



3<sup>rd</sup> Follow-Up Report

# Mutual Evaluation of Vanuatu

September 2018



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Asia/Pacific Group  
on Money Laundering

## ***VANUATU: 3<sup>RD</sup> ENHANCED EXPEDITED FOLLOW-UP REPORT 2018***

### **I. INTRODUCTION**

1. The mutual evaluation report (MER) of Vanuatu was adopted in July 2015. This follow-up report analyses the progress of Vanuatu in addressing the technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: [R.5 and R.8]. This report does not analyse any progress Vanuatu has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of the 5th year follow-up assessment and if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

2. The assessment of Vanuatu's request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:

- *Ms Heather Moyer, FINCEN, United States of America*
- *Mr Jack Williams, Department of Foreign Affairs & Trade, Australia*
- *Ms Denise Chan, Department of Justice Hong Kong, China*
- *Michelle Harwood, APG secretariat*

3. The draft FUR was distributed to the global network for review on 19 June 2018 prior to its consideration by the APG Mutual Evaluation Committee on 21 July 2018 and adoption by the APG plenary on 26 July 2018.

4. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Vanuatu's Technical Compliance ratings.

### **II. FINDINGS OF THE MUTUAL EVALUATION REPORT**

5. The MER rated<sup>1</sup> Vanuatu as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Low	Low	Low	Low	Low	Low	Low	Low	Low	Low	Low

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
NC	NC	NC	PC	PC	PC	NC	NC	LC	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	LC	PC	LC	NC	NC	NC	PC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30

<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

LC	PC	PC	NC	NC	PC	PC	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	LC	NC	PC	PC	PC	PC	NC	PC	NC

6. Given these results, Vanuatu was placed in enhanced (expedited) follow-up.

7. In Vanuatu's 2017 follow-up report it requested re-ratings for three Recommendations (R. 26, 28 & 29). The review team concluded that sufficient progress had been made in relation to R.26 and 28 to a level of largely compliant. In relation to R.29 Vanuatu sought an upgrade from LC to C, and the review team found that the rating should remain at LC. Vanuatu remained on enhanced follow-up (expedited).

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

8. This section summarises the progress made by Vanuatu to improve its technical compliance by:

- Addressing the technical compliance deficiencies identified in the MER, and
- Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.5 and R.8).

#### 3.1. Progress to address technical compliance deficiencies identified in the MER

9. Further to the re-ratings conducted in 2017, based on progress made since its 2016 MER, Vanuatu requested re-ratings of the following Recommendations 1, 2, 3, 4, 5, 6, 7, 8, 10, 14, 16, 17, 18, 19, 22, 23, 24, 25, 27, 31, 33, 34, 35, 36, 37, 38, 39 & 40.

10. As a result of this progress, Vanuatu has been re-rated on Recommendations 1,2, 3, 4, 5, 6, 7, 8, 10, 14, 16, 17, 18, 22, 23, 24, 25, 27, 31, 33, 34, 35, 36, 37, 38, 39, and 40. The APG welcomes the steps that Vanuatu has taken to improve its technical compliance with Recommendation 19 however insufficient progress has been made to justify a re-rating of this Recommendation.

#### *Recommendation 1 (Originally rated NC, re-rated to C)*

11. At the time of the MER, Vanuatu had undertaken a National Risk Assessment in 2014 ('the 2014 NRA'). Vanuatu was however rated NC in the MER, largely based on the 2014 NRA not covering the risks and vulnerabilities for TF, including NPOs, or the specific risks of ML and TF associated with all forms of legal persons created in the country. The MER noted that the 2014 NRA analysis was not based on national statistics and there was no consultation with key private sector entities. At the time of the MER there was no designated authority or mechanism to coordinate actions to assess risks, no plan for keeping the risk assessment up-to-date and no plan to provide the results to key stakeholders. Moreover, Vanuatu had not sufficiently implemented a risk-based approach to allocate resources and implement measures to mitigate ML/TF/PF risk on the basis of the assessed risks. Recommendation 1 formed part of Vanuatu's ICRG Action Plan and it has now been concluded that this item is substantially addressed.

12. Since the MER, Vanuatu finalised and published an updated risk assessment for TF, NPOs and the offshore sector with TA support from the ADB and the New Zealand Government in August 2017 ('the 2017 NRA'). Further in 2018, the Supervisory Working Group (SWG) led a sectoral matrix of risk based on information from relevant stakeholders ('the 2018 sectoral risk matrix'). Findings of the 2018 sectoral risk matrix have driven supervisory and regulatory priorities as outlined further below.

13. Consultation was undertaken from the private sector for the 2017 NRA including private sector representatives involved in the Supervisory Working Group. Vanuatu is planning to develop a strategic plan to address the vulnerabilities identified in the 2017 NRA and other assessments of risk.

14. The 2014 and 2017 NRAs have been disseminated to relevant stakeholders and published on the FIU website, and the Vanuatu authorities have been conducting outreach to government agencies and regulated businesses in relation to their respective findings. The 2018 sectoral risk matrix is also available on the VFIU website and was the subject of an industry awareness raising workshop in April 2018. Supervisory agencies have required reporting entities to conduct a risk assessment for their businesses following the publication of the 2017 NRA to further inform understanding of risk. Responses have been received from various Reporting Entities (REs).

15. Findings of updated risk assessments have provided a basis for preventative measures, including enhancement of CDD in areas of high risk. There are obligations on REs to have risk-based policies, controls and procedures in place.

16. Clause 7(3)(a) of the AML/CTF Regulation (No 2 of 2015) (as amended) prescribes that REs who have been assessed and approved by the Director to have overall low or medium-low risk, must verify CDD within 15 working days.

17. The two NRAs have been incorporated into the FIU's supervisory and intelligence work programs (for instance, suspicious transaction reports are assessed in combination with the findings of the NRAs).

18. Vanuatu has also written to a range of relevant foreign government authorities (including Australia, New Zealand, Hong Kong, Lithuania, PNG and Fiji) to highlight the recent comprehensive changes to its legal framework and to indicate its willingness to assist where possible. The correspondence also refers to the relevant assessments of risk with a direction to the FIU website for further information.

19. As a result of the publication and adoption by the Vanuatu Government of the 2017 NRA, the 2018 sectoral risk matrix, the 2014 NRA and the steps taken to operationalise the respective findings, Vanuatu is now at a level of compliant for R 1.

#### *Recommendation 2 (Originally rated NC, re-rated C)*

20. Vanuatu was rated NC in the MER for R. 2. Significant shortcomings in Vanuatu's national cooperation and coordination, particularly at the operational level (where no coordination mechanisms existed), were reported in the MER. There were no national AML/CTF policies informed by the country's ML/TF risks. Recommendation 2 formed part of Vanuatu's ICRG Action Plan and the recent ICRG report confirms that this item has been substantially completed.

21. The AML/CTF National Coordination Committee (NCC) was established on 23 October 2015. In December 2016 two working groups were formed – the SWG and the Law Enforcement Working Group (LEA WG). Both groups report to the National Coordination Committee on AML/CTF supervision and law enforcement related issues. The SWG is composed of representatives from the RBV, VFSC, VFIU, Casino Regulator and Cooperative Registrar and the LEA WG is comprised of representatives from the Police, Immigration, Customs, VFIU, Public Prosecution and Biosecurity.

22. The NCC has identified and articulated Vanuatu's national AML/CFT policy as set out in the final NRA reports from 2017 & 2015 as well as policy documents arising from Vanuatu's ICRG action plan and post-ICRG implementation plans and statements of priorities.



23. The WGs have continued to meet regularly to develop and oversee implementation plans and to discuss policy and operational issues. The WGs have thereby helped to identify the TA needs of their respective agencies, in order to inform the NCC and to act as a liaison between TA providers, public agencies and the private sector to complete the 2017 NRA.

24. In response to the concerns raised in the 2015 MER as to potential secrecy within the NCC, earlier information sharing through the NCC demonstrates that the provisions in the AML/CTF Act do not, in practice, function as secrecy obligations. Amendments to the AML/CTF Act in June 2017 confirm this.

25. The NCC supported the completion of the three risk assessments (the 2014 NRA, the 2017 NRA and the 2018 sectoral risk matrix); the identification and consideration of policy issues arising from amendments to 30+ laws; consultation and engagement with the private sector; and other key issues to meet Vanuatu's ICRG action plan.

26. The SWG has undertaken significant coordination and risk-based guidance as well as awareness-raising among reporting entities regarding the contents of the NRA. A MOU has been agreed amongst all members of the SWG to further guide and lead cooperation and coordination in all supervisory matters. In early 2018, the SWG led the 2018 sectoral risk matrix leading to a document which guides a risk-based approach to supervision.

27. The United Nations Financial Sanctions Act (UNFSA) established a Sanctions Secretariat to implement TF and PF actions domestically. Further, the Sanctions Secretariat provides support to the National Security Advisory Committee (NSAC) which was established under section 23B of the Government Act. The NSAC is comprised of the Director General of the Office of the Prime Minister and includes high level delegates from the Ministry of Finance and Economic Management, Internal Affairs, Foreign Affairs, Attorney General, Commissioner of Police and the Chief Information Officer. The NSAC is responsible for many issues involving national security including the development of government objectives, policies and programmes on security and is also responsible for the designation of persons or entities under the UNFSA. The LEA WG is also mandated by the NCC to prioritise, trace and investigate both TF and PF matters.

28. Given the actions described above, Vanuatu is now compliant with Recommendation 2.

### *Recommendation 3 (Originally rated NC, re-rated to C)*

29. Vanuatu was rated non-compliant with R.3 on the basis that the definition of 'serious offence' had a critical impact on the ML offence. The ML offence was also dependent on proving an engagement in proceeds of crime, there were no ancillary offences to ML and the penalties for legal and natural persons were not proportionate or dissuasive. Many predicate offences were not criminalised. Recommendation 3 forms part of Vanuatu's ICRG Action Plan and the Joint Group confirmed that this item has now been substantially completed.

30. Vanuatu has since enacted the Statute Law (Miscellaneous Provisions) Act No. 6 of 2016 which amends the definition of serious offence in both the Mutual Assistance in Criminal Matters Act ('MACMA') and the Proceeds of Crime Act ('POCA'). This brought the definitions of serious offence in each law in line with FATF Recommendation 3.3.

31. The MER further noted Vanuatu's most significant ML risk emanates from the laundering of foreign proceeds of crime, especially foreign tax crimes, by exploiting Vanuatu's offshore sector. However, broad tax offences were not previously criminalised as Vanuatu does not have many forms of domestic tax.

32. Vanuatu has now amended the POCA to widen the definition of serious offence to include a foreign tax evasion offence. Amendments were subsequently made to the Penal Code to criminalise foreign tax evasion which is defined as the fraudulent evasion of any tax, whether or not it is a tax imposed within Vanuatu. The Proceeds of Crime amendment has an avoidance of doubt clause which reinforces the fact that the section applies whether or not the tax is imposed under the law of Vanuatu. This enables Vanuatu to charge ML based on foreign predicate offending including tax offences and to provide international cooperation for such offences. While this legal framework has not yet been tested by Vanuatu, there is additional assurance through Vanuatu's Explanatory Notes to the Proceeds of Crime (Amendment) Act and the Penal Code (Amendment) Act. In Vanuatu, Explanatory Notes are an authoritative interpretation of the intent of the legislators and provide guidance to the courts that in this case, the nature of the tax evaded is not relevant.

33. Other laws have been amended to cover predicate offences as well as amendments to widen the coverage of categories of predicate offences. These include final amendments to the Penal Code (which includes predicate offences of illicit arms trafficking, piracy of products), the Copyright Amendment Act (which adds to coverage of offences under the piracy of products category), and amendments to the Dealers in Securities (Licensing) Act (which sets out broadly comprehensive predicate offences for market manipulation and insider trading). These amendments were passed in June 2017.

34. Section 11(7) now imposes ancillary offences to ML and sanctions have been updated in section 11(8). Natural persons are punished on conviction by a fine of VT10 million (USD~90,000) or imprisonment for 10 years or both, or if the offender is a body corporate, a fine of VT50 million (USD~450,000). The review team considers these sanctions are proportionate and dissuasive.

35. In light of the above, Vanuatu is now re-rated compliant with Recommendation 3.

#### *Recommendation 4 (Originally rated PC, re-rated to C)*

36. Vanuatu was rated PC in the MER, largely on the basis of the serious offence deficiency and the absence of certain key predicate offences. Instrumentalities and proceeds of crime was a major deficiency along with the absence of any mechanism for the management and disposal of restrained, seized or confiscated property. Since then, the POCA has undergone reform along with amendments to the ML offence. Recommendation 4 forms part of Vanuatu's ICRG Action Plan and the Joint Group confirmed that this item has now been substantially completed.

37. Vanuatu may confiscate tainted property and proceeds of crime on conviction of a serious offence. The definition of proceeds of crime is widely drafted to include property which is later converted or transformed and include income, capital or other economic gains derived or realised from that property. They may also confiscate property of equivalent value through the use of a pecuniary penalty order (PPO) which is an order to pay back the benefits derived from the commission of the offence (S20). The serious offence definition has now been rectified per the analysis in R.3 above. The MER noted that Vanuatu can adequately confiscate terrorist property or property used in or likely to be used to finance terrorism, TF or terrorist acts.

38. Part 2A of the POCA has been amended to allow the Commissioner of Police to issue a direction to a FI or any other person that property must not be disposed of or dealt with by any person if satisfied of certain legislative criteria. The Direction lasts 28 days from the date of service on the FI or person. Under amended section 14E, such direction to freeze including any variation thereof ceases to be in force when the property to which it relates is covered by a restraining order.

39. Section 73 of the POCA amendment contains provisions for asset management including allowing the Administrator to do anything necessary to preserve the property. Further amendments

provide instruction to the Administrator on the management of property including where monies from the disposal of property are to be paid. Vanuatu has demonstrated its ability to manage complex proceeds of crime assets including houses built on traditional land and a yacht which is currently in the process of being auctioned.

40. As a result of amendments to the POCA, Penal Code and established practice, Vanuatu is now at a level of compliant for Recommendation 4.

*Recommendation 5 (Originally rated PC, re-rated to C)*

41. Vanuatu was rated PC in the MER for R.5. At the time of the MER, TF was not designated as a predicate offence to ML which was identified as a significant shortcoming. Given the legislation stipulated that the penalty could be imprisonment or a fine, it was determined that the discretion for a judge just to apply a fine was insufficiently dissuasive or proportionate. Recommendation 5 forms part of Vanuatu's ICRG Action Plan and the June 2018 exit report confirms that this item has now been substantially completed.

42. The technical requirements of this recommendation have now been largely addressed. The Counter Terrorism and Transnational Organised Crime (Amendment) Act No.15 of 2017 (CTTOC Act), which came into force and effect in June 2017, amends section 6 of the CTTOC Act and other relevant sections. The text expressly criminalises financing (provision or collection of funds) for a terrorist act, terrorist organisations and/or terrorists in sections 6(1) and (2) of the Amendment, and also includes a provision on the financing of the travel of FTFs under Section 6(1)(d). The amended definition addresses the deficiencies identified in the MER at R.5.2 in providing a broad TF offence that is not linked to a requirement that the person providing funds knows that they will be used by a person or group to carry out one or more terrorist act. Attempts to conduct TF and all remaining ancillary offence requirements are also now covered at Sections 6(3)(a) through (c) and 6(4) of the Amendment.

43. The amendment also covers the full scope of funds and other assets, whether from a legitimate or illegitimate source. The CTTOC Act also has a comprehensive definition of "property" going beyond the FATF definition of "funds and other assets" and also includes "human resources" (per Sections 2 on definition of "property" and 6(6)(c)). Vanuatu has a compliant definition of "terrorist act" by extending the definition of a terrorist act to all the activities covered in the 9 CT conventions listed in the annex of the UN TF convention. The CTTOC Amendment Act largely brings Vanuatu into technical compliance with the FATF standards on R.5.

44. Legal persons may be liable for TF and TF is now designated as a predicate offence to ML with the updated definition of 'serious offence' in the POCA Amendment Act of 2017.

45. The money laundering investigative unit within the Vanuatu Police Force is responsible for TF investigations and is the focus of financial investigations training. A SOP has now been developed which outlines the steps to be taken and the relevant agencies involvement in the event TF is detected in Vanuatu. The SOP was adopted by the NCC on 8 June 2018.

46. The penalty for TF as provided in Vanuatu's CTTOC Act is imprisonment for 25 years or a fine of VT125 million (approx. USD1.1 million) or both. Punishment is able to be imposed on both natural and legal persons. The offence allows for judicial discretion to apply a penalty commensurate with the nature and gravity of the offending conduct. The team considers that this is sufficiently proportionate and dissuasive, and is consistent with penalties applied in Vanuatu for other serious offences. By way of example, the penalty for terrorist acts contained in the CTTOC Act attracts imprisonment for 25 years or a fine not more than VT125 million or both. This is in accordance with the penalties prescribed for TF. Compared to findings in other Mutual Evaluation Reports, the penalty



for TF of imprisonment, or a fine, or both is commensurate with other penalty regimes for TF in the region.

47. The technical requirements of this recommendation have now been addressed. Given the progress made by Vanuatu since the 2015 MER, Recommendation 5 is rated as compliant.

*Recommendation 6 (Originally rated PC, re-rated C) and Recommendation 7 (Originally rated NC, re-rated C)*

48. Vanuatu was rated PC for R 6 in the MER. At the time of the MER a freezing framework relied on the Minister for Justice issuing a freezing order for listed individuals and entities under 1267 and 1373. There were no clear mechanisms, procedures or standard of proof for the designation of individuals or entities under UNSCR 1373. There were no clear procedures or mechanisms for permits to be issued for access to funds necessary for basic or extraordinary expenses and there was no procedure for delisting and unfreezing funds of persons and entities delisted by the UN.

49. At the time of the MER onsite Vanuatu had no statutory provisions to give effect to PF sanctions under R7.

50. Since the 2015 MER, Vanuatu has taken a number of legislative and implementation steps to improve its targeted financial sanctions regime for terrorism and WMD proliferation. Vanuatu passed the UNFSA in June 2017 which satisfies the technical requirements of R. 6 and R.7. Recommendations 6 and 7 form part of Vanuatu's ICRG Action Plan and the recent report confirms that this item has now been substantially completed.

51. Vanuatu's UNFSA provides for the following:

- Immediate incorporation into domestic law of relevant UNSC sanctions related to terrorism and proliferation;
- Prohibitions on dealing with property owned, controlled or held, directly or indirectly, wholly or jointly by or on behalf of or at the direction of a designated person or entity along with relevant prohibitions on the provision of funds and financial services to designated entities;
- Power for the Prime Minister to make designations pursuant to UNSC 1373 (and to extend the listing in advance of each three year expiry);
- Revocation of 1373 listings if the Prime Minister is satisfied the grounds for designation are no longer met;
- Judicial review for persons or entities in relation to a Prime Ministerial designation;
- Notification mechanisms for new, expired or revoked designations to reporting entities and other relevant persons and entities, and notification of same in the official gazette;
- Significant imprisonment penalties (25 years maximum) and fines for both natural and legal persons for those who deal with property owned, controlled or held by designated person or entity, and for those who make property or a financial service available to a designated person or entity;
- Permits can be obtained to deal with frozen property or make property available to a designated person or entity for a basic expense, a contractual obligation or an extraordinary expense;
- An obligation to report property of a designated person;
- The ability for a person to request the assistance of the Commissioner of Police when seeking to verify whether property they are holding is owned or may be owned, controlled, or held on

behalf of or at the direction of a designated person or entity. This is also the procedure for clearing false positives.

- The establishment of a Sanctions Secretariat, and an obligation for the Secretariat to perform a supervision function and maintain a consolidated list of designated persons and entities; and
- Power for the Sanctions Secretariat to request information and documents from persons and entities (with penalties for non-compliance), and to conduct onsite inspections.

52. The United Nations Financial Sanctions Act (UNFSA) also established a Sanctions Secretariat to coordinate and implement TF and PF actions domestically. The Sanctions Secretariat has been set up within the VFIU. The Government Act of 2017 established a National Security Advisory Committee who is mandated to advise the Prime Minister on domestic designations and to consider applications to use frozen property.

53. The VFIU has issued a variety of instructions, guidelines and notices informing reporting entities of their obligations and disseminating UN lists of designated persons and entities. This includes clear guidance to FIs and DNFBPs on how they should deal with false positives.

54. VFIU has conducted offsite supervision seeking confirmation of internal controls and monitoring to screen for and freeze any property of designated persons or entities.

55. In relation to procedures for de-listing, in practice the Sanctions Secretariat within the FIU is responsible for providing such information to the public. The Sanctions Secretariat has a detailed standard operating procedure on the steps to be taken in the event someone seeks de-listing. Contained within that SOP is a standard form that the Sanctions Secretariat sends to all people who have been listed under the UNFSA. That form includes a provision that states the following: *'Individuals or entities designated by the UNSC may make a request for delisting. Information on the procedure for such a request may be found on the United Nations Security Council Website.'* The *'Guidance Note to Reporting Entities & the Public regarding the UN Financial Sanctions Act'* published on the VFIU website also directs members of the public to contact the Sanctions Secretariat for further information, and provides a phone and email contact. Further information is available on the FIU website regarding the procedures for de-listing.

56. Vanuatu's UN Financial Sanctions Act addresses the deficiencies outlined in its 2015 MER and on this basis recommendations 6 and 7 are now rated compliant.

#### *Recommendation 8 (Originally rated NC, re-rated to LC)*

57. In its 3rd MER, Vanuatu was rated NC with R.8. The main deficiencies included the lack of coverage in the 2014 NRA of TF and NPOs; Vanuatu had not undertaken any domestic reviews or assessment of the NPO sector in order to identify features and types of NPOs that were at risk of being misused for TF and other forms of terrorist support; no requirement for charitable associations in Vanuatu to register and to submit annual financial statements that provide a breakdown of income and expenditure and no legislative requirements for NPOs in Vanuatu to have specific controls in place to ensure that all funds are properly accounted for and spent in a manner consistent with the NPO's purpose and objectives. Record keeping requirements were deficient and there were no powers of monitoring compliance or application of sanctions. VFSC were unable to investigate and gather information on NPOs via domestic cooperation and information sharing amongst authorities; customer due diligence was not required on beneficiaries of NPOs; there was no supervision of the NPO sector in relation to TF issues and no targeted approach or outreach undertaken to the NPO sector by the VFIU and other government agencies to inform the sector of TF risks.

58. Since the Vanuatu MER, the FATF methodology has evolved in relation to R.8 and hence the current review of R. 8 is assessed against the revised methodology.

59. Vanuatu assessed the risk of the NPO sector in its 2017 Vanuatu National Risk Assessment Report on Money Laundering through the Offshore Sector and Terrorism ('the 2017 NRA'). The risks and vulnerabilities of TF with respect to NPOs are generally covered. The report finds that neither the VFSC nor the VFIU has utilised its resources to identify the features and types of NPOs which are likely to be at risk of TF abuse or to identify the nature of threats posed by terrorist entities to the NPOs that are at risk. However, as there is no known domestic terrorism threat, the primary perceived threats to the NPO sector would likely be in relation to insider abuse within the organisation or with respect to the misuse of funds raised in Vanuatu for charitable purposes overseas. Further work is ongoing to bring all NPOs into the registration process and to increase capacity of the VFSC to provide meaningful oversight of this sector. Overall, whilst there are deficiencies in Vanuatu's understanding and assessment of the risk posed by this sector, there is little to suggest that the sector poses anything other than a low risk of TF.

60. Drawing on the results of the NRA, Vanuatu has conducted outreach to the NPO sector including by advertising the requirement to register with the FIU under the AML/CFT Act. Further, in conducting targeted outreach and supervision of NPOs identified as potentially high risk, the FIU and the VFSC continue to monitor and assess the sector and to take action where risks are identified.

61. The Charitable Associations (Incorporation) Act and the Foundation Act form the legal basis of NPO regulation in Vanuatu. Additionally, since 2003 NPOs have been subject to the AML/CFT regime as a reporting entity under the AML/CFT Act. The VFIU supervises AML/CFT compliance under that Act and the VFSC is the Registrar of charities and administers NPO laws.

62. Consideration was given to the adequacy of measures, including relevant laws and regulations that relate to the NPO sector in order to take proportionate actions to address risks identified. This resulted in legislative amendments and the introduction of a more robust supervisory regime as outlined below. Subsequent to publication of the NRA, the VFSC has committed three staff members dedicated to NPO supervision.

63. On 5 January 2018, the Charitable Associations (Incorporation)(Amendment) Act No. 21 of 2017 ('CAIAA'), the Co-operative Societies (Amendment) Act No. 34 of 2017 ('COSAA') and the Foundation (Amendment) Act No. 20 of 2017 ('FAA') were passed and commenced.

64. Collectively, the legislative reforms to the NPO regime in Vanuatu are as follows:

- Registration of a charitable association and foundation remains optional. However, if registration occurs, NPOs are subject to the monitoring and investigation powers of VFSC. This is a gap with respect to R.8.3 however all charitable associations and foundations must register as a reporting entity with the VFIU – sections 2 & 9 of the AML/CFT Act. This mitigates this gap as some of the AML/CTF requirements also go some way towards effective monitoring and supervision of NPOs (for example the requirement to issue financial statements etc);
- There is now an active registrar monitoring NPOs (the VFSC);
- The FIU has contacted and engaged all NPOs to register with them and at this stage, approximately 60% have responded to the outreach.
- The meanings of 'key person' and 'beneficial owner' are defined in the amended legislation. The source of funds used to pay the capital and the fit and proper criteria of

the key persons (including the beneficial owner) would be considered in an application for registration [sections 1,1A & 2(2) of CAIAA, sections 1,1A & 7(1) of COSAA, and sections 2, 4A & 7(1) of FAA];

- Charitable associations and registered societies have an ongoing statutory duty to give written notice of certain changes, for instance, to the key person, to the VFSC within a prescribed time, failure of which would amount to an offence [section 13 of the CAIAA, section 11A of COSAA].
- A foundation and a charitable association must file its annual return with the VFSC and serve a written notice on VFSC of certain changes, for instance, the beneficial owner or any transfer of assets exceeding VT1 million; a failure to comply with the former may result in dissolution, and for the latter, may amount to an offence [sections 43 & 49 of FAA and section 8A of the CAIAA].
- The VFSC is empowered to require NPOs to provide information and documents including those relating to the integrity, financial standing or organisation thereof within the period set, and any failure to comply with the notice or any provision of false or misleading information or documents would amount to criminal offence [section 15AA of CAIAA, section 37 of COSAA and section 29A of FAA].
- Laws are now in place to enable the VFSC to request information and documents from and to share confidential information with domestic and foreign government agencies in order to perform their functions and exercise their powers [section 15AC, 14A & 14B of CAIAA, sections 37B, 52A & 52B of COSAA, sections 29C, 34A & 34B of FAA].
- The amended section 2(2) CAIAA requires the registrar to consider granting a certificate if they are satisfied that the association is established for charitable purposes. In the prescribed annual report form, all charitable associations are required to declare in their report the nature of activities that they engage in. In practice, the registrar would refuse any application that doesn't provide a clear indication of its purpose and nature of its activities.
- Information regarding the above is available online ([www.vfsc.vu](http://www.vfsc.vu)). If there are further requests by a Court, VFIU, a supervisor, LEA, or other domestic agency or foreign government agency, the Registrar of Charitable Associations may disclose confidential information (section 14A CAIAA). Whilst there is no specified point of contact, in practice in Vanuatu the VFIU is the central point of contact for all AML/CTF matters. Any domestic or foreign enquiries regarding NPOs would go through the VFIU.

65. The VFSC is starting licensing compliance and on-site visits in line with these amendments. The amendments empower VFSC to conduct on-site inspections, to inspect and to take copies of documents as required. Any intentional obstruction thereto amounts to an offence punishable with imprisonment and a fine [section 15AB of CAIAA, section 37A of COSAA and section 29B of FAA].

66. In line with the new supervisory framework the VFSC has conducted periodic ongoing checks and reached out to charities for further information or queries where required. As part of this process, the VFSC identified potential breaches of the legislation and potential AML/CFT concerns. In conjunction with the VFIU, the VFSC carried out an investigation into one charity and sought assistance from foreign contacts to obtain relevant information. The VFSC and VFIU continue to monitor this charity on an enhanced basis with involvement of the Vanuatu Police Force. Further outreach continues by the VFIU to seek to have the entire sector registered as a reporting entity.

67. Overall Vanuatu has made good progress towards implementation of the revised Recommendation 8 introducing a robust regulatory structure and the beginnings of a monitoring regime. Vanuatu continues to monitor and assess the sector and has promoted new policies to promote accountability, integrity and public confidence in the administration of NPOs. As NPOs are covered as REs under the AML/CFT Act, record keeping requirements apply. There are requirements to make information and documents available to the Registrar on request and also to the VFIU. Registration remains optional for charitable associations and foundations however this is largely mitigated by obligations to register under the AML/CFT Act.

68. Many of the deficiencies in relation to the supervisory and monitoring powers of VFSC have been addressed. Some minor gaps remain however, in light of the actions outlined above R.8 is re-rated to largely compliant.

#### *Recommendation 10 (Originally rated PC, re-rated LC)*

69. The MER found that Vanuatu had adequate provisions covering the core CDD requirements, however moderate shortcomings remained, including the absence of requirements for CDD obligations when a series of occasional transactions appear to be linked but individually are below the CDD threshold, verification that persons purporting to act on behalf of legal arrangements are authorised to do so, permitting delayed verification of occasional customers only where the ML/TF risks are effectively managed, criteria/justification for REs to adopt simplified CDD measures or delayed verification where lower risks exist and if a RE is unable to comply with relevant CDD measures, that it must not open the account or must terminate the business relationship.

70. Passage of amendments to the AML/CTF Act addressed a number of these deficiencies. The identified deficiency in 10.2(b) has now been addressed by section 12(1)(d) of the AML/CTF Amendment Act. The MER noted that the AML/CTF Act didn't require a RE to verify that any person purporting to act on behalf of the customer was authorised to do so. Section 12(2) now requires a RE to verify that a person is authorised to undertake a transaction concerned on behalf of the other person.

71. The AML/CTF Regulation of 2014 requires REs to collect the purpose and intended nature of the business relationship with the reporting entity for legal persons and arrangements. Information regarding the beneficial ownership and control structure must be obtained pursuant to clause 3. It also requires the RE to collect the full name and address of the legal person or arrangement as required by R.10.9 and 10.11. If the RE cannot do this then it is obliged by section 12(5) of the AML/CTF Act to not open the account, or to refuse to enter into a business relationship or terminate an existing relationship. Paragraph 7(6) of the AML/CTF Regulation Order (153/2015) now states that a RE may carry out CDD processes on senior management officials of the customer if there is doubt as to the identification and verification of beneficial owners section 12(5) of the AML/CTF Regulation Order (153/2015).

72. To address the requirements in 10.14, Vanuatu amended the AML/CTF Regulation Order (153 of 2015) which now allows REs deemed low or medium-low ML/TF risk by the Director to verify the identification of its customer within a timeframe specified by the Director. It does not however give provision to the fact that this may only occur where the risks are effectively managed.

73. The gap identified in 10.15 has now been rectified with passage of the AML/CTF Regulations Order of 2015 sub clause 5(5) where REs are required to put in place effective risk-based systems and controls to deal with sub-clauses 7(2) and (3). The risk based systems and controls must incorporate the risks identified and mitigation measures recommended by the Vanuatu NRA and the entity's own risk assessment. In relation to the gap identified at 10.16, clause 8 of the AML/CTF Regulation Order requires ongoing due diligence processes.



74. In relation to the gaps identified at R10.18, Clause 7(3)(a) of the AML/CTF Regulation Order (153/2015) allows those REs that have been assessed and approved by the Director of having overall low or medium-low ML/TF risk to verify identification of its customer within a timeframe specified by the Director. No other simplified measures are provided.

75. Requirements specified in R.10.19 are now imposed on REs in circumstances where REs are unable to carry out the prescribed identification process on a person, they must not open an account, must not enter into a business relationship with that person and if one already exists they must terminate the relationship.

76. Overall, Vanuatu has significantly increased its compliance with R.10 in line with the amendments outlined above. Minor gaps remain, particularly in relation to the requirements under and 10.14 (delayed verification may only take place when the risks are effectively managed). Vanuatu is rated largely compliant with Recommendation 10.

#### *Recommendation 14 (Originally rated PC, re-rated to C)*

77. Vanuatu was rated non-compliant with former SR.VI (now R 14) in its previous MER due to the lack of an adequate supervisory regime for money or value transfer services (MVTs) and no specific guidance being issued to the sector. Although requirements existed for the registration of MVTs businesses with the VFIU, very limited action had been taken to identify unlicensed activity. The authorities acknowledged MVTs as high risk for ML/TF purposes but had made no significant attempts to continuously monitor the sector for compliance.

78. MVTs are required to be registered with the VFIU prior to commencing business, as they are a designated reporting entity under the AML/CTF Act. Amended market entry requirements are now in line with the FATF standards (section 9(5) and 9B of the AML/CTF Act 2014). New requirements include meeting fit and proper criteria prescribed by Regulations and satisfying the Director that the source of funds used to pay the capital is acceptable.

79. The VFIU has taken steps to engage unlicensed MVTs using both open source material such as business listings, tax listings obtained from DCIR, advertisements in the local paper, opening of business operations in town along with referrals made by banks when new businesses seek to open accounts with them. VFIU has also conducted outreach through publications on the FIU website, and has also issued a press statement confirming the requirement for REs to register with the FIU in the local media. Vanuatu has begun to issue penalties to MVTs for a failure to register and provided statistics in support of their enforcement actions. In total between 2016 -2018 the FIU has issued 19 compliance directions, 4 formal warnings/compliance warnings and 2 penalty notices.

80. The VFIU is responsible for the registration of MVTs and monitoring their compliance with the AML/CTF Act. The amended section 10 now allows the Director of the FIU with notice in writing to suspend or remove a RE from the register if the Director is satisfied on reasonable grounds that the reporting entity has failed to comply with a provision of the Act. Part 10AA of the amended AML/CFT Act provides for enforcement measures that may be taken by the Director of the FIU if they have reasonable grounds to believe that a reporting entity has failed to comply with an obligation under the Act. Measures include formal warnings, penalty notices, restraining or performance injunctions or a direction to a RE to remove a director, manager, secretary or other officer. VFIU has engaged MVTs, provided guidance, and currently monitors all licensed MVTs in Vanuatu. Section 9(5) of the AML/CFT Act (as amended) enables the Director to refuse entry on the registry if they do not meet the fit and proper criteria.

81. (14.5) Section 33 (2) (e) – (ea) (eb) of the AML&CTF (Amendment) Act No. 16 of 2017 require MVTs businesses to monitor an agent’s compliance with their AML/CTF Procedure Manual. Further amendments to section 33A of the AML/CTF Act require REs to apply a group wide AML/CTF programme to its agents.

82. In light of the amendments above, Vanuatu is rated compliant with Recommendation 14.

*Recommendation 16 (Originally rated NC, re-rated to C)*

83. The MER noted that Vanuatu is non-compliant with R.16, as the originator information requirements do not specify the nature of information to be contained in a wire transfer. There were no requirements with respect to beneficiary information and no obligations consistent with criteria 16.9 – 16.17 imposed by law or regulation on intermediary and beneficiary institutions and MVTs operators. There were also no mechanisms to ensure the reporting entities take freezing actions or comply with prohibitions from conducting transactions with designated persons or entities under targeted financial sanctions.

84. Recommendation 16 forms part of Vanuatu’s ICRG Action Plan which has now concluded that R.16 is substantially addressed. Vanuatu has enacted amendments to the AML/CTF Act to address the deficiency with the international standards and has issued guidance to stakeholders and the general public on the amendments. Amendments passed in June 2017 include provisions under new sections 37 and 37A – 37G which contain a number of requirements that more closely adhere to R16, including the following:

- In case of a domestic or international electronic wire transfer, the originating entity must identify the sender of the wire transfer, and verify the sender’s identity so that it is satisfied that the information obtained is correct; in the case of an international currency transfer, the originating entity must also identify the receiver thereof.
- If several individual currency transfers from a single sender are put in one file for transmission to multiple receivers, the originating entity must send the required and verified sender information, and the required receiver information.
- In case of an international electronic currency transfer of an amount less than VT 100,000 (approximately USD1,000) the originating entity must obtain information on the sender and the receiver. However, if the originating entity has a suspicion of money laundering or terrorist financing, it must verify the information obtained on the sender and file a suspicious transaction report.
- An originating entity must retain records of all sender and receiver information in keeping with the record keeping requirements in Part 5 of the AML/CTF Law and in compliance with R.11.
- An originating entity must transmit with the electronic currency transfer all identity information about the sender it has obtained and verified and in the case of an international currency transfer, identity information about the receiver that it has obtained (s37B(8)). A currency transfer may not be executed if the information requirements are not met (s37B(9)).
- Both the intermediary entity and beneficiary entity must retain records of all sender and receiver information that accompanies an electronic currency transfer and must comply with the record keeping requirements in Part 5 of the AML/CTF Law.

- Both the intermediary entity and beneficiary entity are required to have risk based policies and procedures for determining: (i) when to execute, reject or suspend and electronic currency transfer which lacks any of the information required to accompany the transfer; and (ii) follow up actions to be taken.
- Both the intermediary entity and beneficiary entity are required to take reasonable measures to identify international electronic currency transfers that lack any of the required information under Section 37B.
- In case of an electronic currency transfer of an amount equal to or greater than VT 100,000, a beneficiary entity should verify the receiver's identity to ensure that the information obtained by the originating entity is correct.
- Finally, if a reporting entity provides a money or value transfer service (MVTs), it must take into account all information required to be obtained under the proposed Sections 37B, 37C and 37D relating to the sender and receiver in order to determine whether a suspicious transaction or suspicious activity report should be filed; and file a suspicious transaction report in any country affected by the electronic currency transfer.

85. Overall, sections 37A to 37G adhere to the requirements of R16. Vanuatu has addressed the deficiencies identified in the MER, and on that basis, R.16 is now rated compliant.

*Recommendation 17 (Originally rated NC, re-rated C)*

86. The MER noted that Vanuatu is not compliant with R.17 as there is no requirement in law or regulation that responsibility for CDD measures must remain with the reporting entity relying on a third party. There is also no requirement for a risk appraisal regarding the country of location of the third party being relied on, or for the CDD documentation to be provided to reporting entities by the intermediary upon request without delay.

87. Amendments to the AML/CTF Act in June 2017 now require REs to ensure that copies of relevant identification data are made available immediately or on request without delay and to satisfy itself that the third party is regulated and supervised or monitored for compliance with requirements under the relevant part. REs should assess whether the location of the intermediary or third party is a high risk location and whether the countries or geographical areas that the intermediary operates in are high risk countries or geographical areas. Overall the amended provisions of section 18 of the AML/CTF Act satisfy the requirements under R17.1 -3.

88. In relation to the requirements under R.17.3, there are no provisions specifically dealing with third parties that are part of the same financial group. However, amendments to the AML/CTF Act deem the reporting entity liable for any failure to undertake their obligations. Therefore the requirements under 17.1 & 2 are established in the event of the scenario posed under R.17.3.

89. Vanuatu is rated compliant with Recommendation 17.

*Recommendation 18 (Originally rated NC, re-rated LC)*

90. The MER found that the AML/CTF Act contains certain requirements regarding internal procedure manuals but is silent on their implementation and the screening of employees. The Act also required the appointment of a compliance officer, but was silent on the required management level of that officer. There is also a complete absence of requirements regarding group entities including the requirement for banks to ensure foreign branches and subsidiaries apply the same or higher standard of AML/CTF controls and procedures.

91. Vanuatu requires reporting entities with branches or majority owned subsidiaries or agents anywhere to establish an adequate AML/CTF group wide procedure manual (s33A AML/CTF Act). The Manual must have regard to the risk that the foreign branch or subsidiary may encounter and the nature, size and complexity of such businesses. It must contain group wide policies, processes and procedures that cover Vanuatu's requirements domestically under section 33(2) outlined above. This includes adequate reporting requirements, CDD, record keeping, ML/TF training, vetting of employees and establishing an independent audit function amongst other requirements.

92. Amendments to the AML/CTF Act in 2017 now require the AML/CTF compliance officer to be a member of the senior management team of the RE. Further, amendments to S33(2)(e) of that Act require REs to vet future officers and employees of the RE to ensure they are fit and proper to engage in ML/TF related duties. Section 33(2)(2A) requires REs to periodically engage an external auditor to provide an independent review of its AML/CTF processes, procedures and systems.

93. Group-wide manuals are now required of to all branches, majority-owned subsidiaries and agents of REs including the vetting of officers and employees to ensure they are fit and proper for the role (section 33A AML/CTF Act (as amended)). Further amendments to the AML/CTF Act in 2017 comprehensively cover the requirements at 18.2 (at section 33A(3)).

94. However, Vanuatu does not require financial groups to ensure their branches and majority owned subsidiaries of the financial group appoint a compliance officer at management level.

95. Vanuatu has implemented most requirements of R.18, with the exception of requiring financial groups to ensure their branches and majority owned subsidiaries of the financial group appoint a compliance officer at management level. Vanuatu is now rated largely compliant with R.18.

#### *Recommendation 19 (Originally rated PC, not re-rated)*

96. Vanuatu was originally rated partially compliant with R.19 on the basis that Vanuatu did not have legal powers or procedures in place to apply countermeasures when called upon to do so by the FATF or when acting independently, and it did not have a formalised process for ensuring FIs are advised of concerns about weaknesses in the AML/CTF systems of foreign jurisdictions.

97. Clause 5 of the AML/CTF Regulation requires reporting entities to put in place risk-based systems and controls having regard to the nature, size and complexity of its business and must consider risk posed by high risk jurisdictions as identified by the FATF. This amendment to the AML/CTF Regulation was supplemented by a Guidance Note to reporting entities issued in February 2016 informing REs of high risk jurisdictions. There is no requirement however to apply enhanced due diligence to business relationships and transactions with these countries.

98. There is no requirement to apply countermeasures proportionate to the risks when called upon by the FAFT or independently of the FATF. Further, pursuant to R18.3 whilst a guidance note was issued in 2016 advising REs of high risk jurisdictions there is no measure in place to ensure financial institutions are advised of concerns about weaknesses in the AML/CTF systems of other countries.

99. Vanuatu has put in place amendments to the Regulation and issued a Guidance Note that goes some way towards compliance with R.19. However, in light of the shortfalls identified above, Vanuatu remains partially compliant with R.19.

### *Recommendation 22 (Originally rated PC, re-rated LC)*

100. Vanuatu was rated partially compliant with R.22 on the basis that whilst the scope of DNFBP reporting entities was consistent with the FATF Recommendations, shortcomings remained with respect to CDD requirements (R.10) and reliance on 3rd parties (R.17) for DNFBPs.

101. The deficiencies identified in the MER at 22.1 have been addressed via legislative amendments to the AML/CTF Act (sub clause 3 3(a) (ii), 3 (b) (ii) and 3(c) (ii) of the AML/CTF Regulation (Amendment) Order 153 of 2015.

102. Section 45 of the AML/CTF Act allow the Director to require REs to give or produce documents or records if the Director considers that any documents are relevant to the operation of the Act. Further section 45B allows the Director to require REs to give information about the beneficial ownership of its customers. The Director may specify the timeframe in which the documents are provided and there are penalties for failing to provide the information.

103. Under clause 5 of the AML/CTF Regulation, each reporting entity including DNFBPs must have in place appropriate risk-based CDD systems and controls having regard to the type of ML and TF risk that it might face, including PEPs and must include enhanced CDD under clause 6. This requires the RE to have appropriate risk-based systems and controls to identify, verify and understand whether the customer or beneficial owner is a political exposed person, immediate family member or close associate of a PEP.

104. Although Clause 5 (3) and (4) of AML/CTF Regulation (Amendment) Order No. 2 of 2015 address compliance with PEP requirements as set out in Recommendation 12, there are no requirements for REs to obtain senior management approval before establishing (or continuing for existing customers) business relationships with family members and close associates of PEPs; nor to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as family members and close associates of PEPs.

105. Subsection 18(1) (b), (c), (d) and subsection 18 (2A) of the AML&CTF (Amendment) Act No. 16 of 2017 applies to all reporting entities of which DNFBP's are captured according to the AML/CTF Act. These amendments are in line with the requirements under R.17.

106. There are no requirements for reporting institutions to obtain senior management approval before establishing (or continuing for existing customers) business relationships with family members or close associates of PEPs; nor take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as family members and close associates of PEPs. Vanuatu is rated largely compliant with Recommendation 22.

### *Recommendation 23 (Originally rated PC, re-rated LC)*

107. Vanuatu was rated partially compliant with R.23 due to significant deficiencies with respect to several aspects of internal controls, audit and foreign branches and subsidiaries and for higher risk countries for DNFBPs.

108. Vanuatu has now brought DNFBPs who are REs (which includes all those specified at R.23.1) into compliance with R.18 as outlined above. There is only one shortfall identified in R.18 which relates to requirements on foreign branches and subsidiaries. However, as noted above in relation to R.19, Vanuatu does not comply with R.23.3 due to the deficiencies with respect to controls applied to high risk countries.



109. Vanuatu was found to be largely compliant with R.21 in the MER noting that compliance would be fulfilled by clarifying the requirement that tip off protections apply regardless of whether the person knew precisely what the underlying criminal activity was.

110. Overall, there are still some minor deficiencies in Vanuatu's implementation of R.23 (some gaps in implementing high risk country requirements and one requirement regarding tip off protections). Vanuatu is rated largely compliant with R.23.

*Recommendation 24 (Originally rated NC, re-rated LC)*

111. Vanuatu was rated non-compliant with R.24 in the 2015 MER based on a number of shortcomings. Significantly, secrecy provisions in the ICA meant that no relevant information could be accessed without a court order being obtained. As a result Vanuatu could not respond to international requests for beneficial ownership information. There were no provisions enabling authorities to ensure compliance and to impose proportionate and dissuasive sanctions, no requirements to disclose identity of nominee shareholders and bearer shares and share warrants were permitted with minimal controls. Vanuatu had not assessed the risk associated with all types of legal persons created in the country. Vanuatu has since enacted amendments to the International Companies Act (No 14 of 2017) (ICA) and placed increased requirements on TCSPs under amendments to the Company and Trust Service Providers Act (CTSP Act). Recommendation 24 subsequently formed part of Vanuatu's ICRG Action Plan and the AP Joint Group has now determined that the relevant item has been substantially addressed and implementation has begun.

112. Section 58 of the ICA requires ICs to keep a Register of Members which contains basic ownership details. The IC is required to produce legible evidence of its contents within a reasonable time when required by the commission. The previous provisions contained at s125 of the ICA requiring secrecy of such information have now been repealed following amendments to the ICA in 2016 and 2017. The amended section 125A ICA now notes company records are confidential unless otherwise required to be made available to the public under another provision of this Act. Specific examples are provided at section s125A(6) where the Commission or a person authorised by it may disclose company records if requested by relevant competent authorities, supervisors, LEAs, a liquidator and other specific examples set out in S125A. Information regarding how to register an international company and the requirements to do so are publicly available on the VFSC website along with relevant up to date legislation. Information regarding registering a domestic company is also available on the VFSC website.

113. Vanuatu undertook a risk assessment of the offshore sector in 2017 which encompassed threats and vulnerabilities posed by international companies. The report notes that the number of international companies has been falling year on year. The risk assessment specifically deals with international companies, trusts, international banks, securities dealers, insurance companies and TCSPs risk of ML. The assessment methodology employed input from a broad range of stakeholders, both public and private sector and written responses to tailored questionnaires. Open source information and case studies are considered. Overall there was little evidence to find that money laundering occurs within the offshore sector on a substantial scale. Whilst the 2017 risk assessment encompassed the offshore sector, it did not comprehensively assess ML/TF risks associated with all types of legal persons created in Vanuatu.

114. The MER found that Vanuatu complied with R24.3 in respect of domestic companies however not with respect to ICs. All ICs created in Vanuatu are registered with the VFSC in a register maintained by it and known as the Register of International Companies. Certificates of incorporation are conclusive evidence that the requirements of the Act in respect of incorporation have been complied with. The IC must file its constitution (which includes regulations for the company) with the VFSC which includes the company name, address of the registered office, objects and purposes of the

company as well as the first directors of the company (section 3(3) and 5). Amended section 2A requires that the Commission make available to the public, in any way they think fit, the constitution of a company registered in the Register. Companies are required to keep a register of its directors under section 63. Further requirements are placed on registered agents of the company to obtain information required under R.24.3 (section 35 of the ICA as amended).

115. R.24.4 was found to be compliant in the MER however Vanuatu has enacted further mechanisms to capture relevant information. The ICA requires all ICs to have a registered office and agent in Vanuatu. Registered agents must now be licensed under amendments to the CTSP Act. Amendments to the ICA require the agent to obtain the company's constitution, proof of incorporation, details of beneficial owners, register of members, details of the nominators of nominee shareholders and directors (s35A as amended).

116. The ICA requires an IC to keep one or more registers containing names and addresses of persons who hold registered shares, the number of each class and series of registered shares, date of entry and exit on the Register of Members. ICs must now also keep up to date records of the beneficial owners of the company and the nominators of nominee shareholders and nominee directors. Information regarding details of beneficial owners and nominators of nominee shareholders and directors are required to be kept up to date (amended s58A). The ICA notes that a company that wilfully contravenes section 58 is liable on conviction to a daily default fine of VT25. Directors who knowingly permit contravention of section 58 are also liable on conviction to a daily default fine of VT25.

117. ICs are required to keep a register of Directors (Section 63) and notify the commission of changes to the registered office (section 34). Under the amended section 35 of the ICA, the registered agent must obtain the constitution, certificate of incorporation, details of beneficial owners and register of members and any nominee shareholders or directors. Agents must keep this information up to date and retained for at least 6 years after they cease to be the registered agent for the company. Requirements are placed on the registered agent of an IC to ensure any changes in the register of members of the company or the details of beneficial owners is updated in the registered agent's records within 14 days after the change occurs in line with R24.5. Overall the information required to be captured by R24.5 is required to be available and up to date from either the registered agent or the company itself.

118. The previous provision at section 125 which required an order of the Court to provide beneficial ownership information has now been repealed via the International Companies (Amendment) Act (2016). Amendments to the ICA also further define the notion of beneficial ownership as the natural person who is the ultimate owner or ultimate controller of a company. It is further defined to now include circumstances where ownership or control is exercised through a chain of ownership or by means of indirect control that may not have legal or equitable force or be based on legal or equitable rights.

119. Whilst the amendments outlined above apply to international companies only, there are further measures introduced by Vanuatu that address the gap with respect to other legal persons. The revised AML/CFT Act imposes obligations on all REs to obtain beneficial ownership information as part of the CDD process. Record keeping requirements are provided for in section 19 of the AML/CFT Act requiring CDD information to be kept for up to 6 years after closure or termination of the account and there are ongoing due diligence requirements at section 17.

120. Vanuatu requires that a registered agent be present in the jurisdiction for all ICs, who must be licensed under the Company and Trust Services Provider Act. Specifically under section 35 ICA, the registered agent must provide information regarding beneficial ownership and details of the members of the company to the Commission when required. Penalties are present for non-compliance including

finances of up to VT15 million or a maximum 5 year imprisonment term for natural persons or both; or if the agent is a body corporate, a fine not exceeding VT 75 million. The MER noted that in relation to domestic companies, the requirement was only on the company itself and not a designated natural person. This has not changed.

121. The MER noted that the Companies Act did not formally set a time limit on the retention of relevant documents. Amendments to the ICA now require registered agents of the IC keep records up to date and retained for at least 6 years after the registered agent ceases to be the agent of the company (s35(8)). As every IC in Vanuatu is required to have a local registered agent, the requirements placed on the registered agents satisfy R24.9 for ICs however the gap in relation to domestic companies remains.

122. The MER noted that basic and beneficial ownership information was not able to be obtained by relevant law enforcement. The amended provisions to the ICA now confirm that company records are confidential however must be provided in certain stated situations (at section 125A). Specifically, disclosures are able to be made to the FIU, a supervisor under the AML/CTF Act, a LEA for the purpose of investigating or prosecuting a serious offence, or when undertaking action under the Proceeds of Crime Act, a domestic regulatory authority or the Sanctions Secretariat when carrying out their functions under the United Nations Financial Sanctions Act. This requirement is mirrored via amendments to the Domestic Companies Act section 180A. The amended section 45B of the AML/CTF Act allows the FIU to require any RE to provide it with information specified in the notice, being information about the beneficial owner or a customer of the RE. Time frames are stipulated and if a RE fails to give the Director the correct information they are liable to a fine not exceeding VT15 million or imprisonment not exceeding 5 years, or a fine not exceeding VT 75 million if they are a body corporate.

123. Vanuatu has now abolished bearer shares and share warrants. Section 16A of the ICA and section 25A of the Companies Act prohibit the issuance of bearer shares and share warrants.

124. According to the relevant provisions of the International Companies (Amendment) Act No.14 of 2017 providing for transitional provisions for bearer shares and bearer share warrants, within 3 months after the commencement of the Act (June of 2017), any shares and share warrants issued to bearer by the company must be exchanged for a registered share and share warrant by the company. If this measure has not been complied with, the Commission must strike the name of the company off the Register. Vanuatu confirms that following the 3 month period, the Commission is in the process of considering striking off the non-complying companies from the Register. This is mirrored in the Companies Act at amended section 25. Vanuatu approached every IC agent to determine that no share warrants or bearer shares were in place and confirmed that there were in fact none in place at the time of the amendments.

125. Amendments to the ICA now require the registered agent of the IC to obtain details of the nominators of nominee shareholders and nominee directors. The agent is required to inform the commission in writing of a change to any nominators within 14 days of the change occurring. There is however no requirement to state the nominator in the relevant register. This requirement is not present for domestic companies.

126. The ICA now imposes relevant penalties for a failure to comply with the requirements of R.24. Registered agents in particular who fail to comply with the requirements are subject to a fine not exceeding VT25 million or imprisonment not exceeding 15 years or both; and for body corporates a fine not exceeding VT125 million. Section 127 has been amended to increase the penalty for any false statement made pursuant to the provisions of this act to a fine not exceeding VT15 million or to a term of imprisonment not exceeding 5 years. Section 128B allows the Commission to provide a notice to companies seeking information, failure to comply with the notice renders a company liable to a fine

not exceeding 75 million vatu. The Companies Act has some increased penalties for failure to keep records (up to 25 million VT).

127. Amendments to the ICA now provide for the exchange of information with foreign governments under certain conditions, none of which are restrictive (at section 125C). Similar amendments are contained in the Companies Act. Domestic authorities now have the ability to obtain BO information through the amendments outlined above and are able to share such information with foreign authorities when requested. There are no impediments to the use of investigative powers to obtain BO on behalf of a foreign government (see section 44B, 45B of the AML/CFT Act).

128. As the legislative framework relating to the provision of BO information is relatively new, there is no established practice for monitoring the quality of assistance received.

129. Following the mutual evaluation and the identified shortcomings on international companies, Vanuatu has implemented significant reforms to its requirements to collect basic and beneficial ownership and to share this information where relevant. Vanuatu has abolished bearer shares and share warrants and imposed disclosure requirements on nominee shareholders or directors. Vanuatu has undertaken an updated risk assessment which encompasses risk of the offshore sector (including international companies). As the assessment only considers the offshore sector, the risk of domestic legal persons being abused for ML/TF remains un-assessed, however, the MER notes that ICs form the majority of legal persons in Vanuatu, the focus on ICs is reasonable in the circumstances. There are further minor shortcomings as outlined in the analysis above, however the MER indicates that the predominant risks in relation to R.24 relate to international companies and thus significant weight has been applied to ICs in reaching the conclusion that Vanuatu is rated largely compliant with Recommendation 24.

#### *Recommendation 25 (Originally rated NC, re-rated LC)*

130. Vanuatu was rated NC with R.25 on the basis that it placed no obligation on trustees to hold and maintain relevant information about any of the constituent members of a trust. In the absence of such arrangements, the transparency of legal arrangements was not guaranteed. Trustees were not required to disclose their status to FIs or DNFPBs. Vanuatu has since placed obligations on company and trust service providers (CTSPs) to collect all relevant information. Vanuatu is yet to incorporate its own domestic trust law; however there are some trusts (for example family trusts) that have evolved in Vanuatu for which CTSPs are not required. In this case authorities assess them as being low risk trusts. For these trusts without a CTSP, stamp duty is payable and consequently the VFSC captures information on such trusts in this process.

131. Recommendation 25 formed part of Vanuatu's ICRG Action Plan and the Joint Group has now confirmed that implementation of this action plan item has begun and the technical components are substantially addressed.

132. In Vanuatu, CTSP's must both obtain a licence under the CTSP Act and also be registered with the VFIU as a reporting entity under the AML/CTF Act. Therefore, obligations under the AML Act and the revised obligations under the CTSP Act apply to legal arrangements in Vanuatu.

133. The amended CTSP Act now requires licensed company and trust service providers to obtain trust information in line with the requirements contained in R25.1. A licensee must retain this information for at least 6 years after the licensee ceases to provide trust services in relation to the trust. The information must be kept up to date under amendments to section 25B(3).

134. The amended section 25C requires the disclosure of status as a trustee in line with the requirements of 25.3 however this only applies to TCSPs acting as a trustee and not to other trustees.

135. The TCSP Act specifies who must be licensed as a TCSP, and requires any person providing trust services by way of business to be licensed. Trust services include services in relation to the creation or modification of an express trust, services of a professional trustee, protector or administrator of a trust or settlement, managing and administering a trust or settlement, and any other related services incidental to the above services, or providing any of these services for a private trust company. Section 25D provides penalties for non-compliance with the requirements above, and include a fine not exceeding VT25 million or imprisonment not exceeding 15 years or both; if the licensee is a body corporate, a fine not exceeding VT125 million.

136. There is a requirement for a trustee to provide the commission with documents relating to a trust as required by R.25.4 in section 25E however not to other competent authorities/FIs or DNFBPs. This includes information relating to beneficial ownership. Amendments to the CTSP Act allow the Commission to disclose information acquired under the Act to other relevant domestic authorities in Vanuatu in certain circumstances (which are not restrictive). However the Commission may not share this information with other FIs and DNFBPs in Vanuatu.

137. Amendments to the TCSP Act now require collection of beneficial ownership information by TCSPs with corresponding provisions requiring the TCSP to provide the Commission with all information or documents relating to a trust. As stated above, the Commission may share this information with other domestic authorities.

138. Authorities in Vanuatu are now able to exchange information with foreign counterparts in relation to all information they hold in relation to the trust which should in future facilitate greater exchanges of information (section 44 of the CTSP Act). Amendments to the CTSP Act allow the Commission to request information for the purpose of discharging a duty, performing a function or exercising a power under this Act, from the FIU, a supervisor, the Sanctions Secretariat, a law enforcement agency, a domestic regulatory authority or a foreign government agency that carries out similar functions. Amended section 44 allows information about a licensee and their compliance with the Act to be disclosed to foreign government agencies under certain conditions that are not restrictive. Similar provisions are placed in all sectoral laws and the AML/CFT Act. Under these amendments, Vanuatu would be able to obtain and share beneficial ownership information with foreign counterparts. This is also supplemented by section 45B of the AML/CFT Act as amended which allows the Director of the FIU to compel reporting entities to provide information about the beneficial owners of customers. Section 44B of the AML/CFT Act allows the FIU to search records including all LEA records, public records, administrative records and provide information obtained from the search to the foreign government agency subject to restrictions under section 40.

139. Penalties for failing to meet trustee's obligations are referred to in 25.1 and 2 above. Penalties are imposed on conviction and include liability for both natural and legal persons.

140. Vanuatu has now increased compliance with R.25. There are minor shortcomings (the Commission is not able to share information on trusts with the private sector). Whilst there may be a small subset of trusts for which the trustee does not require a CTSP licence, greater weight has been given to those trustees who fall under the definition of providing trust services in the CTSP Act. Vanuatu is now largely compliant with R.25.

#### *Recommendation 27 (Originally rated PC, re-rated C)*

141. The 2015 MER found that between the RBV and the VFIU, some sanctioning powers were available to supervise all sectors, however the VFIU's sanctioning powers were not proportionate and the RBV's administrative sanctioning powers could only be applied in limited circumstances. As the majority of sectors fall under the supervision of the VFIU, their inability to remove an entity from the



AML/CTF register for failings in compliance was viewed as a serious shortcoming. Vanuatu was rated partially compliant with R.27.

142. The core shortfall in criterion 27.1 related to the lack of power for the VFIU to remove entities from the register for failure to comply with their AML/CTF obligations. Amendments to the AML/CTF Act in 2017 now enable the VFIU to remove an entity from the register for failing to comply with a provision of the Act (section 9A(2)(b) and 9B(3) of the AML/CTF (Amendment) Act 2017.

143. The MER noted that the VFIU had no fining or civil powers to impose lesser sanctions when required. Similarly the RBV had powers at the higher end of the scale, such as removing, restricting or suspending a license under s.17 of the FIA, s.11 of the IBA and s.27 of the Insurance Act, but an appropriate range of civil, disciplinary and financial sanctions was lacking.

144. In relation to the issue of Vanuatu's inability to revoke licenses for non-compliance with the AML/CTF Act, this has now been addressed as part of the amendments outlined above to and the various sectoral regulatory laws<sup>2</sup>. Whilst VFIU is the sole supervisor of reporting entities under the AML/CTF Act, it can delegate its power to regulatory authorities and has coordinated some AML/CTF supervision with the RBV in relation to FIs regulated by them. Amended provisions to the various regulatory laws prohibit suspension or revocation of a licence without an enforcement measure under the AML/CTF Act being applied in the first instance. This could include a formal warning. This ensures cooperation between the VFIU and sectoral regulators in relation to the imposition of sanctions. In practice, Vanuatu advise that regulatory authorities would discuss and coordinate the pursuit of enforcement measures, guided by the 2018 SWG MOU.

145. The VFSC Amendment Bill more clearly regulated the administrative powers of the Commissioner.

146. Amendments to the AML/CTF Act introduce a range of enforcement measures as alternatives to pursuing criminal prosecution for non-compliance with the Act. Most preventive measures and record keeping obligations (both AML/CTF law and various sectoral laws) are enforceable by a criminal offence. However the introduction of section 50A allows for a wider range of sanctions available to the FIU to enable them to take a graduated, tailored approach to enforcement. These include issuing a formal warning, a penalty notice, enforceable undertakings, restraining injunctions, directions to a RE to remove a director, manager, secretary or other officer.

147. The amendments across various laws include the same mechanism to allow enforcement of relevant obligations to an administrative standard of proof (reasonable basis to believe') and to apply a monetary penalty at a greatly reduced rate. The level of fines has been increased however Vanuatu advise that it is a domestic norm that administrative sanctions do not exceed the lowest level criminal penalties. Section 50I provides the power to remove a director, manager, secretary or other officer of a reporting entity.

148. Recommendation 27 is rated compliant.

### *Recommendation 31 (Originally rated PC, re-rated C)*

149. Vanuatu was rated partially compliant for recommendation 31 in the MER. The factors underlying the rating included the lack of effective implementation by the authorities to compel the

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<sup>2</sup>Amendments have been made to the Financial Institution Act, International Banking Act, Dealers in Securities Act, Casino Control Act, International Companies Act, Charitable Association Act, Companies Act

production of records, conduct searches and make seizures in money laundering and terrorist financing investigations. Vanuatu did not have the ability to conduct investigations utilizing a wide range of investigative techniques. The provision that supports controlled deliveries to aid investigations applied only to offences set out in the CTTOCA and did not apply to predicate offences for money laundering or money laundering offences.

150. The Police Powers Act 37 of 2017 at Part 2 allows the Commissioner to authorize undercover operations, surveillance warrants (intercepts, a computer warrant or renewal of a computer warrant), and controlled delivery of property for specified offences which is defined to include any offence against the law of Vanuatu for which the maximum penalty is minimum 12 months imprisonment. The use of controlled deliveries is now also available for any specified offence (section 19). Complementary provisions are found in the amended Customs Act to enable Customs officers to lawfully participate in controlled delivery.

151. Section 5(1) (d) of the AML/CTF Act requires the Director to disclose information derived from any report or information provided to the Director to an assisting entity if the Director has reasonable grounds to suspect that the report or information is relevant to: (i) the detection, investigation or prosecution of a person for a ML/TF offence or another serious offence; (ii) the commission of ML offence, a TF offence or another serious offence; (iii) an act preparatory to a TF offence; or (iv) the enforcement of the AML/CTF Act, the proceeds of crime act or any other Act prescribed. The VPF's Transnational Crimes Unit and the VFIU have signed an MOU, enabling them to share information relating to predicate offences and ML/TF.

152. Recommendation 31 is rated compliant.

### *Recommendation 33 (Originally rated NC, re-rated LC)*

153. Vanuatu was rated non-compliant with R.33 in the MER, based on the facts that whilst some statistics were available, Vanuatu did not maintain comprehensive and relevant statistics in accordance with this criterion.

154. Vanuatu now maintains that with the passage of new legislation, they are largely compliant with R.33.

155. Vanuatu has collected statistics of STRs filed from 2013 to 2018 and has provided a breakdown of these by sector. Vanuatu provided statistics of offences relating to STRs by year and the number of FIU reports submitted to Police for further investigation.

156. The Vanuatu Police Force has collected statistics of each investigation for money laundering and related offences, and is able to breakdown the number of reports submitted by the FIU, the number of cases dealt with by the Police and the number of convictions by the Public Prosecutor.

157. Vanuatu provided details of cases in which it has taken freezing and seizing action. As the number of cases is very low in light of the risk and context of Vanuatu, the case studies are accepted as statistics. Vanuatu has also provided detailed information on exchanges with foreign counterparts, again recently providing case studies on particular exchanges.

158. Whilst Vanuatu may be in the process of reforming their ability to collect statistics, they have been able to articulate all relevant case studies relating to freezing and seizing of assets and international cooperation and have provided clear statistics pertaining to STRs and ML investigations. On this basis, Vanuatu is now at a level of largely compliant for Recommendation 33.

### *Recommendation 34 (Originally rated PC, re-rated C)*

159. Vanuatu was rated partially compliant with R.34, noting that whilst the RBV had issued guidance to the banking sector, no written guidance had been produced by the VFIU and very little training had been held to assist reporting entities with their AML/CTF obligations. No reporting entities had received feedback from the FIU.

160. Whilst R.34 did not form part of the ICRG Action Plan, Vanuatu has implemented a significant amount of guidance and feedback to various domestic authorities and the private sector per R.34 as a result of the various legislative reforms put in place.

161. The VFSC has issued guidance notes to industry on application of the fit and proper requirements. The guidance notes detail criteria for fit and proper including competence, capability, financial soundness and fit and integrity. Contact details are provided for further information. Further guidance has been issued for persons wishing to make an application for a financial dealers licence along with guidance notes for addressing complaints against a financial dealers licence. The VFSC has also conducted a number of industry outreach sessions including to the Bankers Association, Finance Centre Association, Chamber of Commerce and other key financial institutions.

162. Quick reference guides have been drafted to explain the market entry controls and outlining how to obtain information on ultimate beneficial ownership, identifying PEPs and other different entity types.

163. LEAs have conducted workshops on ML and criminal asset confiscation, specifically a 3 day workshop was held in April 2018 outlining the various reforms and providing training from domestic and foreign experts. Importantly, workshops have been held to explain the new law on foreign tax evasion and involved all relevant LEAs and other competent authorities.

164. The VFIU conducted targeted outreach and guidance to industry on topics including targeted financial sanctions, and market entry requirements. Letters have been sent to AML Compliance officers regarding the new beneficial owner requirements, new UN Financial Sanctions requirements, CDD requirements, electronic transfer requirements, the new enforcement measures available to the FIU, STR reporting and the FIU registration process.

165. The FIU also now provides guidance to reporting entities via email and on its website with regular follow up, specifically concentrating on the high risk sectors as identified in the NRA. Written feedback has been provided to entities that have submitted SAR/STRs including the progression status of each case disseminated to LEAs.

166. In line with the various reforms to Vanuatu's AML/CTF system and as a result of implementation of its ICRG Action Plan, Vanuatu has now conducted a significant amount of outreach and guidance to industry. Vanuatu is now compliant with R.34.

### *Recommendation 35 (Originally rated PC, re-rated C)*

167. Recommendation 35 was rated partially compliant on the basis that broad criminal sanctions powers were available under the AML/CTF Act and Regulations but lacked proportionality. No administrative fine or penalty framework is available to the VFIU for less serious breaches. Although the RBV could apply administrative sanctions to banks and insurance entities, they can only be used for AML/CTF purposes in limited circumstances.

168. Analysis of R.6 and 7 note that amendments to the AML/CTF Act now impose significant fines for breaches of targeted financial sanctions including higher financial and imprisonment

sentences. In light of this, R.6 and 7 have been judged to be compliant. Penalties in the new United Nations Financial Sanctions Act also provide for sanctions for dealing with prohibited property, making property or financial services available, in the case of a natural person a fine not exceeding VT50 million (USD474,000) or imprisonment not exceeding 25 years, for legal persons, a fine not exceeding 250 million or an amount equivalent to the value of the property, whichever is greater.

169. Amendments to the AML/CTF Act in 2017, in particular section 50A now provide for a range of enforcement measures available to the FIU in the event a reporting entity fails to comply with their obligations under the Act. The enforcement measures vary from formal warnings, penalty notices, enforceable undertakings, injunctions, direction that a reporting entity remove a director, manager, secretary or other officer ((amended section 50(B-I)). As stated above, whilst VFIU is the sole supervisor of reporting entities under the AML/CTF Act, it may delegate its power to regulatory authorities and has already coordinated some supervision with the RBV. When that power is delegated to another regulatory authority, the delegated agency has power to do all things necessary or convenient to be done for or in connection with performance of the delegated supervision function including when monitoring or enforcing compliance with the AML/CTF Act (section 8B2).

170. Amended provisions to the various regulatory laws now prohibit suspension or revocation of licenses without an enforcement measure being applied first under the AML/CTF Act. This ensures that the approach is co-ordinated (between VFIU and regulatory authorities) and that all available enforcement powers are utilised. In particular, penalties available to the RBV under amendments to the Financial Institutions Act are now increased and varied and include the ability to cancel or suspend licenses.

171. Amendments to the relevant sectoral laws also impose relevant sanctions for breach of AML/CTF requirements. Fines have been largely increased for both individuals and corporations across all legislative amendments. Licences may be able to be revoked for contravention of the AML/CTF Act, in the absence of acceptable fit and proper requirements or if the source of funds to pay the capital is not acceptable. Enforcement measures are now available for breaches of the requirement for agents to collect ultimate beneficial ownership information for international companies and file details with the Commission (fine not exceeding USD100,000). In respect of casino licenses, they may be suspended or cancelled if the licence contravenes the AML/CTF Act or for a breach of fit and proper requirements.

172. Vanuatu has significantly reformed its AML/CTF penalty regime in line with the recommendations made in the MER. The Director now has a wide range of powers to sanction reporting entities, and in line with the significant AML/CTF reforms outlined in this report, relevant sanctions are in place for breaches of new AML/CTF requirements. Sectoral regulators now have greater sanctioning tools available to them pursuant to the amended laws. Vanuatu is now compliant with Recommendation 35.

### *Recommendation 36 (Originally rated PC, re-rated C)*

173. In its 3rd MER, Vanuatu was rated PC with R.36. The main deficiency was that the domestic legislation for ML did not fully address various requirements under international conventions such as (a) the ML offence (given the linkage between conviction for a serious offence and deficiency in definition of 'serious offence'), (b) ancillary offences for ML, (c) effective, proportionate and dissuasive civil and administrative sanction against legal person and for TF, (d) tax offences, illicit arm trafficking, piracy of products, insider trading and market manipulation as predicate offences for ML, and (e) special investigative techniques. The deficiency relating to the ML offence was a major shortcoming which had affected Vanuatu's entire AML regime including its inability to provide MLA where an offence was not a serious offence and as a majority of FATF designated offences did not qualify as serious offence this impacted formal MLA.

174. Amendments to the POCA are outlined above, bringing Vanuatu into compliance with R.3. Administrative sanctions against legal person and for TF are now in place, and certain new special investigative powers are in place.

175. As outlined above, there are various preventive measures and LEA powers that implement the required elements of the Palermo, Merida and Vienna Conventions.

176. The MER noted that Vanuatu had not implemented UNCAC with specific anti-corruption legislation; however provisions exist in the Vanuatu Penal Code and Leadership Code of Vanuatu relating to corruption.

177. Vanuatu has addressed the deficiencies identified in the MER. On that basis, R.36 is re-rated compliant.

*Recommendation 37 (Originally rated PC, re-rated C)*

178. In its 3rd MER, Vanuatu was rated PC with R.37. The main technical deficiencies were the lack of a clear process for the timely prioritisation and execution of MLA requests and a case management system; the requirement for dual criminality limited the provision of assistance; insufficient investigative techniques for competent authorities; and the inability to provide beneficial ownership information on entities to support foreign investigation and prosecution for foreign tax offence.

179. Vanuatu confirms that the Office of Public Prosecutor (OPP) is the competent authority for MLA in Vanuatu. A financial crime unit has been established responsible for actioning MLA requests and has 2 assistant prosecutors allocated. In November 2016, the OPP installed and began to utilise a case management and tracking database. AML and MLA cases are now being registered as separate matters, with different file numbers, and can be tracked with alerts set up to remind officers of key dates / events in the MLA process.

180. The Public Prosecutor is the MLA competent authority in Vanuatu, and investigative techniques are available to be exercised in response to a request for MLA. Provisions were made in MACMA (Amendment) No. 36 of 2017 for the Public Prosecutor to issue directions to an authority to use its endeavours to provide assistance.

181. Vanuatu has now amended the AML/CTF Act to allow the FIU or a supervisor to provide information to foreign counterparts on the basis of certain requirements (which are not unduly restrictive). The amended section 44 also allows the FIU to seek information from other LEAs to respond to the request. In this respect, they now come into compliance with R.37.6.

182. Dual criminality is a discretionary requirement for mutual legal assistance in Vanuatu. However, as stated above, Vanuatu has now criminalised all required predicate offences to ML and is also able to provide assistance on foreign tax evasion, despite not imposing many direct taxes domestically. The addition of section 10(1)(1A) now confirms that in determining whether conduct would have constituted an offence against a law in Vanuatu, it does not matter whether the laws of the foreign country place the conduct constituting the offence in the same category of offence or denominate the offence by the same terminology as Vanuatu.

183. Vanuatu has introduced new powers available to Police including undercover operations, surveillance warrants which allow interception of private communications and access to computers and computer networks. In this respect, Vanuatu has rectified the deficiencies identified in R37.8.

Further, authorities are able to obtain information on accounts held by natural and legal persons as outlined above.

184. In light of the amendments above, Vanuatu is rated compliant with Recommendation 37.

*Recommendation 38 (Originally rated NC, re-rated LC)*

185. In its 3rd MER, Vanuatu was rated NC with R.38. The main technical deficiencies were the deficiency in the definition of ‘serious offence’ which is an essential element of ML offence, and which further inhibited the legal framework to provide MLA for asset recovery. There was a lack of a clear process for a civil confiscation regime; no arrangements for co-ordinating seizure and confiscation actions with other countries, and no mechanism for asset management and disposal or legal framework for asset sharing.

186. With the amendment to the definition of ‘serious offence’ in POCA No. 9 of 2017, the prohibition in rendering MLA for asset recovery is removed. Under the new section 13 of the POCA, an administrative measure for the freezing of tainted property by way of a direction issued by the Commissioner of Police is now in place. However, such direction is only effective for 28 days.

187. Section 40(1)(1B) allows Vanuatu to provide assistance for cooperation on the basis of non-conviction based confiscation providing the following three criteria are met:

- a) proceedings for a serious offence against property referred to in paragraph (1)(a) were commenced; and
- b) any property is tainted property in relation to the offence; and
- c) the accused charged with the offence has absconded or died.

188. The only remaining gap in relation to R38.2 is whether or not Vanuatu may provide assistance for cooperation on the basis of non-conviction based confiscation in circumstances where a perpetrator is unknown as it has not been established that such assistance would be contrary to fundamental principles of ni-Vanuatu law.

189. Part 5C of POCA provides the mechanism for asset management, including the necessary disposal of property subject to a registered foreign restraining order. Section 48A of the MACMA empowers the Public Prosecutor to enter into an agreement or arrangement with a foreign country for the purpose of coordinating seizure and confiscations action. With the establishment of the financial crime centre within the Public Prosecutors Office, specified prosecutors are now responsible for coordinating actions taken on behalf of other countries. Section 82P(d)(iii) of the POCA allows the sharing of property with foreign countries.

190. Vanuatu has addressed most of the deficiencies in the MER. There is one minor gap in relation to Vanuatu’s ability to provide assistance for non-conviction based confiscation in circumstances where an offender is unknown. On this basis, Vanuatu is re-rated largely compliant with Recommendation 38.

*Recommendation 39 (Originally rated PC, re-rated C)*

191. In its 3rd MER, Vanuatu was rated PC with R.39. The main technical deficiency was the absence of a legal basis to request a foreign country hand over evidence available in the foreign country for use in prosecuting a Vanuatu citizen which rendered it impossible for Vanuatu to prosecute a citizen where most of the criminal conduct occurred abroad. There was no case



management system and no clear processes for the timely execution of extradition requests; Vanuatu could not extradite in relation to illicit arms trafficking, piracy of products, insider trading and market manipulation as these offences have not been criminalized.

192. The Public Prosecutor is now the competent authority for extradition requests and a financial crime unit has been established which is dedicated to prosecuting ML/TF/PF, and to action MLA and extradition requests. A case management and tracking database for the OPP was installed in November 2016. AML and MLA cases are now registered as a separate matter which can be tracked and reminded. There is now a designated officer within the OPP who is responsible for all MLA and extradition requests. In this regard, dedicated personnel are stationed to deal with such requests. The Vanuatu Police Force has also installed and is now using a nationwide case management system to assist it to track cases.

193. The Public Prosecutor is empowered to request a foreign country for assistance in locating or identifying persons in a foreign country who is believed to be able to provide evidence or assistance to a criminal matter in Vanuatu, and in arranging a person in a foreign country to give evidence for criminal proceedings commenced in Vanuatu. The difficulties for the domestic prosecutions, where overseas witnesses' evidence is relied upon have been removed. [Sections 30A & 23A of the MACMA].

194. The Extradition Act has been amended so as to be clear that in the absence of agreeing to extradite a Vanuatu national, authorities may convict that national on the grounds of conduct that occurred off shore (section 64A Extradition Act as amended). Section 23A also allows the Public Prosecutor to request someone in a foreign country to give evidence in a proceeding in Vanuatu as well as the ability to seek assistance to locate or identify a person in a foreign country (section 30A).

195. Vanuatu can extradite in relation to the illicit arms trafficking, piracy of products, insider trading and market manipulation after the criminalisation of these conduct as outlined above. Vanuatu's requirement for dual criminality is discretionary but nevertheless satisfied regardless of whether the offence is placed in the same category of offence or denominated by the same terminology.

196. The deficiencies identified in the MER have been addressed by Vanuatu including the criminalisation of missing predicate offences and the ability to request persons overseas for assisting in providing foreign evidence. On that basis, R.39 is re-rated compliant.

#### *Recommendation 40 (Originally rated NC, re-rated LC)*

197. In its 3rd MER, Vanuatu was rated NC with R.40. The main technical deficiencies were the lack of a clear process for cooperation; no clear and secure gateways, mechanism, or channels in place for prioritisation and timely execution of requests, safeguarding of information received, or timely provision of feedback to counterparts; no clear mechanism for LEAs to exchange information for intelligence or investigative purposes; or for joint investigation; no provision on the exchange of information indirectly with non-counterparts.

198. Vanuatu has reformed its ability to engage with the international community on ML/TF and related matters via various legislative amendments. Amendments to the Financial Institutions Act, AML/CTF Act, Company and Trust Service Providers Act, Companies Act, Casino Control Act, Cooperative Society Act, Dealers in Security Act, Foundations Act, Gaming Act, International Banking Act, International Companies Act, Mutual Assistance in Criminal Matters Act, United Nations Financial Sanctions Act, Vanuatu Interactive Gaming Act, Charitable Associations Act, Credit Unions Act and Mutual Funds Act. Similar provisions have been inserted into most of the

legislation listed above, allowing the relevant authority in Vanuatu to disclose documents or information to a foreign government agency under certain circumstances.

199. Vanuatu has now established the financial crime unit responsible for dealing with formal requests for mutual legal assistance.

200. The AML/CTF Act allows the FIU to enter into agreements to share information or cooperate on matters in relation to information that may be shared with foreign government agencies. Provisions in the AML/CTF Act and related acts outlined above ensure that the information is only provided in certain circumstances, and only when the registrar or supervisor is satisfied that the information will be used for a proper regulatory, supervisory or law enforcement purpose. The AML/CTF Act at section 44A confirms information can be disclosed by the FIU without an agreement being in force.

201. The VFIU has in the past provided feedback to its requesting FIU counterparts.

202. There are no provisions in the law that unduly restrict the provision of information. Restrictions are placed around the provision of information but they are reasonable requirements ensuring the information relates to AML/CTF or foreign agencies discharging relevant duties and functions. Provisions protect the confidentiality of the information exchanged to ensure the information is used for the purpose intended. Section 44B of the AML/CTF (Amendment) Act allows for the exchange of such information provided it is in line with the requirements in section 40 which include ensuring the agency to which the information will be provided is subject to adequate restrictions on further disclosure.

203. Vanuatu has a general provision in sectoral legislation which empowers the respective authority to disclose confidential information to a foreign government. Section 40 of the AML/CTF (Amendment) Act of 2017 allows confidential information to be disclosed to a foreign government agency only under certain (reasonable) conditions. The unit or supervisor may only disclose if they are satisfied that the information will be used for a proper regulatory, supervisory or law enforcement purpose and the agency is subject to adequate restrictions on further disclosure. Section 44B of AML & CTF Act empowers the related authority to search certain records and provide such information to foreign government agencies. However, there remains a lack of clear and secure gateways, mechanism or channel for the prioritisation and timely execution of the requests.

204. Section 34B of MACMA provides the assistance in service process in Vanuatu. Section 6A now allows the Public Prosecutor to use investigative powers on request from a foreign country relating to proceedings for serious offences.

205. Supervisors are able to exchange information pursuant to the amended section 39 of the AML/CTF Act which allows for the exchange of information with foreign government agencies in accordance with section 40 (outlined above). As outlined in R.38, LEAs may use powers available to them to conduct inquiries and obtain information on behalf of foreign counterparts.

206. Amendments to sectoral laws allow for the exchange of information by relevant supervisors. The parameters of the information able to be disclosed include those outlined at 40.14. Provisions include enabling the sectoral supervisor to exchange information including relevant supervisory information; relevant financial data about a supervised entity and objective information on individuals holding positions of responsibility in a supervised entity (see for example section 13C Insurance (Amendment) Act).

207. In undertaking this exchange of information, the relevant supervisor may request information or documents from relevant government agencies (see for example section 13(d) of the Insurance (Amendment) Act.

208. The MER noted no information was provided in support of criterion 40.17 – 40.19. Amendments outlined above demonstrate how LEAs are now able to exchange information with foreign counterparts for intelligence and investigative purposes including tracing the proceeds of crime.

209. There are no expressed provisions for joint investigative teams however section 44A of the AML/CTF Act as amended allows the FIU to enter into agreements with foreign government agencies about the sharing of information or cooperating on matters. Section 29 of the United Nations Financial Sanctions Act of 2017 allows the National Security Advisory Committee to transmit, receive or respond to communications from foreign governments or the United Nations Security Council or its committees with regards to powers exercisable under the Act. Further section 28(g) allows the National Security Advisory Committee, Prime Minister, Sanctions Secretariat or a domestic regulatory authority that has been delegated supervisory functions under the act to disclose confidential information to assist international law enforcement cooperation under police-to-police cooperation mechanisms, the MACMA and other relevant mechanisms and laws.

210. Overall, Vanuatu has greatly increased its scope of international cooperation between relevant law enforcement agencies, supervisors and regulators. Whilst there are some gaps in compliance with R.40 as outlined above (limited scope to authorise or facilitate foreign counterparts to conduct inquiries themselves in Vanuatu, still not clear secure gateways to exchange information etc.) overall Vanuatu has an increased scope to exchange a wide range of information with the appropriate parameters to protect confidentiality in place. Vanuatu is rated largely compliant with R.40.

### **3.2. Progress on Recommendations which have changed since adoption of the MER**

211. Since the adoption of Vanuatu's MER, Recommendations 5 and 8 have been amended. As Vanuatu sought re-ratings for both of these recommendations, Vanuatu's progress against these recommendations has been assessed against the revised methodology.

### **3.3. Brief overview of progress on other recommendations rated NC/PC**

212. Vanuatu sought upgrades for all remaining recommendations at NC/PC.

## **IV. CONCLUSION**

213. Overall, Vanuatu has made very significant progress in its AML/CTF framework which is demonstrated in the numerous re-ratings analysed above. Vanuatu should be congratulated for implementing significant reforms to its AML/CFT system and for its progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on 27 Recommendations.

214. As found in the above analysis, Vanuatu has been re-rated to compliant for Recommendations 1, 2, 3, 4, 5, 6, 7, 16, 17, 27, 31, 34, 35, 36, 37 and 39; and to largely compliant for Recommendations 8, 10, 14, 18, 22, 23, 24, 25, 33, 38 & 40.

215. Overall, in light of the progress made by Vanuatu since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>LC</i>	LC	<i>LC</i>
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	LC	<i>C</i>	LC	<i>C</i>	<i>C</i>	<i>LC</i>	PC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	<i>LC</i>	<i>LC</i>	<i>LC</i>	<i>LC</i>	LC	<i>C</i>	LC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
<i>C</i>	LC	<i>LC</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>	<i>LC</i>	<i>C</i>	<i>LC</i>

216. At the 2018 APG Annual Meeting members adopted the Vanuatu FUR and decided that Vanuatu will move to enhanced follow-up as it had 11 low effectiveness ratings in the MER and will continue to report back to the APG on progress to strengthen its implementation of AML/CTF measures.

**August 2018**