and MTCI. According to Article 3 of Law 6/2005 insurance companies and insurance intermediaries are licensed, regulated and supervised by BCTL. Under Law 6/2005 on the Regime for the Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries, life insurance may be offered but must be separated from general insurance business.

Currency exchange bureaux

132. Money changing business is a regulated activity through UNTAET Regulation 2000/5 on the Licensing of Currency Exchange Bureaux. Money changers are subject to the licensing, regulation and supervision of the BCTL. In addition to obtaining a license from the BCTL, currency bureaux are also required to register at the MoJ and MTCI.

133. As of December 2011 GlobalEx was the only non-bank holder of a currency exchange licence in Timor-Leste. Western Union also advised the Evaluation Team that it does offer a currency exchange service. Timor Leste advised that this regulatory gap will be addressed once the Public Instruction for money transfer operators is approved as this Instruction will require Western Union to also apply for a currency exchange licence.

Money or Value Transfer Services / Money Transfer Operators (MTOs)

134. As of December 2011 there were 11 unlicensed MTOs operating in Timor-Leste. Timor-Leste authorities advised that these 11 operators comprise the entire informal sector to their knowledge. The BCTL is in consultation with these operators regarding the government's intention to regulate the sector. The two main MTOs are Moneygram and Western Union. Most of the other MTOs operate in parallel with other commercial businesses such as clinics, construction companies, and wholesale shops to facilitate payments of the imported goods. Many Timorese are using their services to receive or make remittances to their family or children studying overseas, mainly in Indonesia.

135. At the time of the on-site visit, the BCTL was preparing a draft Public Instruction on the Licensing and Regulation of Money Transfer Operators. Until the Instruction is approved, MTOs are not however subject to the supervision of any authority although they are required to be registered at the MTCI.

Credit cooperatives

136. Cooperatives are governed by the Decree Law 16/2004 on Cooperatives. There are 29 credit cooperatives currently registered at the Ministry of Economy and Development. The operations and activities of credit cooperatives are relatively small in Timor-Leste. They receive technical assistance and funding from various international donor agencies. The Evaluation Team was advised that cooperatives accept membership contributions from their members, however the BCTL does not consider "membership contributions" to be "deposits".

⁶ Guarantee Account means an account, bearing interest or not, that holds the funds of a customer as a condition of receiving goods or services or as a guarantee for a loan from the same institution.

Overview of the designated non-financial businesses and profession (DNFBP) sector

137. While most of the DNFBP sector is captured by the new AML/CFT Law, the sector is in practice extremely small in Timor-Leste, being limited to a small number of lawyers and notaries. At the time of the on-site visit, the figures in the table below were provided by the Timorese authorities.

Table 4: Number and size of DNFBPs operating in Timor-Leste as at December 2011

Type of DNFBP	Number of institutions	Total assets as of date (list currency)
Casinos	N/A	N/A
Real estate agents	N/A	N/A
Accountants	N/A	N/A
Lawyers	180	Not provided
Notaries	2	N/A
Trusts & company service providers	N/A	N/A
Dealers in precious metals and stones	N/A	N/A

a. Casinos (including internet casinos)

138. Casinos do not at present operate in Timor-Leste but could be established via a licence obtained from the MTCI based on the requirements established in the Decree Law 6/2009 on Recreational and Social Gambling. There are other forms of social gambling including traditional games such as cockfighting, Kuru-Kuru (dice) and Bola Guling.

b. Real estate agents.

139. There are no real estate agents operating in Timor-Leste and there are currently no regulations regarding their operation. Only Timorese citizens are allowed to purchase real estate in the country but the legal status of land in Timor-Leste is still being defined.

140. Timor-Leste advised that the process of creating a property registry has just commenced and a few thousand parcels of land have been registered. The Civil Code establishes that any sale of immovable property (real estate) needs to be made by a notary deed, but the lack of notaries is making it impossible for authorities to implement this requirement. To overcome this difficulty, Timor-Leste advised that a Decree-Law is being drafted that will enable District Directors of the Land Department to formalise contracts of sale over registered land. It was also noted that there is limited use of lawyers to draft contracts for sale of land but this is not a general practice in Timor-Leste. The Civil Code allows for the existence of mortgages, but regulations regarding mortgages are yet to be approved. For the majority of purchasers, therefore, purchases of real estate with cash is the only option.

c. Dealers in precious metals and stones

141. There are some small scale gem dealers but no precious metal dealers.

d. Lawyers, notaries, other independent legal professionals and accountants⁷

142. As noted above, there are 180 lawyers registered with the Lawyers Association of Timor-Leste but the Evaluation Team was unable to meet with a representative during the on-site visit. The team understands that the Association does intend to develop a disciplinary process for lawyers and to draft a Code of Conduct and accreditation process to better regulate the profession but it is unclear whether this has occurred.

143. All notaries are public notaries and are registered with the Ministry of Justice's National Directorate for Registries and Public Notaries. There are currently two qualified public notaries in Timor-Leste and 11 persons undergoing training as notaries and registrars. Under the Timorese Civil Code, Public Notaries are authorised to issue titles regarding immovable property transactions (real estate) which should then be registered by a registrar.

144. There are currently no registered accountants in Timor-Leste. Accounting services are provided mainly by companies established in Australia.

e. Trusts and company service providers

145. There is no trust law under the present legal system. There are no trust and companies service providers in Timor-Leste and no legal basis for this type of activity.

Non-profit organisations

146. The activities of non-profit organisations (NPOs) are governed by the Decree Law 5/2005 on Non-Profit-Making Corporate Bodies. Under the Decree Law NPOs may be constituted in the form of either an association or foundation. All NPOs including associations are required by law to be registered with the National Directorate of Registries and Notaries Services at the Ministry of Justice (MoJ). In practice, however, not all NPOs are in fact registered, with a total of 69 foundations and associations being registered as at the time of the on-site visit, out of a total of 439 active NPOs operating in the country.

147. There is also a Forum or umbrella organisation for all NPOs – “FONGTIL” – which historically has maintained the list of all NPOs, both national and international, operating in Timor-Leste. FONGTIL was established in 1998, prior to the passage of the Decree Law 5/2005. Its system of NPO registration, which it took on under the imprimatur of the then United Nations administration in Timor-Leste and the relevant UNTAET regulations then in operation, thus predates and is more comprehensive than the ‘official’ registration process now being administered by the MoJ. Although FONGTIL does not formally supervise or regulate the activities of NPOs, it undertakes the registration process and regularly updates the information of these entities including names of the directors, program area, address details and the names of donors. Based on the recent list maintained by FONGTIL as at September 2011 there are 439 active NPOs currently operating in Timor-Leste, of which 366 are domestic (including those operating in the district level) and 73 are international.

148. While the registration system can be said to be somewhat unclear and in transition, registration with FONGTIL has until now generally been sufficient for an NPO to operate and, for example, to open a bank account. This situation seems to be changing however, with foreign donors in particular requiring NPOs to register with the MoJ if they are to receive funds. The MoJ intends to work with FONGTIL to encourage formal registration of NPOs under Decree Law 5/2005 in order to regularise the situation.

⁷ This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

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

149. Law 4/2004 on Commercial Companies establishes how legal persons and arrangements are created. The types of legal person that exist in Timor-Leste are companies, civil societies, associations, foundations and cooperatives. The incorporation of legal persons does not require that a notary is always involved in the establishment of such legal bodies. Notaries will be involved in cases where the assets that the members of these legal persons contribute as their initial share require the transmission through public deed. This is the case where such contributions are made through immovable goods or moveable goods subject to registration. In all other cases the incorporation of legal persons can be made through a private document without the intervention of a notary.

150. There are four types of commercial companies in Timor-Leste, namely general partnerships, limited partnerships, private companies and public companies. Commercial companies are formed under the Commercial Code and must apply to register with the Department of Public Registration (DPR). The applicant must provide details of the company name, the type of company, the act of incorporation, the registered and principal business office, the administrator, the secretary, share structure and members' shareholdings. Commercial companies must have a registered office in Timor-Leste. At the time of the assessment, the Evaluation Team was informed that 6944 companies were registered with the DPR. However no breakdown of how many companies corresponding to each type of company under the Commercial Code was available.

151. There are no provisions on trusts and other legal arrangements except those that are established in Law 4/2004. There is no trust law under the present legal system. According to Timorese authorities, there are no foreign trusts operating in Timor-Leste.

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

152. Timor-Leste has stated that it is committed to putting in place necessary measures to ensure compliance with the international AML/CFT standards. Timor-Leste has been a member of the Asia/Pacific Group on Money Laundering (APG) since 2008.

153. Timor-Leste has recently passed several important pieces of legislation which strengthen the legal framework for AML/CFT. These include:

- Decree-Law 19/2009 which approved the Penal Code to criminalise money laundering and the financing of terrorism;
- The Law on International Judiciary Cooperation on Criminal Matters (2011). This Law regulates international judicial cooperation including extradition and mutual legal assistance.
- Law 17/ 2011 - Legal Regime on the Prevention and Combating of Money Laundering and Combating of Terrorism Financing, 28 December 2011 (the AML/CFT Law) which covers a number of components essential to a comprehensive AML/CFT framework including preventative measures (including CDD requirements), record-keeping, establishment of the FIU, reporting of STRs, supervisory authorities' functions and powers, sanctions, special investigative techniques, provisional measures and confiscation, and freezing of terrorist assets.

154. While some gaps and considerable implementation challenges remain, passage of this law represents a significant strengthening of Timor-Leste's AML/CFT regime.

a. AML/CFT Strategies and Priorities

155. A National Working Group on AML/CFT was formed by the Prime Minister in late 2007 which comprises representatives from various ministries and state institutions to discuss major strategic issues for the implementation of AML/CFT measures including:

- Passage of the AML/CFT Law – completed in December 2011;
- Establishment of the FIU – this is currently in progress following passage of the AML/CFT Law. Detailed plans have been prepared to develop (i) system and specific applications for processing STRs (STR model format); (ii) reporting guidelines for entities (financial institutions and DNFBPs), (iii) policies and procedures to be followed by the FIU analysts. Important considerations are given to the need of providing training particularly customized training program for the FIU's staff.
- National Strategy on the Implementation of AML/CFT measures – Timor-Leste plans to develop a comprehensive National Strategy on Combating Money Laundering and the Countering of the Financing of Terrorism to ensure that stakeholders are aware of the national priorities including higher risk areas that need to be addressed.
- Develop AML/CFT supervisory capacity – plans are underway to develop and update supervisory tools such as on-site examinations manuals and procedures for financial institutions as well as provide additional training for supervisors to enhance their skills and knowledge.

156. There have been two independent risk assessment conducted since 2004 and the latest assessment was conducted in June 2011. The 2011 assessment provides relevant authorities in Timor-Leste particularly the BCTL with practical information and guidance in order to put in place measures for countering ML and the FT.

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

157. The institutional framework for combating ML and FT is outlined below.

Central Bank of Timor-Leste (BCTL)

158. The BCTL was established in September 2011 and assumed the responsibilities of the previous Banking and Payments Authority (BPA). The BCTL's objectives, functions and activities are governed by Law 5/2011 (the Organic Law of the Central Bank of Timor-Leste). Its objectives are to achieve and maintain domestic price stability and to promote and maintain a stable and competitive financial system based on free market principles. The BCTL is responsible for overseeing the payment system, licensing, regulation and supervision of the banking sector and insurers.

159. The BCTL is currently coordinating the National Working Group on AML/CFT and provides the secretariat functions to it.

Financial Intelligence Unit (FIU)

160. The FIU was established by law in the December 2011 AML/CFT Law. In early 2012 the FIU was in the process of being created within the BCTL. This will require passage of the Decree-Law on the Financial Intelligence Unit that will define its nature, organization and operation as well as recruitment of the necessary staff and establishment of systems and procedures.

Anti-corruption Commission (ACC)

161. The Anti-Corruption Commission (ACC) was established on 15 July 2009 by Law 8/2009 – Law on the Anti-Corruption Commission. The ACC was created as an independent specialised criminal police force (judicial police) that undertakes preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by the Penal Code.

Public Prosecutor's Office (PPO)

162. The Public Prosecutor's Office (PPO), also sometimes translated/referred to as the "Public Prosecution Service" and the "Prosecutor General's Office", is the lead agency responsible for investigating and prosecuting ML and FT investigation as well as the predicate offences of ML. The PPO consists of 21 prosecutors, who are responsible for investigating and prosecuting all criminal offences committed in Timor-Leste.

Timor-Leste National Police (PNTL)

163. The Timor-Leste National Police (PNTL) is a unified national police agency created by Decree-Law 9/2009 on the Organic Law of Timor-Leste's National Police. It is the primary law enforcement agency with responsibility for all community safety, road policing and criminal investigations, including the offences of ML and FT, under the direction of the PPO.

Customs

164. The Customs Service's responsibilities and powers are outlined under the Decree Law No 9/2003, the Duties and Competencies of the Customs Service of Timor-Leste. These duties include monitoring people and goods to combat tax evasion and fraud, particularly illegal drug or weapons trafficking, and collaborating with other national, foreign and international bodies in activities related to anti-fraud. Under the new AML/CFT Law, the Customs Service will have the authority to seize or restrain part of or the whole amount of the non-declared currency or bearer negotiable instruments if there is a suspicion of money laundering or the financing of terrorism or when there has been a false declaration.

Ministry of Justice

165. The Ministry of Justice (MoJ) is responsible for coordinating the policy as defined and approved by the National Parliament and the Council of Ministers for the areas of justice and law. It also has the competencies to ensure the relations of the Government with the Courts, the PPO, the Superior Council for the Judiciary and the Superior Council for Public Prosecution, as well as with all other agents in the area of justice and law, namely with the entity representing lawyers (the Bar Association). Details of the competencies of the MoJ are outlined in the Decree Law 12/2008 on the Organic Statute of the Ministry of Justice.

Ministry of Foreign Affairs

166. The Ministry of Foreign Affairs is the Government's main body responsible for the design, execution, coordination and assessment of policies in the areas of diplomacy and international cooperation, and consular functions, including the promotion, representation and defence of the interests of the Timorese abroad. Decree Law 4/2008 on the Organisational Structure of the Ministry of Foreign Affairs sets out the competencies of the Ministry.

Ministry of Economy and Development

167. The Ministry of Economic Development develops policy relating to the regulation of cooperatives including their registration in Timor-Leste. Its functions and powers are set out under Decree-Law 09/2008 on the Organisational Structure of the Ministry of Economy and Development.

c. Approach Concerning Risk

168. Generally, Timor-Leste does not take a risk-based approach to AML/CFT and risk does not form an integral part of its regulatory framework.

169. There are two micro-finance institutions in Timor-Leste which operate in rural areas working with women from a lower socio-economic background to provide banking services to clients who have irregular income or are unable to meet the CDD requirements and high banking fees of the commercial banks. Authorities have developed a mechanism to have such clients provide some means of identification but to a lesser extent than the ones required by the banks (simplified CDD). This mechanism is provided by Article 28 of Public Instruction 06/2010.

d. Progress since the Last Mutual Evaluation

170. This is the first Mutual Evaluation for Timor-Leste since it became a member of the Asia/Pacific Group on Money Laundering in 2008.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

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

2.1. Description and Analysis

Legal Framework

171. Money laundering (ML) and most of the underlying or predicate criminal offences relevant to the ML offence are contained in the Penal Code, approved by Decree-Law n° 19/2009 of 8 April 2009. The recently enacted AML/CFT Law, Law n° 17/2011, defines ML in Article 37 by reference to Article 313 of the Penal Code. While the ML offence provision is laid out under Article 313 of the Penal Code, Article 42 of the AML/CFT Law provides for the criminal liability of legal persons. The illicit character of the conduct perpetrated through the legal person will have to be ascertained under Article 313 of the Penal Code although the corresponding penalties are only stated in Article 42 of the AML/CFT Law.

172. Not all of the designated categories of predicate offences for ML are criminalised in either the Penal Code or other special criminal legislation enacted by Timor-Leste.

173. The Evaluation Team was informed by Timorese authorities that, where no statute from Timor-Leste specifically criminalizes a certain conduct, they still apply Indonesian law where it does not contradict the Constitution of Timor-Leste (as prescribed by Article 1 of Law 2/2002 of 7 August 2002). Evidence was provided to the Evaluation Team of a case related to drug trafficking in which Law n° 22 of 1997 from the Republic of Indonesia was applied in the absence of a specific statute criminalizing drug trafficking in Timor-Leste. However this was the only offence from the list of designated categories of offences in which evidence was shown to the Evaluation Team that Indonesian law was used to fill in the gaps found in the internal legal system of Timor-Leste.

Criminalization of Money Laundering

174. ML has been an autonomous offence in Timor-Leste since 2009. Article 313 of the Penal Code defines the ML offence in very similar terms to the Vienna and Palermo Conventions.

175. Article 313 of the Penal Code states that:

1. Any person who, knowing that assets or products are proceeds from any form of participation in the commission of crimes of terrorism, trafficking in arms or nuclear products, human trafficking, child pornography, corruption, fraud or extortion, tax fraud, trafficking in protected species or human organs or tissues or any other serious crime carrying a minimum sentence of over 4 years imprisonment:

a) Converts, transfers, assists or facilitates any transaction of conversion or transfer of said assets or products, wholly or in part, directly or indirectly, with the aim of hiding or disguising their illicit origin or aiding any party involved in the commission of any of said crimes to avoid the legal consequences of his or her acts; or

b) Hides or disguises the true nature, origin, location, disposition, movement or properties of said assets or proceeds or rights related thereto;

c) Acquires or receives said gain under any wise or uses or holds or maintains the same, shall be punishable by 4 to 12 years imprisonment.

2. Punishment for the acts described in subparagraphs a) to c) of the preceding sub-Article is applicable even when the acts related to the originating crime were committed outside Timor-Leste or where the place of commission of the act or identity of the principals are unknown.

3. Knowledge, intent or purpose, required as elements constituting the crime, may be construed from effective and concrete factual circumstances.

4. No prior sentencing of the perpetrator for committing the originating crime is required to prove the illicit origin of the proceeds.

5. Originating crime shall include any crime committed outside Timor-Leste whenever said act is considered a crime in the State where committed and within Timor-Leste.

6. Attempted money laundering is punishable and may be subject to a reduced penalty under general terms.

7. The punishment provided for commission of unlawful acts described in subparagraphs a) to c) of the preceding sub-Article shall not exceed the maximum limit provided for the corresponding originating offences.

176. Article 313 of the Penal Code has been drafted in accordance with the material and subjective elements of both the Vienna and Palermo Conventions, and the ML offence satisfies the physical and material elements of the offence as required by both Conventions. Sub-paragraphs a), b) and c) of Article 313(1) of the Penal Code correspond to Article 6(1)(a)(i) and (ii) of the Palermo Convention and Article 3(1)(b) and (c) of the Vienna Convention. The ML offence attracts a penalty of 4 to 12 years of imprisonment under Article 313(1)(c) of the Penal Code.

177. Article 313(1) determines the application of the ML offence to anyone who knowingly deals with assets or proceeds that are the result of the commission of any of the predicate offences identified, under any form of participation in such offences. The conversion or transfer of such assets, the concealment or disguise of their illicit origin as well as the assistance of any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions are covered in Article 313(1)(a). Article 313(1)(b) covers the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, while the acquisition, possession or use of such property is covered under Article 313(1)(c).

The Laundered Property

178. The ML offence extends to any type of property (assets or products) ... directly or indirectly and regardless of its value represents the proceeds of crime. The concept of “assets or products” is contained in Articles 102 and 103 of the Penal Code in terms that generally comply with the definition of the relevant conventions.

179. Article 313(1)(b) specifically refers to the conversion, transfer or any transaction over the assets resulting from any of the predicate offences either “(...) wholly or in part (...)” and either “(...) directly or indirectly (...)”.

180. The concept of movable or immovable assets is defined in Articles 195 and 196 of the Civil Code, approved by Law n° 10/2011, while the concepts of corporeal or incorporeal, tangible or intangible assets are concepts well established in legal doctrine of Timor-Leste which is tributary from the well established doctrine of the continental family of legal systems. It should be noted that the civil law system which applies in Timor-Leste (and elsewhere) does not require a specific link to any definition contained in the Civil Code, nor does it requires any specific definition of those

concepts inside the criminal statutes. The concepts and definitions contained in the Civil Code are considered as general definitions and concepts that can be used in any branch of the law.⁸

Proving Property is the Proceeds of Crime

181. It is not necessary that a person be convicted of a predicate offence to establish that assets were the proceeds of a predicate offence and to convict any person of laundering such proceeds. ML is a stand-alone offence.

182. Article 313(4), of the Penal Code, specifically states that “*no prior conviction of the perpetrator for committing the originating crime is required to prove the illicit origin of the proceeds.*”

Scope of the Predicate Offences

183. Concerning the predicate offences for ML, Article 2(b) of the Palermo Convention defines serious crimes as those punishable with imprisonment of a *maximum* term of at least four years. Timor-Leste has adopted a combined list and threshold approach which stipulates, according to Article 313 (1), of the Penal Code, that predicate crimes for ML encompass:

- terrorism, trafficking in arms or nuclear products, human trafficking, child pornography, corruption, fraud or extortion, tax fraud, trafficking in protected species or human organs or tissues; or
- any other “serious crime” carrying a *minimum* sentence of 4 to 12 years imprisonment..

184. This combined approach means that predicate offences for ML in Timor-Leste extend to about half of the 20 designated categories of offences. As outlined below, the use of a minimum, rather than a maximum, threshold of imprisonment excludes a number of categories of predicate offences or narrows the range of offences covered within the category.

185. As far as the list of the designated categories of offences is concerned, the following crimes are included as predicate offences (all references in terms of Articles refer to the Penal Code unless otherwise stated).

Table 5: Predicate offences for money laundering

FATF designated categories of offences	Predicate offences under the law of Timor-Leste
Participation in an organized criminal group and racketeering	Not covered. Participation in an organized criminal group and racketeering is punished with a minimum penalty of 2 to 8 years of imprisonment (Article 188) and thus falls outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313(1)(c).
Terrorism, including terrorist financing	Covered. Terrorism is punished with a penalty of 12 to 25 years of imprisonment (Article 131 for terrorist organizations and 132 for terrorist acts) and FT is also punished with a penalty of 12 to 25 years of imprisonment (Article 133) thus all constituting predicate offences for the ML offence. Terrorism is also referred to specifically in the body of Article 313(1).
Trafficking in human beings	Partially covered. Trafficking in human beings is punished with a

⁸ For example Article 1222 of the Civil Code provides that only corporeal assets, either moveable or immovable are subject to be object of property rights although the Civil Code itself do not makes the definition of corporeal or incorporeal assets.

FATF designated categories of offences	Predicate offences under the law of Timor-Leste
and migrant smuggling	penalty of 8 to 20 years of imprisonment (Article 163) as well as specifically being designated in Article 313, thus constituting predicate offence for the ML offence. However the offence of migrant smuggling has not yet been criminalized and does not there constitute a predicate offence for the ML offence.
Sexual exploitation, including sexual exploitation of children	Partially covered. Sexual exploitation is punished with a penalty of 3 to 10 years imprisonment (Article 174(1)) which falls outside the scope of predicate offence for ML because the minimum penalty (3 years) is below the threshold of 4 years imposed by Article 313, although in certain circumstances this penalty can be increased to 4 to 12 years imprisonment (Article 175, (2)) thereby becoming a predicate offence for the ML offence; sexual exploitation of children is punished with a minimum penalty of 4 to 12 or 5 to 15 years of imprisonment (Article 174 (1)), depending on the circumstances, in which case it constitutes a predicate offence for the ML offence.
Illicit trafficking in narcotic drugs and psychotropic substances	Covered. Illicit trafficking in narcotic drugs and psychotropic substances is not yet criminalized. However Timor-Leste's authorities provided an example in which they demonstrated to the Evaluation Team that, through the application of Indonesian law, this is an offence punished under Indonesian law still applicable in Timor-Leste under Law n° 2/2002.
Illicit arms trafficking	Covered. Illicit arms trafficking is punished with a minimum penalty of 2 to 6 years of imprisonment (Article 211) and thus falls outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold of 4 years imposed by Article 313. However, because illicit arms trafficking is referred to specifically in the body of Article 313(1), it becomes a predicate offence for the ML offence.
Illicit trafficking in stolen and other goods	Not covered. Illicit trafficking in stolen and other goods is not yet criminalized.
Corruption and bribery	Partially covered. Corruption in its form of " <i>passive corruption for an illicit act</i> " – the act of being corrupted for the performance of an illicit act - is punished with a penalty of one to 3 to 15 years of imprisonment (Article 292) while " <i>passive corruption for a licit act</i> " – the act of being corrupted for the practice of a licit act - is punished with up to 3 years in prison or a fine (Article 293); active corruption (act of corrupting someone) is punishable with a prison term between 3 and 10 years imprisonment. All of these offences would fall outside the scope of predicate offences for ML because the minimum penalties are below the threshold imposed by Article 313. However, because they are referred to specifically in the body of Article 313(1), they do indeed become predicate offences for the ML offence. Bribery under Article 281 is punished with imprisonment of up to 4 years, thereby falling outside the scope of predicate offence for ML because the minimum penalty is below the threshold imposed by Article 313.
Fraud	Covered. Fraud is punished with a maximum penalty of 3 to 10 years of imprisonment, depending of the special circumstances of the criminal conduct (Article 267) – if the patrimonial loss resulting

FATF designated categories of offences	Predicate offences under the law of Timor-Leste
	from the fraud is not of a high value, it will not be considered a predicate offence since it does not fit in the threshold (Article 266) because it is punishable only with imprisonment up to 3 years or a fine; all of these offences would fall outside the scope of predicate offences for ML because the minimum penalties are below the threshold imposed by Article 313. However, because fraud is referred specifically in the body of Article 313(1), it becomes a predicate offence ML.
Counterfeiting currency	Not covered. Counterfeiting currency is punished with a penalty of 3 to 10 years of imprisonment (Article 307) and thus falls outside the scope of predicate offence for ML because the minimum penalty (3 years) is below the threshold imposed by Article 313.
Counterfeiting and piracy of products	Not covered. Counterfeiting and piracy of products are not yet criminalized in Timor-Leste.
Environmental crime	Partially covered (very limited). Environmental crime is punished with a penalty of up to 3 years imprisonment (Article 215(1)) and it can carry a prison sentence of between 2 and 8 years imprisonment if it causes serious bodily injuries and 5 to 15 years imprisonment if it causes death. Because of this construction, environmental crime can only be a predicate offence for the ML offence where it causes death. This very limited coverage of environmental crime as a predicate offence for ML offence extends also to traffic in protected species because this conduct is specifically referred to in Article 313(1).
Murder, grievous bodily harm	Partially covered. Murder is punished with a minimum penalty of 8 to 20 years of imprisonment (Article 138) or 12 to 25 years imprisonment (Article 139) depending on the circumstances while grievous bodily injury is punished with a minimum penalty of 2 to 8 years of imprisonment (Article 146) the later falls outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313.
Kidnapping, illegal restraint and hostage-taking	Partially covered. Illegal restraint is punished with up to 3 years of imprisonment or a fine (Article 160, number 1) or 2 to 8 years imprisonment (Article 160, number 2) depending on the circumstances, thus falling outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313; while kidnapping is punished with a minimum penalty of 4 to 12 or 5 to 15 years of imprisonment depending on the circumstances (Article 161) and hostage-taking is not yet criminalized in Timor-Leste.
Robbery or theft	Partially covered. Robbery is punished with a minimum penalty of 3 to 10 years of imprisonment (Article 253(1)) and, in certain circumstances, it may be punished with imprisonment of 4 to 12 years (Article 253(2)) and in cases where serious bodily injuries result it can be punished with a prison term of 5 to 15 years (Article 253 (3)) or in cases where death results it can be punished with a prison term of 5 to 20 years; thus only the aggravated forms of robbery can be predicate offences of the ML offence because the standard form of robbery is punished with a minimum penalty (3

FATF designated categories of offences	Predicate offences under the law of Timor-Leste
	years) below the threshold imposed by Article 313; and aggravated theft is punished with a penalty of imprisonment of 2 to 8 years (Article 252(1)) or 3 to 10 years (Article 252(2)) depending on the circumstances and thus falling outside the scope of predicate offence for ML because the minimum penalties (2 or 3 years) are below the threshold imposed by Article 313.
Smuggling	Not covered. Smuggling is punished with a prison term between 2 and 6 years or a fine (Article 316(1)) or with a prison term of 2 to 8 years (Article 316 (2)) depending on the circumstances, thus falling outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313.
Extortion	Covered. Extortion is punished with a penalty of 2 to 6 years of imprisonment, thus falling outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313; however, because it is referred specifically in the body of Article 313(1), it does indeed become a predicate offence ML.
Forgery	Not covered. Forgery is punishable with imprisonment of up to 3 years (Article 303), fraud of documents with a special value is punishable with imprisonment of 2 to 6 years (Article 304(1)) or 2 to 8 years (Article 304(2)) depending on who commits the forgery, thus falling outside the scope of predicate offence for ML because the minimum penalty (2 years) is below the threshold imposed by Article 313.
Piracy	Not covered. The offence of piracy has not been criminalized yet in Timor-Leste.
Insider trading and market manipulation	Not covered. Timor-Leste has no stock exchange market and thus insider trading and market manipulation have not been criminalized and do not constitute predicate offences for the ML offence.

186. Coverage of the designated categories of predicate offences may be summarized as follows:

- Covered (5): terrorism, including terrorist financing; illicit arms trafficking, illicit trafficking in narcotic drugs and psychotropic substances; fraud; extortion;
- Partially covered (7): trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; corruption and bribery; environmental crime; murder and grievous bodily harm; kidnapping, illegal restraint and hostage-taking; robbery or theft;
- Not covered (8): participation in an organized criminal group and racketeering; ; illicit trafficking in stolen and other goods; counterfeiting currency; counterfeiting and piracy of products; smuggling; forgery; piracy; insider trading and market manipulation.

Threshold Approach for Predicate Offences

187. As noted above, Timor-Leste applies a combined approach on the identification of the predicate offences for the ML offence with the enumeration of a series of predicate offences in the body of Article 313(1) of the Penal Code, combined with a threshold of a minimum (rather than maximum) prison term over 4 years for the remainder serious offences for the purpose of them constituting predicate offences for the ML offence. This relatively high threshold means that, as

outlined in the table above, many of the designated categories of predicate offences do not constitute an offence for the purpose of the application of the ML offence, or are only partially covered.

Extraterritorially Committed Predicate Offences

188. According to Article 313(2) of the Penal Code, the predicate offences for ML extend to conduct that occurred in another country, and which would have constituted a predicate offence if it had occurred domestically.

Laundering One's Own Illicit Funds

189. Until the enactment of the AML/CFT Law in December 2011, Article 313(6) of the Penal Code excluded the application of the ML offence to the author of the predicate offence thus not criminalizing the self-laundering of the proceeds of crime.

190. However, Article 48 of the AML/CFT Law specifically repealed Article 313(6) in order to allow for the application of the ML offence (Article 313(1)) to those individuals that commit the predicate offence. The *occasio legis* (reason behind the legislative intent of the amendment) clearly shows that the removal of the barrier previously contained in Article 313(6) was intended to bring the ML offence under Article 313 into line with the international standard.

Ancillary Offences

191. The General Part of the Penal Code establishes the appropriate ancillary offences to all the criminal offences in Timor-Leste, including the offence of ML.

192. An attempt to commit a ML offence or other crime, which is punishable with a penalty of imprisonment of a maximum term above three years, is always punishable as set out in Articles 23 and 24 of the Penal Code. The penalty is the same applicable to the main perpetrator, but with an “extraordinarily mitigated” (ie reduced) penalty in comparison to the consummated crime.

193. Article 29 of the Penal Code establishes that those who commit the offence, directly or through an intermediary, those who commit the offence with others, and those who instigate others to commit the offence are punishable as main perpetrators of the offence.

194. Article 30 of the Penal Code punishes those who directly commit the offence as well as those who commit an offence through another person who serves as an instrument for the former.

195. Article 31 of the Penal Code punishes those who instigate another person to commit the crime, as long as the offence is actually committed or initiated.

196. Those who aid and abet the commission an offence are punishable as main perpetrators of the crime, but with a reduced penalty (Article 32 of the Penal Code).

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

197. Conduct that occurred in another country, and which would not have constituted an offence in that country but would be considered a predicate offence if it had occurred domestically does not lead to the offence of ML in Timor-Leste. Article 313(5) states that “*the predicate offence also includes crimes committed outside the national territory if they constitute crimes in the State where they were committed and within the territory of Timor-Leste.*”.

Liability of Natural Persons

198. According to Article 12 of the Penal Code, only individuals are held criminally liable for offences described in the Code. Legal persons are criminally liable only for offences specifically provided for in the Penal Code or in specific legislation whenever and as expressly established in law.

199. According to Article 14 of the Penal Code, only typical facts committed wilfully, or with negligence in cases specially provided for in the criminal law, are punishable.

200. The ML offence only applies when the perpetrator knows, or should have known, that he is committing that offence and when he has the intention to commit it (Article 15 of the Penal Code).

201. ML is therefore considered a wilful offence in Timor-Leste law, in accordance with the general principle of the Penal Code. There are different forms of wilfulness or malice: direct, necessary or eventual, as provided for in Article 15 of the Penal Code. Under Article 15 of the Penal Code, a person acts with wilfulness or malice when, conceiving a fact that corresponds to an offence, he/she acts with the intention of committing it (direct wilfulness or direct malice); shall also be deemed to have acted with malice the person who mentally anticipated that, as a necessary consequence of his/her conduct, an act will occur that amounts to a legally typified criminal behaviour (necessary wilfulness or necessary malice); where an act occurs that amounts to a legally typified criminal behaviour and that act was mentally anticipated as a possible consequence of the conduct, if the perpetrator acted tolerating the occurrence of such an act, malice shall be deemed to characterize the conduct (eventual wilfulness or eventual malice).

202. Article 16 of the Penal Code defines the situations where an individual may be criminally liable due to negligence.

203. All these different types of intent are applicable to the ML offence.

Mental Element of the ML Offence

204. The intentional or knowledge element of the offence of ML may be inferred from objective factual circumstances.

205. Article 313(3) of the Penal Code specifically provides that “*knowledge, intent or purpose required as constituent elements of the crime may be inferred from objective factual circumstances*”.

Liability of Legal Persons

206. As noted above, legal persons are only held criminally liable for offences under the Penal Code where this is specifically provided for. The ML offence applies only to natural persons that engage in ML activities, as provided for by Article 313 of the Penal Code (ie no penalty for legal persons is specified in this article).

207. However, Article 42 of the recently enacted AML/CFT Law provides for the criminal liability of legal persons. The illicit character of the conduct perpetrated through the legal person will have to be ascertained under Article 313 of the Penal Code although the corresponding penalties are only stated in Article 42 of the AML/CFT Law.

208. Under Article 42 of the AML/CFT Law, any legal person convicted for ML shall be punishable by a fine of up to 5 times the amount of proceeds of crime being laundered and may additionally be:

- barred, for a period ranging from six months to three years, from directly or indirectly carrying on certain business activities;

- placed under court supervision;
- ordered to suspend the activities which were used for the commission of the offence and to close the premises which were used for the commission of the offence, for a period ranging from six months to three years;
- wound up;
- ordered to publicize the judgment and bear the costs thereof.

209. For the sake of clarity, it should be noted that the English version of the Penal Code (which would be used in the application of Article 42 of the AML/CFT Law) provided to the Evaluation Team uses the term “corporate entities” rather than “legal persons”. However, the official Portuguese version of the Penal Code published in the Official Journal specifically uses the term “pessoas colectivas”. This is equivalent to the concept of “legal person” in the English language.

Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings

210. The criminal liability established under Article 42 of the AML/CFT Law (as set out at paragraph 208 above) does not preclude the administrative liability that legal persons may face where they violate any of the preventive measures established under the same law. It is noted that Articles 31 and 32 of the AML/CFT Law foresee specifically the administrative penalties that may be imposed upon legal persons due to the violation of preventive measures, as appropriate in parallel with the application of criminal sanctions applicable under Article 42 of the AML/CFT Law. These administrative sanctions are outlined and discussed in section 3 of this report.

Sanctions for ML

211. The offence of ML is punishable with imprisonment of four to 12 years according to Article 313(1) of the Penal Code in the case of natural persons.

212. According to Article 39 of the newly enacted AML/CFT Law, there is a set of circumstances where the penalty for the ML offence can be increased (‘aggravated’) by up to one third of its minimum and maximum limits. These circumstances are where the predicate offence is punishable with a penalty higher than the ML offence itself; in circumstances where the ML offence is committed on the exercise of an economic or commercial activity; whenever the ML offence is committed by members and within the activity of an organized criminal group; whenever the laundered property exceeds US\$500,000; and whenever the intention behind the commission of the ML offence is the continuation of a criminal activity.

213. A wide range of ancillary offences are provided in the General Part of the Penal Code and are punishable with reduced penalties from the penalties applicable to the consummated crime.

214. These penalties are proportionate and dissuasive when compared with the penalties for different types of offences within the Timor-Leste Penal Code, as well as in comparison with penalties for the same offence in other jurisdictions. The overall penalties applicable to legal persons as described above seem to be equally effective, proportionate and dissuasive in comparison with penalties for the same offence in other jurisdictions.

215. Article 42 sets out penalties applicable to legal persons for the ML and TF offences. The sanction is limited to ‘a fine of an amount up to 5 times the amount of the laundered money’ which seems to be relatively low when compared with the penalties for the same offence in other jurisdictions and, possibly, when compared with administrative the fine of US\$5000 to US\$500,000 applicable under Articles 31 and 32 of the AML/CFT Law for violations of preventative measures (depending on the amount laundered). However, the accessory penalties available under Article 42(3),

which are also applicable to legal persons involved in the commission of the ML or FT offences, makes the overall sanctions system appear proportionate and dissuasive.

Statistics/effectiveness (applying R.32)

216. The Ministry of Justice and the agencies responsible for prosecutions keep some statistics on prosecutions and convictions for criminal offences in general.

217. Up to the date of the on-site visit, only three ML investigations had been commenced and there had been no prosecutions or convictions for ML. The absence of more comprehensive statistics regarding investigations, prosecutions and convictions for the ML offences makes it impossible to assess the effectiveness of the criminalization in Timor-Leste of this offence.

2.1.2. Recommendations and Comments

218. Timor-Leste has a ML offence and legal regime that largely fulfills the physical and material elements of the offence as set out in the UN Conventions and partially fulfills the requirements of Recommendations 1 and 2. Recent legislative amendments included in the AML/CFT Law address deficiencies relating to self-laundering and the liability of legal persons for the ML offence.

219. The threshold adopted in Article 313 of the Penal Code for the definition of “serious crime” for the purposes of an offence which constitutes a predicate offence for the ML offence – ie an offence punished by a minimum of four years’ imprisonment – is relatively high. Although many of the offences included in the designated categories of offences are criminalized in the Penal Code, they have a penalty below the threshold and thus do not constitute predicate offences for the ML offence. Timor-Leste should consider lowering the threshold required for an offence to be considered a “serious crime” for the purpose of constituting predicate offence for the ML offence.

220. In regard to the sanctions applicable to legal persons, the fine applicable under Article 42(1) of the AML/CFT Law of up to five times the amount of proceeds of crime being laundered seems to be relatively low (depending on the amount laundered) and may not be dissuasive of the commission of the offence. Timor-Leste should consider increasing and broadening the range of fines applicable under Article 42 of the AML/CFT Law.

221. A predicate offence for ML does not extend to Timor-Leste’s jurisdiction, if committed outside Timor-Leste without being an offence in the foreign country. Timor-Leste should consider broadening the territorial and legal scope of ML predicate offences to all conducts that would constitute a predicate offence domestically, regardless of its status in the foreign jurisdiction.

222. Timor-Leste should consider maintaining an updated and comprehensive system for recording statistics regarding the ML offence and the corresponding predicate offences that will allow for a better understanding of the overall effectiveness of its ML system.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating⁹
R.1	PC	<ul style="list-style-type: none"> • A large number of predicate offences included in the designated categories of predicate offences do not constitute predicate offence for the offence of ML in Timor-Leste, or are insufficiently covered. • Limited use of the ML offence and not enough information available to

⁹ These factors are only required to be set out when the rating is less than Compliant.

		assess the effectiveness of the current legislation.
R.2	LC	<ul style="list-style-type: none"> • The fine applicable to legal persons may not be sufficiently dissuasive in all circumstances, although the overall penalties applicable may be considered as proportionate and dissuasive. • Given the ML offence has not yet been applied in prosecutions or sentences, it is not possible to assess the effectiveness of the ML system concerning liability of both natural and legal persons. Effectiveness of sanctions not demonstrated.

2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework

223. The Penal Code of Timor-Leste has criminalized terrorism offences, including the FT offence, as autonomous offences in Timor-Leste since 2009. Articles 131, 132 and 133 of the Penal Code, approved by Decree-Law n° 19/2009, from April 8, define respectively the offences of terrorist organizations (Article 131), terrorism (Article 132) and terrorist financing (Article 133).

224. The offence of terrorist financing is regulated in Article 133 of the Penal Code in the following terms:

Article 133

Funding of terrorism

Any person who, by whatever means, directly or indirectly and with intent, supplies, collects or holds funds or assets of any type, as well as products or rights that may be converted into funds and attempts to do so, with a view to be used or knowing that they may be used, totally or partially, in the planning, preparation or commission of the acts referred to in sub-Article 131.1, or commits such acts with the intent referred to in sub-Article 132.1, shall be punishable with 12 to 25 years imprisonment.

225. Following the same approach applied in relation to the criminalization of ML, Article 38 of the newly enacted AML/CFT Law criminalizes FT with reference to the existing Article 133 of the Penal Code, rather than separately criminalizing it.

226. Similarly, the criminal liability of legal persons has also been established by Article 42 of the AML/CFT Law with the same penalties applicable to the ML offence equally applicable in the case of the FT offence.

Criminalization of Financing of Terrorism

227. As noted above, the FT offence in Article 133 of the Penal Code is made by cross reference to Articles 131 and 132 of the Penal Code. The scope of the offences set out in Articles 131 (which relates to terrorist organizations) and 132 (which relates to terrorist acts) means that the FT offence is applicable to the collection and making available funds destined to be used by terrorist organizations or carrying out terrorist acts but not to financing of individual terrorists, thus falling short of the FATF standard.

228. There are no legal limitations regarding “funds” for the purposes of the FT offence. Funds of both legal and illicit origins, as well as the way they have been gathered or provided, are considered in the FT provision.

229. The concept of “(...) *funds or assets of any type, as well as products or rights that may be converted into funds* (...)” contained in Article 133 is a concept broad enough to satisfy the concept of funds contained in the FT Convention.

230. FT is a willful offence that applies when the perpetrator (any person) knows, or should have known, that the funds are to be used in FT and when he has the intention to commit it, as stipulated in Articles 15 and 16 of the Penal Code.

231. According to Article 14 of the Penal Code, only typical facts committed willfully, or with negligence in cases specially provided for in the criminal law, are punishable.

232. FT is therefore considered a willful offence in Timor-Leste law, in accordance with the general principle of the Penal Code. There are different forms of willfulness or malice: direct, necessary or eventual, as provided for in Article 15 of the Penal Code. Under Article 15 of the Penal Code, a person acts with willfulness or malice when, conceiving a fact that corresponds to an offence, he/she acts with the intention of committing it (direct willfulness or direct malice); shall also be deemed to have acted with malice the person who mentally anticipated that, as a necessary consequence of his/her conduct, an act will occur that amounts to a legally typified criminal behavior (necessary willfulness or necessary malice); where an act occurs that amounts to a legally typified criminal behavior and that act was mentally anticipated as a possible consequence of the conduct, if the perpetrator acted tolerating the occurrence of such an act, malice shall be deemed to characterize the conduct (eventual willfulness or eventual malice).

233. The FT offence does not require that the funds were actually used to carry out or attempt a terrorist act or acts; nor for them to be linked to a specific terrorist act or acts.

234. According to Article 24 of the Penal Code an attempt is punishable only in connection with crimes of intent carrying a maximum prison sentence of more than three years and in all other cases expressly determined by law. This is the case of the FT offence foreseen in Article 133 of the Penal Code. Except where otherwise provided, an attempt is punishable with an “extraordinarily mitigated” (ie reduced) penalty in comparison to the consummated crime

235. Article 29 of the Penal Code establishes that, those who commit the offence, directly or by an intermediary, those who commit the offence with others, and those who instigate others to commit the offence are punishable as main perpetrators of the offence.

236. Article 30 of the Penal Code punishes those who directly commit the offence as well as those who commit an offence through another person who serves as an instrument for the former.

237. Article 31 of the Penal Code punishes those who instigate another person to commit the crime, as long as the offence is actually committed or initiated.

238. Those who aid and abet the commission an offence are punishable as main perpetrators of the crime, but with a reduced penalty (Article 32 of the Penal Code).

Predicate Offence for Money Laundering

239. Terrorist financing offences are predicate offences for ML, as FT offences carry a penalty from 12 to 25 years under Article 133 of the Penal Code, which meets the minimum four year threshold under Article 313(1) of the Penal Code.

Jurisdiction for Terrorist Financing Offence

240. Article 133 of the Penal Code does not make any distinction regarding whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in

which the terrorist(s)/terrorist organization(s) is located or the terrorist act(s) occurred/will occur, thus applying to all situations in which the collection and making available the funds may occur irrespective of the location of the terrorists or the occurrence of terrorist acts and the financiers.

The Mental Element of the FT Offence

241. Article 133 does not contain a norm equivalent to the one contained in Article 313(3) of the Penal Code (which criminalises ML) according to which knowledge, intent or purpose, required as elements constituting the crime, may be construed from effective and concrete factual circumstances.

242. However, Article 113 of the Criminal Procedure Code, approved by Decree-Law n° 13/2005, contains a rule which is a general principle in the evaluation of evidence in criminal procedures and states that “*except as otherwise stated in the law, evidence is assessed according to the free conviction of the competent entity, which shall be formed on the basis of rules of experience and logical criteria*”. This formulation allows for enough latitude in terms of evaluation of evidence to allow for the construction of the mental element of the FT offence from objective factual circumstances as prescribed by the standards. In addition, Article 109 of the Criminal Procedure Code states that “*elements of evidence comprise any facts that are legally relevant to the existence or nonexistence of a criminal offence, the possibility for punishment or not of the defendant, and the determination of the sentence, or security measure, or of any civil liability that may arise from the case.*”

Liability of Legal Persons

243. The recently enacted AML/CFT Law provides in Article 42 for the criminal liability of legal persons for FT. Under Article 42 of the AML/CFT Law, any legal person shall be punishable by a fine of up to five times of the amount of collected funds and may be additionally:

- barred, for a period ranging from six months to three years, from directly or indirectly carrying on certain business activities;
- placed under court supervision;
- ordered to suspend the activities which were used for the commission of the offence and to close the premises which were used for the commission of the offence, for a period ranging from six months to three years;
- wound up;
- ordered to publicize the judgment and bear the costs thereof.

244. The criminal liability established under Article 42 of the AML/CFT Law does not preclude the administrative liability that legal persons may face for violations of any of the preventive measures established under the same law. As noted above in relation to ML, Articles 31 and 32 of the AML/CFT Law foresee specifically the administrative penalties that may be imposed upon legal persons due to the violation of preventive measures.

Sanctions for FT

245. The offence of terrorism financing is punishable with imprisonment of 12 to 25 years imprisonment according to Article 133 of the Penal Code in the case of natural persons.

246. This penalty is proportionate and dissuasive when compared with different penalties for different types of offences within the Timor-Leste Penal Code as well as when in comparison with penalties for the same offence in other jurisdictions.

247. The penalties applicable to legal persons as described above seem to be equally effective, proportionate and dissuasive when in comparison with penalties for the same offence in other jurisdictions. However, the comments made above in relation to ML regarding the fines available

under Article 42 are equally or more applicable here, given that the amounts involved in a TF offence might be quite small. However, the accessory penalties available under Article 42(3) which are also applicable to legal persons involved in the commission of the FT offences makes the overall sanctions system appear as proportionate and dissuasive.

Statistics (applying R.32)

248. At the time of the on-site visit there was no statistical data concerning investigations or prosecutions of FT as no cases had been investigated.

Analysis of effectiveness

249. The absence of relevant statistical data renders it impossible to assess the effectiveness of the FT offence. However, the lower level of FT risk (compared to ML), a lack of FT statistics is not unreasonable and the lack of proven effectiveness therefore has no effect on the overall rating for SR.II.

2.2.2. Recommendations and Comments

250. Timor-Leste should broaden the scope of application of its FT offence to include the financing of individual terrorists.

251. In regard to the sanctions applicable to legal persons, the fine applicable under Article 42(1) of the AML/CFT Law of up to five times the amount involved in the TF offence may not be dissuasive of the commission of the offence. Timor-Leste should increase and broaden the range of fines applicable under Article 42 of the AML/CFT Law.

252. Timor-Leste should keep relevant statistics in order to allow the assessment of effectiveness of the FT offence.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> • FT offence does not cover financing of individual terrorists. • The sanction of fine applicable to legal persons is not sufficiently dissuasive although the overall penalties applicable may be considered as proportionate and dissuasive.

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

2.3.1. Description and Analysis

Legal Framework:

253. The recently enacted AML/CFT Law substantially improves the legal regime and provides for the freezing, seizing and confiscation of laundered property (including property that is income or profit derived from the proceeds of crime), proceeds from, and instrumentalities used in or intended for use in the commission of any ML, FT or predicate offences, and property of corresponding value.

254. Although there is no separate definition of such terms as “proceeds of crime”, “funds”, “instrumentalities” etc in the newly enacted AML/CFT Law, this does not adversely affect the application of the relevant provisions of the AML/CFT Law as these are concepts well consolidated in the legal doctrine of Timor-Leste, and developed in general terms in Articles 102 and 103 of the Penal Code.

255. The Penal Code also contains rules that are applicable generally to all kind of offences including the ML and FT offences.

256. During a ML or FT investigation the relevant provisions to be used by judicial authorities in order to achieve the freezing, seizing or confiscation of assets related with these offences will be the ones contained in the new AML/CFT Law, Law 17/2011, with the relevant provisions of the Penal Code and Criminal Procedure Code acting subsidiarily to the special provisions of the AML/CFT Law.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value

257. Article 43 of the AML/CFT Law provides that:

Article 43

Forfeiture to the State

1. A court may issue an order for the forfeiture of:
 - a) the proceeds of crime or funds and property, or other property of equivalent value;
 - b) the funds and property forming the object of the offense;
 - c) the instrumentalities;
 - d) funds or property with which the proceeds of crime have been intermingled.
2. The decision established in the previous paragraph shall be applicable to any person to whom they may belong or by whom they may be held, unless their owner can establish that he acquired them by actually paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds and that he was unaware of their illicit origin.
3. The decision to impose the forfeiture shall specify the funds and property concerned with sufficient specificity to identify and locate them.

258. Article 102 of the Penal Code determines the confiscation to the State of all objects that were used or destined to be used in the commission of a crime. The confiscation will take place even if no one can be sentenced for the commission of the offence (Article 102 (4)).

Confiscation of Property Derived from Proceeds of Crime

259. Article 103 of the Penal Code determines the confiscation in favor of the State of all assets, rights or benefits directly or indirectly acquired as a result of the commission of a crime. The forfeiture provisions set out in Article 103 of the Penal Code apply to **all** conduct described or considered as a crime under the Penal Code, that is to both the ML and FT offences as well as all predicate offences for the ML offence (where provided for in the Penal Code – see section 2.1 of the report regarding gaps in the coverage of predicate offences).

260. Both Articles 102 and 103 apply regardless of whether the property is held or owned by a defendant or a third party, except by *bona fide* third parties. If those assets, rights or benefits cannot be appropriated in kind, their confiscation shall be compensated through the payment of their corresponding value to the State.

Provisional Measures to Prevent Dealing in Property subject to Confiscation

261. The AML/CFT Law provides in Article 35 for the application of provisional measures including the freezing or seizure of assets with the intent of preserving assets subject to confiscation. This freezing or seizure order may be imposed by the court at its own initiative or at the request of the Public Prosecutor's Office.

Ex Parte Application for Provisional Measures

262. In Timor-Leste the application of any preventive measures *ex parte* or without prior notification is not possible because this would be inconsistent with fundamental principles of domestic law. Article 34 of the Constitution of Timor-Leste imposes the principle of presumption of innocence of any person formally accused of the commission of an offence (“*arguido*” in the Portuguese language) and nobody can be subject to criminal proceedings without its prior constitution in this procedural position. This procedural situation is created at the moment where a formal accusation is deducted against someone or, alternatively, whenever someone is suspected of the commission of an offence and some preventive measures have to be imposed on him, including measures of a patrimonial nature (Articles 58 and 59 of the Criminal Procedure Code). In other words, the freezing of the assets of a suspect requires that a person be formally accused of the commission of an offence (“*arguido*”) which renders impossible the imposition of the freezing order either *ex parte* or without prior notice.

Identification and Tracing of Property subject to Confiscation

263. Under the Criminal Procedure Code, the law enforcement agencies, i.e. the Public Prosecutor’s Office (Article 48(2)(b)), the police (Article 56) or judges (Article 47(2)), have an extensive range of powers to request or perform investigations to identify and trace property subject to confiscation or suspect to be the proceeds of crime, including a wide range of powers to allow the identification and tracking of property, including examination orders (Articles 174 to 176), searches (Articles 168 to 171) and seizures (Articles 172 and 173), among others.

Protection of Bona Fide Third Parties

264. Article 35 of the AML/CFT Law provides the protection of the rights of *bona fide* third parties in the cases where a freezing order has been issued against certain assets, as follows:

Article 35

Provisional measures

1. *The court may, either at its own initiative or at the request of the Public Prosecutor’s Office, impose provisional measures including freezing or seizing, intended to preserve availability of funds and property that may be subject to forfeiture in accordance with article 43.º.*
2. *The provision of the previous paragraph shall apply without prejudice of rights of third parties acting in good faith.*
3. *Such measures may be lifted at any time by the court that ordered the provisional measure on its own initiative or at the request of the Public Prosecutor’s Office or persons claiming rights to the funds or property.*

265. The same is valid whenever a confiscation order is issued according to Article 43(2) of the same Law.

Power to Void Actions

266. Article 44 of the AML/CFT Law provides for the competent court to invalidate any contract or any other business relation that has been done in order to prevent the confiscation of any assets that should have been confiscated in favor of the State. If the contract or the business relation has already been performed, any third party acting in good faith will be only paid on the portion of the contract or the business relation that has already been effectively paid.

Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof

267. Confiscation of assets only on the basis of those assets belonging to organizations principally criminal in nature but without any concrete evidence of the commission of a criminal offence, civil forfeiture or confiscation of property with reversal of the burden of proof are not possible under Timor-Leste's law because they would contradict fundamental principles of criminal law.

Statistics (applying R.32)

268. As there has been no prosecution or conviction for ML/FT in Timor-Leste, there are no statistics about the number of cases or the amount of property frozen, seized and confiscated relating to ML/FT.

Analysis of effectiveness

269. The absence of statistical data prevents a comprehensive assessment of effectiveness. Although the powers to freeze, seize and confiscate assets resulting from the ML and FT offences as well as the predicate offences already previously existed in the Penal Code, in the course of the on-site visit it became apparent that investigations of this nature have not been accorded much consideration with the relevant agencies concentrating their efforts primarily in the investigation of the predicate offences rather than pursuing the financial side of the investigations.

2.3.2. Recommendations and Comments

270. Timor-Leste should consider:

- i. implementing effectively its freezing and confiscation mechanisms, and
- ii. collecting the necessary relevant statistical data to demonstrate effectiveness.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> Agencies do not have a well developed awareness of the freezing and confiscation mechanism available under the Penal Code and there has been a lack of implementation of long existing provisions under the Criminal Procedure Code to freeze, seize and confiscate instrumentalities and proceeds of crime. The absence of comprehensive statistical data prevents the possibility of assessment of effectiveness.
R.32	PC¹⁰	<ul style="list-style-type: none"> Timor-Leste does not have any statistical data that might allow for a comprehensive assessment of effectiveness of its ML and FT criminalization.

¹⁰ This is a composite rating with the rating of PC indicated as the rating attributed to parts 2.1., 2.2. and 2.3. of this report

2.4. Freezing of funds used for terrorist financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

271. Special Recommendation III requires two different elements: the first concerns the implementation of measures to freeze (restrain the transfer, conversion, disposition and movement, of goods or assets with the property remaining with the person or institution that holds its interest) of terrorist related funds or assets according to relevant United Nations Security Council Resolutions (UNSCRs); the second element concerns the adoption and implementation of measures to seize and confiscate terrorist funds (take control and permanently deprive the owner from his/hers assets or funds), through any judicial order or other mechanism, without delay. Timor-Leste has a very incipient mechanism for the implementation of the first obligation. The general framework of seizure and forfeiture of funds and assets, under the Penal Code and Criminal Procedure Code applies for the second obligation.

272. Article 36 of the recently enacted AML/CFT Law provides for the freezing of funds or other property of terrorists, those who finance terrorism and terrorist organisations, in accordance with the United Nations Resolutions made under Chapter VII of the UN Charter as well as those persons designated under UNSCR 1373 (2001) and its subsequent resolutions, relating to the prevention and suppression of terrorist financing, however it has not been put into place in practice.

273. Article 36 states that:

Article 36

Freezing of funds associated with financing of terrorism

- 1. The funds and other assets of terrorists, those who finance terrorism and terrorist organizations, designated by the United Nations Security Council acting pursuant to Chapter VII of the United Nations Charter, or designated under United Nations Security Council Resolution 1373 or successor resolutions shall be frozen pursuant to a Central Bank instruction or any form prescribed by law.*
- 2. Such instructions issued according to the previous paragraph shall define the terms, conditions and time limits applicable to the freezing of the assets and shall be published in the Official Journal.*
- 3. Entities referred in Article 3 holding such funds shall immediately freeze them.*
- 4. Entities referred in Article 3 shall report immediately to the FIU, and in the case of financial institutions regulated by the Central Bank, report also to the Central Bank, the existence of funds linked to terrorists, terrorist organizations or individuals or entities associated with or that belong to such individuals or organizations in accordance with lists established by the United Nations Security Council or designated under United Nations Security Council Resolution 1373 or successor resolutions.*
- 5. Failure to comply with the provisions of the preceding paragraphs by entities referred in Article 3 holding such funds shall be punishable by a fine ranging from US \$ 500.00 to US \$ 5,000.00 per day.*
- 6. Any person or organization whose funds or other assets have been frozen pursuant to this Article may request the removal of its name and the corresponding release of the funds or assets, to the Central Bank or to any other competent supervisory authority who issued the freezing order, within 30 days following publication of the list.*
- 7. The decision that denies the removal from the list or the return of the funds or other economic assets can be appealed to the courts.*

274. Despite the passage of the AML/CFT Law, UNSCRs 1267 (1999) and 1373 (2001) and their successor resolutions have not yet actually been put in force in the internal legal system of Timor-

Leste. No BCTL instruction or other from prescribed by law had been issued pursuant to Article 36 as at the time of the on-site visit or immediately thereafter.

Freezing Assets under S/Res/1267

275. Although Article 36 of the AML/CFT Act provides a mechanism for freezing assets in keeping with UNSCR 1267, the required notifications and instructions are not yet in place to give effect to the legal framework for UNSCR 1267 to freeze terrorist funds. The obligation on entities to check for funds that may be owned or controlled by designated entities and make a report to the FIU (or central bank for banks) is binding regardless of any implementing instruction. However, the FIU is not yet in operation.

276. Nonetheless, the Evaluation Team was told by some Government authorities that the lists related to UNSCR 1267 and its successor resolutions were being disseminated within relevant authorities and the private sector, although meetings with institutions from private sector failed to confirm this was a regular or widespread practice. The institutions from the private sector that were indeed cross-referencing their customer databases against the list of individuals and organizations contained in UNSCR 1267 and successor resolutions were doing so under the requirements of their internal systems and not at the request of Timor-Leste's authorities.

Freezing Assets under S/Res/1373

277. Although Article 36 of the AML/CFT Act provides a mechanism for freezing assets in keeping with UNSCR 1373, the required notifications and instructions are not yet in place to give effect to the legal framework for UNSCR 1373 to freeze terrorist funds. There are no effective procedures in place to freeze without delay and without prior notice, the funds or other assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds or other assets derived or generated from property owned or controlled, directly or indirectly, by such persons and associated persons and entities, designated domestically in the context of UNSCR 1373 (2001).

Freezing Actions Taken by Other Countries

278. Article 36(1) appears to provide a basis for the BCTL to issue instructions to give effect to targeted financial sanctions against terrorists designated by other countries under UNSCR 1373. To date this has not been undertaken. There are however no detailed mechanisms in place that would enable Timor-Leste to consider actions initiated under the freezing mechanisms of other countries (ie where Timor-Leste receives a specific notification or communication and may be satisfied, according its applicable legal principles, that the requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organization, to freeze without delay their respective assets).

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

279. The freezing actions foreseen in Article 36 of the AML/CFT Law extend to funds or property owned by designated terrorists, those who finance terrorism or terrorist organizations, but not to other funds or property only directly or indirectly in their control, nor to the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by those same individuals and organizations.

Communication to the Financial Sector

280. At the time of the on-site visit Timor-Leste did not have any effective systems or mechanisms in place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such actions.

Guidance to Financial Institutions

281. Article 36 of the AML/CFT Law provides that entities covered under the AML/CFT Law (as set out in Article 3, and which includes both financial and non-financial entities) holding such any funds and other assets of terrorists, those who finance terrorism and terrorist organizations shall immediately freeze them. At the same time those entities must report immediately to the FIU and, in the case of financial institutions regulated by the Central Bank, report also to the Central Bank, the existence of funds linked to terrorists, terrorist organizations or individuals. Additional guidance has not yet been provided to financial institutions or other entities which may be holding or controlling terrorist funds or other property.

De-Listing Requests and Unfreezing Funds of De-Listed Persons

282. Article 36(6) of the AML/CFT Law provides that any person or organization whose funds have been frozen pursuant to this article, may request withdrawal of its name and release of funds, to the Central Bank or to another competent supervisory authority who ordered the freeze within 30 days following publication of the list. Under Article 36(7), the decision to deny the inclusion in the list or the return of the funds or other economic activities can be appealed to the courts. This provision is not in keeping with UNSCR 1267.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism

283. Under the terms of Article 36 of the AML/CFT Law, any person or organization whose funds or other assets are frozen may request to the Central Bank or other competent authority that ordered the freezing, within 30 days after publication of the list, that his name be removed from the list as well as the restitution of the funds or other economic activities. However this Article does not provide for the specific procedures to be adopted nor for the grounds for request for a de-listing or the unfreezing of the assets. In other words, a detailed and concrete mechanism providing for the de-listing or unfreezing of funds is not properly provided by the AML/CFT Law as required by the international standards.

Access to frozen funds for expenses and other purposes

284. The AML/CFT Law does not provide for any mechanism at the disposal of any organization or individual under a freezing order for access to the funds for the purposes of paying certain types of expenses or for humanitarian purposes.

Review of Freezing Decisions

285. The AML/CFT Law does not provide for any mechanism for review of freezing decisions besides the one described above contained in Article 36(6), i.e., the possibility of appeal to the Central Bank or the competent authority that orders the freezing with the eventual appeal to the courts. This general provision however falls short of the international standards and publicly known procedures for this process have yet to be developed and implemented.

Freezing, Seizing and Confiscation in Other Circumstances

286. Terrorist-related funds and other assets can also be restrained, seized and confiscated in circumstances unrelated to UNSCR 1267 and UNSCR 1373 by using the general powers of forfeiture,

seizure and restraint set out in Article 43 of the AML/CFT Law and in Articles 102 and 103 of the Penal Code (see section 2.3 of this report).

Protection of Rights of Third Parties

287. No specific provisions regarding the protection of third parties *bona fide* rights were included in the AML/CFT Law besides the general provision of Article 36(6), referred to above, which gives a general right of appeal of the freezing decision with the possibility of judicial appeal from a decision denying it.

Enforcing the Obligations under SR III

288. Article 36(4) of the AML/CFT Law establishes that “the financial institutions must immediately inform the FIU and in the case of financial institutions regulated by the Central Bank, also inform the Central Bank, of the existence of capital linked to terrorists, terrorists organization or individual or organizations according to lists drawn up by the United Nations Security Council of the United Nations Security Council or other subsequent resolutions. And Article 36(5) imposes as a consequence that “the breach of obligations referred to in previous numbers by financial institutions and non-financial business and professions where such funds and other economic activities are found is punished by a fine of \$500 to \$5,000 a day.

289. It should be noted however that the implementation of the framework for the freezing of terrorist related funds and other assets depends on the BCTL to issue the corresponding instructions or for the law to implement such a framework (as prescribed by Article 36 (1) of the AML/CFT Law). The absence of such instructions or the supplementary legal framework means that at present it is not possible to monitor or enforce compliance regarding the implementation of the obligations under SR III.

Additional Element — Implementation of Measures in Best Practices Paper for SR III

290. No measures besides the general provisions contained in Article 36 of the AML/CFT Law have been implemented. There is no reference whatsoever to the Best Practices Paper for SR III anywhere within the legal system of Timor-Leste.

Additional Element — Implementation of Procedures to Access Frozen Funds

291. No specific procedures for access to frozen funds have been created by Timor-Leste authorities.

Statistics (applying R.32)

292. No cases of a match against 1267 list have been reported. Timor-Leste has not designated any entities under UNSCR 1373.

Analysis of effectiveness

293. Article 36 of the AML/CFT Law recently enacted by Timor-Leste provides a broad legal basis to implement a system meeting the obligations under SR.III. However, in practice, at the time of the on-site visit and immediately thereafter there were no mechanisms in place to give effect to these obligations. No BCTL instruction or other form prescribed by law has been issued pursuant to Article 36, despite some earlier efforts made by the BCTL to send the 1267 list to financial institutions.

294. The authorities stated that they have never found any assets or funds related to entities on the 1267 list in Timor-Leste.

295. The absence of implementing instructions rendered the system ineffective at the time of this report.

2.4.2. Recommendations and Comments

296. Timor-Leste should, as soon as possible, adopt the necessary regulations and practices that allow for the effective implementation of the obligations contained in UNSCR 1267 (1999) and 1373 (2001) and their successor resolutions as prescribed by Article 36 of Law 17/2011.

297. As a priority, the BCTL should issue instruction (published in the Gazette) to all relevant parties requiring them to freeze terrorist funds and include the terms, conditions and time limits applicable to the freezing in keeping with Article 36 of the AML/CFT Law.

298. The authorities of Timor-Leste should consider implementing SR III in accordance with the detailed requirements contained in the Best Practices Paper for SR III issued by the FATF.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none">Due to the absence of implementing instructions, UNSCRs 1267 and 1373 have not yet been implemented in Timor-Leste and effectiveness cannot be established.

2.5. The Financial Intelligence Unit and its Functions (R.26)

2.5.1. Description and Analysis

Legal Framework:

299. Article 4 of the recently enacted AML/CFT Law establishes in law the financial intelligence (FIU) as part of the BCTL. Articles 20 to 26 of the AML/CFT Law set out the powers of the FIU in broad terms. Details of the nature, organisation and functioning of the FIU are to be established by Decree Law, in accordance with normal practice in Timor-Leste. The Decree Law had not however been enacted as at the time of on-site or immediately thereafter and in practice, therefore, the FIU had not been established at the time of the evaluation.

300. However, the responsibility for accepting STRs – to be submitted pursuant to reporting requirements set out in Public Instructions 02/2004 and 06/2010 and analysed in section 3.6 of this report – has fallen upon the supervisory department of BCTL for some years¹¹. The BCTL's practice has been to forward all reports to the Public Prosecutor's Office (PPO) to conduct any further inquiries. This practice derives from an obligation under the Criminal Procedure Code (Law No. 13/2005), Article 211 of which requires any public servant who, in the exercise of his or her functions or as a result there from, learns that a crime has been committed to notify the PPO. The BCTL can only conduct further inquiries in respect to a STR at the direction/request of the PPO. In other words, until the passage of the AML/CFT Law, the BCTL has not had the necessary additional powers that

¹¹ Under Article 13 of Public Instruction 02/2004, banks are required to report to the Banking & Payments Authority (now the BCTL) "any customer activity that may adversely affect the stability or reputation of the bank", the names of customers whose applications for opening an account with bank have been refused, any law enforcement inquiry relevant to money laundering being conducted in the bank or a company under its control, any transaction declined by the bank pursuant to this Public Instruction.

would allow it to exercise the normal analytical functions of an FIU – it has largely acted as a ‘post box’ for STRs.

301. Because the status and functioning of the FIU was in transition during and immediately after the on-site visit, the situation both before and after the enactment of the AML/CFT Law is described below.

Establishment of FIU as National Centre

302. The FIU was established in law in December 2011 with the enactment of the AML/CFT Law, but as noted above the Decree Law setting out the nature, organization and functioning of the FIU has not been enacted. The Decree Law will set out in detail the FIU’s powers to receive, request, analyse and disseminate information concerning reports of suspicious transactions and other information that may constitute money laundering or financing of terrorism.

303. During the on-site visit the authorities indicated that the FIU would be set up under the BCTL as an independent body and consist of two employees from the BCTL, and one person each from the National Police of Timor-Leste (PNTL), the Anti-Corruption Commission and the PPO.

304. In the interim, the Supervision Department of the BCTL has dedicated two persons to fulfil the function of receiving and disseminating STRs. Since 2009 the BCTL has received 19 STRs, all of which have been referred to the PPO. As noted above, all STRs are disseminated to the PPO for action, however no detailed analysis of the STR has been undertaken by the BCTL due to its lack of analytical and information gathering powers. Although the BCTL has had no powers or authorities to conduct further inquiries, it has conducted a preliminary or rudimentary analysis within the scope of its duties prior to forwarding STRs to the PPO. The BCTL, being the supervisory body/regulator, can hold information (eg account information) which may be relevant to the STR and which the BCTL is obliged under the law to disclose to the PPO. Once it has conducted its preliminary analysis, the BCTL will forward the information to the PPO. Under the instruction of the PPO, the BCTL can then gather further information and conduct further inquiries.

Guidelines to Financial Institutions on Reporting STR

305. To date there have been no guidelines issued by the BCTL to financial institutions on the reporting suspicious transactions reports. The BCTL had distributed UNSCR 1267 previously, although it was noted the last provided to FIs was in December 2005. The BCTL relies on the respective banks reporting suspicious transactions on their own forms as BCTL has no standardized form. Some general training on STRs has been given to banks, but the BCTL has relied primarily on the banks’ own systems for detection and reporting of STRs.

306. The BCTL has stated that once the FIU is established it will issue guidelines on the manner and form of reporting and setting out any features of suspicious transactions. These guidelines will cover:

- money laundering offences;
- terrorist financing offences;
- customer and ultimate beneficiary identification;
- suspicious transaction guidelines (including example of suspicious transactions);
- reporting of suspicious transactions;
- typologies;
- general information on alternative remittance systems, cash couriers, specific concern, politically exposed persons; and
- alleged offshore centre or non-cooperative jurisdiction and territories.

307. Authorities indicated that the FIU also will provide reporting entities with feedback on the reports received and on trends and typologies. After the entry into force of the Decree-Law on the FIU it is proposed that a standard STR form will be issued.

Access to Information on Timely Basis by FIU

308. Pursuant to Article 21 of the AML/CFT Law, the FIU may request from any entity or person subject to a reporting obligation any additional information it deems useful for the accomplishment of its functions. The FIU has the authority to access and review information on-site that belongs to or is in the custody of entities it deems useful for the accomplishment of its functions. Further, under Article 21 the FIU may request any additional information it deems useful for the accomplishment of its functions from the police departments, supervisory authorities and other administrative agencies of the State, in accordance with applicable procedures, judicial authorities, as well as from reporting entities.

309. At the time of the on-site visit, the BCTL Supervision Department, which as noted above receives STRs from financial institutions, did not have access either directly or indirectly to financial, administrative or law enforcement information.

Additional Information from Reporting Parties

310. As noted above, under Article 21 of the AML/CFT Law, the FIU can request from any entity or persons any additional information it deems useful for the accomplishments of its functions. The FIU has the authority to access and review information on-site that belongs or is in the custody of financial institutions.

311. At the time of the on-site visit, the BCTL Supervision Department could not request any further information from the reporting entities, other than at the direction of the PPO.

Dissemination of Information

312. Under Article 26 of the AML/CFT Law, whenever the review of an STR gives rise to strong suspicions of money laundering or financing of terrorism, the FIU shall forward the relevant information to the PPO which shall decide upon further action. Under Article 26 the FIU shall inform the PPO all relevant information whenever there exist indications of a crime in order to initiate an adequate proceeding.

313. Timor-Leste explained the concept of “strong suspicion” is well-established in the legal doctrine of Timor-Leste, derived from established doctrines in the continental family of legal systems. It is implied from the principle of accusation or indictment, whereby before bringing charges against someone, there must be a strong suspicion of a crime, that is sufficiently strong that the community feels compelled to call the agent to account through the trial process. So before indicting someone, the prosecutor has to bear in mind whether or not there is strong evidence of the crime, it not being enough to have mere suspicions. Therefore, the concept of strong suspicion of a crime is the standard for the community to call that person to account.

314. At the time of the on-site visit, under Article 211 of the Criminal Procedures Code, the FIU and other employees of the BCTL who, in the exercise of his or her functions or as a result there from, learned that a crime has been committed, were obligated to report it immediately to the PPO. In other words, as noted above, all STRs were automatically passed onto the PPO for considerations.

Operational Independence

315. Under Article 4 of the AML/CFT Law, the FIU is established as a separate entity within the BCTL. Article 5 of the AML/CFT Law states that “the nature, organization and functioning of FIUs

are established by Decree-Law.” That Decree-Law had not been enacted at the time of the on-site visit or immediately thereafter (ie by the end of January 2012). The Evaluation Team is therefore unable to determine whether, in practice, the FIU will have sufficient operational independence and autonomy to ensure that it is free from undue influence and autonomy.

316. However, it should be noted that the BCTL is, as a whole, an independent institution. Article 3 of the Law N.o 5/2011, The Organic Law of the Central Bank of Timor-Leste, stipulates:

The Bank shall enjoy independence and autonomy in pursuing its objectives and the performance of its functions under this law.

The Bank’s organs, employees and agents shall be independent and cannot seek or receive instructions from any other entity, including the Government or entities under government control, except as expressly provided by law.

No person or entity is permitted to influence any organ or official of the Bank in pursuing their competencies and the performance of their duties or otherwise interfere with their activities.

317. Given the BCTL’s previous responsibility for performing some limited FIU functions, its lead role within Timor-Leste for AML/CFT matters, and its statutory independence, it seems appropriate that the FIU is to be established within the BCTL and it is to be hoped that the FIU Decree-Law and practices adopted will ensure that the FIU has operational independence and autonomy within the context of the BCTL.

Protection of Information Held by FIU

318. The FIU will be physically located within the BCTL, a secure building which has full time security personnel and whose perimeter is enclosed. Presently the STRs received by the BCTL are marked confidential and locked in a filing cabinet held within a secure location in the Supervision Department of the BCTL. The Evaluation Team was told that any STR disseminated to the PPO had been hand delivered. Further the BCTL advised that information held by and received by the new FIU will be securely stored, handled and protected, and disseminated securely to the PPO.

319. Under Article 20 of the AML/CFT Law, the FIU staff are required to keep confidential any information obtained as a result of or within the scope of their duties, even after cessation of those duties, and such information may only be used for the purposes provided in accordance with this law. For any breach of this obligation staff should be subject to disciplinary and criminal proceedings.

320. Under Article 74 of the Organic Law of the BCTL, no staff shall, except when necessary for the fulfilment of a function or duty imposed by law, allow access to, disclose or publicize non-public information which has been obtained in the performance of their duties or use such information, or permit such information to be used, for benefit either for the person or a third party. This is further addressed in Article 5 of Law No. 8/2004 that approves the statute of the civil service. The law states that a civil servant shall be under an obligation to maintain professional secrecy regarding documents, facts or information that he or she may become acquainted with in the course of his or her functions, particularly in investigations into acts punishable under law. Punishment for violating this act range from a verbal reprimand, fine, suspension and or dismissal. In serious cases a dismissed civil servant may also forfeit the right to a retirement pension.

Publication of Annual Reports

321. No annual or other periodic reports have been issued to date by the BCTL or FIU.

322. The new AML/CFT Law does not contain any provisions relating to the publication of reports. The Evaluation Team was informed that any such requirements will be included in the new FIU Decree Law.

Considering Applying to join the Egmont Group

323. The Governor of the BCTL confirmed that, once it is functional, the FIU will apply for membership to the Egmont Group.

Egmont Principles of Exchange of Information Among FIUs

324. There is nothing in the AML/CFT Law which addresses the requirement to have regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between FIUs. However, it should be noted that Article 11 of the draft Decree-Law on the FIU (not in force and effect at the time of the on-site visit or immediately thereafter) establishes that “the FIU may enter into memorandums of understanding with foreign entities which have powers and duties similar to those of the FIU with regard to the exchange of information between the FIU and those entities.” The same article states that “any agreement entered into under the previous paragraph shall: a) be on the basis of the reciprocity and shall be restricted to providing information that the foreign entity has reasonable grounds to suspect would be relevant to investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; b) restrict the use of information to purposes relevant to the investigation or prosecution of a money laundering offence or an offence of the financing of terrorism; and c) stipulate that the information must be treated in a confidential manner and not be further disclosed or share with other parties without the express consent of the FIU

325. Article 12 of the same draft Decree-Law provides that: (1) The FIU may disclose information to foreign entities, subject to the provisions of Article 11, on such terms and conditions as are set out in the agreement; (2) Notwithstanding the provisions on the previous paragraph, the FIU may disclose information to a foreign entity for the purposes of an investigation, prosecution or proceedings relating to a money laundering offence or an offence of the financing of terrorism; and (3) Any disclosure shall be treated as confidential information and shall not be disclosed further without the written consent of the FIU

Adequacy of Resources to FIU

326. Under Article 5 of the AML/CFT Law the nature, organization and functioning of the FIU shall be established by Decree Law. As noted above, this Decree Law had not been passed by the time of the on-site visit or immediately thereafter, and the FIU had not in practice been established.

327. During the on-site visit, the Evaluation Team was told by the BCTL that the FIU will be staffed with two persons from the Central Bank, and one person from each of PPO, the Police and the Anti-Corruption Commission. Under Article 3 of the draft Decree-Law on the FIU, the FIU shall be headed by a Director General and shall have such staff as the Central Bank consider necessary to perform its mission.

Integrity of FIU Authorities

328. In addition to any relevant provisions that may be included in the Decree Law on the FIU, the FIU will be part of the BCTL, whose mission is outlined in its website: “to be a central bank staffed by a professional team that strives to continuously improve the quality of our services to our stakeholders by maintaining a sustainable monetary system with low inflation; ensuring that payments systems are efficient and effective; promoting a safe and credible system of financial institutions; communicating and providing information; undertaking sound economic research and analysis; by developing the necessary organizational and technical capacities”.

329. The FIU will also be bound by the BCTL's Code of Conduct which stipulates all persons who have contractual obligations with the BCTL shall at all times adhere to its policies which includes that employees of the BCTL shall:

- carry out their duties and conduct themselves solely with the interests of the public and the BCTL in mind; they shall neither seek nor take instructions from any parties including from government agencies, financial institutions, or person outside the BCTL;
- exercise honesty and diligence in the performance of their duties and responsibilities;
- exercise loyalty in all matters pertaining to the affairs of the BCTL and shall satisfy their self that every proposed activity is legal and proper;
- refrain from engaging in acts or activities which may result in damage to the reputation of the BCTL;
- ensure that at all times comply with the laws and regulations of Timor-Leste and the policies of the BCTL;
- refrain from entering into any activity which may be in conflict with the interest of the BCTL or which would prejudice their ability to carry out duties and responsibilities;
- avoid engaging in activities that may result in harm to other persons;
- ensure that the public interest is taken into account when developing any BCTL rule, regulation, guideline or procedure;
- refrain from accepting anything of value from an employee, client, customer, supplier, or business associate of the BCTL other than items procured in the normal course of business;
- avoid using confidential information for any personal gain or for any manner which would be contrary to law or detrimental to the welfare of the BCTL;
- avoid in practices such as betting, gambling and speculative activities to an extent which may be deemed imprudent or which may cause embarrassment to the BCTL;
- be required to report any suspected fraud or contravention of the BCTL approved policies to the Internal Audit Manager as required in the BCTL Fraud Control Plan.;
- refrain from removing computer data from the BCTL premises except when specifically authorized to do so; and
- follow equitable employment practices by promoting equal employment opportunities, following non-discriminatory behavior when engaging in the recruitment, evaluation, or dismissal of employee and refraining from any form of sexual harassment.

330. The BCTL code of conduct will also apply to any officers seconded from PPO, PNTL, etc to the FIU.

331. Article 69 of the Organic Law of the Central Bank of Timor-Leste outlines conflict of interest and fiduciary duty of all BCTL staff including the members of the Governing Board. The law defines "conflict of interest" and describes in detail the circumstances in which this may arise, including family members and his/her circle of friends and acquaintances. Punishment includes dismissal without compensation.

332. Under the law it also stipulates members of the Governing Board and the Bank's staff have a fiduciary duty to the Bank and to the Bank's customers to place the Bank's interests and the interests of its customers before their own pecuniary interest.

Training for FIU Staff

333. Between 2005 and 2011, the staff of the BCTL's supervisory department, who were responsible for receiving STRs, have attended 11 workshops, typologies meetings, conferences and seminars, both at the national and international level in relation to AML/CFT. The sessions included

analysing suspicious transactions, examination of ML and FT methods and trends, countering the financing of terrorism, financial investigators workshop, and Banking Supervision for Anti Money Laundering Examinations (see Annex 4 for details).

Statistics (applying R.32)

334. Since 2008, the BCTL has received a total of 20 STRs. All STRs were received from the banks, despite there having been an obligation for non-bank deposit taking institutions to report STRs since 2010 under the relevant Public Instruction. Since the BCTL was given power/obligation to do so in 2009, it has disseminated all the STRs it has received to the PPO. The BCTL indicated that the reason for the increase in STRs in 2011 was as a result of strong enforcement action being taken by the BCTL in relation to some AML/CFT failings by reporting institutions.

Table 6: Number of STRs received and disseminated

	2008	2009	2010	2011	Total
Number of STRs received	1	2	4	13	20
Number of STRs analysed	1	2	4	13	20
Number of STRs disseminated	0	2	4	13	19

Analysis of effectiveness

335. The overall effectiveness of the FIU cannot be evaluated as at the time of the on-site visit there was no FIU, the AML/CFT Law establishing the FIU only came into force in early January 2012, and the Decree Law establishing the details of the new FIU's nature, organisation and functioning had not come into force by the end of January 2012 (ie within 8 weeks of the on-site visit).

336. At the time of the evaluation, the BCTL was receiving STRs, but only from banks, and only very limited analysis was being conducted of the STRs. By law (the Penal Code), since 2009 all STRs have been disseminated to the PPO for investigation. The BCTL only conducted (and was only able to conduct) further inquiries at the request of the PPO. The two staff from the BCTL supervisory department who were assigned responsibilities related to AML/CFT issues also had other duties to perform.

337. Since 2008 there have been only 20 STRs filed with the BCTL, three of which have generated investigations by the PPO into potential money laundering. It is understood that these matters are still under investigation.

2.5.2. Recommendations and Comments

338. The Evaluation Team recommends that:

- Timor-Leste establish the FIU within the BCTL as per the AML/CFT Law as quickly as possible;
- FIU is staffed and made operational as soon as possible. The Evaluation Team notes and supports Timor-Leste's intention to staff the FIU with employees from the BCTL, as well as seconded officers from law enforcement (PNTL and ACC) and the PPO;
- The Decree Law and practical arrangements be put in place to establish the FIU and to ensure that it is independent and its core functions are not influenced or interfered with;
- The FIU issue guidance on the manner and form of reporting STRs and other reports

- The FIU have its own funding/budget sufficient to ensure effectiveness and efficiency;
- The FIU be provided with adequate and suitable training for staff in combating ML/FT and in financial analysis;
- Staff maintain high professional standards and integrity;
- The FIU office be located in a secure location with restricted access to ensure the integrity of the information and it is securely protected;
- The FIU develop Standard Operating Procedures to encompass
 - The safe receipt and dissemination of information from/to agencies;
 - Co-ordination and liaison with domestic law enforcement agencies, financial institutions in respect to accessing their respective databases for analysis;
- The FIU consult with the respective government agencies to facilitate access to information with respect to their databases;
- The FIU should apply for membership of the Egmont Group;
- The FIU should issue periodic reports and develop and issue guidelines on reporting and identifying of suspicious transactions, the new laws, their requirements, reporting procedures and regularly updated lists of the persons and entities on the UNSCRs.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • FIU not fully in place • The BCTL presently can only receive and forward STRs to the PPO • Very limited analytical function – database of information limited to information held by the BCTL • No access to information held by other government agencies • Cannot request further information from reporting entities • No guidelines have been issued to reporting entities • No periodic reports issued
R.30 (for FIU)	NC	<ul style="list-style-type: none"> • Presently no FIU in place • Two persons presently assigned to receive / disseminate STRs are part of the Supervisory Department of the BCTL who have other duties

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

2.6.1. Description and Analysis

Legal Framework:

339. The primary law enforcement authorities responsible for investigating ML/FT investigations and prosecutions are the PPO, as lead agency, and the National Police of Timor-Leste (PNTL):

- Under Law No. 14/2005, “The Statute of the Public Prosecution Service” Article 3, the PPO is responsible to take criminal action, to lead criminal investigation, even when carried out by other entities, to promote and conduct crime prevention actions, and to monitor proceedings by the criminal police organs in the course of enquiries;

- The PPO is the chief legal advisory and prosecution agency of Timor-Leste which has primary responsibility for investigating and prosecuting money laundering and terrorist financing offences. Article 57 of Decree Law No. 13/2005 approving the Criminal Procedure Code states that the competence to conduct and carry out enquiries rests with the Public Prosecution Service (or PPO). The PPO may grant the police or court staff competence to carry out inquiries or to perform any acts relating to an inquiry. The provisions concerning disqualifications and suspicions are applicable to police officers and court staff carrying out an enquiry, with the necessary adaptations.
- Article 3(2) of Decree-Law No. 9/2009 of 18 February “Organic Law of Timor-Leste’s National Police Force (PNTL)” states the PNTL in its capacity as criminal investigation body and in accordance with the law, shall act under the tutelage of the competent judicial authority. In the case of money laundering and terrorist financing this is the PPO;
- In Decree-Law No. 13/2005 approving the Criminal Procedure Code, under the form of ordinary proceedings, the investigation is done through an enquiry conducted by the PPO, and the police shall act under the functional purview of the PPO. Article 52 outlines General Police Powers and stipulates it is incumbent upon police officers, even on their own initiative, to prevent criminal offences from being committed, gather reports thereof, track down their perpetrators, and take the necessary and urgent precautionary acts in order to secure evidence. It is also incumbent upon the police to assist, upon request, judicial authorities in achieving the objectives of the proceeding, particularly the PPO during the enquiry.
- In Decree Law No. 19/2009 approving the Penal Code, money laundering and funding of terrorism are defined in Articles 313 and Article 133 respectively.
- Under Articles 33 – 35 of the new AML/CFT Law, judicial authorities are given investigative powers to investigate money laundering and terrorist financing offences, including special investigative techniques.

340. Under Article 18 of the Draft Anti-Corruption Law (not yet in force) – Special access to communications - investigators shall be authorised to open and examine letters and parcels distributed by the postal services or other means suspected of being linked to any proceeding under investigation.

341. In addition, the Anti-Corruption Commission, a specialized unit with judicial police powers, is responsible for investigating corruption offences and at times has been delegated by the PPO to investigate associated money laundering offences.

Designation of Authorities ML/FT Investigations

Public Prosecutor’s Office

342. The Public Prosecutor’s Office (PPO) is the agency responsible for leading the investigation and prosecution of ML and FT offences as well as the predicate offences of ML. The PPO consists of 21 prosecutors, who are responsible for investigating / prosecuting all criminal offences committed in Timor-Leste.

Timor-Leste National Police

343. The Timor-Leste National Police (PNTL) is a unified national police agency and the primary law enforcement agency with responsibility for all community safety, road policing and criminal investigations, including the offences of money laundering and financing of terrorism.

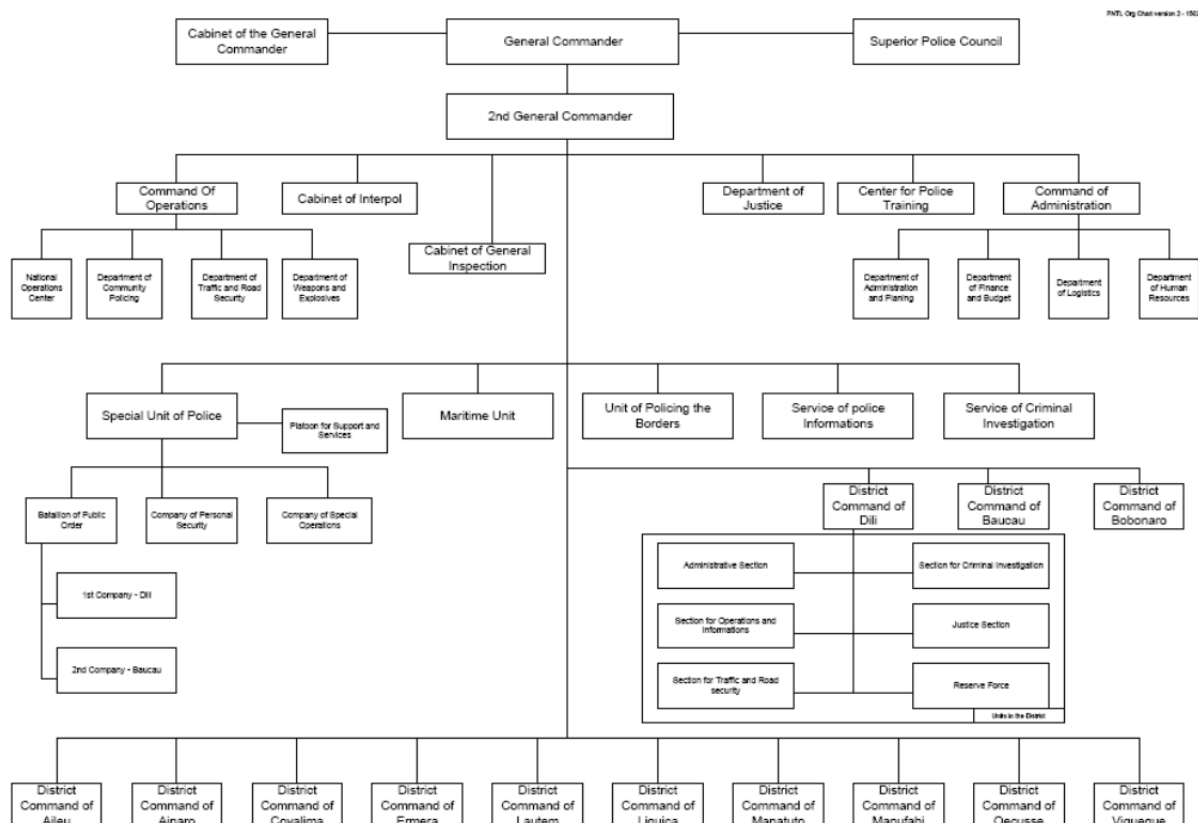
344. On 27 March 2011, the PNTL assumed (from the United Nations) full policing duties in Timor-Leste. There are approximately 3,095 PNTL officers deployed in 13 Districts (1923 officers) and 12 Units (1172 officers) including the Police Training Centre (85 officers), Border Patrol Unit (230 officers), Immigration Unit (76 officers), Interpol (8 officers), Justice Department (20 officers),

Administration Command (100 officers), Operations Command (62 officers), Special Police Unit (465 officers), the Maritime Unit (53 officers), the Border Patrol Unit (230 officers), the Police Intelligence Unit (29 officers), and the Criminal Investigation Service (42 officers). The PNTL Organic Law (Decree Law No. 9/2009) is the major legal document outlining the duties, responsibilities and powers of PNTL and the respective units including the:

- National Investigation Department which is responsible for investigating serious crimes such as organized crime and drug trafficking. The PNTL told the Evaluation Team that within this department is an Economic Crime Unit consisting of five persons which has been in existence for the past two years which would be responsible for investigating ML and FT. In total there are 36 members of the National Investigation Department whose resources can be drawn upon for any investigation, including ML and FT investigations.
- Interpol Unit, which reports directly on the General Commander and whose main mission is to facilitate the cooperation and mutual support between PNTL and the police forces from other countries in coordination with the Ministry for Foreign Affairs. The Interpol Desk is the focal point for the Secretariat-General of Interpol, the regional offices and other countries in need of support in international investigations and in locating and capturing fugitives. There are approximately seven officers in this unit.
- Maritime Unit, which is part of the Maritime Authority System established to provide surveillance and monitor coastal areas whose duties are specialized to prevent and combat crime, including drug trafficking, illegal fishing, trafficking in human beings, terrorism and piracy, clandestine immigration and to provide surveillance along the maritime borders, in coordination and cooperation with other authorities and entities integrating the Maritime Authority System, particularly the naval component of the (Timor-Leste Defense Force –Military (F-FDTL).
- Border Patrol Unit whose role is the surveillance of the border and to control people and goods by patrolling and surveillance along the land border in coordination and cooperation with F-FDTL, cooperate with the Migration Service in controlling the entry and exit of people and goods through the land border, cooperate with the other administrative authorities with a view to ensuring compliance with fiscal, customs and sanitary laws;
- Police Intelligence Service, whose role is to design and ensure the development and maintenance of the PNTL operational intelligence system, to define technical standards relating to the research, collection and processing of news and data that are of interest to PNTL and to cooperate with the National Intelligence Service and the FFDTL Military Intelligence Service, pursuant to the Law on the National Intelligence System of the Democratic Republic of Timor-Leste;
- Immigration Unit which is part of the Ministry of Defence and Security, however it used to be part of the PNTL and it is still in process of transition to the Ministry. UNPOL has assumed some of executive policing responsibilities related to migration and those functions need to be transferred.

345. Units such as the border patrol, marine and immigration are involved during the preliminary stages of an investigation such as the detection, seizure/ preservation of evidence and apprehension of suspects involved in the predicate offences for ML. The cases would be turned over to the National Investigation Department.

346. A further breakdown of the PNTL is provided in the charts below.



	District	Status	Directive Number	Total Number of PNTL officers	Male	Female
1	Lautem	Handed-over on 14 May 2009	01/2009	144	111	33
2	Oecussi	Handed-over on 30 June 2009	02/2009	118	85	33
3	Manatuto	Handed-over on 25 July 2009	03/2009	110	89	21
4	Viqueque	Handed-over on 5 December 2009	05/2009	138	111	27
5	Ainaro	Handed-over on 12 April 2010	01/2010	102	81	21
6	Baucau	Handed-over on 16 April 2010	02/2010	172	118	54
7	Liquiça	Handed-over on 07 September 2010	03/2010	99	73	26
8	Ermera	Handed-over on 10 September 2010	04/2010	130	101	29
9	Aileu	Handed-over on 21 September 2010	05/2010	90	69	21
10	Manufahi	Handed-over on 24 September 2010	06/2010	107	92	15
11	Dili	Handed-over on 27 March 2011	09/2011	454	362	92
12	Bobonaro	Handed-over on 27 March 2011	05/2011	133	91	42
13	Covalima	Handed-over on 27 March 2011	04/2011	126	97	30
Total of PNTL officers in the Districts ²⁸				1923	1480	443

	Units	Status	Directive Number	Total Number of PNTL officers	Male	Female
1	Police Training Center	Handed-over on 11 September 2009	04/2009	85	75	10
2	Maritime Unit	Handed-over on 14 December 2009	06/2009	53	51	2
3	Police Intelligence Service	Handed-over on 18 December 2009	07/2009	29	28	1
4	Border Patrol Unit	Handed-over on 28 September 2010	07/2010	230	217	13
5	Immigration Unit ³⁷	Handed-over on 28 September 2010	08/2010	76	65	11
6	Cabinet of Interpol	Handed-over on 28 September 2010	09/2010	8	8	0
7	Special Police Unit	Handed-over on 27 March 2011	08/2011	465	444	21
8	Criminal Investigation Service	Handed-over on 27 March 2011	01/2011	42	33	9
9	Justice Department	Handed-over on 27 March 2011	03/2011	20	15	5
10	Administration Command	Handed-over on 27 March 2011	07/2011	100	74	26
11	Operations Command	Handed-over on 27 March 2011	06/2011	62	43	19
12	Office of General Inspection	Handed-over on 27 March 2011	02/2011	2	1	1
<i>Total of PNTL officers in the Units</i>				1172	1054	118

Sources: *Monthly Governance Report- Timor-Leste – March 2011 – prepared by UNMIT*

Anti-Corruption Commission

347. The Anti-Corruption Commission (ACC) was established on 15 July 2009 by Law 8/2009 as an independent specialized criminal police force that undertakes preventive action and criminal investigation action against corruption. This includes embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by the Penal Code.

348. The ACC structure consists of the following :

Table 7: Structure/staffing of ACC

Position	Number of Staff
Commissioner	1
Deputy Commissioner	2
Executive Secretary	1
Director of Prevention	1
Director of Public Education	1
Director of Investigation	1
Administrative Staff	8
Investigators	9
Temporary Staff	12
Total	36

349. Investigators with police/judicial police powers have backgrounds that include legal studies, accounting, engineering and journalism. Although they have enforcement powers, the ACC will seek assistance from the PNTL to provide security to the ACC when conducting investigations such as inquiries and/or searches. The PPO can delegate authority to the ACC to conduct investigations on its behalf.

350. The PPO confirmed that it is presently investigating 40 ongoing cases of corruption.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property

351. It is not clear that investigative authorities have the legal authority to postpone/waive arrest of suspects or seizure of property, though in practice it may be possible for the purpose of gathering further intelligence on individuals/offences. The PPO advised that it is obligated by law to conduct investigations and bring charges “when there are factual assumptions of legal charges and the requirements of prosecution”. This means the PPO is obliged by law to act and take all necessary measures to ensure that a person who commits a crime is criminally prosecuted, judged and punished. The PPO indicated that it must act based on criteria of legality and not of opportunity, and that its prosecutors may be held accountable for lack of promotion of prosecution for the crimes of denial of justice, misconduct or even be disciplinarily punished.

Additional Elements—Ability to Use Special Investigative Techniques and Use of Special Investigative Techniques for ML/FT Techniques

352. The PNTL has investigative techniques and powers available for the investigation of serious crimes. Techniques include controlled delivery, undercover police officers, electronic interception and surveillance. During the on-site visit the PNTL stated they have routinely used undercover operations in drug trafficking and illegal border crossings cases, conducted controlled deliveries and surveillance. The PNTL indicated that in the case of intercepting communications, although the law permits it, they lack the technical capacity to do so. The ACC indicated that they had not utilized undercover operations.

353. Timor-Leste advised that Article 23 of the Anti-Corruption Commission law permits undercover operations. This is permitted only in grave cases that necessitate the use of undercover operations. According to Article 26 the Commission also may enter into agreements, including, when appropriate, memoranda of understanding with any similar national or foreign institution, in order to: perform their duties in a cooperative manner, use joint facilities and staff and exchange the information.

354. The PPO stated that any investigation requiring the use of controlled delivery or undercover operations requires their approval to ensure no laws are broken. Any international request for assistance in such cases has to be made through their office. Article 19 of Law 15/2011 on International Criminal Judicial Cooperation establishes PPO as the Central Authority for the transmission and reception of requests for international cooperation. The laws which permit the use of special investigative techniques include:

- Decree-Law No. 13/2005 Approving the Criminal Procedures Code - Article 185 permits the tapping or recording of telephone conversations or communications may be ordered or authorised by a court decision only where this action is necessary for the disclosure of the truth in connection with criminal offences punishable by a prison sentence exceeding three years or abusive language, threat, duress, intrusion into one’s private life, disruption of peace and tranquillity, when committed on the telephone, if there is any reason to believe that this action will prove to be of great importance to the disclosure of the truth or to the obtaining of proof.
- Under December 2011 AML/CFT Law
 - Investigation – Article 33 – For the purpose of obtaining evidence of money laundering and terrorist financing and tracing of proceeds of crime, the judicial authorities may order, for a specified period: the monitoring of bank accounts and other similar accounts; access to computer systems, networks and servers; the placing under surveillance or interception of communications; the audio or video recording or photographing of acts or conversations; the interception of correspondence. These techniques shall be subject to authorization of the competent judicial authority and only be used where there are serious indications that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons

suspected of participating in money laundering and financing of terrorism and subject to compliance with the requirements established in Article 168 to 180 of the Penal Procedures Code

- Under Article 18 of the Draft Anti-Corruption Law (not yet in force) – Special access to communications - Investigators shall be authorised to open and examine letters and parcels distributed by the postal services or other means suspected of being linked to any proceeding under investigation.

355. In the Decree Law 4/2006 on Special Arrangements within the Criminal Procedure Framework for Cases of Terrorism, Violent or Organized Crime, Article 7, in cases of terrorism, violent or highly organized crime, the authorization order referred to in Article 177 paragraph 1 of the Criminal Procedure Code can be requested to the Judge of the places where the conversation or communication may eventually take place, or to the Judge from the siege of the competent institution for the criminal investigation.

Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations

356. The PNTL has an Economic Crime Unit consisting of five investigators which falls under their National Investigation Department. It was indicated that any investigations involving the proceeds of crime would be conducted by this Unit.

357. During the on-site visit, the Evaluation Team was informed that the PNTL and PPO have been involved in the seizure of moneys and assets such as vehicles and in one case a fishing vessel. These items were usually made upon arrest of a suspect and were instruments used in the crimes committed.

358. The PPO and the PNTL advised that they have been involved in international investigations involving controlled deliveries. The PPO also advised they are seeking the cooperation / assistance of a foreign jurisdiction in respect to three potential money laundering cases. The PPO advised they have also provided assistance to other countries involving the taking of witness statements. No statistics were provided as to the number or the number of type of such requests.

359. The PNTL has entered into three MOUs with law enforcement agencies in neighbouring countries for the purposes of preventing and combating transnational crimes, illicit trafficking in narcotic drugs, psychotropic substances and its precursors and developing collaboration/cooperation and capacity building. In July 2009 a MOU was signed between the Indonesian National Police (NPI) and the PNTL on cooperation in preventing and combating transnational crimes and developing police collaboration by exchanging information and experiences in the area of education and training as well as conducting operational activities, i.e. the monitoring, preventing and combating transnational crimes as well as other police related matters at the border area. In 2010 a MOU was signed between the Australian Federal Police and the PNTL in relation to cooperation and coordination in law enforcement operations of mutual concerns. Coordinated operations will provide opportunities for law enforcement agencies to disrupt and dismantle transnational crime threats common to both countries.

360. In March 2011 a MOU was signed between the National Narcotics Board of the Republic of Indonesia and the PNTL on the cooperation in combating illicit trafficking in Narcotic Drugs Psychotropic Substances and its Precursors by taking measures to eliminate illicit drug supply resources; collaborating on suppression of illicit drug production and trafficking as well as close and coordinated cooperation in regional and international arenas. The MOU also covers training opportunities between both agencies Further details are outlined in Section 6.5. Other Forms of International Co-operation (R.40 & SR.V)

Additional Element—Review of ML & FT Trends by Law Enforcement Authorities

361. ML and FT methods, techniques and trends are not reviewed by the PNTL or other partner domestic agencies on a regular, inter-agency basis. The PNTL acknowledged this is an area for improvement.

Ability to Compel Production of and Searches for Documents and Information

362. Under Chapter III of the Criminal Procedures Code, the PPO and/or Police have the power to compel production of, search persons or premises for, and seize and obtain/compel documents. It provides for:

- body searches where there is a need to seize any items related to a crime or that may serve as a means of evidence.
- search of persons and items authorised through an order issued by the judge. The searches are carried by the police or by a person specifically appointed by the PPO;
- search of inhabited houses or their outbuildings;
- seizure of an item relating to a criminal offence or that may serve as a means of evidence authorised by the judge. In the case of urgency or danger posed by a delay in securing authorisation, police may seize without prior authorisation, but they shall immediately report the fact to the competent judge, with the aim of having the seizure validated;
- Where a person wishes to refuse or obstruct any required check or refrains from handing over an item that is to be examined, he or she may be compelled to do so by a decision from the competent judicial authority;
- The competent judicial authority may determine that one or more persons do not leave the place where the check is to be conducted and, if need be, compel, with the assistance of a public force, those trying to leave the place, whose presence is required, to stay there for the duration of the check;
- The court shall issue a writ ordering the production of every evidence the knowledge of which proves to be essential for the disclosure of the truth and for a proper adjudication of the case, while observing the adversarial nature of the proceedings;
- The police may conduct searches, checks or seizures without a court order: In the case of *flagrante delicto* in connection with a criminal offence that carries imprisonment; or where there is strong suspicion that items relating to a criminal offence are hidden and a delay in securing permission to retrieve them might lead to the modification, removal or destruction of such items or pose a danger to the safety of persons and goods.

363. The PPO advised that it subpoenas witnesses and can compel a person in applicable cases to bring business records with them. Records which are considered confidential such as banking records require a court order. Further, under the Criminal Procedures Code, the PPO can delegate such authorities which in some cases has been done to the ACC.

364. Decree Law 4/2006 on Special Arrangements within the Criminal Procedure Framework for Cases of Terrorism, Violent or Organized Crime, provides for further procedures where searches of places and persons can be conducted, in particular:

- Home searches: The PPO can also order home searches in cases of terrorism, violent or highly organized crime when there are well funded indications of an imminent conduct of a crime that puts at risk the life or physical integrity of any person. In the cases referred to in the above paragraph on condition of being declared nil/nullified, the conduct of such measures shall be immediately communicated to the competent judge and shall be appreciated by the judge with a view to its validation.

- Seizures: The PPO and the Police authorities can also order seizures in cases of terrorism, violent or highly organized crime when there are well funded indications of an imminent conduct of a crime that puts at risk the life or physical integrity of any person. Police authorities can also conduct seizures without previous authorization or order in the situations referred to in the previous paragraph.

365. Under Article 5 of the Law on the Anti-Corruption Commission, the ACC has the power to examine books, documents, records, archives and other pertinent elements in the possession of the entities which are under investigation, as well as other pending offences. In terms of criminal investigation, the Commission may also suggest to the PPO that precautionary measures be adopted under the terms of the applicable penal procedural legislation.

Power to Take Witnesses' Statement

366. The PPO told the Evaluation Team that witnesses are interviewed and statements are taken almost on a daily basis when they are conducting investigations. The ACC also stated it has been delegated the authority by the PPO to take witness statements.

367. Article 119 of the Criminal Procedure Code states that a witness may be questioned about the facts of which he or she may be directly aware and constitute elements of proof. Under Article 123, except as otherwise stated in the law, a witness is required to fulfil the following duties:

- to appear, on the set date, time and venue, before the court, if lawfully summoned or notified, and to remain at the disposal of the court until such a time as the latter exonerates him or her from that obligation;
- to take an oath, when being heard by a judicial authority;
- to act upon the instructions given to him or her as to the way in which he or she is to give the deposition.

368. A witness is not obligated to answer any questions where he or she alleges that such answers might cause him or her to incur criminal liability.

369. Some persons may refuse to give a deposition as witnesses including:

- progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
- a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation;
- the authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in sub-Article 125.1 that they are allowed to refuse to give a deposition.

370. Church or religious ministers, lawyers, medical doctors, journalists, members of credit institutions and other persons allowed or required by law to maintain professional secrecy may refuse to give a deposition on facts covered by that secrecy. In the case of reasonable doubts about the lawfulness of the refusal to give a deposition, the judicial authority before which the incident has been raised carries out the necessary investigations; and if, once such investigations have been completed, the refusal is considered to be unlawful, the judicial authority orders or requests the court to order that the deposition be given. A court higher than that where the incident has been raised, or its full bench, if the incident has been raised before the Supreme Court of Justice, may decide that a deposition be given by breaking professional secrecy where this proves to be justifiable in the face of the applicable provisions and principles of the criminal law, particularly in view of the principle of prevalence of the predominant interest; and the intervention is initiated by the judge, on a discretionary basis or at request.

371. Under Law No. 8/2009 – Law on the Anti-Corruption Commission, Article 5, the Commission has the power to exercise the duties assigned under the terms of the law to the criminal police bodies, notably to conduct interrogations within the scope of the investigation and other investigative measures necessary for the performance of their duties;

Recommendation 30 – Resources

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies

372. The PPO has 21 prosecutors responsible for investigating and prosecuting all criminal offences in Timor-Leste, including money laundering, its predicate offences and terrorist financing. The PPO does maintain a computerized database (Major Case Management) of their cases from 2000 to present which is searchable, and which has a backup system. The total criminal cases for the last three years are as follows:

Table 8: Total criminal cases, 2009 – 2011

Year	Case Movement		Total	Finished		Total	Pending Cases
	From the Previous Year	New Cases		Indicted	Archived		
2009	4,981	3,976	8,957	1,227	3,192	4,419	4,538
2010	4,538	3,770	8,308	797	2,888	3,685	4,623
2011	4,623	2,285	6,908	885	2,517	3,402	3,506
TOTAL		10,031		2,909	8,597	11,506	

373. There are no specialized prosecutors solely responsible for investigating and prosecuting money laundering or terrorist financing offences, or pursuing proceeds of crime. Timor-Leste advised there are international judges, prosecutors and public defenders who have experience in dealing with complex cases such as financial crimes. They are from Portugal, Brazil and Cape Verde.

374. As noted above, the PNTL unit responsible for investigating money laundering or terrorist financing is the Economic Crime Unit, which consists of five persons. The Economic Crime Unit is within the National Investigation Department of the PNTL which has approximately 36 officers. This Department is responsible also for investigating the predicate offences. No details were provided on the funding or staffing of the units within the National Investigation Department. During the on-site visit, the PNTL stated the National Investigation Department is independent to make its decisions on investigations. The PNTL acknowledged they lack certain technical capacities in respect to employing investigative techniques such as wiretapping.

375. The PNTL advised that 28 of their officers within the National Criminal Investigation Service have received training overseas. The training has included courses with respect to financial crime investigation, criminal investigations, narcotics, clandestine laboratory investigation, computer criminal investigation, combating human trade for sexual purposes, arson investigations, crime scene investigation and human trafficking.

376. The ACC has 36 staff of whom nine are investigators with law enforcement powers. They have received training internationally on a least three occasions. The ACC stated they do receive internal training on the Criminal Procedure Code and have received international training. Statistics in respect to the breakdown of number of employees trained and type of training were not provided.

Integrity of Competent Authorities

377. Decree-Law No. 13/2004 of 16 June 2004 - Disciplinary Regulation of the National Police of Timor - states that PNTL members have to honour the oath they have made and act in a strictly non-partisan manner and shall, in the performance of their functions, be guided by criteria of impartiality, detachment, objectivity and respect for democratic legality. PNTL cadets who have passed in the admission course imparted by the Police Academy shall, before joining the PNTL, take an oath to this effect.

378. A breach of the oath taken shall constitute a disciplinary offence.

379. The PNTL told the Evaluation Team that there is a specific unit, Professional Standards, referred to as the Justice Unit in the previous organization charts of PNTL. This unit consists of approximately 20 officers who investigate complaints against police officers in all the districts. Many of the cases relate to abuse of power and absence on duty. The investigation will determine the course of action to be taken, i.e. disciplinary and/or referral to the PPO for criminal investigation.

380. Under the Disciplinary Regulation of the National Police of Timor, the investigations into police misconduct are made public. Article 100 states that in an investigation proceeding, the investigator shall, as soon as the investigation is initiated, publicise the act through announcements to be published in the Official Gazette and in a daily newspaper, where available, and through public notices to be displayed in the place where the investigation is going to take place. Announcements and public notices shall state that any person who has a reason to make a complaint about the irregular operation of the command or service being investigated may personally approach the investigator at the time and place as determined, or forward a written complaint to the investigator. The written complaint shall contain the particulars of the complainant and his or her signature legalised by a notary public, except if the identity card of the complainant is exhibited upon the filing of such complaint. A periodical to which an announcement has been addressed shall have the obligation to publish it, and its publication cost shall, for payment purposes, be documented by the investigator and paid for by the PNTL, in case of acquittal, and by the defendant, in case of conviction. Refusal to publish an announcement shall constitute a crime of disobedience, punishable under criminal law.

381. The PNTL stated to the Evaluation Team that they are continuing to receive training in professional development, and are learning from past experiences. They are receiving training in this area from three donor countries in professional development. The MOU with the Australian Federal Police, outlines capacity building and professional development, including but not limited to: the exchange of personnel for study purposes, training programs, attending seminars, conferences, etc and the exchange of equipment and resources. In March 2010, the PNTL signed an MOU with the Indonesian National Police on capacity building. Both police forces agree to cooperate in enhancing knowledge and skill as well as police professionalism technically and tactically.

382. For prosecutors and judges there is training being organized in the special institution for magistrates in Lisbon, Portugal. Some Portuguese prosecutors and judges are coming to Timor-Leste to participate in training of the local staff, and generally the arrangement is for the training to occur in one year's time. The training is not only on technical questions but also on the professional standards such as the confidentiality, integrity and professional secrecy.

383. The ACC is conducting basic training internally on ethical procedures – code of ethics. The procedures at the time of the on-site visit have not been completed had not been finalized.

384. The Public Prosecutors and police officers swear an oath at the time of assuming duties, on the respect and observance of the Constitution and other laws of the Republic, including the laws of the public service.

385. Police officers, as law enforcement agents, are bound by the Penal Code according to the concept of “ Official “ which means they must uphold the law in the same category as civilian servants, administrative officers, members of the same forces etc. (Penal Code, article 302).

Training for Competent Authorities

386. The PPO has received international and national training in ML and typologies, techniques to investigate and prosecute, and techniques for tracing, seizing, freezing and confiscation of assets. This training has been provided by international agencies such as: USAID, UNDP, AUSAID, and the Justice Facility from Australia, etc.

387. Five PNTL officers attended Financial Crime Investigation courses in Thailand and Jakarta, which included a component on money laundering . However, no PNTL officer has attended a specialized money laundering investigation course.

388. Regarding terrorism, one PNTL officer attended a working group on terrorism management course in France. Seven PNTL officers have attended courses on bomb awareness and bomb countermeasures.

389. Relevant AML/CFT training for law enforcement, i.e., police and justice is under discussion with international donors and foreign countries. A training session was recently organized by the BCTL for high level staff with the participation of an international expert

390. ACC staff have received training on the Criminal Procedure Code.

Additional Element (Rec 30) - Special Training for Judges

391. For prosecutors and judges, training has been organized in the special institution for magistrates in Lisbon, Portugal. Some Portuguese prosecutors and judges have visited Timor-Leste to conduct training of local staff, and generally the arrangement is for one year. The training is not only on technical questions but also on the professional standards such as confidentiality, integrity and professional secrecy. The question of seizure, freezing and confiscation of property will be in the agenda of the training sessions.

Statistics (applying R.32)

392. There are three ML related investigations currently being carried out by the PPO. These cases were instigated through STRs received from the BCTL and involve the movement of monies to a foreign jurisdiction. The matters are still under investigation, presently awaiting a request for assistance to the jurisdiction for further information on the transactions and individuals/entities involved.

Analysis of effectiveness

393. Certain factors have had an effect on Timor-Leste’s effectiveness in combating ML and FT. These include the fact that to date investigations involving seizures of cash and other assets such as vehicles and boats were the instruments of the crime and usually incidental to arrest. Investigations did not go further into tracing the proceeds derived directly or indirectly from predicate offences.

394. The PPO acknowledged they have the legislation to seize/restrain real property which is believed to be the proceeds of crime but indicated that proving true ownership would be difficult due to the fact much of the property in Timor-Leste is not registered. Further there is presently no official registry in which a seizure/restraint order against real property could be filed. Therefore proving true ownership to the courts would be difficult in respect to restraint and forfeiture.

395. Having no official property registry has caused problems where persons have failed to pay their fines imposed as part of a criminal sentence. Under the Criminal Procedures Code, the PPO can request that the courts garnish property in lieu of the fines which have not been paid. Where properties have not been properly deeded and recorded, proving to the courts ownership of real property to be garnished is difficult.

396. The PNTL is receiving capacity building through agencies such as UNPOL which plays an advisory role and donor countries are providing investigator courses. The PNTL still however lacks both the capacity and basic requirements to effectively fulfil its role. The PNTL further advised that the majority of its budget is used to pay salaries. A United Nations Development Programme report dated July 2011 titled "Strengthening the National Police Capacity in Timor-Leste" identified basic needs which are not being fulfilled such as maintenance of cars. In 2009 it noted that the PNTL had only 13 % of its radios functioning.

397. The Evaluation Team spoke to both a number of persons from both the government and private sector in respect to the investigations being conducted by law enforcement, the crimes being committed such as the common offences of prostitution and gambling. It was noted during the on-site visit that those persons directly involved in committing the predicate offences are being arrested and charged, i.e. prostitutes and/or their customers. The investigations do not however go further into determining / arresting/charging those who run the criminal operations, including the head of local organized groups/families. These persons are still living in Timor-Leste off the proceeds of crime and are known by the local population. The lack of specialised groups to conduct long term investigations and law enforcement capacity and training issues to utilize special investigative techniques contribute to the problem.

398. The three ML investigations that were generated by the PPO after receiving STRs from the BCTL are a good indicator that the AML/CFT regime, even though in its infancy, is demonstrating some effectiveness as financial institutions have detected and reported potential money laundering to the BTCL, which in turn led to an investigation where inquiries are being made by authorities in foreign jurisdictions. These investigations were initiated prior to the AML/CFT Law. As the AML/CFT regime becomes more robust, Timor-Leste, it is anticipated that preliminary investigations generated by STRs will increase and therefore require a quicker mechanism(s) in obtaining information in an informal manner. This may require the assistance of the PNTL.

2.6.2. Recommendations and Comments

399. The Evaluation Team recommends that Timor-Leste:

- Assign prosecutors specifically to investigate and prosecute ML and FT offences;
- Establish an investigative unit (within the PPO and/or the PNTL, or jointly) which specifically investigates the proceeds of crime with a focus of seizing/freezing and confiscation of assets derived directly or indirectly from criminal offences;
- Provide further training in
 - Conducting money laundering/ terrorist financing/financial investigations
 - Evidence collection requirements
 - Tracing of assets
 - The freezing/seizing and confiscation of assets
 - Use of undercover operations in ML and other financial crimes such as corruption
 - Integrity & Professionalism
- Provide further capacity to investigative units in the areas of employing special investigative techniques such as wire taps;
- Provide further technical capacity immediately in the area of drug analysis which is acceptable by the courts;

- Establish specialized units or joint task forces to investigate heads of local organized crime groups who have benefited from financial crimes such as illegal gambling, prostitution;
- PNTL to maintain a computerized record system of its cases which is searchable;
- Arrange mentorship programs from donor countries in serious and complex investigations such as money laundering that involves mentors providing advice through all the investigative stages, i.e. from the collection of evidence to court.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Lack of specialised investigative capacity and training. • No clear legal authority to postpone/waive arrest • Effectiveness concerns: The number of investigations of money laundering is low when compared with the incidence of predicate crimes
R.28	LC	<ul style="list-style-type: none"> • Competent authorities have not demonstrated /utilized or considered compel production of search persons or premises for, and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons.
R.30 (for LEAs)	PC	<ul style="list-style-type: none"> • Competent authorities require further training in conducting money laundering/terrorist financing investigations, tracing property that is the proceeds of crime, seizing, freezing and confiscation of such property • Competent authorities lack technical capabilities in conducting money laundering and terrorist financing investigations and the predicate offence of drug trafficking

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

2.7.1. Description and Analysis

Legal Framework:

400. There are several legal provisions relating to the cross-border movement of cash and bearer negotiable instruments (BNI).

401. Pursuant to Article 6 of Decree Law No. 20/2003 on the Legal Tender of Timor-Leste, Public Instruction 4/2009 was issued by the Banking Payments Authority (which became the Central Bank in 2011), concerning the importation and exportation of cash. Articles 2 and 3 of the Public Instruction require every person transporting cash into or out of Timor-Leste, in the form of the official currency of Timor-Leste or foreign currency, with a total value in excess of the sum of US \$10,000 or its equivalent, to obtain authorisation from the Banking and Payments Authority (now the BCTL). In addition, every person transporting cash into or out of Timor-Leste, in the form of the official currency of Timor-Leste or foreign currency, with a total value in excess of US\$5,000 or its equivalent or a different amount to be determined by law, shall declare the sum being transported on the prescribed Customs form. Article 7 of Public Instruction 4/2009 sets out the sanction for violations of Articles 2 and 3, which is an administrative fine of 10% of the cash being transported, up to a maximum of US\$5,000. “Transport” means the carrying into or out of the Customs territory of

the Democratic Republic of Timor-Leste of banknotes and coin on one's person or through another party, with or without using a means of transportation

402. Article 7 of the new AML/CFT Law extends the existing declaration obligations. It requires any natural person who enters or leaves the territory of Timor-Leste transporting cash or BNI in an amount above \$10,000 to declare the transported amount to customs authorities. The AML/CFT Law also gives explicit power to customs authorities to seize or restrain part of or the whole amount of the non-declared currency or BNI if there is a suspicion of ML or FT or when there has been a false declaration. However, as noted previously, the AML/CFT Law was only enacted in December 2011 so, while welcome, Article 7 had not been put into practical effect as at the time of the on-site visit or immediately thereafter eg through revision of the declaration form.

403. The old provisions contained in the BPA Public Instruction n.º 4/ 2009 on the Importation and Exportation of Cash that establish the obligation to declare the transportation of US 5,000 or more overlap with a new provisions of the AML/CFT Law that sets a threshold of USD 10 000 for declaration. The BCTL plans to review Public Instruction 4/2009 in accordance with the requirements of the new AML/ CFT Law which is now the prevailing requirement.

Mechanisms to Monitor Cross-border Physical Transportation of Currency

404. The Custom Service is the primary authority in the monitoring of cross-border physical transportation of currency and has offices located at the following points:

- Dili Sea Port
- International Airport President Nicolau Lobato in Dili
- Dili Post Office
- Maliana Customs (western border area)
- Batugade Customs (western border area)
- Salele – Suai Customs (western border area)
- Baucau Customs (eastern part of the country)
- Oecusse Customs (Sakato and Bobometo in the enclave of Oecusse).

405. The border between Indonesia and Timor-Leste is porous and difficult to monitor in respect to the cross border movement of currency, goods and/or persons and is a prime area for concern.

406. Completed border cash reports are collected by customs officers at the airport and other ports of entry or departure and forwarded to the BCTL in Dili for collation and analysis. The border cash report forms allow a variety of information to be collected, including: name, passport number, citizenship, occupation, address in Timor-Leste or overseas, flight and arrival details, where travel commenced, type of currency, amount, value in US \$, and the city and country the cash has come from or is going to.

Request Information on Origin and Use of Currency

407. During the on-site visit the Customs Service told the Evaluation Team that in practice, the discovery of any undeclared or undisclosed of cash would result in the person being detained and interviewed by Customs officers .

408. The Customs Service's responsibilities and powers are outlined under the Decree Law No 9/2003, the "Duties and Competencies of the Customs Service of Timor-Leste." These duties include monitoring people and goods to combat tax evasion and fraud, particularly the illegal drug or weapons trafficking, and collaborating with other national, foreign and international bodies in activities related to anti-fraud fight to fulfil fiscal justice -related duties as may be entrusted thereto by law or regulation. Monitoring action consists of:

- Customs monitoring and policing on an uninterrupted basis, at any place, day or time when there are goods being handled, or, intermittently, through customs monitoring visits;
- Customs monitoring and policing over the entry, stay, movement and exit of people and means of transport, cargo units and goods from the border areas;
- To conduct searches, inspections and audits, and solicit documents and registers that support compliance with the customs law;
- To conduct searches of people, sale establishments, depots, ships, aircraft and other means of transport or of any other places, where there is reasonable motive to suspect that the customs law has been breached;
- To seize weapons, implements, goods, means of transport, documents and any other items that have been used for committing a customs offence or that have been the subject of a tax crime; other applicable prerogatives as contemplated by law.

409. While customs officers have the broad powers outlined above, and told the Evaluation Team that they would in practice detain and interview any person failing to make a declaration or making a false declaration, it is not clear that they have the explicit power or authority to request and obtain further information from the carrier with regard to the origin of the cash and its intended use. In addition, the declaration requirements in place at the time of the on-site visit related only to cash, and not to BNI.

Restraint of Currency

410. Under the Decree Law No 9/2003 on the Duties and Competencies of the Customs Service of Timor-Leste, the Customs Service can seize weapons, implements, goods, means of transport, documents and any other items that have been used for committing a customs offence or that have been the subject of a tax crime or other applicable prerogatives as contemplated by law.

411. Public Instruction 04/2009 outlines sanctions with respect to those persons who make a false declaration or fail to disclose/declare on the Customs form that they have either imported or exported cash over \$5,000 and /or failed to receive authorization from the BCTL to export or import over \$10,000 (USD). Although it does not specify that the cash will be detained or seized, it is implied through the wording of the Public Instruction as it states a fine will be imposed of 10 % up to a maximum of \$5,000.00 which will be deducted from the currency being transported. The remaining amount will be returned to the party from whom the sanctions are imposed. In the case where it is suspected that a person/persons is making multiple journeys, or a group of persons is transporting cash with the intention of avoiding the importation/exportation limits, the official may detain the cash being transported and hand it over to the BCTL.

412. Article 7 of the new AML/CFT Law extends the existing declaration obligations and gives explicit power to customs authorities to seize or restrain part of or the whole amount of the non-declared currency or BNI if there is a suspicion of ML or FT or when there has been a false declaration. However, as noted previously, the AML/CFT Law was only enacted in January 2012 so, while welcome, Article 7 had not been put into practical effect as at the time of the on-site visit or immediately thereafter eg through revision of the declaration form

413. The Customs Service cited three instances where they seized currency in the amounts of 750,000,000 rupiah (approximately US\$80,000), 450,000,000 rupiah (US\$47,500), and 400,000,000 rupiah (US\$42,000) since 2002. This money was presented to the BCTL for verification before being handed over to law enforcement authorities as evidence in the court. Annex 5 is a list of sanctions imposed on the violation of transporting currency in and out of Timor-Leste since 2000.

414. As noted above, under the new AML/CFT Law the Customs Service has the authority to seize or restrain part of or the whole amount of the non-declared currency or BNI if there is a suspicion of

ML or FT or when there has been a false declaration. The currency or BNI may be detained for no more than 3 business days after seizure, after which the Court must issue a seizure order, with a copy to the parties involved, so as to properly characterize the nature of the material and the circumstances of seizure.

Retention of Information of Currency and Identification Data by Authorities when appropriate

415. Presently, the Customs Service maintains a hard copy of all declarations, including those which exceed the prescribed threshold, where there is a false declaration/disclosure or where there is a suspicion of ML or FT.

Access of Information to FIU

416. In the absence of an operational FIU, where cash seizures have been made, the cash and relevant information have been provided to the BCTL. Under the new AML/CFT Law, copies of declaration forms shall be transmitted immediately by the customs authorities to the FIU.

Domestic Cooperation between Customs, Immigration and Related Authorities

417. There is no arrangement for coordinated exchange of SR IX related information between domestic agencies in Timor-Leste. The Customs Service does meet monthly with the National Intelligence Unit, intelligence and law enforcement where information is shared in relation to suspected criminal activities. There are however no meetings held specifically in relation to the requirements under SR IX.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency

418. Presently there are no agreements in place between the Customs Service and relevant agencies in other countries in respect to information exchanges on cross border transportation reports and cash seizures.

419. The Customs Service is receiving assistance from a local donor country in establishing intelligence and profiling units in all areas such as the airport, ports and border areas.

Sanctions for Making False Declarations / Disclosures

420. Under the Public Instruction No 4/2009 on the Importation and Exportation of Cash, any person violating the provisions in respect to making false declarations in respect to the importation and exportation of cash will be liable to an administrative sanction comprising a fine of 10% of the amount of cash being transported, up to a maximum of US\$5,000.

421. Imposition of administrative sanctions comprising a fine shall take place by deduction from the amount of currency being transported into or out of Timor-Leste. Any remaining cash after the imposition of administrative sanctions shall be returned to the party upon whom the sanctions are imposed.

422. Under Article 32 of the AML/CFT Law, failure to declare currency or BNI in an amount equal to or above US\$10,000 or its equivalent in local currency or presenting a false declaration shall be punishable by a fine of US\$250 to US\$150,000 for individuals, or US\$2,500 to US\$750,000, for legal persons. Persons found guilty of violating any of the obligations described above may also be banned from pursuing the business or profession for a period of 6 months to 3 years. These penalties imposed do not exclude the sanctions and measures that are available to the competent supervisory authority.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or FT

423. Under Article 7 of the AML/CFT Law, the Customs Service can seize or restrain part or the whole amount of non-declared currency or BNI if there is a suspicion of money laundering or terrorist financing. The competent judicial authority shall consider, within three days, the seizure made under the preceding paragraph. The decision of the competent judicial authority to confirm the seizure clearly listed the characteristics of the assets seized and the circumstances of the seizure.

424. Money laundering or terrorist financing through the physical transportation of currency would be punishable under Articles 313 and 133 of the Penal Code respectively (see sections 2.1 and 2.2 above for a detailed description of the applicable sanctions).

425. Under the Penal Code, except as otherwise stated in the law, the seizure of an item relating to a criminal offence or that may serve as a means of evidence must be authorised by the judge. In the case of urgency or danger posed by a delay in securing authorisation, police bodies may carry out a seizure without prior authorisation, but they shall immediately report the fact to the competent judge, with the aim of having the seizure validated. Items seized are attached to the records or, where necessary, placed in the care of a trustee who may be the clerk of the section.

Confiscation of Currency Related to ML/FT

426. As noted above, under Article 7 of the AML/CFT Law, the Customs Service can seize or restrain part or the whole amount of non-declared currency or bearer negotiable instruments if there is a suspicion of money laundering or terrorist financing. The currency/BNI can be detained for no more than three business days, after which the Court must issue a seize order, with a copy to the parties involved, so as to properly characterise the nature of the material and the circumstances in which it was seized. The seizure of the amount of currency or BNI not declared in all or part are the acts of the customs authority which has the objective of obtaining evidence by protecting and making available objects related to the crimes of money laundering or terrorist financing. The intervention of the court (judge) must take place within three days (three working days) for the purposes of validating the acts of seizure made by the customs authorities pursuant to paragraph 2 article 172 of Criminal Procedure Code. The amounts of cash seized in offences related to money laundering or terrorist financing can be declared forfeited to the state, similar to any other proceeds of crime, whether equipment or valuables.

427. The three day time frame appears quite restrictive, but it appears that more time can be given to investigate the circumstances.

428. The general confiscation provisions of the AML/CFT Law described in section 2.3 of this report also would apply.

Confiscation of Currency Pursuant to UNSCRs

429. As noted above, Article 7 of the new AML/CFT Law permits the Customs Service to seize or restrain part or the whole amount of non-declared currency or bearer negotiable instruments if there is a suspicion of money laundering or terrorist financing. During the on-site visit there was no indication that the Customs Service check the names of persons/entities against the persons/entities identified in UNSCR 1267 and /or if such lists are provided to their front line employees.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones

430. There have been no cases of an unusual cross border movement of gold, precious metals or stones where the Customs Service in Timor-Leste has notified the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined. Presently the Customs Service has not considered establishing cooperation in such matters.

431. Should the Customs Service detect items which it believes are derived from a crime, the items would be seized and notification would be made to the PPO who would conduct further investigation into the matter. If an unusual cross-border movement of gold, precious metals or precious stones is discovered it could constitute the criminal offence of smuggling. Article 316 of Penal Code provides a penalty of imprisonment up to 6 or 8 years for the offence of illicit importation or exportation of goods. Investigation and prosecution would be determined by the PPO.

Safeguards for Proper Use of Information

432. The records/information which is collected by Customs in relation to cross border transactions/declarations is kept in hard copy at their offices. Such information has been transmitted only to the appropriate authorities such as the BCTL when currency has not been declared or authorized to leave/enter the country.

433. More generally, under the Decree Law No. 11 /2004 of 19 May 2004, the Customs Code of Timor-Leste, Article 12 states that any information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy and shall not be disclosed by the customs authorities without the express permission of the person or authority providing it.

434. Professional secrecy is also required under Article 5 of Law No. 8/2004 of 16 June 2004 (the Law that approves the Statute of the Civil Service), under which a civil servant shall be under an obligation to maintain professional secrecy regarding documents, facts or information that he or she may become acquainted with in the course of his or her functions. Civil servants are required to under the Statue of Civil Service to swear to this effect in their letter of appointment in. The law also outlines the punishment for the breaching of such conditions.

Additional Element—Implementation of SR.IX Best Practices

435. The Customs Service of Timor-Leste is receiving technical assistance from foreign counterparts in respect to developing a profiling and targeting program which will be utilized in all areas. Customs has recently set up x-ray machines at the airport and border points for the purposes of scanning items such as luggage and packages.

436. Timor-Leste Customs Service is also utilizing ASYCUDA (Automated System for Customs Data), an international database for compiling foreign trade statistics. The software was designed to handle manifests and customs declarations, accounting, transit and suspense procedures. There are approximately 85 countries which are members and input data.

437. The above systems are useful tools that allow customs to detect irregularities committed during the clearance procedure of goods. Also these systems allow authorities to target money laundering operations.

Additional Element—Computerization of Database and Accessible to Competent Authorities

438. The reports of cross border transactions of currency are not maintained on a computerized database. The information has been shared in hard copy with the BCTL in cases where currency has been seized. At the time of the on-site visit, the Evaluation Team was told by the Customs Service that studies are being done in relation to the implementation of a computer database in respect to declaration forms completed and cases of seizures.

Recommendation 30 - Resources

Timor-Leste Customs Service

439. The Customs Service is principally concerned with managing security and community risks associated with the flows of people, goods and craft in and out of Timor-Leste, and by collecting customs and excise revenues. The Customs Service plays a major role in preventing, detecting and investigating the illicit importation of drugs and other prohibited goods. The Customs Service undertakes an AML/CFT role as part of its general duties. It is responsible for the enforcement of the cash import/export reporting provision.

440. The Customs Service has 219 officers, as follows:

Table 9: Staffing of Customs Service

Department	TOTAL
DG's Office	19
Commercial Compliance	36
Operations	74
Risk & Compliance	27
Border Control	63

441. Custom Service offices are located in Dili Seaport, the International Airport (Dili), Dili Post Office, and five District /Border Points. As previously noted, Customs recently installed x-ray machines at the Airport and Border Points.

442. Since the on-site visit by the Evaluation Team, Timor Leste advised that three new Integrated Border Posts have been set up that will represent a “one stop shop” for all arriving and departing passengers. The border posts integrate the services provided by the National Directorate of Customs, Immigration, (SoS Security), the Quarantine Inspection Service, Land Transport, and the Commerce and Industry, Ministry of Health and are aimed to modernize the processing of people and goods entering and departing the land borders of Timor-Leste.

443. The role of the National Directorate of Customs is set out in the Organic Law for the Ministry of Finance (DL13/2009) and Ministerial Diploma for Revenue and Customs (M.D.13/2009). It provides Customs with control over commodities and means of transport entering and departing the Customs territory. It ensures compliance with all Customs laws and formalities particularly those relating to the payment of duties and taxes, facilitates legitimate trade, protects the community from illegal and dangerous commodities, and collaborates with other state departments in fostering the economic, social and fiscal integrity of the country to increase cooperation.

444. Further programs in respect to the investigative and intelligence staff will also support Police efforts in this field through any joint operations that might involve money laundering or terrorist financing. All suspicious border-related transactions are assessed by intelligence analysts who would advise the PNTL of any information that may be linked to ML or FT.

Recommendation 30 - Integrity

445. During the on-site visit, the Evaluation Team was told by the Customs Service that they have a good working relationship with the Anti-Corruption Commission and participated in two ACC

workshops where they received training in respect to corruption. The Customs Service also stated they are presently drafting a Code of Conduct and subsequently provided a copy to the Evaluation Team.

446. The Code of Conduct is for officers employed in the Directorate General of Revenue and Customs (DGRC) and is an instruction for the purposes of the Civil Service Law (No. 8/2004); failure to comply with the instruction, and the Code of Conduct, may lead to disciplinary proceedings resulting in one of the penalties provided in Article 79 of the Civil Service Law, including fine, suspension, or dismissal. The Code of Conduct outlines that employees' obligations are under the Constitution and provides a description of corruption offences. The Code elaborates on the standards of the Customs Service including, fairness, impartiality, sense of responsibility, trustworthiness and examples of workplace misbehavior. It also provides the procedures of reporting irregularities.

447. Employees of the Custom Service are also to sign a "Code of conduct officer acknowledgement," ie.... I acknowledge that I have received a copy of the National Directorate of Revenue and Custom Code of Conduct. I have read the Code of Conduct, I understand it, and I agree to comply with the standards of integrity and conduct detailed herein. I understand that behavior inconsistent with this Code of Conduct is not acceptable and that any misbehavior will be addressed in a timely manner and could result in disciplinary action under the Law-No. 8/2004 Statute of the Civil Service as well as with and criminal charges according with the Penal Code issued under Decree Law no. 19/2009. Failure to abide by the Code of Conduct, may lead to disciplinary proceedings resulting in one of the penalties provided in Article 79 of the Civil Service Law, including fine, suspension, or dismissal.

448. The Civil Service Law, No. 8/2004, also stipulates that civil servants must comply with a systematized set of standards, principles and values that emphasize integrity, merit, and excellent discharge of a civil servants' functions. Such standards should assist in the achievement of the national objectives which is progress, social harmony, just and balanced development. Further the Law outlines the general principles of a Civil Servant which includes discretion and confidentiality, impartiality, honesty and integrity, gender equality, conflict of interest. Employee in their letter appointment signs an oath to this effect.

449. The General Directorate of Revenue and Customs has a Training Program 2011-2012 in support of Professional Development. The plan encompasses Operational Training for 171 Customs Officers in two modules which is estimated at taking 6 weeks to complete. The training objectives includes employees of the Customs Service being able to explain:

- Roles and responsibilities of National Customs Directorate;
- Demonstrate an understanding of the Risk Management cycle and application to Customs Operations;
- Explain the importance of customs integrity and demonstrate its application in the Customs Code of Conduct;
- Explain the principles of Customs Offences and Sanctions;
- Operate ASYCUDA to maximize revenue collection and compliance;
- Demonstrate competence in Examination of Cargo, Ship/Aircraft Arrival and Clearance, Passenger Control;
- Demonstrate an ability to use intelligence in applying good customs work practice.

450. It was noted by the Evaluation Team during the on-site visit that corruption was an issue with the Customs Service and a continued area of vulnerability. It was reported in 2010 that bribery was a concern whereby Customs officials had forced importers to pay bribes to allow goods into the country. It was noted that the ACC are working with the Customs Service.

Training

451. As noted above staff of the Customs Service have attended training programs such as specialized training on tariff classification, valuation, risk management and cargo examination. The Customs Service stated they had specialized training programs attended by the customs' staff in related to AML, drug detection, counter terrorist training, and international investigation training programs in 2011: one person attended a seven day "Seminario Counter Terrorisme Inteligence Training Program"; one person attended a 3 day "Combate Trafico Ilicito de Estupefantes e Substancias Psicotropicos Alfandegas (CPLP)"; one person attended a sixteen day "Study Tour ba Comunidade Inteligencia Timor-Leste" and one person attended a two day "Study Tour ba Comunidade Inteligencia Timor-Leste".

Statistics (applying R.32)

452. There is no statistics maintained for the reasons mentioned above.

Analysis of effectiveness

453. Timor-Leste does have a declaration system in place in respect to the importation/exportation of cash. The system however lacks effectiveness due to the following reasons:

- The declaration forms are maintained in hard copy only and presently are not disseminated to agencies with the exception of the BCTL when seizures are made. The information is not readily searchable;
- the Customs Service does communicate directly with its counterparts in border countries for the purposes of sharing intelligence such as notifying them of possible suspects departing Timor-Leste;
- Domestically the Customs Service acknowledged it has developed a good relationship with the Anti-Corruption Commission. During the on-site visit it was not apparent that such a relationship exists with other partner agencies such as law enforcement;
- The fines for violations in the exportation /importation of cash available under the Public Instruction were not dissuasive especially in a cash economy such as Timor-Leste. The fines consisted of 10 % of the amount of cash being transported, up to a maximum of US \$5,000. The fines now available under the AML/CFT Law are dissuasive, but it is too early to assess their effectiveness;
- The BCTL provides a person with an authorization to import/export cash in excess of US\$10,000. During the on-site visit it was expressed to the Evaluation Team that the Customs Service would not detain/seize currency once such an authorization has been issued, even if they suspect money laundering. Although Timor-Leste has a declaration system in place the Customs Service stated they have done limited targeting based on domestic intelligence and random checks.

2.7.2. Recommendations and Comments

454. It is recommends that Timor-Leste should:

- extend scope of coverage of cross border reporting to include mail and cargo streams;
- issue the Decree Law to operationalise the new regime in the AML law and establish mechanisms, procedures and forms to implement the system, including introducing declaration forms that specify the obligations of declaring both currency and BNI;
- Give consideration to:

- i. Developing a computerized database(s) which is searchable containing the information from declarations, false declarations and seizures;
- ii. Implementing and training persons on the use of x-ray machines
- iii. The Customs Service having a canine unit;
- iv. Developing a target based approach based on intelligence and/or indicators;
- v. Enhancing domestic cooperation including the sharing of trends, intelligence, typologies both at management and working levels;
- vi. Developing points of contact (working & management level) with domestic agencies;
- vii. Developing international cooperation especially with border countries in relation to the sharing of intelligence in real time where targets can be identified;
- viii. Receiving further training in detecting money laundering and terrorist financing;
- ix. Receiving further training in respect to integrity and professionalism;
- x. Developing, maintaining and disseminating on a regular basis up to date trends, typologies, red flags/indicators of money laundering and/or terrorist financing.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	PC	<ul style="list-style-type: none"> • No computerized database for maintaining and easy retrieval of information contained in declarations • Unclear if c.IX.2 is met. • Competent authorities have no direct with their counterparts in bordering countries for the purpose of sharing of information; • Lack of sharing of information at the domestic level • Penalties for failing to declare and/or false declarations have not been sufficiently applied
R.30 (Customs)	PC	<ul style="list-style-type: none"> • Lack sufficient training in money laundering and terrorist financing, indicators and flags • Require further training in maintaining high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.
R.32	PC	<ul style="list-style-type: none"> • Competent authorities do not maintain comprehensive statistics on matters relevant to cross border transportation of cash , seizures, penalties/fines and other enforcement action

3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

Preamble: Regulatory approach in Timor-Leste

455. As outlined in section 1 of this report, the financial system of Timor-Leste currently comprises four registered banks, two other deposit taking institutions (microfinance type activities), two general insurers (no life insurance), one currency exchange bureau, 11 money transfer operators (MTOs) and 29 credit cooperatives. No financial market or exchange market operates in Timor-Leste.

456. The Central Bank of Timor-Leste (BCTL) supervises and regulates the banks, insurance companies, other deposit taking institutions (ODTIs) and the currency exchange bureau. This function was undertaken by the Banking and Payments Authority of Timor-Leste (BPA) until September 2011, when the BPA was transformed into the BCTL.

457. The credit cooperatives are currently registered at the Ministry of Economic Development. The BCTL is preparing a draft Public Instruction on the Licensing and Regulation of Money Transfer Operator. This Public Instruction, while in final draft form, had not been formally issued as at the time of the on-site visit or immediately thereafter. Until the Instruction is approved, MTOs are not subject to the supervision of any authority although they are required to be registered at MTCL.

458. As noted above, the AML/CFT Law was approved by Parliament on 12 December 2011 and came into force 28 December 2011. Before the AML/CFT Law's approval, limited preventative measures for banks and ODTIs have been set out in Public Instruction 02/2004 issued by the Banking and Payments Authority of Timor-Leste (BPA). Public Instruction 02/2004 was issued based on Section 17.b of UNTAET Regulation No. 2001/30 which gave the BPA the authority to issue rules, instructions, and guidelines.

459. Public Instruction 02/2004 provides specific measures applicable to banks and ODTIs operating in Timor-Leste regarding:

- customer due diligence requirements;
- ongoing monitoring of accounts and transactions;
- suspicious transaction reporting;
- record-keeping;
- policy to deal with high risk customer accounts;
- requirements on internal training program; and
- penalties for non-compliance.

460. On-site inspection has already been conducted by the BCTL on banks and on a limited scale for ODTIs to assess their AML/CFT compliance. Supervisors have paid some attention to banks' implementation of Public Instruction 02/2004 when determining compliance with money laundering obligations.

461. The recently enacted AML/CFT Law contains preventive measures applicable to all financial institutions (and to certain non-financial entities, as discussed in section 4 of this report). Article 10 of the AML/CFT Law also explicitly requires the identification by financial institutions of their customers and beneficial owners, and verification of their identities by means of independent source documents, data or information when:

- carrying out occasional transactions in an amount equal to or above \$10,000, whether conducted as a single transaction or several transactions that appear to be linked; if the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached;
- doubts exist about the veracity or adequacy of customer identification data;

- there is a suspicion of money laundering or financing of terrorism.

462. While this language mirrors the requirements of FATF Recommendation 5, it should be noted, however, that Article 10 of the AML/CFT Law does not require financial institutions to identify and verify the identity of customers/beneficial owners when establishing business relations. This significant legal gap is discussed further below.

Preamble: Law / Regulation / Other Enforceable Means

463. The AML/CFT obligations under Recommendations 5, 10 and 13 must be set out in *law or regulation*. *Law or regulation* refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar instruments, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Further AML/CFT obligations must be detailed in *other enforceable means* (OEM). OEM refers to guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance and which are issued by a competent authority.

464. In Timor-Leste, Laws, Decree Laws and UNTAET Regulations constitute *law or regulation*. Public Instructions are considered to be OEM as they are issued, for AML/CFT purposes, by the BPA/BCTL as the competent authority. The relevant Public Instructions include enforceable requirements and provide sanctions for non-compliance.

465. The key documents in relation to preventative measures on AML/CFT are:

- AML/CFT Law;
- Public Instruction 03/2003 On The Opening And Maintenance Of Deposit Accounts;
- Public Instruction 02/2004 On The Prevention Of Money Laundering, Customer Identification And Record-Keeping;
- Public Instruction 6/2010 On The Licensing And Supervision Of Other Deposit Taking Institutions.¹²

466. Under the AML/CFT Law, supervisory authorities shall supervise compliance by financial institutions with the requirements. It is understood that the BCTL has been designated as the supervisory authority for banks, insurance companies, other deposit taking institutions, money exchange bureaux and money transfer operators, for AML/CFT. Based on Article 81 Law No. 5/2011 The Central Bank of Timor-Leste succeeds the Banking and Payments Authority of Timor-Leste, established by UNTAET Regulation no. 2001/30 for all legal purposes.

467. There are also several other laws that address the required preventative measures and regulatory powers of competent authorities in the financial sector, as follows:

- UNTAET Regulation No. 2000/8 On Bank Licensing And Supervision;
- Law No. 6/2005 On Insurance Law;
- UNTAET Regulation No.2000/5 On The Licensing Of Currency Exchange Bureaux;
- Law No. 5/2011 Organic Law Of The Central Bank Of Timor-Leste.

¹² BCTL have a draft Public Instruction On The Licensing And Regulation Of The Money Transfer Operators.

Table 10: Instruments Setting Out AML/CFT Obligations on Financial Institutions

Title	Date	Covered Sectors	Notes
Law / Regulation			
AML/CFT Law	04/01/12	Financial institutions and financial entities	Requires CDD, STR Reporting, Record Keeping and contain sanction for non-compliance
Other Enforceable Means			
Public Instruction 03/2003	18/7/03	Banks	Issued by BPA contains no penalty provisions for non-compliance
Public Instruction 02/2004	7/5/04	Banks	Issued by BPA contain penalty provisions for non-compliance
Public Instruction 6/2010	17/12/10	Other Deposit Taking Institution	Issued by BPA contain penalty provisions for non-compliance

468. Although Public Instruction 03/2003 contains no penalty provisions for non-compliance, based on section 36.2 UNTAET Regulation 8/2000 on Bank Licensing and Supervision, the Central Payments Office (currently BCTL) may take the actions or impose the penalties if it determines that the bank violate a provision of the regulation or of any instruction of the Central Payments Office. Some sanctions have actually been applied under Article 36 by the BCTL.

Preamble: Scope of application of preventative measures to financial institutions

469. The AML/CFT Law takes a combined approach to the scope of application of preventative measures, referencing both types of institutions and financial activities. The law defines “financial institution” to include:

- any credit institutions, including micro-finance institutions (this includes banks);
- insurance companies and other investment related insurance companies and brokers;
- leasing and finance companies;
- managers and issuers of credit and debit card;
- any natural or legal person performing professionally the business of buying or selling or exchange of currency;
- any natural or legal person performing professional funds transfer activities;
- any person carrying out other activities and operations t appointed by a supervisory authority.

470. The definition does not cover all financial activities required under the FATF Recommendations such as:

- trading in money market instruments exchange, interest rate and index instruments transferable securities and commodity futures trading,
- participation in securities issues and the provision of financial services related to such issues, individual and collective portfolio management (including management of collective investment schemes such as unit trusts, mutual funds, pension funds),
- safekeeping and administration of cash or liquid securities on behalf of other persons,
- otherwise investing, administering or managing funds or money on behalf of other persons.

471. As mentioned in Table 3 (see paragraph 118 above), trading in money market instruments exchange, interest rate and index instruments transferable securities commodity futures trading is conducted by banks.

472. The four licensed banks, which had a total of \$403 million in assets as at December 2011, are the dominant participants in the financial sector. The total assets of the non-bank deposit takers is approximately \$10 million while credit cooperative had a total of approximately \$1.2 million in assets as at December 2011.

473. The banking system is almost entirely foreign owned, with about 95.1% of the total banking assets being held by branches of foreign banks. There is only one locally incorporated bank – Banco Nacional de Comercio de Timor-Leste (BNCTL) owned by the Government of Timor-Leste which is specialized in providing banking services to small and medium enterprises and microfinance operations. Most of the investments made by the banks are made out of the country.

474. The registered banks are permitted to offer nearly all banking services, including deposit-taking, loans, transfers of money, payment and collection services and money and currency changing. Although some of the registered banks are allowed to engage in buying and selling of debt securities (including futures and options), issuing/managing means of payments (e.g. credit or debit cards) and credit reference and guarantees services, because of the level of license they hold, only some issue debit cards and none of the banks currently engage in buying and selling of debt securities.

475. The three foreign banks are branches of Australian, Indonesian and Portuguese banks. Banks are required to follow relevant instructions issued by BCTL. Where there are specific matters that are not regulated in Timor-Leste, banks are allowed to follow the requirements issued by their home country supervisory authorities. This is in line with the BCTL's requirements for banks to establish policies and procedures based upon the minimum requirements established in the Public Instruction. However for the remaining financial institutions the situation is diverse and AML/CFT is not yet a priority.

476. The Timorese financial sector is underdeveloped. The rate of use of the banking system is limited and the number of branches of banks is very limited outside the capital Dili, with low levels of automation and computerization and cash still remains a major means of payment in the economy.

477. The post office does not provide any financial services.

National Identity System

478. Timor-Leste has a national identity card (IDC) system established under Decree-Law No. 2/2004 on Civil Identification. Section 5 of the Decree requires every citizen to apply for an IDC, and to produce it as required by law. In addition to its number, date of issuance, date of expiry, signature of the registrar, an identity card contains name of the holder, parentage, place of birth, date of birth, gender, marital status, photograph, signature, fingerprints, citizenship. The IDC is valid for 5 years except for applicants 60 years old and above. In practice three types of card can be used for identification: UNTAET residency card, Electoral Cards and IDC. Electoral cards are widely used as a primary form of identity and verification in CDD processes (over 600,000 Timorese have electoral cards, whereas only 24,380 have IDCs).

3.1. Risk of money laundering or terrorist financing

479. Timor-Leste has not conducted a risk assessment to distinguish which sector would be subject to low or little risk of ML or TF. As such, all institutions subject to the legal and regulatory provisions governing AML/CFT are required to adopt the specified standards, although the institutions must apply a risk-based approach to the application of the standards in high risk scenarios.

480. The national authorities have not formally excluded any financial institution, in totality or in part, from the applicable AML/CFT obligations. It should be noted that prior to the AML/CFT Law entering into force, BCTL simplified the CDD measures for ODTIs (microfinance type institutions). A review is being carried out by BCTL to bring the CDD requirements in line with the AML/CFT Law.

481. While the Timorese authorities have not yet carried out a national AML/CFT risk assessment, there are number of jurisdiction-specific factors which tend to suggest that the domestic financial sector presents a moderately low risk of ML and FT at the present time, even though the comprehensive legislative requirements to achieve the full scope of FATF preventive measures have only recently been passed into law. These factors include: the small size of the financial sector which is dominated by four banks that are supervised for AML/CFT purposes; the three most important banks are branches of Australian, Indonesian and Portuguese banks; bank policies and procedures which prevent non-face-to-face account opening; the absence of correspondent banking relationships; no use of third party intermediaries by the banking sector; and a relatively low incidence of ML through financial institutions as identified from analysis of STR and CTR reports to the BCTL.

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

3.2.1 Description and Analysis

Legal Framework:

482. CDD requirements are set out in the AML/CFT Law and Public Instructions 03/2003 and 02/2004. At the time of the on-site visit CDD requirements had been issued to banks and ODTIs.

483. Because the AML/CFT Law was only passed after the on-site visit and had not been applied in practice (effectiveness/implementation issue), the provisions of both the AML/CFT Law and the pre-existing Public Instructions are analysed below.

484. As noted above, there is no requirement in the AML/CFT Law to conduct CDD when establishing business relations. This is a very significant gap in the CDD regime and, if followed in practice by financial institutions, would significantly undermine the effective application of CDD measures in the other circumstances set out in the AML/CFT Law. While the BCTL has the authority to extend the requirements set out in the AML/CFT Law (as long as it does not contradict the Law), it is noted that under the FATF standards that basic CDD obligations should be set out in law or regulation.

485. The existing Public Instructions 03/2003 and 02/2004 do require banks to carry out CDD measures when opening accounts but, as noted above, this requirement applies only to banks (and not other types of FIs) and the Public Instructions are only OEM, rather than law or regulation.

486. The absence from the AML/CFT Law of a requirement for FIs to carry out CDD measures when establishing business relations is not repeated in each section of the analysis below, but should be borne in mind and is dealt with again in the analysis of effectiveness and recommendations section of this report dealing with Recommendations 5 – 8.

Recommendations 5

Prohibition of Anonymous Accounts

487. Article 8(3) AML/CFT Law prohibits financial institutions from opening anonymous accounts or accounts in obviously fictitious names.

Banks

488. Banks licensed to operate in Timor-Leste are already prohibited from opening anonymous accounts or accounts in obviously fictitious names (Article 3 of Instruction 03/2003 on the Opening and Maintenance of Deposit Accounts) and also are prohibited from dealing with unknown customers (Article 5(1) of Public Instruction 02/2004).

489. Article 5(5) of Public Instruction 02/2004 allows confidential numbered accounts to exist but the same customer due diligence process should apply. The public instruction requires that if such an account exists, the identity of the account holder shall be known to a sufficient number of staff to operate proper due diligence and such accounts should in no circumstances be used to hide the customer identity from the bank's compliance functions or from the BCTL.

490. In practice no numbered accounts are offered by banks in Timor-Leste. It is the intention of the BCTL to prohibit the use of confidential numbered accounts given the fact that none of the registered banks conduct this operation.

When is CDD required?

491. Article 10(1) of the AML/CFT Law requires financial institutions to undertake customer due diligence when:

- conducting occasional cash transactions of \$10,000 or above, whether conducted in a single or several transactions that appear to be linked;
- doubts exist about the veracity or adequacy of customer identification data; or
- there is a suspicion of money laundering or financing of terrorism.

492. Article 11(1) of the AML/CFT Law requires insurance companies, agents and brokers engaged in insurance activities to apply the CDD measures set out in Article 10 whenever the amount of premium payable in one year exceeds US\$1,000 or if the payment is made in the form of a single premium of more than US\$2,500 or in the case of pension insurance contracts entered into in connection with an employment contract or professional activity of the insured, when such contracts do not contain a surrender clause and would be used as a collateral for a loan

493. Article 13 of the AML/CFT Law sets out CDD requirements when conducting wire transfers. Financial institutions, whose activities include wire transfers shall obtain and verify full name, account number and address, or in the absence of address, the national identity number or date and place of birth, including when necessary, the name of the financial institution, of the originator of such transfers, and the information shall be included in the message of payment from accompanying the transfer

494. As noted above, there is no requirement in the AML/CFT Law to conduct CDD on establishing business relations. However the requirement is set out in other enforceable means (OEM). Article 5.2 of Public Instruction 02/2004 requires registered banks not to deal with unknown customers.

Identification measures and verification sources

495. Article 10 of the AML/CFT Law requires financial institutions to identify their customers and verify their identities by means of independent source documents, data or information. Article 10(1) of the AML/CFT Law specifies that the identification and verification of individuals shall include the full name and national identification number. Various other sector-specific Instructions add further detail to the requirement.

Banks

496. Article 5.2 of Public Instruction 02/2004 requires registered banks not to deal with unknown customers. Banks are required to identify direct customers, i.e. know who the individual is and verify the customer's identity using reliable, independent source documents, data or information. Section 5.3 sets out that individual's name (including former or other name), residential address (and permanent address if different), date of birth and nationality to identify individual customers.

497. Article 2 Public Instruction 03/2003 requires registered banks to obtain following information to to accept deposits from the public:

- complete name;
- complete address (street, number, "suco", village, city, and detailed contact number, if any);
- proof of residence of declaration signed by two of bank's depositor;
- source of income;
- identification number;
- nationality;
- tax identification number , if any;
- specimen signature of depositor(s).

Other Deposit Taking Institutions (ODTIs)

498. Public Instruction 6/2010, Article 28(1) requires non-bank deposit takers (ODTIs) to make reasonable efforts to determine and document the true identity of their customers and "to develop and implement effective procedures and methods for the purpose". The Public Instruction does not specify the detail of the CDD measures required.

Money Transfer Operators

499. The draft Public Instruction for MTOs contains relevant CDD provisions, but these were not in force at the time of the on-site visit.

Identification of Legal Persons or Other Arrangements

500. Article 10(3) of the AML/CFT Law requires the identification and verification of legal persons and arrangements by the following means:

- Identification of legal persons shall include verifying information concerning the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of their legal status, legal form of organization of the legal person, and the form and powers of those who manage the legal person.
- Identification of legal arrangements (no detail is specified in the AML/CFT Law as to what is required, for example obtaining and verifying the name of trustees, the settlor, and the beneficiary of trusts and express trusts).

501. Article 9(3) of the AML/CFT Law provides that "The law determines the form of registration of information relating to beneficial owners and control of legal arrangements." It is not clear what this might mean in practice (authorities advised that the interpretation of this paragraph is that the relevant law on company registration will define the methods for registration), but it does not in any case seem to create any CDD requirements for legal arrangements.

502. The competent supervisory authorities have access to information required under Article 10(3) where it is held but, as noted in section 5.1 of this report, there are effectiveness concerns in relation to the quality of and access to records concerning beneficial ownership of legal persons.

503. It is not clear that there is a requirement to verify that any person purporting to act on behalf of the customer (legal person or arrangement) is so authorised. While Article 10(4) of the AML/CFT Law requires that “if there is doubt as to whether a customer acts for his/her own account, FIs & DNFBPs shall verify the identity of the person or persons on whose behalf the customer is acting”, this does not require the FI to verify that any person purporting to act on behalf of the customer (legal person or arrangement) is so authorised.

Banks

504. Section 2 of Public Instruction 03/2003 requires registered banks to obtain following information to accept deposits from the public:

Type of Customer	Information to be obtained
Cooperate Entities	<ul style="list-style-type: none"> • Articles of Association or Business Registration Form (accepted temporarily); • Documents authorizing director and/or officials to open bank accounts and to sign on behalf of the entity; • Name of directors or officials; • Complete address, as above; • Identification number of each director and official (e.g. National ID, Passport); • Country of incorporation /registration; • Tax Identification Number (TIN) in Timor-Leste; • Copy of financial statements for the last three financial years or copy of the fiscal income statement; • List of authorized signatories and specimen signatures.
Association and Charities	<ul style="list-style-type: none"> • Article of Association or Registration Charities; • Documents authorizing director and/or officials to open bank accounts and to sign on behalf of the entity; • Name of directors or officials; • Complete address, as above; • Identification number of each director and official (e.g. National ID, Passport); • Country of incorporation /registration; • Tax Identification Number (TIN) in Timor-Leste; • List of authorized signatories and specimen signatures

505. Section 5.2 of Public Instruction 02/2004 requires registered banks not to deal with unknown customers. Banks are required to identify direct customers, i.e. know who the legal entity is and verify the customer’s identity using reliable, independent source documents, data or information.

Other Deposit Taking Institutions (ODTIs)

506. As noted above, Public Instruction 6/2010, Article 28(1) requires non-bank deposit takers (ODTIs) to make reasonable efforts to determine and document the true identity of their customers and “to develop and implement effective procedures and methods for the purpose”. The Public Instruction does not specify the detail of the CDD measures required, including in relation to legal persons or legal arrangements. However, in practice the core customers of ODTIs are women in poor rural areas and a very limited number of civil servants.

Identification of Beneficial Owners

507. Article 10(1) of the AML/CFT Law requires financial institutions to identify the beneficial owner and take all reasonable steps to verify the beneficial owner’s identity. While the Timor-Leste

authorities maintain that the term “beneficial owner” used in the AML/ CFT Law is the same used in the FATF Recommendations, i.e., natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction is being conducted, and also includes those persons who exercise ultimate effective control over a legal person or arrangement, the term beneficial owner is not actually defined in the AML/CFT Law. It is not clear if this will be included in any Decree Law to be prepared based on the AML/CFT Law.

Banks

508. Articles 5(2)(b) & (c) of Public Instruction 02/2004 require that the customer identification process shall comprise the identification of beneficial ownership and control, i.e. determining which individual(s) ultimately own(s) or control(s) the direct customer, and/or the person(s) on whose behalf the transaction is being conducted and verifying the customer’s identity using reliable, independent source documents, data or information.

c5.5.1

509. Article 10(4) of the AML/CFT Law requires that if there is doubt as to whether a customer is acting for his/her own account, the financial institution shall take all reasonable measures to verify the identity of the person or persons on whose behalf the customer is acting.

Banks

510. Article 5(5)(2)(d) of Public Instruction 02/2004 requires banks to verify the identity of the beneficial owner of the customer and/or the person on whose behalf a transaction is being conducted.

511. Furthermore, Article 5(9) of Public Instruction 02/2004 prohibits registered banks from opening an account for a customer who is acting on behalf of a third party who does not provide the information required regarding the third party.

c5.5.2

512. Article 10(3)(d) of the AML/CFT Law requires financial institutions to identify verify natural persons with a controlling interest of legal person.

513. The Law on Commercial Companies allows for the issuance of bearer shares. Notwithstanding this, Article 5(4) of the AML/CFT Law requires the holder of such shares to place them for safekeeping with an approved custodian or with the legal person issuing such shares and allows competent supervisory authorities to have access to such information in a timely fashion.

Other Deposit Taking Institutions (ODTIs)

514. The BCTL requires ODTIs to make reasonable efforts to determine and document the true identity of their customers and to develop and implement effective procedures and methods for the purpose (v. Public Instruction 6/2010, Article 28(1)), though the Public Instruction does not specify how this is to be done. The authorities advised that the requirements are intended to allow for some flexibility in CDD measures, such as registering the ID number of the customers because ODTIs operate mostly in poor rural areas where there is no electricity or photocopy machines so that retention of the evidence is impractical.

Information on Purpose and Nature of Business Relationship

515. Article 10(2) of the AML/CFT Law requires financial institutions to collect information regarding the purpose and intended nature of the business relationship.

516. The Public Instructions do not specifically require banks to obtain information on the purpose and intended nature of the business relationship. However, these requirements are implied in the Rules relating to ongoing due diligence. Article 5(5)(2)(e) of Public Instruction 02/2004 requires all registered banks to ensure that the transactions being conducted are consistent with the bank's expectation. In practice, banks indicated that they follow home-country AML/CFT requirements or group standards.

517. The Public Instruction on ODTI does not specifically require ODTI to obtain information on the purpose and intended nature of the business relationship.

Ongoing Due Diligence on Business Relationship

Banks

518. There is no provision in the AML/CFT Law dealing with ongoing due diligence. A provision contained in the draft of the Law was not included in the final version of the Law.

519. Article 5(2)(e) of Public Instruction 02/2004 requires banks to "conduct ongoing due diligence and scrutiny i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the bank's expectation and knowledge of the customer, its business and risk profile, including, where necessary, identifying the source of funds". Article 5(3) establishes that "The identity of an individual includes the individual's name (including former or other name), residential address (and permanent address if different), date of birth and nationality. To facilitate ongoing due diligence and scrutiny, information on the individual's occupation or business should also be obtained".

520. Article 10 of Public Instruction 02/2004 sets out the requirements for banks for ongoing customer due diligence on the business relationship. It states:

1. Banks shall operate a system to detect unusual activities in all its customers' accounts. This can be done by setting limits for certain categories of accounts. Unusual activities may include transactions that appear to lack economic or commercial sense, or that involve large sums of money, particularly large cash deposits not consistent with the expected activity in the account.
2. Banks shall set detailed procedures setting out the channel of communications regarding unusual transactions which the bank has reasonable grounds to suspect of being associated with money laundering. The procedures should incorporate full documentation of the decision making process from the first detection of the unusual transaction to the formulation of a decision on whether to report to the competent authority.
3. Banks shall verify the identities of the parties to a transaction which is likely to constitute a significant risk to the bank.

521. As a practical matter, it would be impossible for a bank to comply with these requirements unless it has obtained from the client the purpose and intended nature of the business relationship. BCTL policy requires registered banks to adopt policies and procedures by incorporating the KYC principles in their risk management and internal control system which include customer acceptance, identification and ongoing monitoring and control of high-risk accounts. Practices and procedures vary across the banking industry. In practice, banks indicated that they follow home-country AML/CFT requirements or group standards. Some banks conduct ongoing due diligence as a periodic review, the frequency of which is determined by the risk rating of the customer; the higher the risk, the more frequent the periodic review. Others operate a system of ongoing customer due diligence which is generated only by 'event driven' circumstances. The BCTL stated that in practice all banks

operating in Timor-Leste obtain information from their customers on the source of funds and expected amount to be deposited into account. This has been reflected in the STRs received by the BCTL which for example indicated the reason for suspicion was that the amount deposited did not match with expected deposit as stated in the opening deposit account application forms.

ODTIs

522. With regards to non-bank deposit takers, ongoing customer due diligence is generally applied when and if a customer's product and service requirements change or if they were to request a more complex product. In these instances, customers are interviewed again and information on what is known about them is updated.

5.7.1

523. As noted above, Article 10(1) of Public Instruction 02/2004 requires banks to operate a system to detect unusual activities which may include transactions that appear to lack economic or commercial sense, or that involve large sums of money, particularly large cash deposits not consistent with the expected activity in the account. Furthermore, banks are also required to set detailed procedures setting out the channel of communications regarding unusual transactions which the bank has reasonable grounds to suspect of being associated with money laundering and verify the identities of the parties to a transaction which is likely to constitute a significant risk to the bank.

5.7.2

524. Article 7 of Public Instruction 02/2004 requires that when a customer advises the bank of a change of mailing address, the bank must update the address in all that customer's accounts with the same account number for which the customer originally gave that mailing address.

525. Banks are also required to undertake reviews to ascertain the existence of adequate and updated information. The reviews shall take place at times and on occasions determined by the bank in its procedures, such as when a significant transaction is about to take place, or when the requirements relating to customer documentation change, or when the way the account is managed alters significantly. If a bank discovers that certain significant information about a customer is lacking, it shall take steps to ensure that it obtains the missing information as soon as possible (Article 5(8) and Article 9(2) of Public Instruction 02/2004).

526. In practice banks update customer information if red flags occur in the transaction detected in the monitoring of accounts.

Risk—Enhanced Due Diligence for Higher Risk Customers

527. Articles 10(5) and (6) of the AML/CFT Law require financial institutions to take specific and adequate measures to address the increased risk of ML and TF in the event they conduct business relationships or execute transactions with a customer that is not physically presented for purposes of identification. It further requires appropriate measures to determine whether the client or the beneficial owner has special duties arising out of any job or carrying or holding political office under the law.

Banks

528. Article 4(2) of Public Instruction 02/2004 provides guidance for registered banks in determining the risk profile of a particular customer or type of customer which shall take into account at least the following factors:

- the origin of the customer (e.g. place of birth, residency), the place where the customer's business is established, the location of the counterparties with whom the customer conducts transactions and does business, and whether the customer is otherwise connected with certain jurisdictions such as Non-Cooperative Countries and Territories designated by the FATF, or those known to the bank to lack proper standards in the prevention of money laundering or customer due diligence process;
- the background or profile of the customer such as being, or linked to, a politically exposed person or otherwise being an individual with high net worth whose source of funds to be credited to an account (both initially and thereafter) is unclear;
- nature of the customer's business, which may be particularly susceptible to money laundering risk, such as currency exchangers, lottery operators or casinos that handle large amounts of cash;
- for a corporate customer, an unduly complex structure of ownership for no apparent commercial reason; and
- any other information that may suggest that the customer is of higher risk (e.g. knowledge that the customer has been refused a banking relationship by another bank).

529. There are however, specific circumstances where banks are required to classify certain category of customers or transactions as high risk such as:

- following the initial acceptance of the customer, if the bank determines the pattern of account activity does not conform to the bank's understanding of the customer (Public Instruction, 02/2004, Article 4(3));
- if the customer refuses, without good reason, to provide the information requested and to cooperate with the bank's customer due diligence process (Public Instruction 02/2004, Article 5(4));
- if a bank has cause to believe that an applicant has been refused banking services by another bank for reasons related to the prohibition on money laundering (Public Instruction 02/2004, Article 5(4)); or
- the account of a PEP (Public Instruction 02/2004, Article 6(4)).

530. Banks are further required to include in their policy and procedures rules for defining high risk customer accounts, an appropriate system to monitor these accounts and operate an adequate information system to provide officers responsible with timely information needed to analyse and effectively monitor high risk customer accounts (Public Instruction 02/2004, Article 11).

Risk—Application of Simplified/Reduced CDD Measures when appropriate

531. None of the current laws, regulations or other enforceable means permits application of reduced or simplified CDD, including the recently enacted AML/CFT Law.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents

532. None of the current laws, regulations or other enforceable means permits application of reduced or simplified CDD measures to customers resident in another country.

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspensions of ML/FT or other high risk scenarios exist

533. None of the current laws, regulations or other enforceable means permits application of reduced or simplified CDD measures when Suspensions of ML/FT or other high risk scenarios exist.

Risk Based Application of CDD to be Consistent with Guidelines

534. Public Instruction 02/2004, Article 11(1) requires banks to include in their procedures rules for defining high risk customer accounts with regard to the prohibition on money laundering. In formulating these rules, banks shall take into consideration the type of business (e.g., a cash-intensive business), the location of the customer's activity (e.g., in countries categorized by the FATF as NCCT), the types of services required by the customer (e.g., electronic transfers of large sums), and the type of customer (e.g., a prominent public figure from abroad, an entity with a complex ownership structure) and politically exposed persons. In practice, banks indicated that they follow home-country AML/CFT requirements or group standards.

535. As noted above, no provisions in the law, or regulation or other enforceable means, set forth any permission for non-bank financial institutions to determining the extent of the CDD measures on a risk sensitive basis.

Timing of Verification of Identity—General Rule

536. Public Instruction 02/2004, Article 5(6) requires banks not to establish business relationships with new customers until the due diligence process is satisfactorily completed.

537. No provisions in law, regulation or other enforceable means, set forth any requirements for non-bank financial institutions regarding timing of verification. As noted above, the AML/CFT Law does not require financial institutions to identify or verify the identity of customers when establishing business relations.

538. In practice, banks do conduct CDD before establishing business relationships with new customers. Banks state that it would take a few days before customers could establish business relations with financial institutions. One financial institution met by the Evaluation Team mentioned that it would take a month before accepting a new customer. Some customers have been rejected from opening an account as they could not fulfil CDD requirements.

Timing of Verification of Identity—Treatment of Exceptional Circumstances

539. Public Instruction 02/2004, Articles 5(6) and (7) allow banks to open an account pending the completion of the verification of identity provided that the necessary evidence of identity is promptly obtained. In such a case banks shall not allow funds to be paid out of the account to a third party before the identity of the customer is satisfactorily verified. If an account has been opened but the process of verification of identity cannot be successfully completed, the bank shall close the account and return any funds to the source from which they were received.

540. No provisions in law, regulation or other enforceable means, set forth requirements to adopt risk management procedures concerning the conditions under which this may occur.

Failure to Complete CDD before commencing the Business Relationship

541. Public Instruction 02/2004, Article 5(1) requires banks to cease to deal with customers who refuse to provide the details required to enable compliance with the Public Instruction. Article 5(4) requires that where a customer objects, without good reason, to provide the information requested and to cooperate with the bank's customer due diligence process shall itself be a factor that should trigger suspicion. Articles 13(2) and (4) requires the bank to report to the BPA (BCTL) the names of customers whose applications for opening an account with bank have been refused and any transaction declined by the bank.

542. No provisions in law, regulation or other enforceable means set forth any specific or explicit obligation for non-bank financial institutions regarding failure to complete CDD. Article 10(9) of the

AML/CFT Law requires financial institutions and non-financial businesses and professions to “only maintain a business relationship as to fulfil their duty of care”. Timor-Leste authorities stated that this requirement is sufficient to address failure to complete CDD before commencing a business relationship as “there is no timing requirement [and] no business relationship will be established if unable to fulfil due diligence requirement.” However, this is not an explicit or specific obligation and does not include an obligation to consider submitting an STR.

Failure to Complete CDD after commencing the Business Relationship

543. Article 10(9) of the AML/CFT Law requires financial institutions and non-financial businesses and professions only to maintain a business relationship as to fulfil their duty of care. This means that if the customer does not fulfil the requirements of the AML/CFT Law, financial institutions and non-financial businesses and professions shall terminate the business relationship.

Existing Customers—CDD Requirements

544. Article 10(10) of the AML/CFT Law provides that the CDD obligations set out in the Law will apply to all customers of financial institutions in existence prior to the adoption of the Law.

545. However, as no clear obligation exists to conduct CDD when establishing business relations, the CDD requirements only apply on conducting occasional cash transactions of \$10,000 or above, conducting wire transfers, or where doubts exist about the veracity or adequacy of customer identification data and there is suspicion of money laundering or financing of terrorism.

546. Article 15 of Public Instruction 02/2004 provided banks six months to update their customer information following the publication of the Instruction in the Official Gazette.

Existing Anonymous-account Customers – CDD Requirements

547. Article 8(3) of the AML/CFT Law prohibits financial institutions from opening anonymous accounts or accounts in obviously fictitious names

548. Article 5(5) of Public Instruction 02/2004 may allow confidential numbered accounts to exist but the same customer due diligence process should apply.

Recommendation 6

549. Public Instruction 02/2004 defines a Politically Exposed Person (PEP) as “individual, resident and non-resident, who are or have been entrusted with prominent public functions, including heads of state or of a government, senior politicians, senior government, senior politicians, senior executives of public owned corporations and leaders of political parties, as well as a family members, persons or companies related to or associated with politically exposed persons”.

550. There is however no definition of PEPs in the AML/CFT Law. A definition of PEPs and special CDD obligations applying to PEPs (closely based on the FATF standards) were contained in the draft of the AML/CFT Law introduced into Parliament but were not contained in the final version which was enacted.

551. Article 10(6) of the Law requires entities to ‘take appropriate measures to determine whether the client or the beneficial owner fall [sic] special duties arising out of any job carrying or holding high political office under the law’ without defining that term or specifying the particular “appropriate measures” to be taken.

Foreign PEPs—Requirement to Identify

552. Article 10(6) of the AML/CFT Law requires institutions to have appropriate measures to determine if a customer or a beneficial owner fall [sic] special duties arising out of any job or carrying or holding political office under law.

553. Article 4(1) of Public Instruction 02/2004 requires banks to develop policy and system with the objectives to identify the types of customer that are likely to pose higher risk. It further defines a PEP as a high risk customer therefore a more extensive customer due diligence process should be adopted (Article 6(4)).

Foreign PEPs—Risk Management/approval

554. Article 6 of Public Instruction 02/2004 requires banks to obtain senior management approval for establishing a business relationship with a PEP.

555. No provisions in law, regulation or other enforceable means set forth any specific obligation to obtain senior management approval for establishing business relationship with a PEP for non-bank financial institutions.

556. There is no requirement in relation to existing PEPs for financial institutions to obtain senior management approval to continue the business relationship.

557. Article 4(1) of Public Instruction 02/2004 requires that “Banks shall develop customer acceptance policies and procedures whose objective shall be to identify the types of customer that are likely to pose a higher than average risk of money laundering. A more extensive customer due diligence process should be adopted for higher risk customers. There shall also be clear internal guidelines on which level of management is able to approve a business relationship with such customers”. The authorities argued that, reading these requirements in conjunction with Article 6(3) of the AML/CFT Law, there is implied compliance with the standard, and that institutions had been penalized for failure to comply with these requirements. It is possible that these indirect or implicit requirements go some way towards meeting the requirements in relation to PEPs, but an explicit and unambiguous requirement is lacking.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds

558. Public Instruction 02/2004 requires banks to take steps to discover the source of funds expected to be deposited in the account, before opening an account for a PEP (Article 6(2)).

559. For non-bank financial institutions, no provisions in law, regulation or other enforceable means set forth any obligation to determine PEPs’ source of wealth and funds.

Foreign PEPs—Ongoing Monitoring

560. Article 10 of Public Instruction 02/2004 requires an automatic process to conduct enhanced ongoing monitoring for all high-risk customers including PEP customers.

561. No provisions in law, or regulation or other enforceable means set forth any obligation to conduct ongoing monitoring on PEP for non-bank financial institutions.

Domestic PEPs—Requirements

562. Public Instruction 02/2004 defines PEPs as individuals entrusted with prominent public functions and does not distinguish between foreign or domestic PEPs.

Domestic PEPs—Ratification of the Merida Convention

563. Timor-Leste has ratified and implemented the 2003 UN Convention against Corruption. The ACC is coordinating a self-assessment exercise regarding the criminalization of corruption and law enforcement, and international cooperation (assessment on Chapters III and IV of the Convention) to identify the gaps, good practices and technical assistance needed to ensure full implementation of the Convention. The Self-Assessment Report will be completed by the end of November 2011 and reviewed by experts from two State Parties.

Recommendation 7

Cross Border Correspondent Accounts and Similar Relationships – introduction

564. Outside the banking sector, financial institutions in Timor-Leste do not have correspondent relationships with other financial institutions. The locally incorporated bank, insurance companies and the ODTIs do not have any correspondent relationships with international banks. The other registered banks which are international banks apply the due diligence process through their head offices.

565. Prior to the recent passage of the AML/CFT Law, there were no clear provisions in law, or regulation or other enforceable means relating to CDD and cross-border correspondent banking or other financial relationships. Article 10(7) of the AML/CFT Law provides as follows:

7. *With respect to cross-border correspondent banking relationships, financial institutions shall:*
 - a) *verify the identification of respondent institutions with which they conduct correspondent banking relationships;*
 - b) *collect information on the nature of the respondent institution's activities;*
 - c) *based on publicly available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;*
 - d) *evaluate the controls implemented by the respondent institution with respect to anti-money laundering and financing of terrorism;*
 - e) *in the case of a payable through account, ensure that the respondent institution has verified the customer's identity, has implemented mechanisms for ongoing monitoring with respect to its client, and is capable of providing relevant identifying on request;*
 - f) *comply with any instruction issued by the competent authority.*

Requirement to Obtain Information on Respondent Institution

566. The AML/CFT Law, Articles 10(7)(a) and (b) require financial institutions to verify the identification of the respondent institution and to collect information on the nature of the respondent institution's activities.

Assessment of AML/CFT Controls in Respondent Institution

567. Articles 10(7)(c) and (d) of the AML/CFT Law require banks to evaluate the respondent institution's reputation and nature of supervision based on publicly available information and evaluate the controls implemented by the respondent institution to AML/CFT.

Approval of Establishing Correspondent Relationships

568. No provisions in law, regulation or other enforceable means set forth any obligation to obtain approval from senior management before establishing new correspondent relationships. A provision which was contained in the draft AML/CFT Law introduced into Parliament which addressed this requirement was not contained in the final version of the enacted Law, however the BCTL advised that it will incorporate this requirement in an amendment to Public Instruction 02/2004.

Documentation of AML/CFT Responsibilities for Each Institution

569. No provisions in law, regulation or other enforceable means set forth any obligation to Document the respective AML/CFT responsibilities of each institution (however the BCTL advised that it will incorporate this requirement in an amendment to Public Instruction 02/2004).

Payable-Through Accounts

570. The AML/CFT Law, Article 10(7)(e) requires banks to ensure that the respondent institution has verified the customer's identity, has implemented mechanisms for ongoing monitoring with respect to its clients, and is capable of providing relevant identifying information on request in case of a payable through account.

Recommendation 8

571. There are limited banking products currently offered by the registered banks operating in Timor-Leste, although banks are considering the introduction of more advanced products such as mobile banking.

Misuse of New Technology for ML/FT

572. There are no laws, regulations or other enforceable means which require financial institutions to have policies or procedures in place to mitigate risks of ML/FT through misuse of technologies. It is noted however that the BCTL will incorporate this requirement in the amendment to Public Instruction 02/2004.

Risk of Non-Face to Face Business Relationships

573. Article 10(5) of the AML/CFT Law requires financial institutions and non-financial businesses and professions to take specific and adequate measures to address the increased risk of money laundering and financing of terrorism, in the event they conduct business relationships or execute transactions with a customer that is not physically present for purposes of identification.

574. Currently, no registered banks offer non-face-to-face facilities.

575. There is no requirement for specific CDD procedures that apply to non-face to face customers.

Effectiveness

576. While the new AML/CFT requirements are binding on all financial institutions, in practice they are only being implemented in the banking sector and to a limited extent by the foreign remittance agents. In addition, full supervision of CDD requirements has not yet taken place in the sector which is currently applying only the requirements of the Public Instruction (plus any home office/group practices). On-site examinations conducted by the BCTL have made many findings regarding CDD deficiencies. This is a positive reflection on the quality of supervision, but does raise doubts about the extent of effective implementation of CDD requirements by banks and, particularly, non-bank financial institutions.

577. Financial institutions face challenges in conducting CDD and related preventative measures in a society with a predominantly informal sector, corruption issues and transactions in US\$, a currency which is high demand in the region. In addition, there are some challenges with identity systems for natural persons and some practical issues concerning transparency of legal persons. Some of the risks arising from lack of formal identification data for some persons are mitigated to some extent by the fact that Timor-Leste is a relatively small (often village-based) society where people are well known to each other, but challenges do remain. It should also be noted that there are only four licensed banks

in Timor-Leste, three of which are foreign owned, and thus subject to stricter AML/CFT obligations. This also helps to address some of the challenges in conducting CDD.

578. While the enactment of the AML/CFT Law has significantly enhanced the legal requirements regarding CDD, significant gaps remain in the legal requirements in relation to the scope and depth of CDD and related preventative measures. The failure to include in the AML/CFT Law the need for CDD measures when establishing business relations creates a significant legal hole in the requirements. This is mitigated to some extent by the requirements of Public Instruction 02/2004 (which applies only to banks) and by what banks and other financial institutions may do in practice, but it needs to be addressed as a matter of priority. Beyond the Public Instruction, which does not constitute law or regulation and which covers only banks, there are no requirements for financial institutions to mitigate risks with respect to high risks clients or accounts, including PEPs, or new technologies.

579. In practice, foreign banks appear to follow much higher standards than mandated by Timor-Leste with respect to CDD/KYC, high risk clients and transactions, including PEPs, and new technologies, in order to preserve their reputation in the global banking arena, and because stricter obligations are imposed by home supervisors or supervisors in jurisdictions in which a subsidiary may be located.

580. The passage of the AML/CFT Law is a very important and welcome development, and the BCTL has indicated its commitment to introduce AML/CFT Regulations which will further enhance the CDD and other requirements. Now that the AML/CFT Law has been passed, further enhancement of capacity, resources and a whole of government approach to effectively use AML/CFT preventative measures will enhance effectiveness of current efforts to reduce criminality.

581. As outlined in section 3.10 of this report, training and on-site inspections to monitor compliance with the CDD requirements are not extensive and are limited primarily to the banks. Training for FIs is only conducted once after issuance of public instructions and only six examinations of banks have been conducted regarding AML/CFT requirements. However, BCTL staff regularly attend various training programs and visits to overseas entities to enhance their knowledge on AML/CFT matters. The training programs also include in-house training provided by consultants funded under IMF TA program.

582. In practice financial institutions find it difficult to conduct verification of customers' identity. A major difficulty is to verify customers' addresses as no street numbers are used in Timor-Leste. Financial institutions primarily rely on the electoral card, drivers licence and/or passport to verify the identity of customers. Some incidences of use of false electoral cards have occurred.

583. In practice financial institutions do not always verify the identity of legal persons. They rely on the Articles of Association or Business Registration Form obtained from customer. In practice, the information contained in the Articles of Association provided to the bank may be out of date as the shareholders of the company have already changed. It should be noted however that the BCTL examines such issues as part of its examination process and BCTL for example dismissed a senior manager of a bank because he failed to update the information of a particular client, and other non-compliance.

584. While banks are required to establish policies and procedures to meet the requirements in Public Instruction 02/2004, practices and procedures vary somewhat across the banking industry. In practice, banks indicated that they follow home-country AML/CFT requirements or group standards. Some banks conduct utilise commercial database providers to determine whether a customer is a PEP. Others only consider Timor-Leste Members of Parliament and members of cabinet as PEPs. In terms of effective supervision by the BCTL and enforcement of existing requirements for PEPs, the Evaluation Team was made aware of one case involving several domestic PEPs in which a financial institution was sanctioned for failing to carry out sufficient due diligence and other requirements.

While this case related to domestic rather than foreign PEPs, it shows a commitment to enforcement of CDD obligations in relation to higher risk customers. The authorities noted that the AML/CFT Law enables the BCTL to define what is meant by PEPs, and that the Public Instruction requires that banks include both foreign and local politicians in the definition of PEPs. It is proposed to further strengthen these provisions.

585. Banks indicated that complex ownership structures are not common in Timor-Leste. Most legal person shareholders are individual and related to family businesses. However there is no detailed procedure prescribed for financial institutions concerning their obligation to identify/verify the beneficial owner for corporate customers. The financial institutions that the Evaluation Team met had varying understanding of the scope of their obligations.

586. According to discussions with the Ministry of Justice, which is responsible for company information, only one company at the time of evaluation had obtained approval to issue a bearer share.

3.2.2. Recommendations and Comments

587. The Timor-Leste authorities have issued laws and other enforceable means which show a degree of compliance with the FATF Recommendations. However, some key requirements have not been captured and the requirements are relatively new on non-bank financial institutions.

Recommendation 5

588. Timor-Leste should amend the AML/CFT Law or issue a regulation to require all financial institutions operating in Timor-Leste to:

- undertake CDD measures when establishing business relations; and
- conduct ongoing due diligence on the business relationship.

589. Timor-Leste should issue law, regulations or enforceable instructions to require non-bank financial institutions to:

- include scrutiny of transactions undertaken throughout the course of the relationship that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds, in case of ongoing due diligence;
- ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships;
- perform enhanced due diligence for higher risk categories of customer, business relationship or transaction;
- determine the extent of the CDD measures on a risk sensitive basis;
- verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers;
- not open the account, commence business relations or perform the transaction and consider making a suspicious transaction report when the financial institution is unable to comply with CDD requirements.

590. Timor-Leste should issue a guidance document on what beneficial ownership is, especially for corporate customers.

591. Timor-Leste should ensure effective implementation of core CDD measures, in particular verification of the identity of natural persons, legal entities and the beneficial owner of accounts.

Recommendation 6

592. A clear and comprehensive definition of “politically exposed person” should be extended to non-bank financial institutions, as in the Public Instruction 02/2004 for banks, which includes family members, persons or companies

593. Timor-Leste should issue law, regulations or enforceable instructions to require non-bank financial institutions to:

- obtain senior management approval for establishing business relationships with a PEP
- take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and
- conduct enhanced ongoing monitoring on PEPs.

Recommendation 7

594. Timor-Leste should issue enforceable instructions requiring banks to obtain approval from senior management before establishing new correspondent relationships and document the respective AML/CFT responsibilities of each institution.

Recommendation 8

595. Timor-Leste should issue enforceable instructions to require all reporting parties to take such measures to prevent the misuse of technological developments in ML or FT schemes.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none">• CDD requirements on establishing business relations and ongoing CDD are not covered in law and regulation, but are set out in other enforceable means (OEM)• The term “beneficial owner” is not defined in the AML/CFT Law• No explicit requirement of enhanced CDD when risks are higher• No requirement to verify legal arrangements• No requirement to verify that any person purporting to act on behalf of the customer (legal person or arrangement) is so authorised• No requirement for non-bank financial institution to:<ul style="list-style-type: none">○ include scrutiny of transactions undertaken throughout the course of the relationship that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary, the source of funds, in case of ongoing due diligence○ ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships○ verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers○ not to open the account, commence business relations or perform the transaction and consider making a suspicious transaction report consider making a suspicious transaction report when the financial institution is unable to comply CDD requirement

		<ul style="list-style-type: none"> Effectiveness: Due to absence of supervision for AML/CFT of some non-bank sectors, it is not possible to fully determine the extent of implementation of the existing and new CDD obligations
R.6	PC	<ul style="list-style-type: none"> Although the account of a customer who is or becomes a PEP is classified as a “high risk” account, there is no explicit requirement in the law for financial institutions to obtain senior management approval to continue the business relationship when an existing customer becomes a PEP (see criterion 6.2.1) No enforcement of PEPs requirements for MTOs, which are not yet regulated or supervised Definition of PEP for non-bank financial institution does not extend to family members, persons or companies No requirement for non-bank financial institutions to: <ul style="list-style-type: none"> No obligation to obtain senior management approval for establishing business relationship with a PEP no requirement for existing PEPs to obtain senior management approval to continue the business relationship take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP conduct enhanced ongoing monitoring on PEPs Effectiveness concerns: Doubt as to whether all financial institutions have effective systems to identify foreign PEPs
R.7	LC	<ul style="list-style-type: none"> No requirement for banks to obtain approval from senior management before establishing new correspondent relationships or to document the respective AML/CFT responsibilities of each institution Lack of supervision/effectiveness concern, especially considering very recent introduction of the obligations
R.8	PC	<ul style="list-style-type: none"> No enforceable instructions to require all financial institutions to take such measures to prevent the misuse of technological developments in ML or FT schemes No explicit requirement on specific CDD procedures that apply to non-face to face customers

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

3.3.1. Description and Analysis

Legal Framework:

596. There is no specific rule that permits banks or other financial institutions to rely upon third party services to perform CDD, including in the new AML/CFT Law. This is interpreted by both the BCTL and by financial institutions as requiring CDD to be done directly by financial institution.

597. There is no instance where third parties are relied upon in practice. Banks do not rely on documents from other financial institutions, but conduct identification and verification through their own offices either domestically or in the case of foreign customers through their branches abroad.

Requirement to Immediately Obtain Certain CDD elements from Third Parties

598. N/A.

Availability of Identification Data from Third Parties

599. N/A.

Regulation and Supervision of Third Party

600. N/A

Adequacy of Application of FATF Recommendations

601. N/A

Ultimate Responsibility for CDD

602. N/A

3.3.2. Recommendations and Comments

603. N/A

3.3.3. Compliance with Recommendation 9

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

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

3.4.1. Description and Analysis

Legal Framework:

Secrecy Provisions Inhibiting Implementation of FATF Recommendations

604. The confidentiality of customer information for banks is protected under section 20.1 of UNTAET Regulation 2000/8 on Bank Licensing and Supervision. This section requires that present and past administrators, employees, and agents of a bank shall keep secret, and not use for personal gain or gain by other than the bank that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the bank. Such information includes, but is not limited to, customers' accounts balances, amounts, conditions, and use of proceeds of banks' loans, customers' business relationships, and recipients and amounts of payments made by the bank.

605. Section 20.2 of UNTAET Regulation 2000/8 gives an exemption on the disclosing of information to the Central Payments Office (now the BCTL), including its inspectors and the auditors appointed by it, to external auditors of the bank, to judicial authorities as the law shall provide, to foreign bank supervisory authorities, and when the protection of the bank's own interest in legal proceedings requires disclosure.

606. Article 23 of the AML/CFT Law requires financial institutions and non-financial businesses and professions to report suspicious transactions, except for lawyers, notaries, attorneys and other

independent legal profession when they receive the information in the course of performing their task of defending a client.

607. Article 27 of the AML/CFT Law also gives the supervisory authorities power to regulate and supervise financial institutions and casinos for compliance with the obligations established in the law, including conducting on-site examinations. The Law also requires supervisory authorities to provide prompt and effective cooperation to authorities performing similar functions in other States, including exchange of information.

608. Article 31 of Law 5/2011 (the Central Bank Law) gives the BCTL exclusive responsibility to regulate, license, register and supervise financial institutions, including the imposition of remedial measures and administrative sanctions. The BCTL also is given the authority to inspect the premises of financial institutions to examine their accounts, books, documents and other records, to obtain all relevant information from them, and to take such other actions as are deemed necessary or desirable.

609. Article 35 of the Central Bank Law provides that each bank and each of its subsidiaries shall be subject to inspections by inspectors of the BCTL or by auditors appointed by the BCTL. The inspection may include officials of the authority of another country that is charged with the monetary or prudential supervision of financial activities in that country. It further requires that the inspections the BCTL and its auditors may (a) examine the accounts, books, documents and other records of the bank or subsidiary and (b) require administrators, employees and agents of the bank or subsidiary to provide all information on any matter relating to its administration and operations as they reasonably request.

610. Article 46 of the Banking Law gives power to the BCTL to issue instructions and guidelines, to visit offices of banks, to examine accounts, books, documents and other records, and to take other action as it deems necessary or advisable.

611. No provisions in law, or regulation or other enforceable means set forth requirements on the sharing of information between financial institutions. With the exception of currency exchange bureaux, banks, ODTIs and insurance companies and intermediaries are not permitted to disclose customer information to third parties. As noted above, section 20.1 of Regulation 2000/8 restricts banks and ODTIs from sharing their customer information. However, the scope does not extend to correspondent relationships, wire transfers and other arrangements where there are specific requirements established by law. In addition, the CRIS (Credit Registry Information System) credit registry is a formal means whereby banks and other financial institutions share information about their customers to improve the level of credit and to maintain stability in the financial system. CRIS has legislative support in Article 35 of the Central Bank Law. Such information sharing does not extend however to depositor information.

612. Law enforcement cannot ask financial institutions directly for information related to ML; all such inquiries must come from the BCTL, FIU or with the approval of the court. There is no mechanism of information sharing among competent authorities. No request has been made by a law enforcement agency to a financial institution regarding a ML investigation. Banks informed the Evaluation Team that current information requests by law enforcement must get approval from BCTL or court.

3.4.2. Recommendations and Comments

613. Timor-Leste should create clear legal frameworks for disclosure and sharing of information between competent authorities financial institutions regarding AML/CFT responsibilities.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none">• No clear legal framework for information sharing among competent authorities• No legal frameworks for disclosure and sharing of information between financial institutions regarding AML/CFT responsibilities where this is required by R7, R9, or SR.VII

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

3.5.1. Description and Analysis

Legal Framework:

614. The main record-keeping requirements are set out in Article 15 of the new AML/CFT Law and, for banks, in Article 9 of Public Instruction 02/2004 and in Section 2 of Public Instruction 3/2003. There are also general provisions for record-keeping established in various laws and regulations for insurers (Article 26 of Law 6/2005), ODTIs (Article 28 of Public Instruction 6/2010) and currency exchange bureau (Article 6, (g) to (l) of UNTAET Regulation 2000/5).

Record-Keeping & Reconstruction of Transaction Records, Record-Keeping for Identification Data Availability of Records to Competent Authorities

615. Comprehensive requirements for financial institutions both to maintain records and to make them available on a timely basis to competent authorities are contained in the AML/CFT Law.

616. Article 15 of the AML/CFT Law requires financial institutions to establish and maintain records containing the following information in an appropriate record-keeping system, and to ensure that the records and underlying information are readily available to the FIU and competent supervisory authority:

- copies of documents evidencing the identities of customers, beneficial owners or agents, account files and business correspondence for at least five years after the business relationship has ended;
- information to enable the reconstruction of transactions executed by customers and the written reports referred in Article 14 for a period of at least five years after the completion of the transaction;
- files of all the reports sent to the FIU for the period of at least five years from the date of the transmission of the report;
- a copy of a feedback provided by the FIU in response to the reports about suspect transactions for five years from the receipt of the information.

617. Under the provisions of Article 15(2), the competent supervisory authority may, by regulation or order, determine the type and extent of measures to be taken for each of the requirements in Article 15 by financial institutions, having regard to the risk of money laundering and financing of terrorism and the size of the business. Given the very recent enactment of the AML/CFT Law, no such regulation or order has been issued.

618. Therefore, while the broad requirement to retain sufficient information to enable the reconstruction of transactions has been established under Article 15, there are no specific provisions

requiring the following information to be retained: address (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, if necessary in case of evidence for prosecution of criminal activity.

619. Other laws and public instructions impose record-keeping obligations, in particular on banks. Under Public Instruction 02/2004, Article 9(1), the BCTL requires all registered banks to establish procedures for the retention of information essential for authenticating customers' identity and their type of business, relating to the source of the information, the period for which it should be retained, the type of customer and the extent of activity in the account which shall be retained in a manner which will make it readily available and enable efficient retrieval.

620. Customer identification documents shall be retained for five years after an account is closed (Public Instruction 03/2003, Section 2, 2, e).

621. Article 27 of the Banking Law (Regulation 2000/8) requires banks to prepare and maintain all corporate records including records of transaction concerning its business relations with its customers and other persons that the BCTL may prescribe by instruction.

622. Where a financial institution is not prepared to release records at the request of a law enforcement authority, the authority may obtain an authorization from the court when there is sufficient evidence of an offence.

623. The obligations of financial institutions to retain records under Article 15 of the AML/CFT Law do not provide an automatic power for the law enforcement authorities to access such records.

Special Recommendation VII

624. Article 13 of the AML/CFT Law provides requirements with regard to wire transfers.

625. These requirements are not applicable to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer transfers between financial institutions where both the originator and the beneficiary are financial institutions acting on their own behalf (Article 13(3)).

626. The registered banks are also required to decline to undertake a transfer of money to or from high risk customer accounts, or to or from other customer accounts, where the bank has cause to believe that the transaction may be undertaken for the purpose of transferring, concealing or disguising the illicit origin of money or assisting any person who is involved in such activity, or otherwise contravenes the principles established in this Public Instruction (Public Instruction 02/2004, Article 8(3)).

Obtain Originator Information for Wire Transfers

627. Financial institutions whose activities include wire transfers are required under Article 13(1) of the AML/CFT Law to obtain and verify the full name, account number and address, or in the absence of address, the national identity number or date and place of birth, including, when necessary, the name of the financial institution, of the originator of such transfers, and the information shall be included in the message or payment form accompanying the transfer.

Inclusion of Originator Information in Cross-Border Wire Transfers

628. All information required shall be retained and transmitted when they act as intermediaries in a chain of payments (Article 13(2)).

Inclusion of Originator Information in Domestic Wire Transfers

629. Article 13 of the AML/CFT Law provides requirements with regard to wire transfers without distinction between cross-border and domestic wire transfers. Therefore, the requirements are applicable to all wire transfers.

630. Public Instruction 02/2004 also contains relevant requirements for banks. The BCTL requires all registered banks to include the name and bank account, if any, for both domestic and cross-border transactions (Public Instruction 02/2004 Articles 8(1) and (2)).

Processing of Non-Routine Transactions

631. In case of payment chains, the AML/CFT Law only requires national institutions to retain and transmit all information when they act as intermediaries. The law does not refer to the case when there is a non-Timorese financial institution involved in the payment chain (see Article 13(2)).

Maintenance of Originator Information

632. The record-keeping requirements defined in Article 15 of the AML/CFT Law apply to all transactions, including wire transfers.

Restrictions on De Minimis Threshold

633. There is no threshold limits for wire transfers, so the legal obligations apply to all wire transfers, regardless of their amount.

Risk Based Procedures for Transfers Not Accompanied by Originator Information

634. It is an offence for persons who intentionally or by gross negligence contravene the obligations required for wire transfers. Furthermore, there are also severe administrative penalties for persons who contravene such requirements (see Articles 31 and 32 of the AML/CFT Law).

Monitoring of Implementation of SR VII

635. If financial institutions receive money or value transfers that do not contain the complete originator information, they are required to take measures to obtain and verify the missing information from the ordering institution or the beneficiary and, should those fail to release the information, they must refuse acceptance of the transfer and report it to the FIU (Article 13(5)).

3.5.2. Recommendations and Comments

636. While the record-keeping requirements recently established under Article 15 of the AML/CFT Law largely meet the international standards, further specificity regarding the requirements, which could be achieved through regulation (decree law), would clarify possible areas of ambiguity or uncertainty.

637. For example, there is no legal or regulatory definition of what is meant by “termination of the business relationship”. The following issues could be considered:

- The date on which an occasional transaction is performed or the last in a series of occasional transactions;
- The formal date when an account is closed, either through the initiative of the institution or the customer;
- The date when credit recovery proceedings are started, following insolvency or bankruptcy of the borrower.

638. The Instruction on bank’s internal control systems (CPO/B-2001/5) is very generic. There are no rules regarding the internal control systems of financial institutions, requiring complete, reliable

and up to date accounting and financial information, in particular their registration, retention and availability, as well as procedures for retracing operations in chronological order.

639. Concerning information to be provided to the competent authorities the AML/CFT Law only stipulates it should be “readily available”. It may be more appropriate to stipulate certain time limits e.g. 5 days if the information is computerized or 30 days maximum if another form of filing is being used and if there is no one in police detention, or 15 days if there is someone in detention. Otherwise the requested information may take a long time to be obtained if an authorization from the Court is needed.

640. Consideration could also be given to providing in law or regulation that financial institutions should be required to maintain all necessary records on transactions, both domestic and international, longer than five years if requested by a competent authority in specific cases and upon proper authority, regardless of whether the account or business relationship is ongoing or has been terminated. While this is not a requirement under the FATF Recommendations, it would provide additional safeguards in law.

641. If regulations are drafted, the definition of “transaction records” should also include address (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved.

642. While some monitoring of compliance occurs, the BCTL should more effectively monitor the compliance of all financial institutions with the wire transfer requirements, including through both on-site examination and off site reports.

643. The draft Public Instruction on licensing and supervision of MTOs should be finalised and issued as soon as possible.

644. Each intermediary and beneficiary financial institution in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer, not only within the country, but also out of borders.

645. Timor-Leste should have measures in place to effectively monitor the compliance of all financial institutions, and not only banks, with rules and regulations, including both on-site examinations and off-site reports and its analysis. These off-site reports should include information on internal rules and procedures of all the institutions (including MTOs).

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> Effective implementation across all sectors cannot be established as requirements are new and widespread AML/CFT supervision of record-keeping requirements has not been undertaken
SR. VII	PC	<ul style="list-style-type: none"> In the payment chain, each intermediary and beneficiary financial institution (national and foreign) is not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. Measures are not in place to effectively monitor the compliance of all financial institutions, and not only banks, with rules and regulations, including both on-site examinations and off-site reports and its analysis. It is too early since the introduction of the AML/CTF Law to

		assess effective implementation <ul style="list-style-type: none"> • It is necessary to approve the Instruction for Money Transfer Operators, and pay special attention to its activity.
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Unusual and Suspicious Transactions

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

3.6.1. Description and Analysis

Recommendation 11

Legal Framework:

646. The obligations under the AML/CFT Law and Public Instructions require financial institutions to conduct special monitoring of certain transactions based on the criteria outlined below. No further guidance has been issued by the BCTL regarding unusual transactions. The BCTL indicated that it had not considered it necessary to issue further guidance because Article 10 of Public Instruction 02/2004 already contains sufficient detail, including an example of unusual transactions to be included in banks' system and procedures. However, BCTL indicated that it would nonetheless provide further guidance in the amendment to Public Instruction 02/2004. This would imply that further guidance would in fact be useful. In practice, banks indicated that they follow home-country AML/CFT requirements or group standards.

Special Attention to Complex, Unusual Large Transactions

647. To comply with suspicious transaction reporting requirements, Article 14(1) of the AML/CFT Law requires that financial institutions are expected to "pay special attention to all complex, unusually large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose".

648. Article 10 of Public Instruction 02/2004 requires all registered banks to operate a system to detect unusual activities in all its customers' accounts such as transactions that appear to lack economic or commercial sense, or that involve large sums of money, particularly large cash deposits not consistent with the expected activity in the account.

Examination of Complex & Unusual Transactions

649. Article 10(2) of Public Instruction 02/2004 requires registered banks to "set detailed procedures setting out the channel of communications regarding unusual transactions which they have reasonable grounds to suspect of being associated with money laundering. The procedures should incorporate full documentation of the decision making process from the first detection of the unusual transaction to the formulation of a decision on whether to report to the competent authority." There is no equivalent Article in the AML/CFT Law.

Record-Keeping of Findings of Examination

650. Articles 14(3) and 15 of the AML/CFT Law require financial institutions (and non-financial businesses and professions) to maintain records of the specific information regarding all complex, unusually large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose and the identity of all parties involved. The record shall be made available if requested by the FIU or other supervisory authority.

Recommendation 21

Special Attention to Countries Not Sufficiently Applying FATF Recommendations

651. Article 14(2) of the AML/CFT Law requires financial institutions (and non-financial businesses and professions) to pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in countries that do not or insufficiently apply the relevant international standards to combat ML and FT.

652. Articles 4, 5 and 11 of Public Instruction 02/2004 provide details on how registered banks should deal with high risk customers including those from countries that do not or insufficiently apply the FATF Recommendations.

653. As noted previously, the great majority of banks operating in the Timor-Leste are branches of foreign international banks; therefore, they follow home-country AML/CFT requirements or group standards for purposes of identification of high risk countries. In practice, nothing has been given by the BCTL to financial institutions advise them of concerns about weaknesses in the AML/CFT systems of other countries. There has been no implementation so far of this requirement in non-bank financial institutions.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations

654. As noted above, Article 10 (2) of Public Instruction 02/2004 requires registered banks to set detailed procedures setting out the channel of communications regarding unusual transactions which they have reasonable grounds to suspect of being associated with money laundering. The procedures should incorporate full documentation of the decision making process from the first detection of the unusual transaction to the formulation of a decision on whether to report to the competent authority. This does specifically refer to transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations, but read together with the requirements of Articles 4 and 11 of the Public Instruction, this criterion is partly addressed (at least for banks).

655. The AML/CFT Law contains no provision specifically relating to this requirement.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations

656. No provisions in law, regulation or other enforceable means set forth any obligation to apply counter measures with regard to countries not sufficiently applying FATF Recommendations.

3.6.2. Recommendations and Comments

657. Timor-Leste requires financial institutions to monitor unusual transactions and transaction from high risk countries. As there are only four licensed banks in Timor-Leste, three of which are foreign owned and which comply with this requirement as they follow home-country AML/CFT requirements or group standards. The fact that the AML/CFT Law has only just been introduced means that this requirement is not being effectively implemented yet in non-bank financial institutions. Given the very limited scope of the non-bank financial sector in Timor-Leste, however, this scope issue has only a minor impact on overall levels of implementation/effectiveness.

658. Timor-Leste should:

- Ensure effective implementation of requirements to monitor unusual transactions on non-bank financial institutions;

- require non-bank financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing;
- be able to apply appropriate counter-measures to a country that continues not to apply or insufficiently applies the FATF Recommendations; and
- put in place mechanisms to alert banks about high risk countries, ie letters or circulars especially regarding the FATF ICRG statements.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none"> • Scope issue: No effective implementation in non-bank financial institutions
R.21	PC	<ul style="list-style-type: none"> • No provisions in law, regulation or other enforceable means requiring application of counter measures to countries not sufficiently applying FATF Recommendations • No effective implementation in non-bank financial institutions

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

3.7.1. Description and Analysis

Recommendation 13 and SRIV

Legal Framework:

659. The AML/CFT Law provides extensive provisions on the obligation for financial institutions (and non-financial business and professions) to report suspicious transactions, including attempted transactions, to the FIU.

660. The Banking Law further requires that registered banks shall on their own initiative inform the authorities in Timor-Leste responsible for combating money laundering of the evidence that property is derived from criminal activity and provide, at the authorities' request, any additional related information, in accordance with the procedures established by applicable law.

661. Public Instructions 02/2004 and 06/2010 place reporting obligations on banks and non-bank deposit taking institutions respectively. While these Public Instructions constitute OEM rather than law or regulation, as required under R.13 and SRIV, they have in practice led to some limited STR reporting by banks (only).

Requirement to Make STRs on ML and FT to FIU, and Attempted Transactions

662. Under Article 23 of the AML/CFT Law, financial institutions and non-financial businesses and professions that suspect or have reasonable grounds to suspect that funds or property are the proceeds of crime, or are related or linked to, or are to be used for the financing of terrorism, or that have knowledge of a fact or an activity that may be an indication of money laundering or financing of terrorism, are required to submit promptly a report setting forth its suspicions to the FIU, including in the case of attempted transactions.

663. While "proceeds of crime" is not defined in the AML/CFT Law, as noted in section 2.3 of this report, this concept is well consolidated in the legal doctrine of Timor-Leste, and developed in general terms in Articles 102 and 103 of the Penal Code. However, limitations in the FT offence, noted in section 2.2 of this report (ie the FT offence does not apply to individual terrorists and not to the

financing of terrorist organisations for any purpose), have an impact on the breadth of the STR obligation.

664. Under Article 13 of Public Instruction 02/2004, banks are required to report to the Banking & Payments Authority (now the BCTL) “any customer activity that may adversely affect the stability or reputation of the bank”, the names of customers whose applications for opening an account with bank have been refused, any law enforcement inquiry relevant to money laundering being conducted in the bank or a company under its control, any transaction declined by the bank pursuant to this Public Instruction.

665. Under Article 28(4) of Public Instruction 06/2010, non-bank deposit taking institutions (ODTI) are required to report to the BCTL any suspicious transaction.

Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters

666. There is no rule restricting the reporting of matters which involve tax matters. However, under the Penal Code predicate offences are those punishable with a minimum term of imprisonment of four years. Tax offences do not fall within the threshold and are not therefore currently predicate offences for ML.

Additional Element - Reporting of All Criminal Acts

667. Under Article 23 of the AML/CFT Law, financial institutions and non-financial businesses and professions that suspect or have reasonable grounds to suspect that funds or property are the proceeds of crime or are related or linked to, or are to be used for the financing of terrorism, or that have knowledge of a fact or an activity that may be an indication of money laundering or financing of terrorism, are required to submit promptly and in accordance with Article 25, a report setting forth its suspicions to the FIU, even in the case of attempted transactions.

Recommendation 14

Protection for Making STRs

668. There is no explicit provision regarding immunity of financial institutions, their directors, officers and employees (permanent and temporary), in respect of information disclosed or supplied in a suspicious transaction report relating to a money laundering transaction, that might normally be covered by legal privilege, customer confidentiality, or contractual requirements. Such a provision was included in the draft AML/CFT Law initially provided to the Evaluation Team and introduced into Parliament, but not in the final version which was enacted on 28 December 2011.

669. The Timor-Leste authorities maintain however that under the general principles of the civil law system, and as provided for in of the AML/CFT Law in particular, financial institutions, officers and employees cannot be held liable— either in criminal or civil law – for the consequences of complying with an obligation imposed by law to report matters to the FIU. They also argue that the existence of a legal duty is a cause of “exclusion of unlawfulness”, as provided for in Article 43 of the Timorese Penal Code, which provides that “when the unlawfulness of an act, considered in its entirety, is excluded by the legal system, the same shall not be liable to criminal punishment and specifically, any act committed in exercise of a right or performance of a duty (...)”. Timor-Leste therefore considers that it complies with this aspect of Recommendation 14, having an explicit provision in the penal law that also covers financial institutions and given that the AML/CFT Law is special legislation meaning that legal duties and obligations therein contained over-ride provisions in other legislation.

670. While it is conceded that the “exclusion clause” in Article 43 of the Penal Code may protect anyone that practices any act (in this case STR reporting) when complying with a legal duty, the

protection offered is quite general and does not include protection from civil liability. It is also not clear whether it provides sufficient protection if directors, officers and employees (permanent and temporary) of financial institutions did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually had in fact occurred. While it is agreed that in a civil law system it is not necessary to provide for each specific type of situation when they are governed by the general principal, it is noted that other civil law jurisdictions do have specific safe harbor provisions and that a specific inclusion of a safe harbor provision in the AML/CFT Law would specifically protect anybody making an STR report. In this way the protection would be guaranteed and no doubts would ever arise about any liability associated with the filling of an STR.

Prohibition Against Tipping-Off

671. Article 25 of the AML/CFT Law prohibits financial institutions and non-financial business and profession (including any directors, officers and employees) from disclosing to their customer or a third party that information was provided to the FIU or that a report concerning suspected money laundering or financing of terrorism is being or will be submitted to the FIU or that a money laundering or financing of terrorism investigation is being or will be carried out.

672. More broadly, Article 20 of the AML/CFT Law requires the head, experts, liaison officers and other staff of the FIU to keep confidential any information obtained as a result of or within the scope of their duties, even after the cessation of those duties, and such information may only be used for the purposes provided for in accordance with this law. Breaching of this obligation is subject to disciplinary and criminal proceedings.

Additional Element—Confidentiality of Reporting Staff

673. As noted above, Article 20 of the AML/CFT Law requires the head, experts, liaison officers and other staff of the FIU to keep confidential any information obtained as a result of or within the scope of their duties, even after the cessation of those duties, and such information may only be used for the purposes provided for in accordance with this law. While there are no specific provisions or rules on the maintaining the confidentiality of staff of financial institutions who submit STRs, Timor-Leste authorities state that Article 20 has been drafted “without limitation” to cover all matters affecting the bank and its customers and shall be interpreted in a way that covers the confidentiality of the staff of financial institutions who submit STRs.

Recommendation 19

Consideration of Reporting of Currency Transactions Above a Threshold

674. Article 6(o). of UNTAET Regulation 2000/5 requires currency exchange bureau to prepare a report of any purchase by the bureau of currency or traveller’s cheques in excess of the equivalent of \$US 10,000 per customer per day.

675. Article 13(2) of the draft Public Instruction XX/2010 requires money transfer operators to report all transactions equal or above \$5,000.00 (five thousand United States dollars) to the BCTL and the other competent authorities established by law.

676. Inclusion of this requirement in this draft Public Instruction shows that Timor-Leste has given consideration of a reporting of currency transactions above a certain threshold for this type of financial institution. However, no consideration has been given to requiring other financial institutions to report transactions above a threshold.

Additional Elements

677. N/A.

Recommendation 25

Feedback to Financial Institutions with respect to STR and other reporting

678. Discussion with the banks indicates that there is a need for further feedback from the BCTL. However, since the Penal Code was enacted in 2009, the BCTL has not given any feedback on STRs to banks since it considers it does not have the legislative basis (investigative or other power) to do so.

Statistics (applying R.32)

679. As noted above, the broader STR obligation under the AML/CFT Law came into effect only in January 2012 and no STRs had been submitted under that obligation as at the time of the on-site visit or immediately thereafter.

680. However, Public Instruction 02/2004 and Public Instruction 06/10 do place some reporting obligations on banks and non-bank deposit taking institutions respectively. Only banks have submitted STRs to date. As outlined above, it is very clear that reports submitted under Article 13 of Public Instruction 02/04 do not necessarily constitute “STRs” as normally understood under the standard. In addition, these reports were not filed to an operative FIU.

Table 11: STR reporting 2007 – 2011

	2007	2008	2009	2010	2011	Total
STRs from banks	1	1	2	4	11	19

Analysis of effectiveness

681. Even allowing for the small size of the financial sector, the rates of STR reporting are very low although the number is gradually increasing. Based on discussions with the regulator and reporting parties in Timor-Leste, this is due to a lack of understanding of STR indicators, especially in the non-bank sector, the low number of on-site examinations (to reinforce the need for STR systems and reporting), lack of sanctions for failure to report and lack of feedback on STRs.

682. Only two of the four banks in Timor-Leste (and no non-bank financial institutions) have reported STRs, and it is not clear that the reporting is at a rate commensurate with rates of crime, including corruption. From discussion with the BCTL, it is clear that most STRs provided by the banks are generally for high-value of money transfers. Since 2009, all such STRs have been disseminated to the PPO for consideration.

683. According to explanations provided by reporting parties, transactions that were reported along the internal line of reporting are reviewed and filtered by a special unit or person who is responsible for STR reporting.

684. There appears to be no checking conducted by financial institutions on publicly available information about the customers. Even an inquiry from a law enforcement agency in relation to a particular customer may not be enough for financial institutions to look at related accounts to consider possible suspicious transactions.

685. The lack of resources and, until the recent passage of the AML/CFT Law, the powers of the BCTL, both as regulator and as FIU, have prevented it from assessing AML/CFT compliance and the effectiveness of internal controls and reporting requirements of banks and other financial institutions, as well as limiting the ability to provide feedback on STRs.

3.7.2. Recommendations and Comments

Recommendation 13/SRIV

686. Timor-Leste should undertake comprehensive education and awareness raising with reporting parties on the new STR obligations under the AML/CFT Law to encourage higher rates and quality STR reporting.

687. Timor-Leste should ensure effective implementation of the STR requirement by non-bank financial institutions.

Recommendation 14

688. While the Timor-Leste authorities maintain that their general legal doctrines and Article 43 of the Penal Code provide sufficient protection for persons submitting STRs, the Evaluation Team is not convinced that such protection is as clear or as wide ranging as it needs to be. In the view of the Evaluation Team, it would be better for Timor-Leste explicitly to provide by law protection to financial institutions and their directors, officers and employees (permanent and temporary), from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU.

Recommendation 19

689. Timor-Leste should consider the feasibility and utility of a threshold reporting requirement by financial institutions other than MTOs.

Recommendation 25

690. Timor-Leste should provide reporting entities with sector-specific guidelines to assist in the implementation of their requirements.

691. Timor-Leste should provide financial institutions and non-financial business and profession that are required to report suspicious transactions, with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none">• The deficiencies in the list of predicate offences and in the FT offence affect the scope of the requirements to report STRs• The very low number of STRs submitted and the very limited range of institutions submitting them shows a lack of effective implementation of the STR obligation• It is too early to judge the effectiveness of the STR obligation for non-bank financial institutions
R.14	PC	<ul style="list-style-type: none">• A lack of clear ‘safe harbour’ for the directors, officers and employees of the financial institutions if they report STRs in good faith.
R.19	C	
R.25	PC	<ul style="list-style-type: none">• No guidelines to financial institutions and non-financial business and

		profession that are required to report suspicious transactions <ul style="list-style-type: none"> • No feedback on STR since Penal Code was enacted in 2009
SR.IV	PC	<ul style="list-style-type: none"> • The obligation does not cover funds provided for an individual terrorist nor does it cover the financing of a terrorist organisation for any purpose. • It is too early to judge the effectiveness of the STR obligation for FT

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

3.8.1 Description and Analysis

Legal Framework:

692. Under the AML/CFT Law there are requirements with regard to establishing internal programs to combat ML and FT applicable to all financial institutions and DNFBPs (see Articles 12 and 16). It is noted that, while there are some differences in wording, there seems to be overlap in the obligations imposed under Articles 12 and 16.

Establish and Maintain Internal Controls to Prevent ML and FT

693. The AML/CFT Law requires all institutions to develop and implement programs for the prevention of money laundering and financing of terrorism (see Article 12(1)).

694. Article 12(2) of the AML/CFT Law and Article 3(5) of Public Instruction 02/2004 require all financial institutions and DNFBPs to appoint a compliance officer. The Compliance Officer is generally a senior management member, but the law does not impose this obligation¹³.

695. Public Instruction 02/2004 requires financial institutions to establish, implement and maintain a compliance programme that includes internal procedures, policies, and controls to prevent activities related to money laundering and the financing of terrorism. The instruction also requires the institutions to ensure that all relevant employees are aware of the compliance programme and receive the appropriate training.

696. Furthermore, there are general requirements for all registered banks with regards to ethical and integrity standards. Instruction B-2001/5 issued by the BCTL regarding the Banks Internal Control System requires that, the Governing Board and senior bank administrator are responsible for promoting high ethical and integrity standards, and for establishment of a culture within the organisation of the bank that emphasizes and demonstrates all levels of personnel the importance of internal controls. Bank personnel must be informed of, and held responsible for, their role in the internal controls process.

697. Under the AML/CFT Law there are some broad requirements with regards to the internal programs to combat ML and FT applicable to financial institutions (and DNFBPs).

698. Under Public Instruction 02/2004 (Articles 3, 4, 9, 10, and 13), the BCTL also requires all registered banks to establish policies with regard to KYC, which must include reference to customer acceptance policy, a definition of customers likely to represent high risk, and rules for different types

¹³ It should be noted that while the unofficial translation of the AML/CFT law provided to the Evaluation Team in January 2012 and annexed to this report says that the compliance officer shall be designated “at management level”, this is not in fact contained in the original Portuguese version of the Law.

of customers to prevent the bank from being exploited, intentionally or unintentionally, by persons engaged in criminal activities wishing to conceal or disguise the illicit origin of the property or of any person assisting with such activities. Registered banks also are required to develop procedures for the retention of information essential for authenticating customer's identity and their type of business, relating to the source of the information, the period for which it should be retained, the type of customer and the expected extend of activity. There are also requirements for all registered banks on the detection of unusual and suspicious transactions and the reporting obligations.

699. Public Instruction 02/2004 also sets out the minimum requirements that a financial institution would have to meet when establishing, implementing and maintaining its compliance programme. These include staff training on AML matters, customer due diligence requirements, and reporting of suspicious transactions.

700. In practice, the internal procedures, policies and controls of financial institutions relating to the prevention of money laundering and terrorist financing vary across the financial sector. Where policies and procedures are established and maintained they are generally well supported by ongoing staff training and knowledge building. There is however no evidence of internal controls systems in place in Timor-Leste for ODTIs.

701. A wide range of issues is covered in the banks' AML/CFT programmes and Public Instruction 2/2004 imposes some obligations. Bank's programmes include:

- ongoing staff training;
- senior management oversight;
- 'Know Your Customer' procedures;
- staff education and training;
- reporting suspicious transactions;
- transaction filtering; and
- reviewing and monitoring customer records against various global and government lists and retention of records,

however it is difficult to assess the effectiveness of these programmes.

15.1.1

702. Article 12(2) of the AML/CFT Law requires financial institutions to designate a compliance officer to be responsible for implementation of AML/CFT regime within the institutions.

703. Article 3(5) of Public Instruction 02/2004 requires all registered banks to appoint a compliance officer. The Compliance Officer generally is a senior management member, but this is not required under the Public Instruction.

15.1.2

Banks

704. As noted above, Public Instruction 02/2004 (Article 3(5)) sets out the need for a person to be appointed as a compliance officer. For foreign banks AML procedures are generally well established and ingrained in their overall control systems. These procedures are predominantly determined at group level. Across the groups, specific regional or 'country' personnel are responsible for ensuring compliance with both internal group AML procedures and of the local country regulatory AML/CFT requirements.

705. Banks have appointed a specific person or at least have a compliance manager tasked with AML oversight. Whilst responsibilities vary from institution to institution, these include maintaining appropriate operational controls, procedures for the reporting of suspicious transactions, procedures with regards customer due diligence and training of staff in AML/CFT. The main reporting lines in the majority of cases are to a senior person within each bank's risk or compliance function. For the smaller banks, the AML oversight is usually just a part of the overall responsibilities of the designated officer, whilst the larger organisations have appointed someone (or in certain instances a small team) specifically to the AML/CFT function.

ODTIs

706. The new AML/CFT Law imposes similar obligations on ODTIs, however the previous instructions on this subject were only applied to banks and due to the very recent enactment of the AML/CFT Law, the obligations on ODTIs are yet to be imposed in practice.

Independent Audit of Internal Controls to Prevent ML and FT

707. Article 12(1) of the AML/CFT Law requires financial institutions to develop internal programs and audit standards to check compliance with and effectiveness of the measures to apply the AML/CFT regime.

708. Where a financial institution has an AML/CFT compliance officer, the authorities indicated that it is "highly likely that the compliance officer has full access to customer due diligence information". However, the law does not provide the compliance officer with full access to the information needed to comply with the obligations.

Ongoing Employee Training on AML/CFT Matters

709. Public Instruction 02/2004 also sets out the minimum requirements that a financial institution would have to meet when establishing, implementing and maintaining its compliance programme. Article 12 of Public Instruction 02/2004 requires all registered banks to provide training on CDD and KYC policy and procedures, distinguishing between new staff, management staff, branch staff, staff who deal with the acceptance of new customers, and those engaged in compliance, and to make all employees aware of the procedures it has set.

710. Article 12(1) of the AML/CFT Law require financial institutions to "develop and implement programs for the prevention of money laundering and financing of terrorism under the policy of hiring, training and continues [sic] internal audit" (emphasis added). Article 16(1)(b) of the AML/CFT Law require financial institutions to develop and implement programs for the prevention of money laundering and financing of terrorism, including "ongoing training for officials and employees to assist them in recognizing transactions and actions that may be linked to money laundering or financing of terrorism and instruct them in the procedures to be followed in such cases".

Employee Screening Procedures

711. Articles 12(1) and 16(1)(a) of the AML/CFT Law require financial institutions to develop and implement adequate screening procedures to ensure high standards when hiring employees.

712. Furthermore, there are general requirements for all registered banks with regards to ethical and integrity standards. Instruction B-2001/5 issued by the BCTL regarding the Banks Internal Control System requires that the Governing Board and senior bank administrator are responsible for promoting high ethical and integrity standards, and for establishing a culture that emphasizes and demonstrates to all levels of personnel the importance of internal controls. Bank personnel must be informed of, and held responsible for, their role in the internal controls process.

713. As the majority of banks operating in Timor-Leste are branches of foreign international banks, they have in place effective high standards on hiring new employee.

ODTIs

714. The new AML/CFT Law imposes similar obligations on ODTIs, however the previous instructions on this subject were only applied to banks and due to the very recent enactment of the AML/CFT Law, the obligations on ODTIs are yet to be imposed in practice.

Additional Element—Independence of Compliance Officer

715. Compliance officers of banks should submit reports directly to the general manager of the bank; in addition for branch of overseas bank, the compliance officer should be able to convey STR to the director of compliance of the head office in their home country.

716. The new AML/CFT Law imposes similar obligations on ODTIs, however the previous instructions on this subject were only applied to banks and due to the very recent enactment of the AML/CFT Law, the obligations on ODTIs were yet to be imposed in practice.

Recommendation 22

Application of AML/CFT Measures to Foreign Branches & Subsidiaries

717. Although there are no financial institutions authorized in Timor-Leste with foreign branches or subsidiaries abroad, the AML/CFT Law obliges financial institutions to require their foreign majority owned subsidiaries to implement AML/CFT measures to the extent that local applicable laws and regulation so permit (see Article 17(1) of the AML/CFT Law).

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures

718. If local laws and regulations prohibit compliance with these obligations, the financial institution shall so advise its supervisory authority (see Article 17(2) of the AML/CFT Law).

Additional Element—Consistency of CDD Measures at Group Level

719. Not applicable.

Effectiveness

720. It is not possible to fully assess the effectiveness of the internal control requirements, due to the very recent introduction of new requirements under the AML/CFT Law and the fact that the BCTL's on-site examinations of the requirements imposed by the existing Public Instructions were limited only to banks. With the introduction of the new requirements contained in the AML/CFT Law for both banks and ODTIs, the BCTL has the opportunity to improve inspections regarding AML/CFT internal control systems to evaluate their efficiency and effectiveness.

3.8.2. Recommendations and Comments

Recommendation 15

721. The recently enacted AML/CFT Law contains broad requirements for all financial institutions to establish internal control systems for AML/CFT. These requirements reinforce existing obligations on banks contained in Public Instruction 02/2004, and extend the obligations to ODTIs. There is however no explicit regulation that the compliance officer should be at the senior management level

and that the compliance officer should have a direct reporting duty to the management board. In addition, implementation is patchy, with little or no evidence of implementation within the non-bank financial sector.

722. Authorities should:

- require that the compliance officer should be at the senior management level and that the compliance officer should have a direct reporting duty to the management board
- ensure that current obligations regarding internal controls, compliance and audit are fully implemented by financial institutions.

723. In addition, the BCTL should consider issuing enforceable instructions/regulations pursuant to Articles 12 or 16 of the AML/CFT Law which set out in greater detail the obligations of financial institutions in this area. In drafting these instructions, consideration should be given to the following issues:

- The creation and up-dating of the internal control system as well as the verification of its operation and efficiency should be directly monitored by the management board of the institution.
- BCTL should require an internal control report from every financial institution which outlines the main rules of internal control systems, stipulating its objectives, procedures and means of ensuring its implementation and it should also be available to their users
- The internal control report could give, inter alia, a brief description of the internal audit process, including auditing of the computer system. In this context, the institutions should indicate:
 - Their adherence to the AML/CFT obligations imposed by Timor-Leste;
 - Human resources allotted to the internal audit;
 - Audits undertaken, respective follow up and schedule of works to be performed
 - The average number of months between two successive inspections of counters and central services;
 - The audit of the computer system
- BCTL should require of financial institutions to elaborate inspection plans and produce reports which cover, among others aspects, the observance of the principles of prevention of ML.
- The internal control report could be sent annually to the BCTL, and should cover specific aspects of ML prevention, including the presence in the organizational structure of the compliance officer. A report of the same nature should also be prepared by branches of credit institutions established in Timor-Leste. The annual internal control report should include, among other information considered relevant to assess the efficacy of the systems put in place, information on the training courses developed and the number of employees involved.
- Annual internal control reports should be sent to the BCTL along with the opinion of the board of auditors, which includes a detailed statement on the adequacy of the existing internal control system.
- Financial institutions could consider the designation of a compliance officer responsible for the coordination of internal control procedures on ML and to centralize information relating to potentially suspicious operations as well as for the reporting to the competent authorities where applicable.

724. The position of the compliance officer within a financial institution could be strengthened, so that they are designated at a senior management level. The compliance officer should also have

access to all the information relating to the identification of customers and the collection and recording of documents relating to operations so as to ensure compliance with the duties specified in the AML/CFT Law. At a minimum it should be required by other enforceable means (but preferably in law or regulation) that the compliance officer should have a direct reporting duty to the management board; in addition for branches of overseas banks, the compliance officer should be able to convey STRs to the director of compliance of the head office in their home country.

725. It is also important to mention that financial entities should have in place regular training courses for employees and collaborators in the field of ML prevention.

Recommendation 22

726. It is important to require financial institutions to have internal control mechanisms to ensure that their duties regarding the prevention of ML are also observed in their foreign subsidiaries and branches, including international and offshore branches, should any such subsidiaries or branches be established in the future. In fact, they should inform their supervisory authorities explicitly whenever the legislation in the host country prevents or hinders application of the principles and procedures relating to the duties of prevention set down in the law and in the relevant regulatory instruments. While this is required by the new AML/CFT Law, it is important that these provisions be applied in practice should any Timorese financial institution establish a foreign branch or subsidiary in the future. Under these provisions, financial groups are required to have procedures to ensure that the head of the group adequately monitors and controls the risks incurred by the whole group. Reputation, legal and compliance risks are among the risks that must explicitly be covered.

727. Financial institutions should use procedures to ensure the adequacy of their internal control systems in their foreign branches or subsidiaries, with the aim of preventing the institution from being involved in ML operations, and these procedures should be detailed in the annual internal control report.

728. Furthermore a reporting duty to the BCTL should be established to ensure the adequacy of the internal control systems in branches or subsidiaries abroad, requiring the report to be forwarded annually to the BCTL, together with the detailed opinion of the board of auditors of the financial institution about the adequacy of the internal control systems including the prevention of ML and the procedures used to ensure the adequacy of the internal control systems in the branches or subsidiaries abroad.

729. Additionally, the BCTL should compel the internal audit of financial institutions to elaborate inspections plans and produce reports which covers, among others aspects, the observance of the principles of prevention of ML regarding its foreign branches and subsidiaries.

730. Article 17 of AML/CFT Law requires financial institutions to report to the BCTL if local laws and regulations prohibit compliance, with the application of the principles and procedures deemed adequate to the fulfilment of their AML duties. However there is no explicit legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit.

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> There is no explicit regulation that the compliance officer should be at the senior management level and that the compliance officer should have a direct reporting duty to

		<p>the management board</p> <ul style="list-style-type: none"> • Lack of implementation/evidence of implementation in non-bank sector •
R.22	N/A	<ul style="list-style-type: none"> • Not applicable due to the structural features of Timor-Leste; there are no financial institutions authorized in Timor-Leste with foreign branches or subsidiaries abroad.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework:

731. Article 8 of the AML/CFT Law prohibits shell banks from operating in Timor-Leste as well as prohibiting banks that are not affiliated with a regulated financial group subject to effective consolidated supervision.

Prohibition of Establishment Shell Banks

732. Article 8(1) of the AML/CFT Law provides that no bank may be established in the territory of Timor-Leste if it maintains no physical presence within such territory and is not affiliated with a regulated financial group subject to effective consolidated supervision.

733. All financial institutions with head offices in Timor-Leste are subject to licensing by the BCTL (see Articles 5(j) and 31 of Law 5/2011).

734. The Banking Law also establishes stringent procedures to set up banks in Timor-Leste. It requires, inter alia, the BCTL to inspect the premises of the proposed bank, review the bank's systems and assess the training program of staff.

735. Under the Instruction on Application for Bank License (see VI B. of Instruction CPO/B-2000/1) in the licensing process for a branch of a foreign bank, the BCTL requires an official from the home country supervisor stating that:

- the applicant foreign bank is authorized to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located;
- the applicant foreign bank is a bank "in good standing" with the home country supervisor, that is, the bank is fully meeting all capital requirements and has no formal enforcement actions currently outstanding or pending;
- the home country supervisor has given written consent for the applicant foreign bank to operate a branch office in Timor-Leste;
- the applicant foreign bank including its branches in Timor-Leste is, and will be, supervised on a consolidated basis by the home country supervisor, in accordance with the principles contained in the Basle Concordat; and
- the home country supervisor agrees to keep the Central Bank of Timor-Leste informed of any significant developments adversely affecting the parent bank's financial soundness and/or reputation globally.

Prohibition of Correspondent Banking with Shell Banks

736. Article 8(2) of the AML/CFT Law requires that financial institutions shall refuse to enter into or continue business relations with banks registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks

737. Article 8(4) of the AML/CFT Law requires that financial institutions shall not enter into or continue business relations with financial institutions in a country if they permit their accounts to be used by shell banks. However, there is no specific requirement that obliges financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2. Recommendations and Comments

738. Timor-Leste's banking authorisation process effectively precludes the establishment and operation of "shell banks" within the jurisdiction. But a comprehensive ruling on the issue of shell banks should establish an explicit obligation on financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	LC	<ul style="list-style-type: none">• There is no explicit regulation that obliges financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

REGULATION, SUPERVISION, GUIDANCE, MONITORING AND SANCTIONS

3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1. Description and Analysis

Authorities’/SROs’ roles, duties, structure and resources - R.23, 30 - Designated supervisory authorities and application of AML/CFT measures

Legal Framework:

739. The BCTL is exclusively responsible for the regulation, licensing, registration, and supervision of all financial institutions in Timor-Leste.

740. Article 31 of Law 5/2011 confers responsibility to the BCTL for the regulation, licensing, registration and supervision of financial institutions, including the imposition of remedial measures and administrative sanctions.

741. The BCTL enjoys independence and autonomy in the performance of its functions.

742. All financial institutions and DNFBPs are subject to the provisions of the AML/CFT Law, which is principally aimed at the prevention, detection and reporting of AML/CFT activity.

743. Articles 27, 31 and 32 of the AML/CFT Law give power to “competent supervisory authorities” to impose compliance duties on financial entities to prevent ML and empower them to investigate administrative breaches of the law and apply administrative sanctions. This term is not however defined in the AML/CFT Law.

744. At the time of the on-site visit, money transfer operators (MTOs) were not yet regulated, only registered at MTCL. A draft Public Instruction had been prepared and was close to being issued. It should also be noted that credit co-operatives are not regulated by the BCTL but are required to register at the Ministry of Economic Development (MED), but constitute a very small part of the financial sector.

Regulation and Supervision of Financial Institutions

745. Within the scope of its regulatory powers, specifically Articles 31, 65 and 66 of Law 5/2011, the BCTL can issue regulations, general and mandatory, known as instructions, circulars and orders. Instructions and circulars are published in the “Jornal da República” and the BCTL may decide on the publication of orders.

746. The BCTL is exclusively responsible for the regulation, licensing, registration, and supervision of all financial institutions. Financial institutions are subject to ongoing supervision and monitoring by the BCTL, which conducts regular on-site examinations to all banks, both on prudential supervision and on the AML/CFT compliance, at least once every two years depend on the findings of the previous examination. When failures are detected, BCTL imposes recommendations on the institutions and if they are not put in practice BCTL effectively imposes sanctions and under Article 31 of the AML/CFT Law BCTL may impose several kinds of sanctions whenever irregularities are detected.

747. The authority of BCTL includes to inspect the premises of financial institutions in order to examine their accounts, books, documents and other records, to obtain all relevant information from them, and to take such other actions as are deemed necessary or desirable.

748. The BCTL is adequately staffed at present to undertake the AML/CFT duties currently provided for in its powers and functions. Staff are required to the staff adhere to the Code of Conduct and are provided with appropriate training. The BCTL enjoys independence and autonomy in the performance of its functions.

749. Timor-Leste has in place stringent requirements on fit and proper assessment for persons wishing to be shareholders or administrators of financial institutions. The BCTL successfully examines the fitness and suitability of all board members and qualified owners of financial institutions. The evaluation process applies also to the licensing of existing banks and approval may be refused or cancelled if there are serious concerns about owners, directors or senior managers. This process has been tested as evidenced in the number of proposed administrators who have been disqualified during the review process. In the case of a change in control or new significant participation in a registered bank, the BCTL will carry out a background check on new owners or participants.

Designation of Competent Authority

750. Articles 27, 31 and 32 of the AML/CFT Law give power to “competent supervisory authorities” to impose compliance duties on financial entities to prevent ML and empower them to investigate administrative breaches of the law and apply administrative sanctions.

751. In the previous draft of the AML/CFT Law provided to the Evaluation Team, “competent authority” was defined to mean “a supervisory authority, government ministry or another agency prescribed by law to have responsibility for oversight, regulation or similar function of financial institutions or non-financial activities and professions subject to this law.” It is presumed by the Evaluation Team that this rather common sense definition will be used in practice. The Timor-Leste authorities also advised that it is sufficient that there is in the legal system a sure and certain administrative duty under a legislative statute obliging non-compliance to result in a sanction. This is the case, for example, with the AML/CFT Law. The authorities argue therefore that it is not necessary that a general definition exists for universal use of administrative penalty expressly provided for in law.

Structure and resources of supervisory authorities

Adequacy of Resources for Competent Authorities

752. The BCTL was formally established on 13 September 2011 under Law 5/2011 in accordance with Article 143 of the Constitution.

753. Previously, central banking functions in Timor-Leste were carried out by predecessor organizations, the Banking & Payments Authority of Timor-Leste (2001 to 2011) and the Central Payments Office (2000-2001) both of which were created by the United Nations Transitional Administration of Timor-Leste (UNTAET) which administered the country from October 1999 to May 2002.

754. The Central Payments Office held the government account (CFET) and made government payments, was responsible for bank licensing and supervision, and operated the Dili clearinghouse.

755. The Banking & Payments Authority added to those functions the licensing and supervision of insurance companies, the publication of monetary and banking statistics and other economic information, the operational management of the Petroleum Fund, the issuance of centavos coins, and the operation of the Credit Registry Information System (CRIS) and the Large Value Transfer System (LVTS).

756. The BCTL's vision is "to be a credible leader in preserving price stability to foster economic development in Timor-Leste.

757. The BCTL structure is comprised of three Departments: the Department of Financial System Supervision, the Department of Payments, and the Department of Administration and the Department of Petroleum Fund; three independent Divisions: Accounting and Budget, Economics and Statistics, and Information Technology, and three specialized supporting Offices: the Legal Office and the Internal Audit Office.

758. The BCTL has administrative and financial autonomy. It enjoys independence and autonomy in carrying out its supervisory role. This power includes the power to deregister a bank or to place a bank in receivership.

759. The BCTL has approximately three persons (full time equivalent) committed to AML/CFT matters within the Department of Financial System Supervision. There are about three additional persons employed to support their work particularly during the on-site examination to registered banks. These resources are primarily committed to ensure financial institutions' compliance with the AML/CFT requirements and liaising with other agencies and authorities on policy and operational matters.

760. The BCTL is preparing resources for the establishment of the Financial Intelligence Unit.

Integrity of Competent Authorities

761. Staff of the BCTL are provided with adequate training and required to adhere to the Code of Conduct.

Training for Competent Authorities

762. The BCTL has staff engaged in AML/CFT work and provides them with appropriate training and support where possible.

763. The staff are supported and provided with relevant sustainable training and courses in order to enhance knowledge, both in domestic or overseas covering various topics such as:

- Workshop on AML/CFT for Financial Sector Supervisors and Regulators;
- Workshop on Justice & Financial Intelligence Unit Official on AML/CFT;
- Course on Banking Supervision for Anti Money Laundering Examination;
- Complex Financial Investigation Course;
- APG Typologies Workshops;
- Regional Asset Forfeiture & Financial Investigations Conference;
- Seminars and exercises on countering the financing of terrorism;
- Other regional and international workshops and seminars.

764. Timor-Leste has provided a list of 24 training events that took place between 2004 and 2011, 19 of which were international and five of which were conducted in Timor-Leste (see Annex 4).

Authorities' Powers and Sanctions – R.29 & 17

Recommendation 29 (Supervisory powers)

765. As noted above, the BCTL is responsible for the regulation, licensing, registration and supervision of financial institutions, including the imposition of remedial measures and administrative sanctions. This authority includes to inspect the premises of financial institutions to examine their

accounts, books, documents and other records, to obtain all relevant information from them, and to take such other actions as are deemed necessary or desirable (see Article 31 of Law 5/2011).

Power for Supervisors to Monitor AML/CFT Requirement

766. Article 27 of the AML/CFT Law sets out the broad functions and powers of the “competent supervisory authorities” to enforce the Law, as follows:

1. The competent supervisory authorities shall supervise compliance by financial institutions and non-financial businesses and professions with the requirements set forth in Title II of the present law.
2. In accordance with the law, competent supervisory authorities shall:
 - a) adopt the necessary measures to establish adequate fit and proper criteria owning, controlling, or participating, directly or indirectly, in the directorship, management or operation of a financial institution or a casino;
 - b) regulate and supervise financial institutions and casinos for compliance with the obligations set out in Titles II and III, including through on-site examinations;
 - c) issue instructions, guidelines or recommendations to assist financial institutions and non-financial businesses and professions in complying with the obligations set out in Titles II and III;
 - d) cooperate and share information with other competent authorities, and provide assistance in investigations, prosecutions or proceedings relating to money laundering, predicate offences and financing of terrorism;
 - e) ensure that financial institutions and their foreign branches and majority owned subsidiaries adopt and enforce measures consistent with this law;
 - f) report promptly to the FIU any information concerning suspicious transactions or facts that could be related to money laundering and financing of terrorism;
 - g) provide prompt and effective cooperation to authorities performing similar functions in other States;
 - h) maintain statistics concerning measures adopted and sanctions imposed in the context of this Title.

767. In addition to these powers to enforce the AML/CFT Law, the BCTL has broad supervisory powers under Law 05/2011 (the Organic Law of the Central Bank of Timor-Leste). Article 31 of that Law sets out the BCTL’s supervisory powers as follows:

Article 31

Supervisory functions

- 1. The Bank shall be exclusively responsible for the regulation, licensing, registration and supervision of financial institutions, including the imposition of remedial measures and administrative sanctions.*
- 2. The Bank may inspect the premises of financial institutions to examine their accounts, books, documents and other records, to obtain all relevant information from them, and to take such other actions as are deemed necessary or desirable.*
- 3. Financial institutions must furnish data and information concerning their operations and financial condition on the Bank’s request.*
- 4. The Bank may disclose information and data obtained under the previous paragraph in whole or in part, aggregated for classes of financial institutions, according to the nature of the activity subject to the rules of confidentiality provided by law.*

768. The BCTL's powers seem adequate, but the laws are very recent and it is not possible to assess their implementation and the effective use of available powers by the BCTL specifically related to the failure to comply with AML/CFT requirements. It is however relevant to note that the BCTL proactively issued Public Instructions 02/2004 for banks and 06/2010 for ODTIs in the absence of enabling legislation, and that since 2000 the BCTL has imposed various sanctions on individuals and entities including banks with a total of over 40 sanctions including administrative penalties. Only the last two enforcement actions related specifically to AML/CFT requirements, but they demonstrate a general willingness to use available powers and this is a positive sign.

Authority to conduct AML/CFT Inspections by Supervisors

769. As outlined above, the BCTL is given powers of inspections/on-site examination under Refer Article 27(2)(b) of the AML/CFT Law and a broad power of inspection power under Article 31(2) of the Organic Law of the Central Bank of Timor-Leste (Law 05/2011).

Power for Supervisors to Compel Production of Records

770. Article 27 of the AML/CFT Law confers broad functions and powers on competent authorities, and Article 21 of the AML/CFT Law gives the FIU the power to compel the production of records. In addition, under Article 31(3) of the Organic Law "financial institutions must furnish data and information concerning their operations and financial condition on the Bank's request." These powers are sufficient for the BCTL to compel the production of all necessary documents relevant to monitoring AML/CFT compliance.

Powers of Enforcement & Sanction

771. As outlined in the next section of this report, a range of sanctions powers are available to competent authorities under Article 31 of the AML/CFT Law, ranging from written warnings to fines and suspension or withdrawal of license. Sanctions are also available under the Banking Law, the Organic Law or Public Instructions 02/2004 (see Article 14) for banks and Public Instructions 06/2010 (see Article 30) for ODTIs.

Recommendation 17 (Sanctions)

Availability of Effective, Proportionate & Dissuasive Sanctions

772. In general, civil and administrative sanctions are available to the BCTL under the AML/CFT Law, the Banking Law, the Organic Law on the Central Bank, and under Public Instructions 02/2004 for banks and Public Instructions 06/2010 for ODTIs. Application of administrative sanctions does not preclude the imposition of any sanctions or measures otherwise available under the law (see Article 32(2) of the AML/CFT Law).

Sanctions under AML/CFT Law

773. Articles 31, 32, 39 and 40 of the AML/CFT Law provide an effective, proportionate and dissuasive criminal, civil and administrative set of sanctions, from disciplinary and financial sanctions to the power to withdraw, restrict or suspend the financial institution's license.

774. Under Article 31 of the AML/CFT Law, the supervisory authorities are provided with the following sanctions when financial institutions or DNFBPs fail to comply with the obligations established in the law:

- written warning;
- order to comply with specific instructions;
- ordering regular reports from the financial institution and DNFBP on the measures it is taking;

- barring individuals from employment within the business sector or profession;
- replacing or restricting the powers of managers, directors or controlling owners, including the appointing of ad hoc administrator; or
- suspending, restricting or withdrawing the license and prohibiting the continuation of the business or profession.

775. For administrative proceedings, the following table summarises the sanctions that can be applied under Article 31 for violations of the AML/CFT Law.

Table 12: Sanctions for violations of AML/CFT Law

Administrative Offence	Responsible	Main Sanction	Additional sanctions
Breach of duties relating to CDD, Wire transfers, record-keeping, ...	Individuals Legal Persons	Fine - from US\$ 250 to US\$150,000 for individuals - from US\$ 1,250 to US\$ 750,000 for legal persons	Banned from pursuing the business or profession for 6 months to 3 years.

776. It is also an offence for persons who intentionally or by gross negligence fail to comply with the requirements established in the AML/CFT Law (see Article 32). Such offences are punishable by a fine us US\$250 to US\$150,000 for individuals, or US\$1,250 to US\$750,000 for legal persons and are available for the following offences:

- a) fails to declare currency or bearer negotiable instruments in an amount equal to or above US\$ 10,000 or its equivalent in local currency or presenting a false declaration;
- b) sets up a bank in Timor-Leste that does not maintain a physical presence and is not affiliated with a regulated financial group;
- c) enters into or continues business relations with banks registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision;
- d) fails to maintain adequate, accurate and current information on the beneficial ownership and control structure of legal persons and arrangements as required by the law;
- e) fails to undertake the identification of customers and risk management measures as required pursuant to the law;
- f) fails to undertake the monitoring measures;
- g) fails to maintain the records or withholds or destroys such records;
- h) fails to provide access to information or records in a timely fashion when so requested by the competent supervisory authority;
- j) fails to submit a report to the FIU.

Sanctions under Banking Law and Organic Law on Central Bank

777. In addition to the foregoing sanctions, the BCTL may decide to impose sanctions as specify in Article 67 of Law 5/2011 and Articles 36 and 37 of the Banking Law.

778. The sanctions available include to:

- (a) issue written warnings;
- (b) conclude a written enforcement agreement with the Governing Board providing for a program of remedial action;
- (c) issue written orders to cease and desist from infractions and to undertake remedial action;
- (d) impose fines;
- (e) suspend temporarily or dismiss administrators from positions in a bank and terminate their receipt of remuneration from the bank;
- (f) revoke the license of the bank and appoint a receiver for the bank.

779. Although Article 67 of Law 5/2011 and Articles 36 and 37 of the Banking Law refer to sanctions to both legal and natural persons, concerning directors and senior management of financial institutions the law does not provide a clear specification imposing criminal or administrative sanctions to them. In fact, the aforementioned sanctions for natural persons only seem to relate to civil sanctions such as suspension or dismissal of administrators of financial institutions.

Application of sanctions

780. No specific violations of the AML/CFT Law have as yet been detected in inspections, given its very recent enactment. Nevertheless, some sanctions have been imposed by the BCTL under section 36 of the Banking Law (Regulation 2000/8 on Bank Licensing and Supervision). From a list of 42 enforcement actions provided by BCTL, only two of them are directly related to failure to comply with AML / CFT requirements (one in 2009 and another in 2010)..

Designation of Authority to Impose Sanctions (c. 17.2):

781. The BCTL is the designated authority to impose sanctions under the Organic Law, the Banking Law and Public Instructions 02/2004 and 06/2010.

782. No specific authority is designated to impose sanctions under the AML/CFT Law, which provides sanctions powers to the “competent supervisory authorities”, a term that is not defined in the AML/CFT Law; this however does not appear likely to be a problem in practice.

Ability to Sanction Directors & Senior Management of Financial Institutions

783. The sanctions available under Articles 31 and 32 of the AML/CFT Law apply not only to the financial institutions themselves, but also, as appropriate, to individuals (see Articles 31(3) and 32(2)).

Range of Sanctions—Scope and Proportionality

784. The range of sanctions available to the BCTL is broad and proportionate to the severity of the situation.

Market entry – Recommendation 23

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions

785. The BCTL has the authority to oppose, either plans to hold a qualifying holding, or the exercise of managerial and auditing functions in a financial institution, by persons who do not comply with fit and proper requirements.

786. The assessment of the suitability of members of the management and auditing board in banks and branches of foreign banks is based on the provisions of Instructions CPO/B-2000/1 and CPO/B-2000/4. Similar instructions apply to insurance and currency exchange bureaux and other deposit-taking institutions.

787. Only persons whose suitability and availability ensure sound and prudent management may be members of the management and auditing boards of banks, the same applying also to members of the general council and to non-executive members of the board, with a view to providing security, in particular, to the funds entrusted to the institution.

788. Section III. A. of Instruction CPO/B-2000/4 sets out the criteria concerning the fitness and properness of administrators and shareholders. The BCTL has actively applied these criteria for banks and similar criteria for other financial institutions when assessing applications for licenses and 15 such license applications have been rejected since 2001, one of which related to criminal activities by the applicant.

789. The managers of branches of credit institutions in Timor-Leste are required to meet all suitability and experience requirements established by law for the members of the management boards of Banks (see Section VI. B. of Instruction CPO/B-2000/1).

790. A questionnaire must be completed in full, accompanied by a photocopy of the front and back of the individual's identity card (or equivalent). The questionnaire contains background information covering general identification and personal data and information on the proposed professional nature of the financial business.

791. For insurance companies, ODTIs and currency exchange bureaux there are similar separated Instructions with the same objective.

792. Section 13 of Regulation 2000/8 sets out rules relating to the acquisition of and increase to qualifying holdings in banks and the possibility that the BCTL may oppose the move. Among these rules, Section 13.3, with reference to Section 6, permits the BCTL to oppose the acquisition or increase of a qualifying holding on the following grounds:

- If it is not satisfied that the person in question is in the proper conditions to ensure sound and prudent management of the credit institution;
- If it is not satisfied that the characteristics of the plan are in the proper conditions to ensure sound and prudent management of the credit institution.

793. The suitability of shareholders with qualifying holdings is established through BCTL Instruction CPO/B-2000/1 with a set of information requirements that must be fulfilled in the communication of an intended acquisition of qualifying holdings.

23.3.1

Licensing or Registration of Value Transfer/Exchange Services

794. The BCTL has prepared a Public Instruction on the Licensing, Regulation and Supervision of Money Transfer Operators, though it was not yet in force at the time of the on-site visit or immediately thereafter. The mechanism for fit and proper assessment is similar to those applicable to banks on the integrity of the owner and administrators.

795. Article 28 of the AML/CFT Law obliges any person or entity that intends to professionally engage in money or value transfer service to apply for registration with the Central Bank, which shall stipulate minimum conditions of operation, in particular regular inspection of this activity.

Application of Prudential Regulations to AML/CFT, Monitoring and Supervision of Value Transfer/Exchange Services

796. Article 27 of the AML/CFT Law requires the supervisory authorities to supervise and regulate financial institutions' compliance with the obligations established in the AML/CFT Law. This includes value transfer/exchange services.

797. The AML/CFT Law also requires supervisory authorities to adopt necessary measures to establish adequate fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the directorship, management or operation of a financial institution or a casino (see Article 27(2)(a)).

Licensing and AML/CFT Supervision of other Financial Institutions

798. For insurance companies, ODTIs and currency exchange bureaux there are similar separate Instructions with the same objective.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

Guidelines for Financial Institutions

799. Article 26(2)(c) of the AML/CFT Law requires the supervisory authority to issue instructions, guidelines or recommendations to assist financial institutions and non-financial business and profession in complying with the respective AML/CFT requirements.

800. No guidelines have been issued by BCTL apart from the public instructions previously issued. However, the BCTL conducts training after issuing public instructions.

Statistics (applying R.32)

801. The BCTL conducts regular on-site examinations on all registered banks at least once every two years depend on the findings of the previous examinations.

802. There have been six on-site examinations of banks carried out by the BCTL in the last five years. No on-site examinations of non-bank financial institutions have as yet been conducted.

3.10.2. Recommendations and Comments

803. Until the recent enactment of the AML/CFT Law, there has been no legal framework that covers all financial institutions. Timor-Leste has in place several overlapping laws, decree laws and public instructions for each type of financial institution and not all of them are consistent.

804. In addition, the current laws, regulations and instructions should be updated and enhanced in the light of the new AML/CFT Law.

805. MTOs and credit cooperatives are not yet regulated or supervised and are not therefore covered as regards the fitness and properness of the management, auditing board and qualified holders. As noted previously, Timor-Leste has four banks, three of which are branches or subsidiaries of foreign financial groups from Australia, Indonesia and Portugal. In addition, it is important to stress that banks hold about 96% of the activity in the financial system of Timor-Leste. Therefore, the lack of supervision of MTOs, while a deficiency which needs to be addressed, is not sufficient to affect the overall rating of compliance for Recommendation 23.

806. The questionnaires currently used are insufficient as they do not provide enough information to the assessors. The Evaluation Team recommends the questionnaires be enhanced to include a series of questions that seek to detect any situation demonstrating lack of suitability. In the same way, the questionnaire should be considered a formal statement and include two formal signed declarations:

- 1- A declaration authorizing any third party (even those subject to the duty of secrecy and not obliged to give information) to provide the BCTL with any information considered necessary to be included with the dossier or taken as proof of the information supplied;

- 2- A declaration stating awareness of the consequences of giving false information to the BCTL, specifically as such conduct is considered to be a very serious offence, punishable notwithstanding other penal sanctions that are applicable.

807. The acquisition of a qualifying holding or an increase in shareholding should be subject to prior communication and should also be notified within 15 days of its occurrence.

808. Irrespective of the application of administrative sanctions which may be applicable, the BCTL should have the right to bar the exercise of voting rights relating to a qualifying holding if the acquisition or increase has not been communicated to the BCTL. The same measures can be used by the BCTL as and when it has raised a definitive or provisional objection but the acquisition or increase has gone ahead anyway.

809. The BCTL should assess annually through offsite examination the ML prevention procedures adopted by every institution, which are described on the internal control system report, and forwarded to BCTL. This report should include an official statement of the institution's board of auditors and a detailed statement on the adequacy of the existing internal control system. Off-site surveillance should be complemented through on-site inspections, which should be targeted on the basis of the supervisors assessment of the internal control report (on a risk basis) or on a periodical basis. It should also be possible to conduct ad hoc inspections.

810. Supervised institutions should be obliged to supply the BCTL with all the information that it deems necessary for verification of their compliance with the laws and regulations governing their activity and the efficacy of their internal controls. Financial entities should be required to allow access to their premises for inspections to be carried out. During the course of these inspections, the BCTL should have the opportunity to conduct direct, unlimited and unconditional examinations of all the information, support and records (e.g. accounting data) that it considers relevant for its supervision and it can take copies and transcriptions of all the documents.

811. When the BCTL has well-founded suspicions that an unauthorized entity is performing or has performed any activity reserved for financial institutions, it should have power to require it to:

- Present the information necessary to make the situation clear;
- Undertake inspections in the place or places where there seems to be evidence of activity or where there is a suspicion that there may be items relevant for shedding light on the unlawful activity and seize, during the course of an inspection, any documents or valuables that show any kind of connection with the Violations or are considered necessary for the initiation of administrative offence proceedings;
- Request dissolution and liquidation of the unauthorized entity.

812. In specific circumstances the BCTL should be able to request the assistance of the police for inspection and for the collection of documents or information that may be necessary for supervision of authorized or unauthorized entities. However, competent authorities should without a judicial warrant seize any item which may be related to the violation giving rise to the administrative proceeding.

813. The BCTL should be provided with adequate human and technical resources to ensure the concrete and effective application of the new AML/CFT Law.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	LC	<ul style="list-style-type: none"> • Broad range of sanctions available but only two sanctions have been imposed by the BCTL for the violation of AML/CFT rules • The law should have explicit provisions regarding sanctions against directors and senior management

R.23	LC	<ul style="list-style-type: none"> • Scope issue: MTOs are not yet regulated or supervised • Effectiveness: Limited resources for implementation
R.25	PC	<ul style="list-style-type: none"> • No guideline has been issued by BCTL apart from public instruction and socialization conducted after the issuance of public instruction
R.29	LC	<ul style="list-style-type: none"> • Not all types of financial institutions have been subject to on-site examinations by the BCTL • Effectiveness: Insufficient off-site supervision (lack of regular off-site reporting on AML/CFT compliance)

3.11. Money or Value Transfer Services (SR.VI)

3.11.1. Description and Analysis (summary)

Legal Framework:

814. The BCTL is taking steps to bring informal remittance services under regulatory framework through registering the remittance sector. Under Article 28 of the AML/CFT Law they have to apply for registration. The obligations under the AML/CFT Law apply to money remitters; Article 3(1)(f) defines “any natural or legal person performing professional funds transfer activities” as a financial institution.

815. At the time of the on-site visit, the BCTL was close to finalising a Public Instruction on MTOs. A copy of the draft Public Instruction was provided to the Evaluation Team, however it had not been issued by the end of the on-site visit or immediately thereafter (ie by the end of January 2012). While not being in force and effect, and therefore not counting for the purposes of this evaluation, the contents of the draft MTO are however noted and discussed in the analysis that follows.

816. The public instruction will be issued under Article 29(1) of Law N.º 5/2011 on the Organic Law of the Central Bank of Timor-Leste which, as noted above, gives exclusive responsibility to the BCTL to regulate, license, register and supervise, including the imposition of remedial measures and administrative sanctions, of clearing, payment and securities settlement system.

817. Chapter V of the draft Public Instruction, entitled anti-money laundering, states that “MTOs shall develop and implement effective procedures and methods make all reasonable efforts to identify and verify the identity of their customer.”

Designation of Registration or Licensing Authority

818. Article 28 of the AML/CFT Law sets up an obligation for any person or entity that intends to professionally engage in money or value transfer service to apply for registration with the BCTL, which shall stipulate minimum conditions of operation, in particular regular inspection of this activity.

819. Article 4(1) of the draft Public Instruction on MTOs requires any person who wishes to establish a money transfer operator business in Timor-Leste to apply in writing to the BCTL for a license.

Application of FATF Recommendations

820. All the requirements for CDD, record-keeping and other obligations applicable to financial institutions under the AML/CFT Law apply also to money transfer operators.

821. In addition, Article 12 of the draft Public Instruction requires that:

- 1. "MTOs shall obtain and maintain copies of identification of their customers, but at minimum shall require the full name, address and identification of the transferor and the beneficiary.*
- 2) MTO shall cease to deal with customers who refuse to provide details as required in the previous paragraph.*
- 3) MTOs are prohibited from dealing with unknown customers.*
- 4) If there is doubt as to whether a customer specified in paragraph 1 above acts for his/her own account, the MTO shall take and record all reasonable measures to verify the identity of the person or persons on whose behalf the customer is acting.*
- 5) MTOs shall maintain records in an appropriate record-keeping system information required in the paragraph 1 above and other information required in this Public Instruction and ensure that the records and underlying information are readily available to the Central Bank and other competent authorities established by law.*

822. Article 13 of the draft Public Instruction requires that:

- 1) MTOs that suspect or have reasonable grounds to suspect that funds are the proceeds of crime, or are related or linked to, or are to be used for the financing of terrorism, or that have knowledge of a fact or an activity that may be an indication of money laundering or financing of terrorism, are required to submit promptly a report setting forth its suspicions to the BCTL and the other competent authorities established by law, even in the case of attempted transactions.*
- 2) MTOs shall report all transactions equal or above \$5,000.00 (five thousand United States dollars) to the BCTL and the other competent authorities established by law.*

823. As all requirements on the CDD, record-keeping and other obligations applicable to financial institutions in AML/CFT Law also apply to MTOs, and not all deficiencies are captured in the draft Public Instruction, the deficiencies identified in relation to the obligations placed on financial institutions would also apply to MTO (see explanation in previous section).

Monitoring of Value Transfer Service Operators

824. Article 21 of the AML/CFT Law gives the FIU the authority to access information on-site that belongs to or is in the custody of the entities referred to in Article 3 (which includes MTOs), which is necessary to the fulfilment of its functions, prior written permission by courts, pursuant to the criminal procedure law.

825. Article 8(3) of the draft Public Instruction sets up a requirement that the BCTL may conduct inspections at any time on the premises of MTOs or any of its Agents. The inspection shall include examine the books, records and other relevant documents and information.

List of Agents

826. Article 4(2) of the draft Public Instruction requires MTOs that wish to appoint an agent to apply in writing to the BCTL for a license for that agent.

Sanctions

827. The sanctions available under the AML/CFT Law are available in relation to MTOs.

828. Article 15 of the draft Public Instruction empowers the BCTL to take actions or impose penalties if the MTO or the agent or any of its administrators or principal shareholders is guilty of some infractions described in this Article.

Additional Element—Applying Best Practices Paper for SR VI

829. Timor-Leste has not implemented the measures set out in the Best Practices Paper for SR.VI.

Statistics (applying R.32)

830. N/A

Analysis of effectiveness

831. While the intention to properly license and regulate the MTO sector through the issuing of the draft Public Instruction is welcome, as at the time of the on-site visit and immediately thereafter the Public Instruction had not come into effect. While the two largest MTOs, Western Union and Moneygram, operate under group-wide rules, the MTO sector cannot be supervised and regulated by BCTL until the licensing regime is established under the Public Instruction.

832. While the MTO sector is captured by the new AML/CFT Law, its relevant provisions had not been implemented as at the time of the on-site visit.

833. The BCTL has surveyed the MTO sector and identified only 11 MTOs operating in Timor-Leste. The financial institutions that the Evaluation Team met expressed the view that there exist unregulated informal remittance channels into and out of Timor-Leste, so it is not clear that all money remitters have been identified. Depending on the size of any informal sector yet to be identified, the BCTL may lack adequate resources for identifying MTOs, conducting on-site supervision, and issuing guidance to the MTO sector.

834. No specific workshop has been conducted for MTOs on AML/CFT issues but they have been involved in and are aware of the preparation of draft Public Instruction and cooperated in the initial process of producing effective and efficient regulation. Several workshops are planned and will be conducted after approval of the Public Instruction.

3.11.2. Recommendations and Comments

835. Timor-Leste should:

- issue and implement the draft Public Instruction on MTOs as soon as possible;
- consider increasing human resources at the disposal of the BCTL to more effectively conduct outreach campaigns, mapping exercises and examinations of the MTO sector;
- continue to identify unlicensed informal remittance operators;
- extend requirements to money remitters to include all requirement in all relevant FATF Recommendations (R.4-11, 13-15 & 21-23) and Special Recommendation VII.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	<ul style="list-style-type: none"> • Public Instruction on MTOs not in force • Unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels • MTO service operators are not in practice subject to all applicable FATF Recommendation (R.4-11, 13-15 & 21-23) and Special Recommendation (SR VII)

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General Description

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

Legal Framework:

836. The AML/CFT Law imposes similar requirements on financial institutions and designated non-financial business and professions (DNFBPs).

837. As indicated elsewhere, there are very limited numbers of non-financial business and professions that currently exist or operate in Timor-Leste.

838. Article 3(2) of the AML/CFT Law provides a fairly wide definition of “Non-Financial entities” which covers most but not all of the DNFBPs designated by the FATF including:

- casinos (including internet casino);
- any person whose business is the provision of financial services or participating or assisting in financial or estate transactions, on behalf of the client, without prejudice to professional secrecy;
- accountants, auditors and tax consultants;
- any other activities and professions that may be designated by law.

839. Excluded from this definition are dealers in precious metals and precious stones and trust and company service providers, and coverage of lawyers and notaries is at best unclear. However, as discussed below, certain CDD obligations do in fact apply to dealers in precious metals and stones. It is noted that the definition of “non-financial businesses and professions” contained in the draft AML/CFT Law originally provided to the Evaluation Team included a definition based very closely on the FATF definition, but the definition was amended prior to enactment of the Law.

840. There is no explicit provision in the AML/CFT Law that professional secrecy or privilege shall not be invoked as a ground not to comply with the obligations under the AML/CFT Law when the information is requested, or the production of a related document is ordered, by law enforcement.

CDD Measures for Non-financial business and profession in Set Circumstances

841. All the CDD, record-keeping and other obligations applicable to financial institutions under Articles 10, 13, and 15 of the AML/CFT Law also apply in similar form to non-financial business and professions. In addition, there are specific CDD requirements applicable to certain business and professions under Article 11 of the AML/CFT Law.

842. Article 10 of the AML/CFT Law specifies CDD requirements for both financial institutions and non-financial entities. However Article 11 of the AML/CFT Law provides an exemption for certain transactions. Casinos are also required to verify the identity of customers who engage in financial transactions equal to or above US\$1,000 (ie below the US\$3,000 require by the FATF standards). Dealers in precious metals and dealers in precious stones and other dealers in high value goods, shall identify their customers whenever receiving payment in cash in amount equal to or above US\$5,000 (below the threshold of US\$15,000 specified in the FATF standards). Real estate agents are required to identify the parties when involved in transactions concerning the buying or selling of real estate. Each of the entities covered by Article 11 is required always to identify their customers and verify their identity when there are grounds to suspect ML or FT.

843. Implementation of the CDD requirements set forth in the AML/CFT Law has not commenced in any of the DNFBP sectors. In addition, the gaps in the CDD requirements imposed under the AML/CFT Law (identified in section 3.2 of this report) in relation to financial institutions apply equally to non-financial entities.

844. Lawyers, notaries, attorneys and other independent legal professionals are not included in the definition of “non-financial entities”, nor are they specifically mentioned in Article 11. It is noted that “non-financial entities” includes “any other activities and professions that may be designated by law” (Article 3(2)(d)) but, given the very recent passage of the AML/CFT Law, no such designations have been made.

CDD Measures for Non-financial business and profession in Set Circumstances

845. As all the requirements of the CDD, record-keeping and other obligations applicable to financial institutions in the AML/CFT Law also apply to non-financial entities, the deficiencies relevant to financial institutions also apply to non-financial entities (see explanation in section 3.2).

4.1.2 Recommendations and Comments

846. The AML/CFT Law imposes some important CDD obligations on most, but not all, of the categories of DNFBPs, but the recent passage of the Law means that these obligations are yet to be applied in practice. In addition, the gaps in the CDD obligations contained in the AML/CFT Law apply also to the DNFBP sectors.

847. Timor-Leste should ensure that:

- all DNFBPs as defined by the FATF are made subject to the AML/CFT regime;
- the entire set of requirements under Recommendation 5 applies to all DNFBPs;
- DNFBPs are required to implement requirements in relation to Recommendations 6, 8, 9 and 11
- DNFBPs are subject to effective supervision, regulation and compliance monitoring in respect of all AML/CFT requirements.
- Although not specifically called for under the standard, in order to increase the effectiveness of CDD and record-keeping requirements:
 - Conduct an outreach and awareness raising campaign to DNFBPs to facilitate compliance with the applicable AML/CFT provisions;
 - Issue sector-specific regulations clarifying the CDD and record-keeping requirements for DNFBPs;
 - Ensure an authority with sufficient capacity can provide feedback when necessary on implementation issues

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> • As the AML/CFT obligations for DNFBPs are identical to those for financial institutions, they suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11. • Effectiveness issue: Although DNFBPs are subject to AML/CFT obligations, no AML obligations have yet been implemented in any DNFBP sectors. • Scope issue: Lawyers, notaries, attorneys and other independent legal professionals have not been included in the AML/CFT Law

4.2. Monitoring Transactions and other Issues (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

STR reporting for No-financial business and professions

848. The AML/CFT Law imposes suspicious transaction reporting requirements on “Non-financial entities”. As noted in the previous section of this report, the definition of “non-financial entities” contained in the AML/CFT Law excludes dealers in precious metals and precious stones and trust and company service providers, and coverage of lawyers and notaries is at best unclear.

849. Article 23(1) of the AML/CFT Law obliges all financial institutions and non-financial entities to submit promptly a report setting forth their suspicions to the FIU, including in the case of attempted transactions, when suspecting or having reasonable grounds to suspect that funds or property are the proceeds of crime, or are related or linked to, or are to be used for the financing of terrorism, or that have knowledge of a fact or an activity that may be an indication of money laundering or financing of terrorism.

850. Article 23(2) is somewhat confusing as it stands. As noted above, lawyers, notaries and other independent legal professionals are not explicitly included in the definition of “non-financial entities”, but Article 23(2) nonetheless states that: “Lawyers, legal consultants and other independent legal professionals have no obligation to report to the FIU information they receive from a client, in the course of performing their task or defending or representing that client, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.” It is noted that the content of Article 23(2) appeared in the previous draft of the AML/CFT Law, which did include lawyers, notaries and other independent legal professionals in the definition of “non-financial entities”. It may be that Article 23(2) has inadvertently been retained in the final version of the law. Alternatively, it may have been left in the event that lawyers, notaries and other independent legal professionals are in due course specified as “non-financial entities” under Article 3(2)(d).

851. Dealers in precious metals and dealers in precious stones and such other dealers in high value goods are required under Article 23(3) to report suspicious transactions to the FIU when they engage in any transaction equal or above \$10,000. Real estate agents also are required to report suspicious transactions to the FIU when involved in transactions for their client concerning the buying or selling of real estate.

852. Given the very recent passage of the AML/CFT Law, implementation of the STR obligations set forth in the AML/CFT Law has not commenced in any DNFBP sector.

Cooperation between SROs and the FIU in cases lawyers, notaries, etc report STRs to their SRO

853. Not applicable. Lawyers, notaries, attorneys and other independent legal professionals have no obligation to report STRs and accountants, auditor and tax consultant are required to report directly to the FIU.

Tipping off, safe harbour, internal controls

854. The obligations and protections applicable to financial institutions under the AML/CFT Law also apply to non-financial entities. This includes the lack of a clear ‘safe harbour’ provision for STRs made in good faith.

Additional Element – extension of the STR requirement extended to auditing by accountants

855. Auditors are mentioned explicitly in Article 3 of the AML/CFT Law as a reporting party.

Statistics and effectiveness

856. N/A

4.2.2. Recommendations and Comments

857. Authorities should ensure that obligations for monitoring, STR reporting, internal controls and sanctions included in the AML/CFT Law are applicable to all DNFBPs present in Timor-Leste.

858. DNFBPs should be notified of their obligations under the AML/CFT Law and supported in implementing those provisions through support of SROs.

859. The FIU should be adequately resourced to take on this regulatory and supervisory task for DNFBPs and the subsequent increase in STRs received.

860. Although there are no casinos licensed in Timor-Leste at present, authorities should prepare enforceable AML/CFT regulations and practical guidelines to ensure that casinos are not able to be abused for ML in Timor-Leste.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none">Effectiveness issue: Although DNFBPs are subject to AML/CFT obligations, no AML obligations have yet been implemented in any DNFBP sectorsScope issue: Lawyers, notaries, attorneys and other independent legal professionals have not been included in the AML/CFT Law

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Recommendation 24 (Supervision of DNFBPs)

Legal Framework:

861. Article 27(1) of the AML/CFT Law specifies that the “competent supervisory authorities” shall supervise compliance by financial institutions and non-financial business and professions with the requirements set in chapter II of the law (AML/ CFT provisions). As noted in section 3.10 of this report, this term is not however defined in the AML/CFT Law.

862. Correspondingly, Article 30 of the AML/ CFT Law establishes that the non-fulfilment of the AML/CFT provisions must be sanctioned.

Regulation and Supervision of Casinos

863. There are currently no casinos in Timor-Leste but it could be a legal activity with a license obtained from the MTCI based on the requirements established in the Decree Law 6/2009 on Recreational and Social Gambling. There are other social games and betting, as well as traditional

games, such as cockfight, Kuru-Kuru (dice) and Bola Guling. These are not subject to any kind of licensing or regulation.

Monitoring Systems for Other DNFBPs

864. Other non-financial business and professions are currently not subject to any kind of supervision regarding AML/CFT and there is no designated authority to supervise compliance with AML/ CFT provisions and enforce sanctions.

865. For the lawyers, in Timor-Leste, there is a Bar Association which could regulate its members but does not as yet to so in practice.

866. The notaries are public notaries, i.e. public servants, and they are under the control of the Ministry of Justice.

867. There are no professional accountants established in Timor-Leste. The service is provided mainly from companies based in Australia.

868. Up to now there are no real estate agents in Timor-Leste and only Timorese citizens are allowed to buy land or real estate in the country.

869. There are no trust or companies service providers in Timor-Leste and no legal statute for these type of activities.

870. There is no business in Timor-Leste dealing in precious metals or in precious stones. There is however a small-scale jewellery shop.

Recommendation 25 (Guidance for the DNFBP sectors)

Guidelines for DNFBPs

871. As mentioned above, non-financial business and professions are not yet subject to any kind of supervision regarding AML/CFT and there is no designated authority to supervise compliance with the recently enacted AML/CFT provisions and to enforce sanctions. Therefore, although DNFBPs are subject to the legal requirements of the AML/CFT Law, no guidelines have been issued to assist the implementation of and compliance with AML/CFT provisions.

4.3.2. Recommendations and Comments

872. DNFBPs are not subject to any degree of supervision and do not have an assigned body responsible for supervision for AML/CFT purposes.

873. Timor-Leste should:

- Ensure that all DNFBPs as defined by the FATF are made subject to the AML/CFT regime;
- Identify “competent supervisory authorities” for the implementation of effective systems for monitoring the compliance of DNFBPs with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering and terrorist financing in that sector, i.e. if there is a proven low risk then the extent of the required measures may be less;
- Issue guidelines to DNFBPs to assist with implementation and compliance of institutions with AML/CFT requirements;
- Establish mechanisms to enable general and case-by-case feedback from DNFBPs on their responsibilities under existing AML/CFT Laws.

4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors underlying rating
R.24	NC	<ul style="list-style-type: none">• While some DNFBPs are subject to AML/CFT obligations under the AML/CFT Law, DNFBPs are not yet subject to any AML/CFT supervision• There is no assigned body responsible for supervision for AML/CFT purposes• There is no assigned body responsible for the application of sanctions to DNFBP for AML/CFT purposes
R. 25	NC	<ul style="list-style-type: none">• There are no guidelines for the implementation and comply with AML/ CFT provisions

4.4. *Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)*

4.4.1. Description and Analysis

Other Vulnerable DNFBPs

874. Timor-Leste has not carried out a formal risk assessment of vulnerabilities posed by other non-financial businesses and professions. However, consideration has been given to applying the FATF Recommendations to non-financial businesses and professions (other than DNFBPs) that are at risk of being misused for money laundering or terrorist financing. This is demonstrated by the fact that Timor-Leste includes tax consultants under the definition of “non-financial businesses and professions” contained in Article 3(2)(c) of the AML/CFT Law. In addition, Article 3(2)(d) includes in the definition of NBFIs “any other activities and professions that may be designated by law”. This indicates that Timor-Leste authorities have considered including other types of institutions in the future.

Modernization of Conduct of Financial Transactions

875. Timor-Leste’s financial system is heavily cash-based, and the use of the US\$ as the currency of Timor-Leste poses additional risks from an AML/CFT perspective if appropriate controls are not in place.

876. Timor-Leste is yet to take any significant steps to encourage the development of modern and secure techniques. Several banks are however beginning to introduce ATM networks and e-pay banking, though usage levels remain very low.

4.4.2 Recommendations and Comments

877. The prospect of the ongoing development of Timor-Leste, based on oil production, should encourage Timor-Leste to extend AML/CFT obligations to other businesses and professions.

878. Timor-Leste should:

- consider formally assessing vulnerabilities of other non-financial businesses and professions and consider the need for any further regulatory AML/CFT coverage of this area; and

- encourage the development and use of modern and secure techniques for conducting financial transactions (e.g. electronic means of payment), especially when they involve large sums of money, that are less vulnerable to ML.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	LC	<ul style="list-style-type: none"> • No particular measures have been taken by authorities to reduce reliance on cash and encourage secure automated transfer system.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

Legal Framework:

879. The types of legal person that exist in Timor-Leste are companies, civil societies, associations, foundations and cooperatives. The incorporation of legal persons does not require that a notary is always involved in the establishment of such legal bodies. Notaries will be involved in cases where the assets that the members of these legal persons contribute as their initial share require the transmission through public deed. This is the case where such contributions are made through immovable goods or moveable goods subject to registration. In all other cases the incorporation of legal persons can be made through a private document without the intervention of a notary.

880. The notary's role, when required, is to seek to ensure that the contracting parties are aware of the contents of the relevant documents and that those contents reflect the wishes of the contracting parties. The notary issues a document of authentication, public deed, which includes information as to how identification of the contracting parties has been achieved.

881. All legal persons incorporated in Timor-Leste are subject to registration in the Department of Public Registration (DPR). The DPR was established in 2008, under the National Division for Registries and Notaries of the Ministry of Justice. The DPR is responsible for registering companies and legal entities operating Timor-Leste and to retain the information related to those companies and entities. At the time of registration the DPR is responsible to ensure the legality of the process of incorporation and to proceed with the verification of the identity of all members of the legal person and its representatives. The DPR is currently under a process of reform, including the development of a computerized system to store the information required by law about companies and other legal entities. As at 31 December 2011, a total of 8,236 companies were registered in Timor-Leste.

Measures to Prevent Unlawful Use of Legal Persons

Commercial Companies and Civil Societies

882. All companies are incorporated according to the Commercial Code. Article 7 of the Commercial Code, which regulates the form and minimum contents of the constitutive act, determines that this constitutive act must contain the identification of all partners and, whenever they do not intervene in person, their legal representative has to be identified and their powers of representation verified (Article 7(6)(b)). Moreover, Article 7(6)(f) determines that, in annex to the constitutive act, there must be the identification of the managers or directors and the single auditor or, when this is the case, of the members of the board of directors and audit committee.

883. A company only acquires legal personality with its registration (Article 4 of the Commercial Code) and this has to be achieved within 15 days of the drafting of the constitutive act (Article 15 of the Commercial Code) under penalty of liquidation promoted by the PPO (Article 15(4) of the Commercial Code) for those companies operating without registration for a period over 3 months.

884. The acts subject to registration regarding commercial companies and civil societies incorporated under a commercial form are the ones contained in Article 3 of the Commercial Registration Code and they include the constitutive act (subparagraph a)), any transmission or legal burden involving the capital entries of each partner (subparagraphs d), e), f) and g)), the designation of and cessation of functions of members from the administration and supervisory board as well as the secretary of the company (subparagraph m)), amongst many others.

885. Civil societies are legal persons formed by members who contribute assets and services to the society for the common exercise of a particular economic activity in order to share the profits resulting from that activity or to maintain savings. Civil societies are similar to commercial companies. The only difference lies in their objectives. When a civil society's objective is the exercise of a commercial business, it is considered to be a commercial company. When its objective is not a commercial business, it is considered to be a civil society.

886. Civil societies incorporated under a commercial form follow the same procedures as prescribed for companies and are under the duty of registration with the DPR according to Article 3 of the Commercial Registration Code.

Foreign companies

887. Any company exercising a permanent activity in Timor-Leste but without its main office or permanent administration in Timor-Leste is bound to nominate a representative with residency in Timor-Leste and to effect a certain patrimony to its activity in Timor-Leste. These facts are also subject to registration with the DPR according to Article 8, subparagraphs b) and c) of the Commercial Registration Code.

888. The requirements for registration are a) evidence of its existence in the foreign state; b) updated Articles of Association, translated; c) evidence of the decision made by the Board of the Company to establish the foreign company in Timor-Leste; d) identification of the manager/director in Timor-Leste and evidence of its nomination by the Company's Board. All documents referred must be certified by a public notary in the foreign country and verified by the Timorese Diplomatic Representation or by the Diplomatic Representation of the Foreign Country in Timor. Finally, identification of the applicant and evidence of his/her authorization to represent the company for registration purposes is also required.

889. The MoJ did not have an exact figure, but indicated that the number of foreign companies registered in Timor-Leste did not exceed 100.

Associations and foundations

890. Associations and foundations are both legal persons without a lucrative purpose and both are regulated by Decree-Law 5/2005.

891. Associations are organizations of individuals and do not have the aim of making a profit. According to Article 16, the incorporation assembly of an association must be signed by the founding members with the certification by a notary of the identity of at least ten of those founding members. The constitution of an association must specify the assets or services brought by the members to the association, the denomination, the purpose and statutory seat of the association, the form of its operation and its duration (Article 14). The constitution of an association must be made public and be published in the Official Journal in order to be able to produce legal effects regarding any third parties (Article 15(3)). The association acquires legal personality with its registration (Article 3(1)). A register of associations should be maintained by the DPR.

892. Foundations are organizations which are vehicles established for charitable, benevolent or social purposes as determined by the founder(s). Foundations may be created by a public document but this is not always the case. For example, the founders may wish to establish a foundation privately (Article 29). The constitution must indicate the aim of the foundation and specify the destination of the assets (Article 31). The recognition by the Government or by its regional representatives of the act of incorporation and the foundation's assets is mandatory for the foundation's validity (Article 30). The constitutive act must be published in the Official Journal in order to provide third parties with the opportunity of challenging the existence of the foundation (Article 29(5)). A register of foundations should be maintained by the DPR.

893. Both associations and foundations are, according to Article 1(2) of the Commercial Registration Code, subject to registration with the DPR. However, in practice only a very small number of both associations and foundations are registered with the DPR. For historical reasons (further discussed in section 5.3 of this report), both associations and foundations have been registering themselves with a private “self-regulatory organization” which is denominated as FONGTIL. This SRO has no formal relation at all with the Government of Timor-Leste but has been, in practice, the entity responsible for the certification of associations and foundations. The Evaluation Team was provided with evidence that for banking purposes, on the establishment of business relations banks have been relying in certificates issued by FONGTIL, rather than those issued by the DPR. This means that, at the time of the on-site visit, the DPR had only a very small number of associations and foundations registered with it. The DPR is currently in the process of trying to make an outreach effort in order to promote the registration/legalization of these types of entities as provided by law.

Cooperatives

894. Cooperatives are legal persons with a possible variable capital or composition that through the rendering of assistance between their members, in obedience to the cooperative principles and without the pursuing of profitable objectives, provide for the economic or cultural needs of their respective members. Cooperatives are regulated through Decree-Law 16/2004.

895. Cooperatives can be established by private document or public deed depending on the nature of assets contributed by the founding members. In any case either the private document or the public deed that establish a cooperative must have the identification of the founding members (Articles 12 and 13).

896. Cooperatives acquire legal personality with the registration of their constitutive act (Article 16). Besides the constitutive act with the identification of the founding members the appointment and removal of directors, the legal burdens placed on the capital of the cooperatives, the prorogation, fusion, transformation or any other amendments to the Articles of incorporation as well as the dissolution and liquidation of cooperatives all these events or acts are subject equally to registration with the DPR (Article 5 of the Commercial Registration Code).

897. Besides these specific rules applicable to each type of legal person which can be incorporated in Timor-Leste and that provide means for the determination of the ownership and control of those legal persons, there is a recent development in the legal system of Timor-Leste, which is the one contained in Article 9 of the recently enacted AML/CFT Law, that determines that besides all the duties of registration, declaration and publicity foreseen in the Companies Law, Business Registration Code and other relevant legislation, any legal persons registered in Timor-Leste must have accessible and provide to competent authorities, whenever requested, “*all the necessary and adequate information providing for the determination and identification of its beneficial owners as well as its control structure*”.

898. Once implemented, this provision will constitute a major step forward in the legal system of Timor-Leste, regarding the obligations under Recommendation 33.

Access to Information on Beneficial Owners of Legal Persons

899. The system for registration of all types of legal persons which can be incorporated in Timor-Leste and, through this registration process to determine the beneficial owners and control structures of these legal persons is, on paper at least, quite a comprehensive one.

900. It is important to note that Article 9 of the AML/CFT Law does distinguish between direct ownership or extended (or ultimate) beneficial ownership. It requires that “*legal persons registered in Timor-Leste should provide, wherever requested by the competent authority, the appropriate and*

necessary information to identify the beneficial owners and their control structure.” This Article does not distinguish between direct and extended layers of ownership, between individuals or legal persons as beneficial owners or, where the direct owners are in fact legal persons, what will be the required information that must be accessible to investigative bodies. The critical words in this provision are “appropriate” and “necessary”, and whether they are sufficient to require that legal persons should provide (and therefore, have/retain access to) sufficient information to identify the *ultimate* beneficial owner of a legal person.

901. It is the Evaluation Team’s view that the obligations imposed by Article 9 are very broad and can and should be read that way, and that these obligations give competent authorities the necessary legal framework to request all necessary information from legal persons to identify the ultimate beneficial owner. This should be relatively straightforward where the direct owner is a natural person or a legal persons incorporated in Timor-Leste. The eventual problem may be in terms of access to information where the direct owners of a legal person are other foreign legal persons because in that case the relevant information may not be contained in Timor-Leste Commercial Registry. In any case, competent authorities may, at least according to the text of Article 9(1) of the AML/CFT Law, compel the investigated legal person to produce that information.

902. It should also be noted that, for the sake of clarity, the inclusion of the word “ultimate” before the words “beneficial owners” in Article 9(1) would remove any doubt as to the requirements it imposes.

903. More generally, effectiveness is an issue in Timor-Leste.

904. The DPR is able to provide information on ownership of companies when requested by competent authorities, although the response to the requests can take a few days as the archives are not computerized and a manual research is required. Although the Commercial Registration Code imposes the organization of the Registry through informatics (ie electronic) means (Article 24), the fact is that until the time of the on-site visit the organization of the Registry was manual with the opening of individual files for each of the registered legal persons and with all the supporting documents archived in those individual files with no specific criteria other than the simple deposit. The same would be applicable to any other documents supporting any changes in the status of the legal person.

905. Another difficulty that was expressed to the Evaluation Team was that although the relevant legislations determining that incorporating documents should be drafted in one of the official languages of Timor-Leste (for example Article 7(10) of the Commercial Code for the case of companies) many of the staff currently employed by the DPR are young staff with no previous education in any of the official languages (either Tetum or Portuguese) but rather in the Bahasa from Indonesia. This makes it quite difficult for all the registration process constituting one of the major obstacles for its effective implementation.

906. Finally, the lack of professional proficiency of the staff currently employed by the DPR seems to be hindering the proper functioning of the Register. Staff require training in their responsibilities to comply effectively with their obligations under the existing legal framework.

907. These difficulties make it quite difficult for the competent authorities to have access in a timely fashion to adequate accurate and updated information on the beneficial ownership and control of legal persons.

Prevention of Misuse of Bearer Shares

908. Under the Commercial Code, all companies registered in Timor-Leste have to file their incorporation documents with the Commercial Registry. If they have bearer shares this has to be stated in the incorporation document. However, under the existing system, the DPR does not routinely

maintain statistics on the number of companies with bearer shares, especially considering the operational difficulties of the DPR identified above. The holders of bearer shares can exercise all of the rights incorporated in the shares. In addition, the transfer of the rights incorporated in a bearer share occurs with the transfer of the bearer title or with the acquisition of its ownership. The Commercial Code requires that shares must be nominal if they are not fully paid, if they cannot be transferred by reason of a legal provision, or if the shareholders have a right to pre-emption in their transfer under terms set in the Articles of association. The holder of bearer shares would be identified at the formation of a commercial company because they need to sign the Articles of association – the Commercial Code requires the nature of the shares (i.e. bearer or nominal) to be specified in the Articles of association. Moreover, Article 247 of the Commercial Code provides for the deposit of bearer shares with a credit institution for the purposes of its owners to exercise their corresponding voting rights in the annual general meeting.

909. The MoJ indicated that in practice no records of transfers of bearer shares following the company formation stage are kept as the whole process is done manually. With the implementation of an electronic system (by June-July 2012) data will be collected for the shares that are subscribed at the time of the registration with DPR.

910. There is another mechanism in the Commercial Code (Article 301) for the identification of ownership and control of shareholders with bearer shares. A shareholder who, by any form of subscription or acquisition of bearer shares, reaches a position where he/she is the owner of 1/10, 1/3 or ½ of the capital of the company, must communicate such fact to the company by means of a letter addressed to the company's board of administration, which in turn shall communicate it to the audit committee or single auditor. The identity of the dominant shareholders must be published as part of the company's annual report. Similar provisions apply where the shareholder ceases to be a dominant shareholder. When the holder of the bearer share is another company, the data of the company holding the bearer shares is recorded at the time of registration and new shareholders must be approved by a company's Administration board.

911. Article 9(2) of the AML/CFT Law provides that from the moment of its entering into force, all owners of bearer shares will have to deposit them with the legal person that issued such bearer shares or with a central share registry when it exists. This new provision will assist in determining the owner of bearer shares once this legal provision is effectively implemented, however it is not clear that it would in practice fully address the situation where the holder of a bearer share is another legal person, eg a company.

912. The Evaluation Team was informed however that up to the moment of the on-site visit only one company related with air transportation had issued bearer shares in Timor-Leste.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions

913. No special measures are in place in order to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify their customer identification data.

5.1.2 Recommendations and Comments

914. Timor-Leste has a reasonably comprehensive legal framework in order to prevent the misuse of legal persons in relation to money laundering and terrorist financing. The laws and regulations in place provide, on paper at least, for a reasonably high level of transparency and, once effectively implemented, will go some way in allowing for the timely determination of beneficial ownership and control of legal persons registered and operating in Timor-Leste. However, it is not clear whether the legal requirements, even when fully implemented, would mitigate all the risks involved in relation to bearer shares

915. However, implementation of the existing laws and regulations is a major issue hindering the possibility of access to accurate and adequate information in a timely manner.

5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> • Doubts as to whether beneficial ownership information is readily available beyond immediate shareholders, in particular in relation to more complex corporate structures involving foreign ownership and/or layers of ownership • Operational difficulties in terms of implementation of existing laws and regulations hinder effectiveness of the system

5.2. *Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)*

5.2.1 Description and Analysis

Legal Framework:

916. Timor-Leste does not allow for the creation of trusts nor does it recognize foreign established trusts. In addition, no trust service providers have been established in Timor-Leste.

917. The Evaluation Team asked about the operation in Timor-Leste of any foreign established trusts but the information gathered does not suggest that this is the case. Even in the domain of FDI (foreign direct investment) licensed by the Department of Foreign Trade and Investment there was no evidence of such type of entities operating in Timor-Leste.

918. The Evaluation Team therefore concluded that Recommendation 34 is non-applicable in the context of Timor-Leste.

Measures to Prevent Unlawful Use of Legal Arrangements

919. Not applicable to Timor-Leste.

Access to Information on Beneficial Owners of Legal Arrangements

920. Not applicable to Timor-Leste.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions

921. Not applicable to Timor-Leste.

5.2.2. Recommendations and Comments

922. Not applicable to Timor-Leste.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	N/A	

5.3. Non-Profit Organisations (SR.VIII)

5.3.1. Description and Analysis

923. Timor-Leste has a relatively large and active NPO sector. As of September 2011, there were approximately 439 active NPOs operating in Timor-Leste, including 366 domestic and 73 international NPOs. There are also a range of so-called ‘community-based organisations’ which operate on a smaller, local scale and are not registered either with the Government (MOJ) or the umbrella NPO organisation FONGTIL.

924. NPOs may be established for any charitable purpose, “consistent with the law, that do not impinge upon third-party interests, or that do not run counter to public morality and order”. In practice, common areas of NPO activity include education, agriculture, public health, infrastructure, environmental protection, advocacy, human rights and capacity building. A number of large, well known international NPOs operate in Timor-Leste.

925. As noted in section 1.3 of this report, while all NPOs are meant to register with the MOJ as foundations or associations, in practice not all NPOs have done so (there are only 69 NPOs registered with the MOJ), for both practical, historical and other reasons relating to the financial requirements of Decree Law 5/2005. A parallel (and more comprehensive) system of de facto NPO registration is maintained by FONGTIL. FONGTIL’s system of registration was established under the relevant UN regulations in place from 2000, ie prior to the enactment of Decree Law 5/2005. FONGTIL is a member-based organisation which has a Code of Ethics for its members, including that members’ activities must be non-sectarian and cannot be against the state. Although FONGTIL does not formally supervise or regulate the activities of NPOs, registration with FONGTIL has until now generally been sufficient for a domestic NPO to operate and, for example, to open a bank account.

926. While the legal framework established by Decree Law 5/2005 is relatively clear, the situation on the ground can be said to be in transition. Due to capacity constraints, there is no effective monitoring or supervision of the NPO sector by the MOJ for AML/CFT purposes. The MOJ intends to work with FONGTIL to encourage formal registration of NPOs under Decree Law 5/2005 in order to regularise the situation, and FONGTIL is also examining this issue.

Legal Framework:

927. Decree-Law 5/2005 regulates the establishment and registration of non-profit entities, which are referred to in the Decree Law as “non-profit-making corporate bodies” or as “non-governmental organisations” or NGOs, but are referred to in this report by the FATF term “non-profit organizations” (NPOs).

928. Under Decree Law 5/2005, an NPO is obliged to be registered as either an association or foundation at the National Directorate of Registries and Notarial Services in the MOJ.

929. Article 1.3 of the Decree Law defines an association as “a corporate body comprised of persons, which does not pursue any profits for its associates and therefore cannot distribute any profits, assets or remainders, or dispose of property owned by the association even in case of winding-up or liquidation.” Article 1.4 defines a foundation as “a non-profit-making corporate body, of social interest and comprised of property.”

930. Under Article 3(1) of the Decree Law, an association acquires juridical personality upon filing of its memorandum of association, provided the association cumulatively meets the following requirements:

- (a) be comprised of at least ten members;
- (b) its Articles of association are in compliance with the present decree-law;

- (c) prove to have the necessary means for its operation, in accordance with its Articles of association.

931. Under Article 3(2), a foundation acquires juridical personality upon recognition by the competent entity (ie the MOJ).

932. Article 1(iii) of Instruction 03/2003 of BPA on the opening and maintenance of deposit accounts outlines the requirements imposed to associations and foundations when they open or maintain a deposit account. Under the instruction, an NPO must provide the following information: Article of Association or Registration Charities (sic); documents authorizing director and/or officials to open bank accounts and to sign on behalf of the entity; name of directors or officials; complete address; identification number of each director and official (e.g. National ID, Passport); country of incorporation /registration; Tax Identification Number (TIN) in Timor-Leste; and a list of authorized signatories and specimen signatures.

Review of Adequacy of Laws & Regulations of NPOs

933. Due to capacity constraints, there has been no review of the activities, size and other relevant features of the non-profit sector for the purpose of identifying the features and types of NPOs that are at risk of being used for terrorist financing, nor has there has been an assessment or review to gauge the sector's potential vulnerability to terrorism. Various reviews of the NPO sector have been conducted by domestic and international entities including the United Nations, but not for the purpose of addressing the issue of vulnerability to FT. A review of Decree Law 5/2005 was conducted by an adviser in 2010 and a redrafted law was prepared, but the revisions did not proceed.

934. As to the activities, size and other relevant features of the NPO sector more broadly, the MOJ collects information on the purpose for which NPOs are established, but this information is incomplete and is not collated in a comprehensive way. FONGTIL's database of NPOs is more comprehensive, but has not been used for the purposes of a review of the sector for FT purposes.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse

935. There has been no awareness raising or outreach programs in the NPO sector on the risks of terrorist abuse and available measure to protect against such abuse nor to promote transparency, accountability, integrity and public confidence in the administration and management of all NPOs.

936. The Government, through the General Labor Inspectorate, conducts regular inspections of NPOs regarding labour contracts of nationals and internationals employees. The MOJ advised that any apparent criminal activity revealed during such inspections would be passed onto the police, but MOJ officials met during the on-site were not aware of any such instances.

937. FONGTIL indicated that its activities include the provision of financial management training and that international partners and donors have conducted a lot of training and mentoring for domestic NPOs on the proper management of funds, which might help mitigate the risk of misuse of funds for the purposes of FT. However no specific outreach to the sector on FT has taken place.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities

938. As noted above, there is no competent authority that supervises or monitors all NPOs in Timor-Leste. The MOJ does maintain some information on NPOs, but this information relates to only a small proportion of all NPOs and is not necessarily kept up-to-date, nor is it verified. The MOJ has no power to conduct inspections of NPOs.

939. Under Article 11 of Decree Law 5/2005, associations and foundations administering funds allocated by the State, benefiting from any form of assistance from the State or receiving funds from development partners for the purpose of implementing any activities included in the National Development Plan, are subject to direct oversight by the Ministry of Planning and Finance.

940. Other Government departments have contact with individual NPOs in their sector, but this is ad hoc and uncoordinated.

941. Domestic NPOs with funding from international donors are subject to donor funding and reporting requirements. These sometimes include audited reports, but in general audited reports of NPOs are not common given their size.

942. It should be noted that Article 19 of the AML/CFT Law states that:

“Any non-profit organization that collects, receives, grants or transfer funds as part of its charitable activity shall be subject to appropriate oversight by the Ministry of Finance, which may prescribe regulations to ensure that non-profit organizations are not misused for the purpose of the financing of terrorism.”

943. While this provision is welcome, it is not however entirely clear why the AML/CFT Law designates the Ministry of Finance rather than the MOJ as the oversight body, or under what law would the Ministry of Finance issue regulations regarding NPOs and FT.

944. FONGTIL representatives indicated that FONGTIL does not formally regulate or supervise the NPO sector, but does have a role in receiving complaints and attempting to resolve them through mediation.

Information maintained by NPOs and availability to the public thereof

945. The memorandum of association and the Articles of association of an association are published in the official gazette, as are amendments to them (Decree Law 5/2005, Article 15).

946. The memorandum of establishment of a foundation, where it consists of a public deed, and, in either case, the Articles of association, including any amendments thereto, must be published in the official gazette (Decree Law 5/2005, Article 29).

947. On registration with the MOJ, original identity documents of NPO office holders need to be submitted with the other registration documents (eg memorandum and Articles of association). This information is publicly available from the MOJ (Article 54).

948. NPOs are also obliged by law to submit annual returns to the MOJ which includes a short financial statement, names of the board and directors and minutes of the annual general meeting. This information is placed together with the original registration information. In practice, however, only a few such annual returns are submitted by NPOs.

949. FONGTIL requires its members to submit six monthly updates, which include changes to membership and structure, but audited financial reports are not required.

Measures in place to sanction violations of oversight rules by NPOs

950. No specific system is in place to prosecute and sanction NPOs. Any illegal activity uncovered is handled under the principles of the Penal Code and the Decree Law 5/2005. Sanctions available under Decree Law 5/2005 are however limited.

951. Under Article 28(2) of Decree Law 5/2005, an association may be wound up by means of a court decision at the request of the PPO where:

- (a) its purpose has either been fully achieved or become unachievable;
- (b) its real purpose is not consistent with the purpose expressed in the memorandum of association or in the Articles of association;
- (c) its purpose is systematically pursued by unlawful or immoral means and its existence comes to be contrary to public order, morality or propriety.

952. Under Article 36(2), a foundation may also be wound up by the MOJ where:

- (a) its purpose has either been fully achieved or become unachievable;
- (b) its real purpose is not consistent with the purpose expressed in the memorandum of establishment;
- (c) its purpose is systematically pursued by unlawful or immoral means; and
- (d) its existence comes to be contrary to public order.

953. Under Article 42, the MOJ may order that the registration of a foreign corporate body be cancelled where such a corporate body carries out activities that are contrary to the law, impinge upon the rights of, or cause damage to, a third party or the State.;

954. In practice, no sanctions have been applied to NPOs and no NPO has ever been wound up or had its registration cancelled. Any complaint would most likely be made to either FONGTIL or the PNTL, depending on its nature. FONGTIL indicated that its main sanctioning power would be to dismiss an NPO from membership, thereby removing its status as an NPO.

Licensing or registration of NPOs and availability of this information

955. As noted above, Decree-Law 5/2005 regulates the establishment and registration NPOs. NPOs are obliged to be registered at the MOJ, but not all NPOs have as yet registered. Information that is held by the MOJ regarding NPOs is available upon request from competent authorities.

Maintenance of records by NPOs, and availability to appropriate authorities

956. The record of a corporate body consists of a set of documents, certified copies of the deed of establishment, Articles of associations and amendments thereto, including credentials issued to or in the name of the corporate body, its managers or directors, in addition to a list of books and files deemed necessary.

957. Decree Law 5/2005 imposes some financial record-keeping requirements. Article 10.2 states that “A corporate body shall have a formal accounting according to the accepted system and the tax norms”. Article 10.3 states that “An association with a turnover of less than US\$ 12,000 (twelve thousand American Dollars) shall only have a legalised, bound book where to separately record the expenditure, purchases and sales and shall, at the end of every fiscal year, take stock of all operations, specifying the amounts comprising its assets and liabilities.”

958. Although there is no requirement under Decree Law 5/2005 for NPOs to maintain records for a period of five years and make the information available to appropriate authorities, banks are required under the AML/CFT Law to maintain records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. Banks are also required to conduct customer due diligence on NPOs and incorporated societies that hold bank accounts with these banks.

Measures to ensure effective investigation and gathering of information

959. The National Director of Registries and Notaries Services in the MOJ is responsible for overseeing all administrative and legal aspects of the registry. There is no however special mechanism in place for the investigation of the NPO sector or for sharing of information, for example

with the tax authorities. The MOJ could only share information regarding an NPO if a formal request was made by another Government entity.

960. The authorities advised that there has never been an investigation of an NPO on terrorism or terrorist financing issues, nor any record of fraud or breaches of the law in the last five years. FONGTIL representatives indicated that while they were unaware of any allegations or instances of FT or terrorist related activity in the sector, there are vulnerabilities for the sector to the misuse of funds, for example use of an NPO's funds for non-charitable purposes.

Domestic cooperation, coordination and information sharing on NPOs

961. There is no specific regime in Timor-Leste for domestic cooperation, coordination and information sharing on NPOs.

Access to information on administration and management of NPOs during investigations and sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes

962. While, as noted above, the MOJ's data holdings cover only a fraction of the total NPO sector, the data registered at the MOJ is fully available upon request of competent authorities. In addition, the information held by FONGTIL on its members can be obtained in accordance with the law during any investigation involving an NPO.

963. No integrated IT system is implemented in Timor-Leste as yet for information regarding legal entities, including NPOs (foundations and associations). A project dealing with such measures will be established between the MOJ, Ministry of Finance and Ministry of Tourism, Commerce and Industry in order to establish the "One Stop Shop" for business registration. This will in due course be extended to all entities registered with the MOJ, including NPOs and, when implemented, should improve the quality, consistency and availability of the information held by the authorities.

Responding to international requests regarding NPOs - points of contacts and procedures

964. At the time of the on-site visit, there was no designated point of contact to respond to international requests for information regarding particular NPOs.

5.3.2. Recommendations and Comments

965. Based on the information available to the Evaluation Team, it appears likely that the risk of FT (and ML) through the NPO sector is low and there is no evidence to suggest that any NPO in Timor-Leste has been used as a vehicle for FT (or ML). However, no formal review of the sector has been conducted which would formally substantiate this conclusion.

966. The Evaluation Team recommends that Timor-Leste should:

- formally designate an agency as the responsible agency for NPOs, not only in respect to registration but for broader AML/CFT matters including as a coordination point for information sharing;
- undertake a comprehensive NPO sector review capturing all relevant data necessary, including the adequacy of domestic laws in the NPO sector;
- undertake a risk assessment of the sector for terrorist financing;
- conduct outreach programs in relation to terrorist financing (and money laundering);
- establish effective coordination and information sharing mechanisms between the NPO administrative authorities; between those authorities and other government agencies; and between law enforcement and those NPOs authorities; and

- establish a point or points of contact to respond to international information requests.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • No review has been undertaken of the adequacy of existing laws and regulations that relate to NPOs that can be abused for the financing of terrorism or of the FT/ML risks to the sector. • No outreach has been undertaken with the NPO sector with a view to protecting the sector from FT abuse. • The authorities have not taken effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector. • NPOs are not required to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. • There are no effective mechanisms in place to ensure domestic cooperation, co-ordination or information sharing. • No contact points have been identified for dealing with international requests for information about NPOs.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31)

6.1.1 Description and Analysis

Legal Framework:

967. The new AML/CFT Law does not prescribe the types of mechanisms the FIU, law enforcement agencies, supervisors and policy makers generally should use to coordinate domestically with each other. Article 21 of the AML/CFT Law does however allow the new FIU to “request any additional information it deems useful for the accomplishment of its functions from the Police, Supervisory authorities, other administrative agencies of the State and, in accordance with applicable procedures, judicial authorities” but does not prescribe the type of mechanisms for information sharing on either operational or policy matters.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT

Operational cooperation

968. As set out in section 2.6 above, the PPO is the lead agency responsible for investigating and prosecuting ML and FT as well as the predicate offences for ML. While communication between agencies in Timor-Leste appears to be ongoing and constructive on operational matters, the Evaluation Team was not advised of any centralised committee, task force or regular working group meetings which have been established to improve effective cooperation on operational ML or FT matters. The National Working Group on AML/CFT (discussed further below), while it has mainly focused on policy matters, occasionally acts as a centralised forum for discussion of some operational matters, for example, discussion between the PPO and the PNTL of STR matters.

Central Bank, the Police and Customs

969. As set out in section 2.5 of this report, the BCTL is legally required (under the Penal Code) to disseminate STRs to the PPO for investigation and can itself only conduct further inquiries at the request of the PPO. It is positive that this referral framework is well known and well utilised by relevant agencies. Agencies also reported a good level of informal exchange between the BCTL, the Police and Customs in relation to the 14 STRs which have been referred by the BCTL to the PPO since 2009.

970. As stated in section 2.7 above, the Timor-Leste Customs Service (Customs) is principally concerned with managing security and community risks associated with the flows of people, goods and craft into and out of Timor-Leste, and by collecting customs and excise revenues. Customs plays a major role in preventing, detecting and investigating the illicit importation of drugs and other prohibited goods. Customs undertakes an AML/CFT role as part of its general duties. It is responsible for the enforcement of the cash import/export reporting provision. Customs staff will also support Police efforts in this field through any joint operations that might involve ML or FT. All suspicious border related transactions are assessed by intelligence analysts who would advise Police of any information that may be linked to ML or FT.

971. The Customs Service meets monthly with the National Intelligence Unit, where information is shared in relation to suspected criminal activities. They also have a good working relationship with the Anti-Corruption Commission. Customs advised that it has good working relationships with other agencies including Immigration, Quarantine, Health, Transport and Communications.

Public Prosecutor's Office (PPO)

972. The PPO advised that it has a special unit which focuses on ML investigations that arise from corruption matters. The PPO confirmed that since 2009 (with the introduction of the Penal Code) it now receives all STRs from the BCTL for consideration if further investigation is required. The PPO has, at times, invited the Governor of the BCTL to provide further input on particular STR matters.

973. The PPO advised the Evaluation Team that it also has a close working relationship with the Police's National Investigation Unit including the Interpol focal point. The PPO holds quarterly meetings with the Police but they are not focused on AML/CFT measures. Rather, they were described to be of a high level nature to 'maintain good working relationships and to establish training needs' between the two agencies. The PPO also meets with Customs on an ad hoc basis. The SNI (National Intelligence Service), which reports directly to the Prime Minister, coordinates an intelligence sharing meeting every one or two months but again, it was not clear whether any of these meetings have a focus on coordination of AML/CFT operational matters.

Anti-Corruption Commission (ACC)

974. The ACC was created in July 2009 as an independent specialized criminal police force (judicial police) that undertakes preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by the Penal Code. The ACC advised the Evaluation Team that it is empowered to conduct investigations under the Criminal Procedure Code on corruption matters but they, like the Police, have to obtain approval from the PPO to prosecute after an assessment is made of the available evidence.

975. The ACC advised that it works with the PNTL when conducting investigations such as inquiries and/or searches in terms of seeking assistance from the PNTL to provide security. Customs advised that it is working with the ACC to develop a code of conduct for Customs employees in an effort to educate officials on professional standards of conduct and address instances of internal fraud and low staff morale. The ACC also advised that it discusses operational matters with the PNTL, PPO and BCTL through the meetings of the National Working Group on AML (see below).

Policy cooperation and coordination across all relevant competent authorities

976. In October/November 2007, the Prime-Minister established a National Working Group to coordinate domestic operation on and implement measures for combating money laundering and the financing of terrorism. The National Working Group currently comprises representatives from the Ministries of Finance, Justice, Foreign Affairs, Secretary of State and Security, BCTL, the PPO, Appeals Court, ACC, Police and Customs. The BCTL acts as the Chair and co-ordinator of the Working Group's meetings and is required to report to the Prime Minister on progress. The Working Group is to remain in place until all required AML/CFT measures have been completed.

977. Working papers provided to the Evaluation Team indicate that the National Working Group's terms of reference were to:

- develop a national AML/CFT strategy and to coordinate and supervise its implementation;
- review the draft AML/CFT legislation and provide policy advice on outstanding issues; and
- coordinate the establishment of a national FIU including defining its roles and responsibilities including its ongoing coordination role.

978. Timor-Leste advised that the National Working Group has met on a regular basis since its establishment including six meetings on:

- 19 November 2007: a meeting to adopt the terms of reference for submission to the Prime Minister for approval;
- 10 December 2007: a meeting to discuss the work plan, draft AML/CFT strategy, set up a sub-group to review the draft legislation, discuss membership of the APG and any technical assistance requirements;
- 25 and 26 October 2010; and
- 15 and 21 November 2011.

Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions

979. The Evaluation Team was advised by members of the banking sector that the BCTL has not established a regular forum for consultation and coordination with the financial sector and other sectors (DNFBPs). Representatives from the banking sector advised that they would welcome any such move by the Government as it would assist inter-bank cooperation and general understanding of the government's policies on regulation of the sector. Members of the accounting profession did, however, advise that despite the lack of a regular forum for consultation with the BCTL, access to government officials was on the whole open and readily available on a needs basis.

980. The Police noted that it would be useful to facilitate increased cooperation with the banking sector and an awareness of Timor-Leste's AML/CFT measures to allow more reports to flow through for investigation.

Effectiveness

Operational cooperation

981. Communication between relevant agencies in Timor-Leste appears to be ongoing and constructive and staff do appear to be involved in co-operative efforts between the agencies. While there are no centralised operations committees or task forces in operation in Timor-Leste, the referral system to the PPO from the BCTL and the ACC appears to be functioning effectively and goes some way towards meeting the requirement for coordination of operational matters on AML/CFT.

982. With the recent passage of the new AML/CFT Law, it will be important to consolidate the capacity of the law enforcement agencies to investigate ML cases and prosecute financial crimes and to enhance mechanisms for operational cooperation and coordination. The establishment of an FIU in Timor-Leste presents new challenges for the Police in terms of information sharing with this new agency and effectively investigating any reports received from the new FIU.

983. It is positive to note that the ACC advised the Evaluation Team that it will be undertaking a self-assessment of its progress in implementing the UN Convention against Corruption ahead of a peer review and mission visiting in 2012.

Policy cooperation

984. No formal meeting minutes, outcomes documents or reports from the Working Group Chair to the Prime Minister have been sighted. The effectiveness of the Working Group since its establishment has been evaluated based mainly on advice from agency staff that:

- the main focus of the Working Group has been to review and provide policy advice on the AML/CFT legislation in order to ensure that it was introduced to Parliament as soon as possible;
- the Working Group occasionally acts as a forum for discussion of some operational matters, for example, discussion between the PPO and the PNTL of STR matters;

- the Working Group members have remained stable since 2007 and the group has expanded to include additional agencies;
- there is good level of mutual trust between agencies and the Working Group is a practical mechanism for cooperation and information sharing on policy developments around AML/CFT which has improved awareness of AML/CFT issues among member agencies. The Interpol focal point (who resides within the Police) also attends the Working Group meetings which assists coordination on operational matters with Ministry of Foreign Affairs, Finance (Customs), Immigration and the National Intelligence Service; and
- this has led to a greater willingness for inter-agency cooperation on operational matters.

6.1.2. Recommendations and Comments

985. The Evaluation Team recommends that Timor-Leste should:

- Continue the operation of the National Working Group but consider its function and scope now that the new AML/CFT Law has passed;
- Establish a forum for regular consultation with the financial sector and DNFBPs on AML/CFT measures including the new AML/CFT Law.
- Conduct a review of the effectiveness of its current operational coordination framework to assist the work of the new FIU once established.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> • Effectiveness of national cooperation on operational and policy matters needs to be improved.

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Legal Framework:

986. In order for international conventions and treaties to become part of Timor-Leste's domestic legal system, they have to be duly ratified or acceded to by the National Parliament or, in the case of simplified agreements, they have to be approved by the Government or the National Parliament according to their respective competences, and published in the Official Journal. International law (including customary law and ratified instruments) does not need to be incorporated into domestic law in order produce effects in the domestic legal system so long as it is published in the official gazette (Article 9(2) of the Constitution of Timor-Leste). In the event of a conflict between international and domestic law, international conventions, treaties and agreements applicable in Timor-Leste take precedence over domestic ordinary law (Article 9(3) of the Constitution of Timor-Leste).

987. The following relevant Conventions are applicable in Timor-Leste:

- United Nations Convention against Transnational Organized Crime (*Palermo Convention*) published in the Official Journal on 9 September 2009 through Resolution of the National Parliament n° 27/2009;
- Additional Protocol to the United Nations Convention against Transnational Organized Crime relating to the Prevention, Repression and Punishment of Human Trafficking in

Special the Trafficking of Women and Children published in the Official Journal on 9 September 2009, through Resolution of the National Parliament n° 29/2009;

- United Nations Convention against Corruption (*Merida Convention*) published in the Official Journal on 10 December 2008, through Resolution of the National Parliament n° 25/2008;
- Convention on Judicial Assistance in Criminal Matters between the members of the Community of the Portuguese Speaking Countries, published in the Official Journal on 6 May 2009, through Resolution of the National Parliament n° 13/2009;
- Instrument that Establishes an International Legal and Judicial Cooperation Network between the Members of the Community of the Portuguese Speaking Countries, published in the Official Journal on 6 May 2009, through Resolution of the National Parliament n° 16/2009;
- Convention on Extradition between the members of the Community of the Portuguese Speaking Countries, published in the Official Journal on 6 May, 2009, through Resolution of the National Parliament n° 15/2009;
- Convention on the Transfer of Condemned Persons between the members of the Community of the Portuguese Speaking Countries, published in the Official Journal on 10 February 2010, through Resolution of the National Parliament n° 5/2010.

988. The Conventions between members of the Portuguese Speaking Countries Community have not been implemented yet by those countries.

989. Although the above-mentioned Conventions are applicable in law to Timor-Leste, some of the relevant provisions on those Conventions have not in practice been implemented, as required by this Recommendation.

Ratification of AML Related UN Conventions

990. Timor-Leste acceded, on 9 November 2009, to the United Nations Convention against Transnational Organized Crime (the *Palermo Convention*).

991. Timor-Leste is not a Party to the Vienna Convention nor has it started the internal process of ratification of that convention.

Ratification of CFT Related UN Conventions

992. Timor-Leste is not a Party to the Terrorist Financing Convention nor has it started the internal process of ratification of the same.

Implementation of UN SCRs relating to Prevention and Suppression of FT

993. Timor-Leste is not implementing the United Nations Security Council Resolutions relating to the prevention and suppression of FT. These comprise S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).

Additional Element—Ratification or Implementation of Other relevant international conventions

994. No other relevant international conventions were signed or ratified by Timor-Leste.

6.2.2. Recommendations and Comments

995. Timor-Leste should become a party to and fully implement the Vienna Convention and the Terrorist Financing Convention.

996. Timor-Leste should implement the United Nations Security Council Resolutions relating to the prevention and suppression of FT. These comprise S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> Timor-Leste is not a party to the Vienna Convention nor to the Terrorist Financing Convention The Palermo Convention is not fully implemented
SR.I	NC	<ul style="list-style-type: none"> Timor-Leste is not a party to the Terrorist Financing Convention nor is it implementing S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Legal Framework:

997. Law n°15/2011, the Law on International Judicial Cooperation on Criminal Matters, which came into force on 25 December 2011, establishes the basis for legal cooperation in criminal matters between Timor-Leste and other countries or territories. The following forms of international judicial cooperation are set forth:

- extradition,
- transfer of criminal proceedings,
- enforcement of criminal sentences,
- transfer of sentenced persons,
- surveillance of sentenced persons or person released on parole,
- other forms of legal assistance in criminal matters.

998. Principles regarding the primacy of international conventions, reciprocity, dual criminality, specialty and *non bis in idem* are cornerstone principles of this law.

999. Mutual legal assistance is based on the principle of reciprocity and whenever the circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply (Article 4(2) of Law 15/2011). Despite such a requirement, the absence of reciprocity shall not preclude the execution of a cooperation request, as long as:

- it seems to be advisable taking into account the nature of the fact or the need to combat certain serious forms of criminality;
- it may contribute to the enhancement of the situation of the accused or sentenced person or to his/her social rehabilitation;
- it may serve to clarify the facts of which a Timorese citizen resident is accused.

(Article 4(3) of Law 15/2011).

1000. In relation to cooperation procedures, the following general rules are established under Law 15/2011:

- The PPO of Timor-Leste is the central authority responsible to receive and transmit any cooperation request covered by this law that are addressed to Timorese authorities, as well as for all communications relating thereto (Article 19(1));
- Any cooperation request shall be submitted to the Minister of Justice by the General Public Prosecutor, in order for the former to make a decision on its admissibility (Article 19(2));
- Any cooperation request formulated by Timorese authorities shall be submitted to the Minister of Justice, by the General Public Prosecutor (Article 19(3));
- The cooperation request shall specify, inter alia: the requesting authority as well as the requested authorities; the object and reason for the request; the legal qualification of the facts on the grounds of which the request is sought for the purposes of criminal proceedings; the identification of the suspect, accused or sentenced person, of the victim and of the witness or expert whose testimony is sought; a description of the facts, depending on the importance of the cooperation sought; the text of the legal provisions applicable in the requesting party; any other documents related to the facts for which cooperation is sought (Article 21);
- The decision of the Minister of Justice that declares the inadmissibility of the cooperation request addressed to a Timorese authority shall be substantiated and is not subject to appeal, being the foreign competent authority notified through the PPO (Article 22);
- Any final decision of a judiciary authority that refuses the cooperation request shall be notified to the requesting party through the channels mentioned in Article 19 (Article 28).

1001. Mutual legal assistance requests on criminal matters may be afforded or requested, even if no bilateral agreement exists with a foreign jurisdiction. However, Mutual Legal Assistance Treaties on a regional or international basis improve the efficiency of the MLA system. In fact, Timor-Leste has not engaged actively in international bilateral agreements on mutual legal assistance in criminal matters with the exception of the Conventions established with the Portuguese Speaking Countries Community which in term are not yet in force.

Widest Possible Range of Mutual Assistance

1002. Legal assistance in criminal matters as provided for in Law n° 15/2011 comprises the communication of information; the communication of procedural acts and other public acts, whenever deemed to be necessary for the purposes of criminal proceedings; as well as the necessary acts to enable the seizure or recovery of instrumentalities, objects or proceeds of an offence (Article 138(1) of Law n° 15/2011).

1003. Such legal assistance is outlined in Articles 138 to 159 of Law n° 15/2011, and covers, inter alia, the following acts:

- effecting service of judicial documents; provision of judicial documents and other documents;
- gathering of evidence;
- searches and seizures; examination of objects and sites; experts evaluations;
- the notification and taking testimony or statements of suspects, accused persons, witnesses or experts;
- transit of persons;

- provision of information related to Timor-Leste law and law of another country or territory as well as information concerning the criminal record of the suspect, accused or sentenced persons.

1004. Article 138(2)(a) and Article 146 provide for the effecting service of judicial documents; provision of judicial documents and other documents.

1005. Articles 138(2)(b) and (c) provide for the production, search and seizure of information, documents, or evidence.

1006. According to Article 152 of Law n° 15/2011, it is possible to hand over objects, valuables, documents or files, which may be seized and forfeited under Timor-Leste law, upon request of a foreign authority, if they are deemed to be relevant to their criminal proceedings.

1007. Article 153 allows Timorese authorities to undertake actions in order to trace any proceeds, objects and/or instrumentalities located in Timor-Leste, from an alleged crime, upon request of a foreign authority. The Timorese authorities may seize and provide for the forfeiture of those proceeds following foreign court decisions.

1008. Article 147 facilitates the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country.

1009. While the range of mutual legal assistance measures possible under the new MLA law is very broad, a significant issue regarding the scope of mutual legal assistance able to be provided by Timor-Leste in relation to AML/CFT investigations arises from the significant deficiencies identified on Recommendation 1 regarding the range of offences that constitute predicate offence for the ML offence. Indeed the fact that most of the designated categories of offences are not covered by the ML offence due to the high threshold imposed by Article 313 of the Penal Code, combined with the general requirement of dual criminality for the purpose of rendering mutual legal assistance in criminal matters, makes it difficult to Timor-Leste to provide assistance in a relatively high number of situations, thus diminishing considerably the scope of assistance that can be rendered.

Provision of Assistance in Timely, Constructive and Effective Manner

1010. The process for rendering mutual legal assistance is construed in a manner that allows for a timely rendering of such assistance in line with the international best practices. However, in urgent cases, assistance requested relating to the gathering and keeping of evidentiary material; searches and seizures; or other provisional measures related to criminal proceedings may be duly afforded. The foreign authorities can communicate directly or through Interpol with Timor-Leste's judicial authorities, stating the reasons for urgency and observing the requirements referred in Article 21 (Article 30).

1011. In relation to the provision of assistance in a constructive manner, some examples can be found in Law n° 15/2011:

- Regarding the content of the request, if the information provided by the requesting party is insufficient to entertain the request, additional information may be requested, without prejudice to adopting provisional measures whenever it is not possible to hold for the revised request (Article 27(3));
- Regarding the applicable law to the assistance requests, at the request of the requesting party, the assistance sought may be given in conformity with the law of the requesting party, as long as this is not incompatible with the fundamental principles of law of Timor-Leste and does not carry out serious damages to the parties involved in the proceedings (Article 139(2));

- Regarding the prohibition to use the information obtained, upon application of the requesting party, the Minister of Justice may, by exception, authorize the use of any information obtained within the framework of criminal proceedings specifically mentioned in the request within the framework of other criminal proceedings (Article 141(2));
- Regarding confidentiality of the assistance request, upon application of the requesting party, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved may be kept confidential (Article 142(1));
- Regarding the contents of assistance request, the request and supporting documents may include any reference to particulars of the criminal proceeding file or to any additional requirements, including deadlines and confidentiality, that the requesting party wishes to be met (Article 144(c));
- Regarding the handing over of objects, valuables, documents or files, if the authority of the requesting party expressly requests the handing over of originals, the request shall as far as possible be afforded; upon a return condition (Article 152(5)).

1012. On whether or not cooperation is afforded in an effective manner, at the moment it is difficult to provide such data or to assess effectiveness taking into account Timor-Leste's lack of experience in this area and the very recent enactment of Law n° 15/2011. As mentioned before, this law only entered in force on 25 December 2011.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance

1013. The principles, requirements and grounds for refusal of legal assistance requests established in Law n° 15/2011 are reasonable and proportional and restrictions are the ones contained in most laws on international judicial cooperation in criminal matters.

1014. According to Article 5, the following are considered general mandatory grounds for refusal of a cooperation request:

1. The proceedings do not comply with nor abide by the requirements laid down in the international conventions regarding human rights applicable to Timor-Leste;
2. There are well-founded reasons to believe that cooperation is sought for the purpose of persecuting or punishing a person by virtue of that person's race, religion, sex, nationality, language, political or ideological beliefs or belonging to a given social group;
3. There is a risk that the procedural status of the person might be impaired based on any of those factors;
4. The facts are punishable with the death penalty or any other punishment from which may result serious bodily injury to the accused;
5. The facts are punishable with a imprisonment or any other measure involving deprivation of liberty of a life-long or of indefinite character.

1015. Even so, the situations mentioned above in items 4) and 5) shall not preclude cooperation: if the requesting party offers assurances that those penalties or security measures shall not be executed or imposed, or if the requesting party accepts the conversion of the said penalties or security measures by a Timorese court and in accordance with Timor-Leste's law applicable to the crime for which the person was convicted of.

1016. Law n° 15/2011 also establishes grounds for refusal based on the nature of the offence, namely regarding any offence of a political nature or an offence connected with a political offence, according to the concepts of Timor-Leste law.

1017. Genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions; or any acts mentioned in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984; acts against the life of foreign sovereigns or persons occupying other high level public bodies or other persons to whom international protection must be granted according to international law; air and maritime piracy acts; or any other offences that ought not to be regarded as political under the terms of an international convention applicable to Timor-Leste, shall not be regarded as political offences (Article 6(2) of Law n° 15/2011).

1018. Cooperation requests may also be refused if related to offences which are considered to be minor offences under Timor-Leste's law (Article 9 of Law n° 15/2011) as for instance imprisonment penalties less than one year (Article 67(1) of the Penal Code of Timor-Leste).

1019. There is also an optional refusal for cooperation in Article 17 of Law n° 15/2011, whereby cooperation may be refused if the facts that substantiate the request are the object of ongoing criminal proceedings, or if the facts are or may also be the object of criminal proceedings for which Timor-Leste judiciary authorities have jurisdiction or in view of the circumstances of the case, the acceptance of the request may entail serious consequences for the person concerned in reason of his/her age, health or other personal nature reasons.

1020. Cooperation may also be refused whenever reciprocity is not assured.

Efficiency of Processes

1021. The procedures for the execution of mutual assistance requests are clearly identified in Law n° 15/2011 as follows:

- Articles 19 to 28 regulate the general rules applicable to all types of mutual legal assistance;
- Articles 29 to 72 regulate the process of extradition including the passive extradition – when Timor-Leste is requested the surrender of the person to be extradited – regulated in Articles 30 to 65; active extradition – when Timor-Leste requests another State for the extradition of a person – regulated in Articles 66 to 69 and expedite extradition – when the person to be extradited do not opposes his/her extradition – regulated in Articles 71 to 72;
- Articles 73 to 88 regulate the process for the transfer of criminal proceedings;
- Articles 89 to 107 regulate the process of enforcement of criminal sentences;
- Articles 108 to 119 regulate the process of transfer of sentenced persons;
- Articles 120 to 137 regulate the process of surveillance of sentenced persons or person released on parole
- Articles 138 to 159 regulate the process of other forms of legal assistance in criminal matters.

1022. All these different processes are envisaged and designed to allow for the execution of mutual legal assistance requests on a timely way without undue delays.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters

1023. Law n° 15/2011 does not foresee the possibility of the refusal of a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws

1024. Law n° 15/2011 does not establish any grounds for refusing a MLA request on the basis of secrecy and confidentiality laws. The sole limitation as regards secrecy or confidentiality

requirements vis a vis mutual legal assistance requests, concerns its execution. Indeed, Article 10 imposes a confidentiality norm, wherein the provisions of the criminal procedural legislation concerning grounds of refusal to testify, seizure, wiretapping, professional privilege or country secrets, or any other cases in which confidentiality is protected shall apply. In other words, the execution of a cooperation request shall abide by the existing criminal procedural rules on those matters as well as its prescribed limitations.

1025. In this regard, as far as professional secrecy is concerned, under the Criminal Procedural Code (CPC), lawyers, physicians, journalists, members of credit institutions, ministers of religion or cult and other persons permitted and imposed by law to professional secrecy are excused of making depositions over facts covered by their duty of secrecy (Article 126(1) of the CPC). But even so, this professional secrecy or confidentiality may cease if the judicial authority consider that breach necessary and legitimate - with the exception of religious secrecy (Articles 126(3) and (4) of the CPC).

Availability of Powers of Competent Authorities

1026. Articles 154 to 156 of Law 15/2011 provide specifically for the use of controlled deliveries, undercover operations and electronic surveillance and wiretapping respectively.

1027. Besides that, all available powers of competent authorities for domestic investigations are equally available for the entertaining of foreign requests regarding mutual legal assistance in criminal matters.

Avoiding Conflicts of Jurisdiction

1028. Article 14 of Law 15/2011 establishes mechanisms that prioritize the execution of requests for international judicial cooperation in criminal matters considering the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

1029. Criteria established by this legal provision include giving priority to the jurisdiction where the best interests in the realization of justice are secured on the concrete case, as well as where the social reinsertion of the suspect, accused or sentenced person is maximized, all taking in consideration the following:

- Whenever the multiple requests cover the same facts, priority should be given to the place where the crime has occurred or where the principal facts were committed;
- Whenever the multiple requests cover different facts consideration should be given successively to the gravity of the crime according to Timorese law, the date of the request, the nationality or residence of the person to be extradited, as well as any other attending circumstances such as the existence of a bilateral treaty or the possibility for re-extradition between requesting states.

Additional Element—Availability of Powers of Competent Authorities Required under R28

1030. Mutual legal assistance requests must go through the procedures identified in Law 15/2011. Although some informal agreements exist that allow for the direct contact between law enforcement counterparts such informal agreements cannot be considered within the mutual legal assistance process.

SRV

International Cooperation under SR V

1031. Article 46 of the newly enacted AML/CFT Law determines that “competent authorities shall provide the most ample cooperation to the competent authorities of other states for the purposes of

international judicial cooperation in criminal matters according to the internal and international applicable legislation.”

1032. Based upon this legal provision all the above described characteristics of international cooperation described in Recommendation 36 are equally applicable in the case of requests for cooperation regarding the FT offence.

Additional Element under SR V

1033. Article 46 of the AML/CFT Law does not make any distinction between the provision of mutual legal assistance in general and for the FT offence. All the above described characteristics of international cooperation described in relation to c 36.7 and 36.8 are equally applicable in the case of requests for cooperation regarding the FT offence (see paragraphs 959 and 960 above).

Recommendation 37

Dual Criminality and Mutual Assistance

1034. Dual criminality is an essential element for the provision of mutual legal assistance in criminal matters in Timor-Leste. Dual criminality is required for extradition (Article 30(2) of Law 15/2011), transfer of criminal proceedings (Article 74(1)(c)), enforcement of criminal sentences (Article 90(1)(e)), surveillance of sentenced persons or person released on parole (Article 123), and for other forms of legal assistance in criminal matters involving compulsory measures (Article 140).

1035. Timor-Leste has no legal or practical impediment to render assistance in cases where the requesting country and Timor-Leste both criminalize the conduct underlying the offence. There are no technical differences between the laws in Timor-Leste and the requesting states, such as differences in the manner in which each country categorizes or denominates the offence, which may pose an impediment to the provision of mutual legal assistance by Timor-Leste.

International Cooperation under SR V

1036. As noted above, Article 46 of the newly enacted AML/CFT Law determines that “*competent authorities shall provide the most ample cooperation to the competent authorities of other states for the purposes of international judicial cooperation in criminal matters according to the internal and international applicable legislation.*”

1037. Based upon this legal provision all the above described characteristics of international cooperation described in Recommendation 37 are equally applicable in the case of requests for cooperation regarding the FT offence.

Recommendation 38

1038. Mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of laundered property, proceeds, instrumentalities used in, or instrumentalities intended for use in, the commission of any ML, FT or other predicate offences are regulated by Article 153 of Law 15/2011, the Law on International Judicial Cooperation on Criminal Matters.

Timeliness to Requests for Provisional Measures including Confiscation

1039. Article 153 of Law 15/2011 allows Timor-Leste authorities to undertake actions in order to trace any proceeds, objects and/or instrumentalities located in Timor-Leste, from an allegedly committed crime, upon request of a foreign authority, and to transmit the results thereof. Once assets are located, Timor-Leste authorities shall undertake the necessary measures to enforce the court decision of the requesting party whereby a forfeiture order of the proceeds of crime, objects and/or

instrumentalities is imposed. Furthermore, Timor-Leste authorities may take any measures permitted under Timor-Leste's law to prevent any transfer or disposal of property, including objects and/or instrumentalities of a crime, which are or may be object of that decision. The problem regarding this criterion is that the shortcomings identified regarding the freezing of assets domestically are equally shortcomings for the purposes of international cooperation.

1040. As regards enforcement of foreign criminal sentences, foreign *res judicata* criminal sentences may be enforced in Timor-Leste upon request of the ruling party under the conditions laid down in Articles 89 and 90 of Law 15/2011, and a foreign criminal sentence may be executed for the purposes of confiscation of proceeds, objects or instrumentalities of an offence, according to Article 92 of the same law.

Property of Corresponding Value

1041. Article 153 of Law 15/2011 does not have any reference to the freezing, seizure, or confiscation of property of corresponding value.

Coordination of Seizure and Confiscation Actions

1042. Articles 154 to 156 of Law 15/2011 specifically provide for the use of special investigative techniques in the execution of international judicial cooperation requests involving coordination between Timor-Leste and other jurisdictions. This includes controlled deliveries (Article 154), undercover operations (Article 155) and wiretapping (Article 156).

1043. There are some informal arrangements between law enforcement agencies in Timor-Leste and some foreign counterparts that allow for some limited cooperation in this area.

International Cooperation under SR V

1044. As noted above, Article 46 of the AML/CFT Law determines that “*competent authorities shall provide the most ample cooperation to the competent authorities of other states for the purposes of international judicial cooperation in criminal matters according to the internal and international applicable legislation.*”

1045. Based upon this legal provision all the above described characteristics of international cooperation described in Recommendation 38 are equally applicable in the case of requests for cooperation regarding the FT offence.

Asset Forfeiture Fund

1046. There is no provision in Timor-Leste for the creation of an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.

Sharing of Confiscated Assets

1047. Sharing of forfeited assets is clearly possible under Law 15/2011, Articles 26, 104 and 152, by agreement, on a case-by-case basis, between Timor-Leste and the country or territory concerned.

Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof

1048. Law 15/2011 does not provide for the confiscation of assets from organizations principally criminal in nature, civil forfeiture and confiscation of property which reverses burden of proof as

these are not allowed domestically due to fundamental principles of domestic law. This is valid both for requests for cooperation regarding the ML offence (criteria 38.6) as for requests regarding the FT offence (criterion V.7).

Additional Element under SR V

1049. As noted above, Article 46 of the AML/CFT Law determines that “*competent authorities shall provide the most ample cooperation to the competent authorities of other states for the purposes of international judicial cooperation in criminal matters according to the internal and international applicable legislation.*”

1050. Based upon this legal provision all the above described characteristics of international cooperation described in Recommendation 38 are equally applicable in the case of requests for cooperation regarding the FT offence.

Resources

1051. The Central Authority for processing requests for mutual legal assistance in criminal matters is the PPO. The limitations in terms of resources of this department for the purposes of rendering mutual legal assistance in criminal matters are the ones identified in general for the PPO. No special resources in terms of personnel training or assets committed were identifiable related specifically with the mutual legal assistance process.

Statistics (applying R.32)

1052. There are no statistics regarding mutual legal assistance and extradition requests that were made or received.

Analysis of effectiveness

1053. The absence of statistical data because no requests for mutual legal assistance or extradition were made makes it impossible to assess effectiveness.

6.3.2. Recommendations and Comments

1054. Law 15/2011 and Article 46 of the AML/CFT Law generally provide a sound legal basis for Timor-Leste to cooperate internationally in relation to ML, FT and predicate offences. Passage of these provisions is very welcome and increases considerably Timor-Leste’s ability to render assistance. The main issues in terms of compliance with the relevant Recommendations relate to the problems with the scope of the ML offence in Timor-Leste and requirement of dual criminality, and the inability to assess effectiveness given the lack of statistics and the very recent passage of both the AML/CFT Law and Law 15/2011.

1055. It is noted that if Timor-Leste addresses the deficiencies in relation to the criminalisation of money laundering as outlined in section 2.1 of this report, this will expand the scope of mutual legal assistance that it may provide.

1056. The requirement of dual criminality for all type of mutual legal assistance makes equally difficult the scope of mutual legal assistance that Timor-Leste is able to provide. The removal of the requirement of dual criminality for less intrusive and non-compulsory forms of legal assistance should be considered by Timor-Leste authorities.

1057. Timor-Leste authorities should consider introducing into their legal system the necessary arrangements that will enable them to provide mutual legal assistance in the freezing of terrorist assets.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<ul style="list-style-type: none"> • Scope of mutual legal assistance that Timor-Leste can provide is limited because of the threshold contained in Article 313 of the Penal Code • Gaps in the definition of ML (scope of predicates) may undermine effective implementation. • Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance made or received
R.37	LC	<ul style="list-style-type: none"> • The requirement of dual criminality for all type of mutual legal assistance requests reduces the scope in which this can be rendered
R.38	PC	<ul style="list-style-type: none"> • Gaps in the definition of ML (scope of predicates) may undermine effective implementation. • Assistance cannot be rendered for the purpose of freezing terrorist assets • There is no provision regarding the identification, freezing, seizure and confiscation of property of corresponding value • Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance regarding the identification, freezing, seizure and confiscation of property related with the ML and FT offences, either made or received
SR.V	PC	<ul style="list-style-type: none"> • There is no provision regarding requests for the freezing of assets of FT • Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance regarding the freezing of property related with FT offence, either made or received

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

1058. According to Article 3(1) of Law 15/2011, the Law on International Judicial Cooperation on Criminal Matters, legal cooperation in criminal matters shall be carried out, first of all, in accordance with the provisions of the international conventions applicable to Timor-Leste. Whenever, such provisions are non-existent or insufficient, Law 15/2011, as a special legal instrument, shall apply, supplemented by the provisions of the Criminal Procedure Code. Article 46 of the AML/CFT Law provides for the most ample possible cooperation within the framework of these laws.

Money Laundering as Extraditable Offence

1059. Article 30 of Law 15/2011 on the purposes and grounds for extradition establishes that extradition may take place only for the purposes either of filing criminal proceedings or enforcing a penalty or measure involving deprivation of liberty for a crime wherein the courts of the requesting party have jurisdiction. As a condition, extradition shall only be possible in respect of crimes, including attempted crimes that are punishable under both Timor-Leste's law and the law of the requesting party by a penalty or measure involving deprivation of liberty for a maximum period of at least one year.

1060. Bearing in mind that ML is a criminal offence under Timor-Leste's Penal Code and the principle of dual criminality established in Law 15/2011, the ML offence is an offence which fits the criteria for extradition.

Extradition of Nationals

1061. According to Article 31(1) of Law 15/2011, extradition shall be refused in the cases mentioned in Articles 5 to 7 (general grounds for refusal), as well as in the following cases: a) the crime was committed in Timor-Leste; b) the person claimed is a Timor-Leste national or c) the claimed person is below 16 years of age and d) it is not recognized that the reclaimed person will be subject to a fair and process according to the internationally recognized standards.

Cooperation for Prosecution of Nationals

1062. According to Articles 31(2) of Law 15/2011, whenever extradition is refused according to Article 31(1), criminal proceedings shall be filed in Timor-Leste for the facts on the grounds of which the request was made with the requesting state providing all the necessary elements.

Efficiency of Extradition Process

1063. The extradition process in Timor-Leste is efficient and in line with international practices. It is considered an urgent process and it comprises an administrative phase for the evaluation of the request followed by a judicial phase (Article 45). The administrative phase has to be decided by all intervenient (Central Authority and Minister of Justice) within 30 days (Article 47). The judicial phase is competence of the Supreme Court of Justice (criminal section) and its duration depends on the existence or not of detained persons.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition

1064. Once the requested person is informed of his/her right to the extradition process according to Articles 50 to 57 of Law 15/2011, he/she may waive his/her right to such procedure and the competent judge after examining the admissibility of the request and the conditions under which the waiver for the proceedings was made will homologate (approve) the decision and this becomes irreversible leading to the immediate extradition of the requested person (Article 39).

Extradition for FT purposes SRV

1065. Article 46 of the AML/CFT Law determines that “*competent authorities shall provide the most ample cooperation to the competent authorities of other states for the purposes of international judicial cooperation in criminal matters according to the internal and international applicable legislation.*”.

1066. Based upon this legal provision all the above described characteristics of international cooperation described in Recommendation 39 are equally applicable in the case of requests for cooperation regarding the FT offence.

Additional Element under SR V

1067. The same is applicable for the additional element under SR V regarding extradition of persons related with FT.

Statistics (applying R.32)

1068. There are no statistics regarding extradition requests because no such requests were made or received.

Analysis of effectiveness

1069. The absence of statistical data because no requests for extradition were made or received makes it impossible to assess effectiveness.

6.4.2. Recommendations and Comments

1070. Timor-Leste authorities should consider maintaining appropriate statistical data referring to extradition requests made or received as soon as they occur.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none">• Gaps in the definition of ML (scope of predicates) may undermine effective implementation.• Assessment of effectiveness is not possible due to the absence of any requests for extradition made or received
R.37	LC	<ul style="list-style-type: none">• This is a composite rating and it is considered at part 6.3 of the report
SR.V	PC	<ul style="list-style-type: none">• This is a composite rating and it is considered at part 6.3 of the report

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework:

1071. As noted above, Article 46 of the AML/CFT Law states that competent authorities have a duty cooperate in that they “shall promote the broadest possible cooperation with the competent authorities of other states for purposes of international judicial cooperation in criminal matters, in accordance with domestic and international law”. It is not clear however whether this authorises non-judicial (informal) international cooperation with foreign counterparts.

1072. Timor-Leste has a range of informal international cooperation arrangements as set out below, including bilateral arrangements, MoUs and arrangements with regional and international organisations.

Widest Range of International Cooperation and Provision of Assistance in Timely, Constructive and Effective Manner

1073. The only instance of an international request described to the Evaluation Team was by the Canadian Government: a formal request was made for information to the BCTL to assist Canadian law enforcement authorities’ investigations of a bank licensing matter. The BCTL cooperated constructively and responded fully but the time taken to respond to the request is not known. The PPO advised it has also provided assistance to other countries involving the taking of witness statements. No statistics were provided as to the number or the number of type of such requests. The PPO also advised it is seeking the cooperation/assistance of a foreign jurisdiction in respect to three potential ML cases.

1074. The PNTL has entered into three MOUs with law enforcement agencies in neighbouring countries for the purposes of preventing and combating transnational crimes, illicit trafficking in narcotic drugs, psychotropic substances and its precursors and developing collaboration/cooperation and capacity building. The MOUs are in relation to enhancing cooperation and coordination :

- In 2010 a MOU was signed between the Australian Federal Police and the PNTL in relation to cooperation and coordination in law enforcement operations of mutual concerns. Coordinated operations will provide opportunities for law enforcement agencies to disrupt and dismantle transnational crime threats common to both countries. Coordinated operations means coordinated activity and assistance between the two agencies as may be mutually arranged from time to time: training of police officers, providing consultative and advisory assistance, enhancing technical and forensic capabilities, providing operational support and assistance, where such and any other area of coordinated activity and assistance as may be mutually determined by the two agencies.
- In July 2009 a MOU was signed between the Indonesian National Police (NPI) and the PNTL on cooperation in preventing and combating transnational crimes and developing police collaboration years. Under the MOU, the PNTL and the NPI will enhance cooperation by exchanging information and experiences in the area of education and training as well as conducting operational activities, i.e. the monitoring, preventing and combating transnational crimes as well as other police related matters at the border area. The Parties shall cooperate in improving the efforts in monitoring, preventing and uncovering the transnational crimes, such as: terrorism; Illicit trafficking in narcotic drugs and psychotropic substances as well as precursors; crimes against state property; Illicit trafficking in weapons, ammunition and explosives; economic crimes including money laundering; forgery of notes, documents and securities; human trafficking; and other types of crimes deemed necessary. In the efforts of enhancing cooperation both police departments will exchange information on criminal activities and other matters at the border, establish police operational activities which jointly coordinated in the efforts of preventing the crimes occur and other police related matters at the border area of the two countries; and cooperate in capacity building through personnel exchange in sharing knowledge and experience, education and training program as well as seminar, conference, as appropriate. Both departments agree to establish communication channel between the coordinators to ensure the accurate information flow between the Parties.
- In March 2011 a MOU was signed between the National Narcotics Board of the Republic of Indonesia and the PNTL on the cooperation in combating illicit trafficking in Narcotic Drugs Psychotropic Substances and its Precursors. The main areas of cooperation is in drug supply and demand reduction as well as improving administrative methods; taking joint measures to eliminate illicit drug supply resources; collaborating on suppression of illicit drug production and trafficking as well as close and coordinated cooperation in regional and international arenas; exchange of experiences on the methods of search and seizure of concealed drugs; exchange of experiences and information on the methods and modus operandi used by drug traffickers; exchange of information on networks and persons involved in or suspected to be involved in or arrested for illicit drug trafficking and on new routes of illicit drugs transportation.

Clear and Effective Gateways for Exchange of Information

1075. Timor-Leste provided the following examples of gateways for exchange of information:

1076. Bilateral arrangements: Timor-Leste has asset recovery reciprocity bilateral arrangements with Australia and Indonesia. Timor-Leste has made requests of Indonesia in relation to all three ML cases being investigated but there have been no responses to these requests. Timor-Leste has a number of informal intelligence arrangements with: Australia, Malaysia, China, Indonesia, and Singapore. There has been recent interest in drafting bilateral cooperation agreements on AML/CFT matters with Australia and Indonesia. Drafts have been prepared but negotiations have yet to commence. The officials noted that a process has yet to be confirmed with PPO and the Police regarding the coordination of seizure and confiscation actions with other countries.

1077. MOUs: The PNTL has entered into three MoUs with law enforcement agencies in Australia and Indonesia (see section 2.6.1 above). Customs has an MoU with New Zealand Customs and some NZ staff have provided training to Timor-Leste customs officials. Customs advised that it has a good working relationship with Indonesian and Singapore customs officials and may consider developing MoUs shortly.

1078. Exchanges through Interpol: Timor-Leste is a member of Interpol. The Interpol desk within the PNTL facilitates cooperation and mutual support between the PNTL and foreign police counterparts in cooperation with the Ministry for Foreign Affairs. A warrant is required to proceed with Interpol's assistance. As stated in section 2.6 above, the PNTL and the PPO advised that they have been involved in international investigations and are seeking foreign jurisdiction assistance in relation to three potential ML cases.

1079. Exchanges with other international or regional organisations: Timor-Leste has informal intelligence arrangements with ASEANAPOL. Customs is also a member of the World Customs Organisation and the Oceania Customs Organisation. Customs would also consider using Interpol connections if relevant. Timor-Leste is also part of the Organisation of Portuguese speaking countries and has a protocol with the Portuguese Bar Association which will allow the sharing of legislation and key judicial decisions.

1080. The Governor of the BCTL confirmed the FIU will be applying for membership to the Egmont Group. The BCTL advised that it does currently cooperate informally with central banks/FIUs from other jurisdictions eg Portugal, Australia, United States and Malaysia.

Spontaneous Exchange of Information

1081. Exchanges of information with overseas counterparts is possible spontaneously and upon request – see the example of the assistance provided to Canada above and the BCTL cooperation with FIUs.

Making Inquiries on Behalf of Foreign Counterparts and FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts

1082. There is nothing precluding competent authorities from making inquiries domestically on behalf of foreign counterparts. Article 46 of the AML law states that competent authorities aim for the 'broadest possible cooperation' with foreign counterparts on criminal matters. The decree law outlining in greater detail the role of the new FIU has yet to be drafted and may address this matter further.

Conducting of Investigations on Behalf of Foreign Counterparts

1083. Timor-Leste advised that cooperation is currently ongoing with Australia on the investigation in relation to the 'Balibo Five',¹⁴ but no examples in relation to ML or FT investigations were provided.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information

1084. There are no unreasonable or unduly restrictive conditions regarding information exchanges between law enforcement agencies and their overseas counterparts.

¹⁴ The 'Balibo Five' was a group of journalists for Australian television networks based in the town of Balibo in East Timor (then Portuguese Timor), where they were killed on 16 October 1975 during Indonesian incursions.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters

1085. Competent authorities are unlikely to refuse a request for cooperation on the ground the request is considered to involve fiscal matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws

1086. Competent authorities will not refuse a request for cooperation on the grounds of laws that impose secrecy of confidentiality requirements on financial institutions or DNFBPs.

Safeguards in Use of Exchanged Information

1087. There was no indication whether competent authorities have established controls and safeguards to ensure that information received is used only in an authorised manner and consistent with national provisions on privacy and data protection.

Additional Element—Exchange of Information with Non-Counterparts

1088. There was no indication whether there are mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU

1089. As the new decree law of the FIU has yet to be drafted, this criterion cannot yet to be assessed.

Statistics (applying R.32)

1090. Statistics on other forms of international cooperation were not readily available. As stated above, the only instance of an international request described to the assessment team was by the Canadian Government: a formal request was made for information to the BCTL to assist Canadian law enforcement authorities' investigations of a bank licensing matter.

Analysis of effectiveness

1091. Timor-Leste authorities appear to have some international cooperation arrangements in place and they appear to have commenced especially in relation to police to police cooperation. Overall, there does not appear to be a well-developed culture of international cooperation in Timor-Leste: record-keeping of international requests should be improved and designated points of contact established.

6.5.2. Recommendations and Comments

1092. The Evaluation Team recommends that Timor-Leste should:

- continue to actively pursue international cooperation outside of MLA channels, including designating points of contact for cooperation and promoting mechanisms including bilateral and multilateral MOUs, agreements and contracts to support rapid and constructive information sharing.
- draft the decree law for the FIU as soon as possible and give clear legal powers to the FIU, police and other competent authorities to share information and intelligence related to AML/CFT with foreign counterparts.
- apply for membership of the Egmont Group of FIUs once an FIU has been established.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	PC	<ul style="list-style-type: none">• No clear legal basis for the FIU and other competent authorities for non-judicial cooperation with foreign counterparts in relation to AML/CFT• Statistics do not demonstrate effective cooperation for AML/CFT
SR.V	PC	<ul style="list-style-type: none">• No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT• Statistics do not demonstrate effective cooperation for CFT

7. OTHER ISSUES

7.1. Resources and Statistics

1093. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report, i.e. all of Section 2, parts of Sections 3 and 4, and in Section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	PC	LEAs <ul style="list-style-type: none">• Competent authorities require further training in conducting money laundering/terrorist financing investigations, tracing property that is the proceeds of crime, seizing, freezing and confiscation of such property• Competent authorities lack technical capabilities in conducting money laundering and terrorist financing investigations and the predicate offence of drug trafficking FIU <ul style="list-style-type: none">• Presently no FIU in place• Two persons presently assigned to receive / disseminate STRs are part of the Supervisory Department of the BCTL of Timor-Leste who have other duties Customs <ul style="list-style-type: none">• Lack sufficient training in money laundering and terrorist financing, indicators & flags• Require further training in maintaining high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.
R.32	PC	<ul style="list-style-type: none">• Timor-Leste does not have any statistical data that might allow for a comprehensive assessment of effectiveness of its ML and FT criminalization.• Lack of statistics regarding informal international co-operation• Competent authorities do not maintain comprehensive statistics on matters relevant to cross border transportation of cash , seizures, penalties/fines and other enforcement action

7.2. Other relevant AML/CFT Measures or Issues

1094. There are no further issues to be discussed in this section.

7.3. General Framework for AML/CFT System (see also section 1.1)

1095. There are no further issues to be discussed in this section.

Table 1: Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
Legal systems		
1. ML offence	PC	<ul style="list-style-type: none"> • A large number of predicate offences included in the designated categories of predicate offences do not constitute predicate offence for the offence of ML in Timor-Leste, or are insufficiently covered. • Not enough information available to assess the effectiveness of the current legislation.
2. ML offence—mental element and corporate liability	LC	<ul style="list-style-type: none"> • The fine applicable to legal persons may not be sufficiently dissuasive in all circumstances, although the overall penalties applicable may be considered as proportionate and dissuasive. • Given the ML offence has not yet been applied in prosecutions or sentences, it is not possible to assess the effectiveness of the ML system concerning liability of both natural and legal persons. Effectiveness of sanctions not demonstrated.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Agencies do not have a well developed awareness of the freezing and confiscation mechanism available under the Penal Code and there has been a lack of implementation of long existing provisions under the Criminal Procedure Code to freeze, seize and confiscate instrumentalities and proceeds of crime. • The absence of comprehensive statistical data prevents the possibility of assessment of effectiveness.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • No clear legal framework for information sharing among competent authorities • No legal frameworks for disclosure and sharing of information between financial institutions regarding AML/CFT responsibilities where this is required by R7, R9, or SR.VII
5. Customer due diligence	PC	<ul style="list-style-type: none"> • CDD requirement on establishing business relations and ongoing CDD are not covered in law and regulation, but are set out in other enforceable means (OEM) • The term “beneficial owner” is not defined in the AML/CFT Law

¹⁵ These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		<ul style="list-style-type: none"> • No explicit requirement of enhanced CDD when risks are higher • No requirement to verify legal arrangements • No requirement to verify that any person purporting to act on behalf of the customer (legal person or arrangement) is so authorised • No requirement for non-bank financial institution to: <ul style="list-style-type: none"> ○ include scrutiny of transactions undertaken throughout the course of that relationship that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds, in case of ongoing due diligence ○ ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships ○ verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers ○ not to open the account, commence business relations or perform the transaction and consider making a suspicious transaction report consider making a suspicious transaction report when the financial institution is unable to comply CDD requirement • Effectiveness: Due to somewhat limited supervision banks for AML/CFT and absence of supervision for AML/CFT of some non-bank sectors, it is not possible to fully determine the extent of implementation of the existing and new CDD obligations
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • No explicit requirement for financial institutions to obtain senior management approval to continue the business relationship when an existing customer becomes a PEP • No enforcement of PEPs requirements for MTOs, which are not yet regulated or supervised • Definition of PEP for non-bank financial institution does not extend to family members,

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		<p>persons or companies</p> <ul style="list-style-type: none"> • No requirement for non-bank financial institutions to: <ul style="list-style-type: none"> ○ No obligation to obtain senior management approval for establishing business relationship with a PEP ○ no requirement for existing PEPs to obtain senior management approval to continue the business relationship ○ take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP ○ conduct enhanced ongoing monitoring on PEPs <p>Effectiveness concerns: Doubt as to whether all financial institutions have effective systems to identify foreign PEPs</p>
7. Correspondent banking	LC	<ul style="list-style-type: none"> • No requirement for banks to obtain approval from senior management before establishing new correspondent relationships or to document the respective AML/CFT responsibilities of each institution • Lack of supervision/effectiveness concern, especially considering very recent introduction of the obligations
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • No enforceable instructions to require all financial institutions to take such measures to prevent the misuse of technological developments in ML or FT schemes • No explicit requirement on specific CDD procedures that apply to non-face to face customers
9. Third parties and introducers	N/A	
10. Record-keeping	LC	<ul style="list-style-type: none"> • Effective implementation across all sectors cannot be established as requirements are new and widespread AML/CFT supervision of record-keeping requirements has not been undertaken
11. Unusual transactions	LC	<ul style="list-style-type: none"> • No requirement for non-bank financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing • No effective implementation in non-bank financial institution
12. DNFBP–R.5, 6, 8–11	PC	<ul style="list-style-type: none"> • As the AML/CFT obligations for DNFBPs are identical to those for financial institutions, they

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		<p>suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11.</p> <ul style="list-style-type: none"> • Effectiveness issue: Although DNFBPs are subject to AML/CFT obligations, no AML obligations have yet been implemented in any DNFBP sectors. • Scope issue: Lawyers, notaries, attorneys and other independent legal professionals have not been included in the AML/CFT Law
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • The deficiencies in the list of predicate offences and in the FT offence affect the scope of the requirements to report STRs • The very low number of STRs submitted and the very limited range of institutions submitting them shows a lack of effective implementation of the STR obligation • It is too early to judge the effectiveness of the STR obligation for non-bank financial institutions
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • A lack of clear 'safe harbour' for the directors, officers and employees of the financial institutions if they report STRs in good faith.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • There is no explicit regulation that the compliance officer should be at the senior management level and that the compliance officer should have a direct reporting duty to the management board • Training facilities for employees have been established but effectiveness could be improved • Lack of implementation/evidence of implementation in non-bank sector • Due to its very recent passage, no regulations/orders have been issued as yet by the BCTL to spell out the broad requirements established under Articles 12/16 of the AML/CFT Law
16. DNFBP–R.13–15 & 21	PC	<ul style="list-style-type: none"> • Effectiveness issue: Although DNFBPs are subject to AML/CFT obligations, no AML obligations have yet been implemented in any DNFBP sectors • Scope issue: Lawyers, notaries, attorneys and other independent legal professionals have not been included in the AML/CFT Law
17. Sanctions	LC	<ul style="list-style-type: none"> • Broad range of sanctions available but only two sanctions have been imposed by the BCTL for the violation of AML/CFT rules • The law should have explicit provisions regarding sanctions against directors and senior management

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
18. Shell banks	LC	<ul style="list-style-type: none"> There is no explicit regulation that obliges financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks
19. Other forms of reporting	C	<ul style="list-style-type: none"> Fully observed.
20. Other DNFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> No particular measures have been taken by authorities to reduce reliance on cash and encourage secure automated transfer system.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> No provisions in law, or regulation or other enforceable means set forth with regard to apply counter measures to countries not sufficiently applying FATF Recommendations No effective implementation in non-bank financial institution
22. Foreign branches & subsidiaries	N/A	<ul style="list-style-type: none"> Not applicable due to the structural features of Timor-Leste; there are no financial institutions authorized in Timor-Leste with foreign branches or subsidiaries abroad.
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> Scope issue: MTOs are not yet regulated or supervised Effectiveness: Limited resources for implementation
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> While some DNFBPs are subject to AML/CFT obligations under the AML/CFT Law, DNFBPs are not yet subject to any AML/CFT supervision There is no assigned body responsible for supervision for AML/CFT purposes There is no assigned body responsible for the application of sanctions to DNFBP for AML/CFT purposes
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> No guidelines to financial institutions and non-financial business and profession that are required to report suspicious transactions No feedback on STR since Penal Code was enacted in 2009 No guideline has been issued by BCTL apart from public instruction and socialization conducted after the issuance of public instruction There are no guidelines for the implementation and comply with AML/ CFT provisions
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> FIU not fully in place The BCTL presently can only receive and forward

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		<p>STRs to the PPO</p> <ul style="list-style-type: none"> • Very limited analytical function – database of information limited to information held by the BCTL • No access to information held by other government agencies • Cannot request further information from reporting entities • No guidelines have been issued to reporting entities • No periodic reports issued
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • Lack of specialised investigative capacity and training. • No clear legal authority to postpone/waive arrest • Effectiveness concerns: The number of investigations of money laundering is low when compared with the incidence of predicate crimes
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • Competent authorities have not demonstrated /utilized or considered compel production of search persons or premises for, and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons.
29. Supervisors	LC	<ul style="list-style-type: none"> • Not all types of financial institutions have been subject to on-site examinations by the BCTL • Effectiveness: Insufficient off-site supervision (lack of regular off-site reporting on AML/CFT compliance)
30. Resources, integrity, and training	PC	<p>LEAs</p> <ul style="list-style-type: none"> • Competent authorities require further training in conducting money laundering/terrorist financing investigations, tracing property that is the proceeds of crime, seizing, freezing and confiscation of such property • Competent authorities lack technical capabilities in conducting money laundering and terrorist financing investigations and the predicate offence of drug trafficking <p>FIU</p> <ul style="list-style-type: none"> • Presently no FIU in place • Two persons presently assigned to receive / disseminate STRs are part of the Supervisory Department of the BCTL who have other duties

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		Customs <ul style="list-style-type: none"> • Lack sufficient training in money laundering and terrorist financing, indicators & flags • Require further training in maintaining high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.
31. National co-operation	PC	<ul style="list-style-type: none"> • Effectiveness of national cooperation on operational matters needs to be improved. • Mechanisms should established or strengthened for consultation between competent authorities, the financial sector and other sectors (including DNFBP) on implementation of the AML/CFT Law, Public Instructions or other measures.
32. Statistics	PC	<ul style="list-style-type: none"> • Timor-Leste does not have any statistical data that might allow for a comprehensive assessment of effectiveness of its ML and FT criminalization. • Lack of statistics regarding informal international co-operation • Competent authorities do not maintain comprehensive statistics on matters relevant to cross border transportation of cash , seizures, penalties/fines and other enforcement action
33. Legal persons–beneficial owners	PC	<ul style="list-style-type: none"> • Doubts as to whether beneficial ownership information is readily available beyond immediate shareholders, in particular in relation to more complex corporate structures involving foreign ownership and/or layers of ownership • Operational difficulties in terms of implementation of existing laws and regulations hinder effectiveness of the system
34. Legal arrangements – beneficial owners	N/A	
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Timor-Leste is not a party to the Vienna Convention nor to the Terrorist Financing Convention • The Palermo Convention is not fully implemented
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • Scope of mutual legal assistance that Timor-Leste can provide is limited because of the threshold contained in Article 313 of the Penal Code • Gaps in the definition of ML (scope of predicates) may undermine effective implementation. • Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance made or received

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
37. Dual criminality	LC	<ul style="list-style-type: none"> The requirement of dual criminality for all type of mutual legal assistance requests reduces the scope in which this can be rendered
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> Gaps in the definition of ML (scope of predicates) may undermine effective implementation. Assistance cannot be rendered for the purpose of freezing terrorist assets There is no provision regarding the identification, freezing, seizure and confiscation of property of corresponding value Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance regarding the identification, freezing, seizure and confiscation of property related with the ML and FT offences, either made or received
39. Extradition	PC	<ul style="list-style-type: none"> Gaps in the definition of ML (scope of predicates) may undermine effective implementation. Assessment of effectiveness is not possible due to the absence of any requests for extradition made or received
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> No clear legal basis for the FIU and other competent authorities for non-judicial cooperation with foreign counterparts in relation to AML/CFT Statistics do not demonstrate effective cooperation for AML/CFT
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> Timor-Leste is not a party to the Terrorist Financing Convention nor is it implementing S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)
SR.II Criminalize terrorist financing	LC	<ul style="list-style-type: none"> FT offence does not cover financing of individual terrorists. The sanction of fine applicable to legal persons is not sufficiently dissuasive although the overall penalties applicable may be considered as proportionate and dissuasive.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> Due to the absence of implementing instructions, UNSCRs 1267 and 1373 have not yet been implemented in Timor-Leste and effectiveness cannot be established.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> The obligation does not cover funds provided for an individual terrorist nor does it cover the financing of a terrorist organisation for any purpose. It is too early to judge the effectiveness of the STR

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		obligation for FT
SR.V International cooperation	PC	<ul style="list-style-type: none"> • There is no provision regarding requests for the freezing of assets of FT • Assessment of effectiveness is not possible due to the absence of any requests for mutual legal assistance regarding the freezing of property related with FT offence, either made or received • No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT • Statistics do not demonstrate effective cooperation for CFT
SR.VI AML/CFT requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • Public Instruction on MTOs not in force • Unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels • MTO service operators are not in practice subject to all applicable FATF Recommendation (R.4-11, 13-15 & 21-23) and Special Recommendation (SR VII)
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • In the payment chain, each intermediary and beneficiary financial institution (national and foreign) is not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • Measures are not in place to effectively monitor the compliance of all financial institutions, and not only banks, with rules and regulations, including both on-site examinations and off-site reports and its analysis. • It is too early since the introduction of the AML/CTF Law to assess effective implementation • It is necessary to approve the Instruction for Money Transfer Operators, and pay special attention to its activity.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • No review has been undertaken of the adequacy of existing laws and regulations that relate to NPOs that can be abused for the financing of terrorism or of the FT/ML risks to the sector. • No outreach has been undertaken with the NPO sector with a view to protecting the sector from FT abuse. • The authorities have not taken effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁵
		<p>sector.</p> <ul style="list-style-type: none"> • NPOs are not required to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. • There are no effective mechanisms in place to ensure domestic cooperation, co-ordination or information sharing. • No contact points have been identified for dealing with international requests for information about NPOs.
SR.IX Cash Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> • No computerized database for maintaining and easy retrieval of information contained in declarations • Unclear if c.IX.2 is met. • Competent authorities have no direct with their counterparts in bordering countries for the purpose of sharing of information; • Lack of sharing of information at the domestic level • Penalties for failing to declare and/or false declarations have not been sufficiently applied

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> • Ensure that all 20 designated categories of offence are criminalised and ensure the ML offence applies to all predicate offences – for example by lowering the threshold required for an offence to be considered a “serious crime” for the purpose of constituting predicate offence for the ML offence • Consider increasing and broadening the range of fines applicable to legal persons under Article 42 of the AML/CFT Law. • Consider maintaining an updated and comprehensive system for recording statistics regarding the ML offence and the corresponding predicate offences that will allow for a better understanding of the overall effectiveness of its ML system
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • Broaden the scope of application of its FT offence to include the financing of individual terrorists. • Increase and broaden the range of fines application under Article 42 of the AML/CFT Law.
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> • Implement effective freezing and confiscation mechanisms. • Consider collecting the necessary relevant statistical data to demonstrate effectiveness.
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> • Adopt the necessary regulations and practices that allow for the effective implementation of the obligations contained in UNSCR 1267 (1999) and 1373 (2001) and their successor resolutions as prescribed by Article 36 of Law 17/2011. • BCTL should issue an instruction (published in the Gazette) to all relevant parties requiring them to freeze terrorist funds and include the terms, conditions and time limits applicable to the freezing in keeping with Article 36 of the AML/CFT Law. • Consider implementing SR III in accordance with the detailed requirements contained in the Best Practices Paper for SR III issued by the FATF.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Issue the Decree Law and put practical arrangements in place, including staffing, to establish the FIU and to ensure that it is independent and its core functions are not influenced or interfered with; • Issue guidance on the manner and form of reporting STRs and other reports • Ensure the FIU has its own funding/budget sufficient to ensure effectiveness and efficiency; • FIU should consider adequate and suitable training for staff in combating ML/FT and in financial analysis; • Ensure the FIU office is located in a secure location with

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>restricted access to ensure the integrity of the information and it is securely protected;</p> <ul style="list-style-type: none"> • Develop FIU Standard Operating Procedures to encompass <ul style="list-style-type: none"> ○ The safe receipt and dissemination of information from/to agencies; ○ Co-ordination and liaison with domestic law enforcement agencies, financial institutions in respect to accessing their respective databases for analysis • FIU should consult with the Government agencies to facilitate access to information with respect to their databases • FIU should apply for membership of the Egmont Group; • FIU should issue periodic reports and develop and issue guidelines on reporting and identifying of suspicious transactions, the new laws, their requirements, reporting procedures and regularly updated lists of the persons and entities on the UNSCRs.
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</p>	<ul style="list-style-type: none"> • Assign prosecutors specifically to investigate and prosecute ML and FT offences; • Establish an investigative unit (within the PPO and/or the PNTL, or jointly) which specifically investigates the proceeds of crime with a focus of seizing/freezing and confiscation of assets derived directly or indirectly from criminal offences; • Provide further training in: <ul style="list-style-type: none"> ○ Conducting money laundering/ terrorist financing/financial investigations ○ Evidence collection requirements ○ Tracing of assets ○ The freezing/seizing and confiscation of assets ○ Use of undercover operations in ML and other financial crimes such as corruption ○ Integrity & Professionalism • Provide further capacity to investigative units receive in the areas of employing special investigative techniques such as wire taps; • Provide further technical capacity immediately in the area of drug analysis which is acceptable by the courts; • Establish specialized units or joint task forces to investigate heads of local organized crime groups who have benefited from financial crimes such as illegal gambling, prostitution; • PNTL to maintain a computerized record system of its cases which is searchable; • Arrange mentorship programs from donor countries in serious and complex investigations such as money laundering that involves mentors providing advice through all the investigative stages, i.e. from of the collection of evidence to court.

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
3. Preventive Measures– Financial Institutions	
Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> Consider conducting a national risk assessment to distinguish which sector would be subject to low or little risk of ML or TF to enable a risk-based approach to the application of AML/CFT obligations.
Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>Recommendation 5</p> <ul style="list-style-type: none"> Amend the AML/CFT Law or issue a regulation to require all financial institutions operating in Timor-Leste to: <ul style="list-style-type: none"> undertake CDD measures when establishing business relations conduct ongoing due diligence on the business relationship. Issue law, regulations or enforceable instructions to require non-bank financial institutions to: <ul style="list-style-type: none"> include scrutiny of transactions undertaken throughout the course of that relationship that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary, the source of funds, in case of ongoing due diligence ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships perform enhanced due diligence for higher risk categories of customer, business relationship or transaction determine the extent of the CDD measures on a risk sensitive basis verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers not open the account, commence business relations or perform the transaction and consider making a suspicious transaction report consider making a suspicious transaction report when the financial institution is unable to comply CDD requirement Issue a guidance document on what beneficial ownership is, especially for corporate customers. Ensure effective implementation of core CDD measures, in particular verification of the identity of natural persons, legal entities and the beneficial owner of accounts. <p>Recommendation 6</p> <ul style="list-style-type: none"> Extend a clear and comprehensive definition of “politically

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>exposed person” to non-bank financial institutions, as in the Public Instruction 02/2004 for banks, which includes family members, persons or companies</p> <ul style="list-style-type: none"> • Issue law, regulations or enforceable instructions to require non-bank financial institutions to: <ul style="list-style-type: none"> ○ obtain senior management approval for establishing business relationships with a PEP ○ take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP ○ conduct enhanced ongoing monitoring on PEPs. <p>Recommendation 7</p> <ul style="list-style-type: none"> • Issue enforceable instructions requiring banks to obtain approval from senior management before establishing new correspondent relationships and document the respective AML/CFT responsibilities of each institution. <p>Recommendation 8</p> <ul style="list-style-type: none"> • Issue enforceable instructions to require all reporting parties to take such measures to prevent the misuse of technological developments in ML or FT schemes.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • N/A
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Create clear legal frameworks for disclosure and sharing of information between competent authorities financial institutions regarding AML/CFT responsibilities.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Consider further specificity regarding the requirements, which could be achieved through regulation (decree law), to clarify possible areas of ambiguity, in particular: <ul style="list-style-type: none"> ○ the date on which an occasional transaction is performed or the last in a series of occasional transactions; ○ the formal date when an account is closed, either through the initiative of the institution or the customer; ○ the date when credit recovery proceedings are started, following insolvency or bankruptcy of the borrower.
Monitoring of transactions and relationships (R.11 & 21)	<p>Recommendation 11</p> <ul style="list-style-type: none"> • Ensure effective implementation of requirements to monitor unusual transactions on non-bank financial institutions. • Require non-bank financial institutions to examine as far as possible the background and purpose of unusual transactions and to set forth their findings in writing. <p>Recommendation 21</p> <ul style="list-style-type: none"> • Ensure the ability to apply appropriate counter-measures to a country that continues not to apply or insufficiently applies the FATF Recommendations. • Put in place mechanisms to alert banks about high risk countries, ie letters or circulars especially regarding the FATF

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	ICRG statements.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<p>Recommendation 13/SRIV</p> <ul style="list-style-type: none"> • Undertake education and awareness raising with reporting parties on the new STR obligations under the AML/CFT Law to encourage higher rates and quality STR reporting. • Ensure effective implementation of the STR requirement by non-bank financial institutions. <p>Recommendation 14</p> <ul style="list-style-type: none"> • Provide legal protection to financial institutions and their directors, officers and employees (permanent and temporary), from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. <p>Recommendation 19</p> <ul style="list-style-type: none"> • Consider the feasibility and utility of a threshold reporting requirement by financial institutions other than MTOs. <p>Recommendation 25</p> <ul style="list-style-type: none"> • Provide reporting entities with sector-specific guidelines to assist in the implementation of their requirements. • Provide financial institutions and non-financial business and profession that are required to report suspicious transactions, with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> • Extend scope of coverage of cross border reporting to include mail and cargo streams • Issue the Decree Law to operationalise the new regime in the AML law and establish mechanisms, procedures and forms to implement the system, including introducing declaration forms that specify the obligations of declaring both currency and BNI • Give consideration to the detailed recommendations contained in section 2.7 of this report.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>Recommendation 15</p> <ul style="list-style-type: none"> • Ensure that there is an obligation for compliance officers to be at the management level • Ensure that effectiveness of obligations pre-dating the AML/CFT Law regarding internal controls, compliance and audit and obligations the new law are established. <p>Recommendation 22</p> <ul style="list-style-type: none"> • N/A
Shell banks (R.18)	<ul style="list-style-type: none"> • Establish an explicit obligation on financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<p>The supervisory and oversight system—competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)</p>	<p>Recommendation 17</p> <ul style="list-style-type: none"> Establish explicit provision regarding sanctions against directors and senior management <p>Recommendation 23 – Supervision</p> <ul style="list-style-type: none"> Issue and implement the draft Public Instruction on MTO Consider introducing legislation setting out a selective list of circumstances which could indicate that fit and proper tests cannot be ensured. <p>Recommendation 25 – guidelines and feedback</p> <ul style="list-style-type: none"> Enhance questionnaires to include a series of questions that seek to detect any situation demonstrating lack of suitability and include two formal signed declarations: <ul style="list-style-type: none"> A declaration authorizing any third party (even those subject to the duty of secrecy and not obliged to give information) to provide the BCTL with any information considered necessary to be included with the dossier or taken as proof of the information supplied; A declaration stating awareness of the consequences of giving false information to the BCTL, specifically as such conduct is considered to be a very serious offence, punishable notwithstanding other penal sanctions that are applicable. Set up internal examination guidelines for assessing systems used by financial institutions for identifying STRs. <p>Recommendation 29 – Supervisory powers to monitor</p> <ul style="list-style-type: none"> Require supervised institutions to supply the BCTL with all the information that it deems necessary for verification of their compliance with the laws and regulations governing their activity and the efficacy of their internal controls. Require supervised institutions to allow access to their premises for inspections to be carried out.
<p>Money value transfer services (SR.VI)</p>	<ul style="list-style-type: none"> Issue and implement the draft Public Instruction on MTOs Consider increasing BCTL human resources to more effectively conduct outreach campaigns, mapping exercises and examinations of the MTO sector; Continue to identify unlicensed informal remittance operators; Extend requirements to money remitters to include all requirements in all relevant FATF Recommendations (R.4-11, 13-15 & 21-23) and Special Recommendation VII.
<p>4.Preventive Measures–Non-financial Businesses and Professions</p>	
<p>Customer due diligence and record-keeping (R.12)</p>	<ul style="list-style-type: none"> Take steps to extend CDD and record-keeping measures to the full range of DNFBPs. Consider issuing sector-specific regulations clarifying the CDD and record-keeping requirements for DNFBPs.

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Take steps to extend STR obligations to the full range of DNFBPs
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • Take steps to supervise and monitor the full range of NFBPs for AML/CFT purposes and provide feedback when necessary on implementation issues • Consider conducting an outreach and awareness raising campaign to DNFBPs to facilitate compliance with the applicable AML/CFT provisions.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Consider formally assessing vulnerabilities of other non-financial businesses and professions and consider the need for any further regulatory AML/CFT coverage of this area.; and • Encourage the development and use of modern and secure techniques for conducting financial transactions (e.g. electronic means of payment), especially when they involve large sums of money, that are less vulnerable to ML
5. Legal Persons and Arrangements & Non-profit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Consider addressing whether beneficial ownership information is readily available beyond immediate shareholders, in particular in relation to more complex corporate structures involving foreign ownership and/or layers of ownership • Consider addressing operational challenges to implementation of existing laws and regulations which hinder effectiveness of the system
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • N/A
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • Formally designate an agency as the responsible agency for NPOs, not only in respect to registration but for broader AML/CFT matters including as a coordination point for information sharing • Undertake a comprehensive NPO sector review capturing all relevant data necessary, including the adequacy of domestic laws in the NPO sector • Undertake a risk assessment of the sector for terrorist financing • Conduct outreach programs in relation to terrorist financing (and money laundering) • Establish effective coordination and information sharing mechanisms between the NPO administrative authorities; between those authorities and other government agencies; and between law enforcement and those NPOs authorities • Establish a point or points of contact to respond to international information requests.
6. National and International Cooperation	

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
National cooperation and coordination (R.31 & 32)	<p>Give consideration to:</p> <ul style="list-style-type: none"> Continuing the operation of the National Working Group but consider its function and scope now that the new AML/CFT Law has passed; Establishing a forum for regular consultation with the financial sector and DNFBPs on AML/CFT measures including the new AML/CFT Law. Conducting a review of the effectiveness of its current operational coordination framework to assist the work of the new FIU once established.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> Become a party to and fully implement the Vienna Convention and the Terrorist Financing Convention. Implement the United Nations Security Council Resolutions relating to the prevention and suppression of FT. These comprise S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<p>Recommendation 36</p> <ul style="list-style-type: none"> Consider the removal of the requirement of dual criminality for less intrusive and non-compulsory forms of legal assistance. Consider introducing into their legal system the necessary arrangements that will enable them to provide mutual legal assistance in the freezing of terrorist assets. <p>Recommendation 37</p> <ul style="list-style-type: none"> Consider the removal of the requirement of dual criminality for less intrusive and non-compulsory forms of legal assistance <p>Recommendation 38/SRV</p> <ul style="list-style-type: none"> Consider introducing the necessary arrangements that will enable provision of mutual legal assistance for the freezing of terrorist assets.
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> Widen the scope of the predicates to the ML offence to widen the grounds for extradition Consider maintaining appropriate statistics on extradition requests made or received.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> Give consideration to: <ul style="list-style-type: none"> continuing to actively pursue international cooperation outside of MLA channels, including designating points of contact for cooperation and promoting mechanisms including bilateral and multilateral MOUs, agreements and contracts to support rapid and constructive information sharing. drafting the decree law for the FIU as soon as possible and giving clear legal powers to the FIU, police and other competent authorities to share information and intelligence related to AML/CFT with foreign

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>counterparts.</p> <ul style="list-style-type: none"> ○ applying for membership of the Egmont Group of FIUs once an FIU has been established.
7. Other Issues	
Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> • N/A

Annex 1: Authorities' Response to the Assessment

Statement by Banco Central de Timor-Leste on behalf of the Government of Timor-Leste during the discussion of the Mutual Evaluation Report, at the 2012 Annual Meeting of Asia/Pacific Group on Money Laundering. Brisbane, 16 July 2012.

Introduction

The Government of Timor-Leste wishes to express its gratitude to the Government and the people of Australia for hosting this Annual Meeting and for the very warm hospitality the delegation has enjoyed in Brisbane.

The Timor-Leste delegation also wishes to thank the Evaluation Team for undertaking a thorough and complete assessment of Timor-Leste's legal and operational framework for preventing and combating money-laundering and the financing of terrorism, and for recognizing the considerable progress that Timor-Leste has made during the ten years of its existence as an independent nation.

The delegation wishes to thank the ME team for the very constructive discussions during the intensive two weeks on-site visit in [November 2011].

The delegation also appreciates the opportunity the ME team gave to Timor-Leste to provide further comments before the Mutual Evaluation Report was finalized. It particularly appreciates the attention the ME team gave to these comments, which enabled some recommendations, particularly Recommendations 5 and 29, to be upgraded.

Timor-Leste has addressed a number of challenges when developing its AML/CFT framework. This statement outlines the progress Timor-Leste has made to date, and briefly outlines plans for the future.

The challenges

The ME process was a challenging exercise for Timor-Leste, a country with only ten years of experience. However, it is considered a valuable step in the nation-building process. The process has helped set a key foundation stone in place which Timor-Leste is working to build on as the years go by.

As a newly independent state, Timor-Leste has encountered many challenges, not the least of which has been to build the institutions of state and the legal framework for the nation from scratch while at the same time building capable human resources to run the key state institutions.

Despite these challenges, Timor-Leste remains committed to move forward with the introduction of measures to ensure compliance with the FATF Recommendations as well as continuing to build the institutions and human resources to effectively implement those requirements.

Characteristics of Timor-Leste

Some key characteristics of Timor-Leste:

1. Timor-Leste is a small open economy almost entirely dependent on petroleum exports and international donor assistance. Aside from the petroleum sector, it has a subsistence economy, and although its national currency is the US Dollar, Timor-Leste is far from being a regional or offshore financial centre. The economy of Timor-Leste is primarily cash based with only about 16% of the population having direct access to banking

facilities and only a little over one per cent of the population regularly use banking facilities.

2. Timor-Leste has adopted the continental civil law as the basis for its legal system, which is based upon legal principles and codes that have their source in legislation. In other words, the courts are inquisitorial and regard legislation as the primary source of law. The court system is unbound by precedent and composed of specially trained judicial officers with a limited authority to interpret the law.
3. Timor-Leste has a small judiciary consisting of a Court of Appeal and four District Courts located in the main districts. There is also an Audit Court which was established in August 2011 with the power to examine the legality of public income and expenditure (including private entities which have received public funding). There are about 14 judges and a number of foreign judges, prosecutors and public defenders from other countries in Timor-Leste whose experience is used in more complex cases such as those relating to financial crimes.
4. The development of the financial sector in Timor-Leste is still in an early stage and is still relatively small. The financial system currently comprises only 4 registered banks, 2 other deposit taking institutions (microfinance type activities) with total assets approximately US\$10M, 2 general insurers (no life insurance), 1 currency exchange bureau, 11 Money Transfer Operators and 29 credit cooperatives with total assets approximately US\$1,2M. The micro finance type institutions dealing mostly with women in poor rural areas with average balance of US\$100. There are no financial or foreign exchange markets in Timor-Leste.
5. The registered banks are the dominant participants in the financial sector. The banks have total assets of US\$403 million as at December 2011 and account for about 96% of all financial activity. The banking system is almost entirely foreign owned, with over 96% of total banking assets being held by branches of three foreign banks. These banks offer a limited range of services to the public, mainly savings and cheque accounts and domestic and international payment services.
6. The Central Bank of Timor-Leste is exclusively responsible for regulating, licensing, registering and supervising financial institutions including the imposition of remedial measures and administrative sanctions, and has actively promoted compliance with banking requirements.
7. As for the Designated Non-Financial Business and Professions, most of the sector is captured by the AML/CFT Law and the size of the sector is extremely small in Timor-Leste, being limited to a small number of lawyers and public notaries that are registered with the Ministry of Justice. There are no casinos, registered accountants, dealers in precious metals, or real estate agents currently operating in Timor-Leste.

Progress to date

In the ten years following the restoration of independence in 2002, the governments of Timor-Leste have worked to establish a fully-functioning judicial sector. This has not only involved the enactment of major pieces of legislation, such as the Criminal Code and the AML/CFT law, but has also required extensive training of judges (at various levels), prosecutors, and others involved in the judicial process who would normally acquire the necessary knowledge and experience over many years. Officials from various state institutions have benefited immensely from various training courses and have received a significant input of Technical Assistance generously provided by our development partners, many of which are represented in this room today.

Some of the more important steps in the progress made to date in implementing sound frameworks for AML/CFT have been as follows.

1. Timor-Leste has recently passed several important pieces of legislation which strengthen the legal framework for AML/CFT. These include:
 - a. the Penal Code in which Money Laundering and Financing of Terrorism are criminalized,
 - b. the Law on International Judiciary Cooperation on Criminal Matters, which regulates the international judicial cooperation including extradition and mutual legal assistance,
 - c. the AML/CFT Law which covers a number of components essential to a comprehensive AML/CFT framework including preventative measures (including CDD requirements), record keeping, establishment of the FIU, reporting of STRs, supervisory authorities' functions and powers, provisional measures and confiscation, and freezing of terrorist assets;
 - d. the Anti-Corruption and witness protection law; etc.
2. Timor-Leste ratified the United Nations Convention against Corruption in March 2009 and has acceded to the Palermo Convention.
3. Timor-Leste established an Anti-Corruption Commission in 2009. This is an independent body responsible to the National Parliament with the status of specialized criminal police body. The objectives of the Commission is to undertake preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs.
4. A National Working Group lead by the Central Bank has been constituted since 2007 to deal with AML/CFT matters.

The next steps...

The secretariat of the National Working Group has prepared a draft plan to implement the recommendations made in the Mutual Evaluation Report. Following recent parliamentary elections, this plan will be submitted to the incoming Government and other state organs as part of a consultative process.

The immediate priority in the Timor-Leste plan will be to conduct a national risk assessment and develop a comprehensive National Strategy on AML/CFT matters.

Conclusion

During Timor-Leste's short existence as an independent nation, remarkable progress has been made in establishing a strong AML/CFT framework. This framework has been developed in an environment of many other competing priorities that have marked the first ten years of the nation's life.

During that brief decade, the Timor-Leste parliament has carefully deliberated many laws put before it, and has naturally given priority to the passing of basic laws, including the ratification of international treaties, commercial and criminal codes, basic electoral and land laws, and so on. For example, even though a comprehensive AML/CFT law had been drafted quite early on, it had to wait several years until the criminal code was enacted before AML/CFT could be added to parliament's legislative calendar.

Although the AML/CFT law was passed only weeks after the onsite visit of the ME team to undertake the review, the very fact that the AML/CFT law was enacted at all represents a considerable commitment by Timor-Leste's government and parliament to prioritizing the principles of good governance and playing a responsible role in the international community.

The Government of Timor-Leste wishes to conclude by expressing its continuing commitment to completing the necessary administrative and institutional measures to prevent and combat money laundering and the financing of terrorism.

Thank you.

Annex 2: Details of All Bodies Met During the On-Site Visit

List of ministries, other government authorities or bodies, private sector representatives and others:

1. Central Bank of Timor-Leste
2. Ministry of Justice
3. Commissioner of Police and other PNTL officials
4. Anti-Corruption Commission
5. Ministry of Foreign Affairs
6. Ministry of Finance/Customs Authority
7. Trade Invest
8. Ministry of Tourism Commerce & Industry
9. Members of the National Working Group on AML/CFT
10. Law firm
11. Accountancy firm
12. Banks
13. Credit cooperative
14. FONGTIL
15. Insurance firm
16. Money transfer companies

Annex 3: List of All Laws, Regulations, and Other Material Received

1. Constitution of the Democratic Republic of East Timor
2. Law No.2/2002, Interpretation of Applicable Law
3. Law No.8/2009, Law on the Anti-corruption Commission
4. List of Financial institutions operating in Timor-Leste
5. Law No.5/2011, Central Bank of Timor-Leste
6. UNTAET Regulation No. 2000/8 on Banking Licensing and Supervision
7. Banking and Payments Authority of Timor-Leste, Governing Board Resolution No.11/2010
8. Law No.6/2005, Regime for the Licensing, supervision and regulation of insurance companies and insurance intermediaries
9. UNTAET Regulation No.2000/5 on the Licensing of Currency Exchange Bureaux
10. Decree Law No.16/2004 on Cooperatives
11. Decree Law No.6/2009 Regulation on Recreational and Social Gambling
12. Decree Law No.5/2005 on Non-profit-making Corporate Bodies
13. List of NGOs registered with FONGTIL (East Timor NGO Forum), January – June 2011
14. Law No.4/2004 on Commercial Companies
15. Draft AML/CFT Law 2011
16. Decree law No.19/2009, Approves the Penal Code
17. Decree Law No.12/2008, Organic Statute of the Ministry of Justice
18. Decree Law No.4/2008, Organisational Structure of the Ministry of Foreign Affairs
19. Decree Law No.9/2008, Organisational Structure of the Ministry of Economy and Development
20. Decree Law No.9/2009, Organic Law of Timor-Leste's National Police (PNTL)
21. Decree Law No.13/2005, Approving the Criminal Procedure Code
22. Decree Law No.20/2003 on the Legal Tender in Timor-Leste
23. Public Instruction No.4/2009 on the Importation and Exportation of Cash
24. Public Instruction No.2/2004 on the Prevention of Money Laundering, Customer Identification and Record-keeping
25. Public Instruction No.3/2003 on the Opening and Maintenance of Deposit Accounts
26. Central Payments Office of East Timor Instruction, CPO/B-2001/5 on Bank Internal Control Systems
27. Central Payments Office of East Timor Instruction, CPO/B-2000/1 on Applications for Bank Licenses
28. Decree Law No.4/2006 on Special Arrangements within the Criminal Procedure Framework for Cases of Terrorism, Violent or Organised Crime
29. Decree Law No.38/2008, Public Defender's Office Statute
30. Law No.2/2009, Protection of Witnesses
31. Note on Administrative, Tax and Audit Court, Ministry of Justice
32. Law No.17/2011 on the Legal System for Preventing of Money Laundering and the Financing of Terrorism
33. BCTL Application for Bank License – Procedures Checklist
34. Central Payments Office of East Timor Instruction CPO/B-2000/5, Large Credit Exposures
35. Summary of overseas training activities undertaken by Directorate General Revenue and Customs 2011
36. Code of Conduct, Timor-Leste Directorate General Revenue and Customs

37. Customs Organisational Chart 2011
38. Decree Law No.2/2004, Civil Identification
39. Decree Law No.3/2004, Notaries
40. Draft Anti-corruption Law
41. Crime Statistics 2009-2011 – Public Prosecutor’s Office
42. AML/CFT Risk Assessment, French Cooperation Bureau Report of Mission June – July 2011
43. Justice Sector Strategic Plan 2011 – 2030
44. Law of the Republic of Indonesia, No.22/1997 on Narcotics
45. AFP/PNTL MoU on Combating Transnational Crime and Developing Police Cooperation, 2010
46. Narcotics Board Indonesia/PNTL MoU on Cooperation in Combating Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and its Precursors, 2011
47. Indonesian Police/PNTL MoU on Cooperation in Preventing and Combating Transnational Crimes and Developing Police Collaboration, 2009
48. Summary of PNTL Police Training activities
49. Indonesia Police/PNTL Technical Arrangement on Capacity Building 2009
50. PNTL Organisational Chart 2009
51. Draft Public Instruction on Licensing and Regulation of Money Transfer Operators
52. Report on the visit to Timor-Leste of the Counter-Terrorism Committee to the Democratic Republic of Timor-Leste, 30 November -4 December 2009

Annex 4: Training courses attended by BCTL staff

Between 2005 and 2011, the staff of the BCTL's supervisory department, who were responsible for receiving STRs, have attended 11 workshops, typologies, conferences and seminars, both at the National and International Level in relation to AML/CFT. The sessions included analysing suspicious transactions, examination of ML and FT methods and trends, countering the financing of terrorism, financial investigators workshop, Banking Supervision for Anti Money Laundering Examination. The details are as follows:

July 2004, Dili, Timor-Leste	Workshop: - Money Laundering and Terrorist Financing, IMF. - A legal Framework and Regime Regarding AML/CFT for Timor-Leste, IMF.
2-6 May 2005, Lisboa, Portugal	WORKSHOP: Divulgação Aplicação dos Padrões Internacionais em Matéria de Prevenção Branqueamento de Capitais e do Financiamento do Terrorismo. CPLP.
24-29 June 2007, Kuala Lumpur, Malaysia	46th SEACEN Course: Federal Reserve System Intermediate Course on Banking Supervision for Anti Money Laundering Examination
26-30 January 2009, Praia, Cabo Verde	WORKSHOP: AML/CFT.
20-24 July 2009, ILEA, Bangkok, Thailand	TRAINING: Complex Financial Investigation Course
February 2010, Sydney, Australia	WORKSHOP: Illegal Fishing And Illegal Logging Related To the Corruption and Money Laundering
18-20 May, 2010, Jakarta, Indonesia	CONFERENCE: Regional Asset Forfeiture & Financial Investigations Conference.
2-3 November, 2010, Kuala-Lumpur, Malaysia	SEMINAR AND EXERCISE: Countering The Financing Of Terrorism.
18-22 July, 2011 Kochi, Kerala, India	APG TYPOLOGY: Examination on ML and TF methods and trends.
18 – 20 October 2011 , Kuala Lumpur, Malaysia	Seminar: Analyzing Suspicious Transaction Report
31 March-1 April, 2011, Dili, Timor-Leste	CONFERENCE: International Conference on Money Laundering and Financing of Terrorism.
2 Jun 2011, Tibar, Dili, Timor-Leste	WORKSHOP: Anti-Money Laundering and Countering of Terrorist Financing Organized by CGD.

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