

**L REPORT ON OBSERVANCE OF STANDARDS AND CODES—FATF
RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM
(AML/CFT)**

General

1. This report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering and 9 Special Recommendations Combating the Financing of Terrorism provides a summary of the level of observance with the FATF 40+9 Recommendations, and provides key recommendations to strengthen observance. In preparing the detailed assessment, a review was undertaken of the relevant AML/CFT laws and regulations; supervisory and regulatory systems in place to deter money laundering (ML) and the financing of terrorism (FT) among prudentially regulated financial institutions, designated non financial businesses and professions (DNFBPs) and nonprofit organizations (NPOs); and the capacity and implementation of criminal law enforcement systems. The assessment is based on the information available up to 1 June 2006.

Main Findings

2. Fiji has committed substantial resources to bringing its AML/CFT system up to international standards. With the entry into force of the Financial Transactions Reporting Act (FTR Act) in January 2006, Fiji introduced a core element in the development of a strong AML/CFT legislative framework. The FTR Act closely reflects the international standard in creating a range of AML/CFT preventive regulatory requirements and extending them to a wide range of financial institutions and non-financial businesses and professions. The Act is recent and implementation is still at an early stage. Fiji has had a functioning FIU since 2003. With some operational challenges, the FIU has a track record of receipt, analysis and dissemination of STRs.

3. The criminalization of money laundering is in line with international standards. Fiji also enjoys a progressive and comprehensive legislative framework for preserving and recovering the proceeds of crime. The law criminalizes a range of terrorist financing (TF) acts though it falls short of international requirements in some technical respects. While no TF acts have been detected, enforcing the TF provisions is operationally contingent on the passage of a comprehensive anti-terrorism law, which is still at an early drafting stage. The legislative framework for international cooperation is exemplary. This reflects a general commitment to international cooperation across competent agencies.

4. Implementation and resources are a serious constraint for the AML/CFT regime. This is further aggravated by the ambitious approach that Fiji adopts towards fighting ML and TF. Achieving effective enforcement of the penal provisions and effective functioning of the FIU will require capacity building, risk-based implementation and leveraging of resources. The supervisory framework is unclear and as structured under the FTR Act cannot be effective.

General Situation of Money Laundering and Terrorist Financing

5. Fiji enjoys a relatively low level of crime with reported crime decreasing in recent years. Nevertheless, Fiji's geographical location makes it a potential staging post for

illicit trafficking to Australia and New Zealand. This has been demonstrated by some recent significant drug related cases and a noted increase in the number of human smuggling cases. These cases have shown that cross-border crime gangs are operating within Fiji. The country suffers from low-level systemic corruption in certain sectors. Indicators suggest that there is a low risk of terrorist activity within Fiji. To date, there have been no known instances of terrorist financing activity. Authorities report that the principal methods used to launder funds include the use of legal entities, and the purchase of real estate and high-value goods especially cars.

Overview of the Financial Sector and DNFBNs

6. The financial sector is relatively small. The total size of assets of the prudentially regulated sector is approximately FJ\$8 billion, FJ\$3 billion of which is in the banking sector and FJ\$3 billion in Fiji National Provident Fund (FNPF). The range of institutions operating in Fiji include banks, credit institutions, life insurance, general insurance, securities brokers, securities dealers, investment advisors, unit investment trusts, foreign exchange dealers, fund transfer dealers, credit unions, cooperatives, money lenders and a superannuation fund (the FNPF). Four of the five banks operating in Fiji are branches of foreign banks. The one locally incorporated bank is 100% foreign-owned. Casinos are prohibited. Trust and company services are provided only by lawyers and accountants. The notary function is carried out by lawyers licensed as notaries by the Ministry of Justice.

Legal Systems and Related Institutional Measures

7. Fiji criminalizes money laundering under the *Proceeds of Crime Act* (POC Act, 1998) in a manner substantially consistent with the Recommendations. The predicate offences include all serious offences. The penal laws include offences in all but one of the designated categories. The criminalization provisions, however, are often old and are often characterized by lenient sanctions. This may have implications for international cooperation. A program to reform the entire penal code is currently underway, which will address these difficulties. One conviction for ML has been secured to date. Approximately 50 investigations emanating from suspicion of ML are currently underway. There is doubt regarding the effectiveness of enforcement. It should however be considered in the context of low crime rates and relatively low value of proceeds.

8. Section 70A of POC Act came into force on 1 January 2006 criminalizing the financing of terrorism (FT) as an independent offence. The current provision does not criminalize “providing or collecting funds” for terrorist organizations or individual terrorists and in that regard falls short of the international standard. Enforcement of the TF offences is contingent on the passing of a comprehensive anti-terrorism law, which is still at an early stage of preparation. This concern is only partially mitigated by the lack of evidence that terrorist financing activities are taking place in or through Fiji.

9. The legal framework for asset recovery is comprehensive providing for both criminal and civil forfeiture. It gives the competent authorities extensive powers to identify, trace, preserve and recover assets that constitute the proceeds of crime whether direct or indirect. Successful asset recovery remains limited. This is largely due to scarce

technical skills and material resources. Building the capacity of the competent authorities in using the powers under the Act is essential.

10. Fiji has not yet taken steps to implement the freezing mechanisms under the Security Council Resolutions. With some limitations, the existing legal framework contains powers that may be used to implement a designation and restraining mechanism for terrorist assets. It is not clear whether the freezing mechanism available under the law provides, if implemented, will provide effective means for de-listing, unfreezing, challenging and accessing funds for necessary expenses. The authorities indicate that these measures are on hold pending the enactment of the comprehensive anti-terrorism law referred to above. Implementation is necessary a matter of urgency.

11. Fiji has had a functioning FIU since July 2003. The FTR Act recently replaced the interim FIU by creating a permanent one. The FIU is, therefore, currently in transition. The FTR Act gives the FIU, numerous functions including supervision of all covered sectors, receipt of cash transaction reports and electronic fund transfer reports, and issuing guidelines for all reporting institutions.

12. The FIU received an average of 311 STRs since 2003, with a peak to 432 STRs in 2004. The FIU has limited capacity to handle this number of reports, which is reflected in a substantial backlog of reports pending finalization. There are plans to expand the unit from 3 staff to 5 in 2006 and to 14 in 2008. Even with the full expected capacity of 14 staff the FIU will not have sufficient resources to perform all the new functions assigned to it under the Act. This is a key issue of concern with implications for the overall effectiveness of the AML/CFT supervisory framework. Priority should be given to ensuring the effective performance of the core functions; i.e., receipt, analysis and dissemination of STRs. Since 2003, the FIU has analyzed and disseminated an average of 68 STRs per year to a wide range of authorities. One of these STRs has resulted in a conviction for ML. The practices of maintaining statistics, conducting strategic analysis, and reviewing the operations of the FIU are not yet up to international standards and could be significantly improved.

13. Three agencies are responsible for the investigation and prosecution of ML and TF cases within Fiji: the Office of the Director of Public Prosecutions (DPP), the Fiji Police Force (FPF), and the Fiji Islands Revenue and Customs Authority (FIRCA). The legal framework gives the authorities extensive powers to search, seize and compel production of documents. Experience in conducting ML and TF investigations and exercising the powers provided under relevant laws is limited. Technical skills and material resource constraints are evident in all agencies, though this is most acute within the FPF. The larger range of reports required by the FTR Act will lead to greater dissemination of reports and will make the resource needs more pressing. Unless these needs are addressed, the effectiveness of the AML/CFT penal system in Fiji will remain limited.

14. There are currently no effective measures against ML and TF risk in the cross-border physical transportation of cash and other negotiable instruments. The FTR Act imposes measures consistent with the Recommendations. The relevant section of the Act has not yet entered into force. This contingent on completing the necessary preparation.

Preventive Measures – Financial Institutions

15. Fiji's AML/CFT preventive measures are at a transitional stage. Banks are currently implementing some customer identification and verification, record keeping, and suspicious transaction reporting requirements under a regulatory instrument preceding the FTR Act. Overall, FIs do not keep anonymous accounts or accounts in fictitious names. Also, confidentiality requirements and practices do not impose undue restrictions on the implementation of the AML/CFT system. In addition, the FTR Act's CDD, record keeping, wire transfers, internal controls, transaction monitoring, and suspicious transactions reporting requirements are substantially in line with international standards.

16. The FTR Act extends the scope of AML/CFT measures to all the financial activities required to be covered under the international standards without differentiation or exemption on basis of risk. For example, the Act applies its full range of measures to money lenders, which offer very low value loans to poor debtors. The Act also extends to financial institutions that would not be covered under international standards, such as general insurers that do not offer investment related products. There was no evidence of risk assessment in determining the scope of AML/CFT measures. The power of the competent Minister to exempt institutions and transactions is very limited.

17. Only banks are currently implementing AML/CFT measures and that is done in accordance with out-of-date regulatory requirements. These old requirements fall short of international standards in many ways. Most importantly, there is no on-going due diligence or transaction monitoring obligations. There is also no obligation to include originator information with wire transfers. The obligation to verify the identity of an occasional customer prior to executing a transaction is vague. Also, enhanced due diligence requirements with regard to PEPs, cross-border correspondent banks or unusual transactions were only introduced by the FTR Act and are not yet implemented. Ensuring effective implementation of preventive measures is a priority and it should be done on risk-basis. The authorities should consider, on basis of sound risk analysis, exempting, or simplifying the obligations of, financial institutions that pose low ML/TF risk.

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

19. For obligations that are regulatory in nature, the FTR Act relies primarily on a penal scheme of sanctions to enforce FIs' compliance with the AML/CFT requirements. In addition, the Act gives the Attorney General the power to seek a court order imposing a financial penalty on any FI that fails to comply with a directive to take remedial action issued by the FIU. Consistent with the analysis above, discussions with the relevant authorities revealed that there is no clarity on whether the supervisory authorities for the

banking, insurance and securities sectors should or would use their sanctioning powers to enforce compliance with AML/CFT requirements. The Act therefore lacks a sufficient range of sanctions to ensure effective and proportionate enforcement of its requirements.

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

Preventive Measures – Designated Non-Financial Businesses and Professions

21. The FTR Act applies to all the designated businesses and professions (DNFBPs), which are defined in a manner consistent with the international standards. The FTR Act extends to other categories of businesses and professions, such as car dealers and travel agencies. The Act does not distinguish between FIs in terms of obligations. The obligations of dealers in precious metal and stones will not enter into force until the threshold for covered transactions is set up by Ministerial regulations. Currently, the supervisory responsibility for these institutions is assigned to the FIU, which lacks the capacity to carry out supervision at this scale. The authorities should reconsider the system of supervision and either identify other agencies that may be able to carry out parts of the supervisory functions or increase the capacity of the FIU substantially. The authorities should also adopt a risk-based approach to supervision or monitoring.

Legal Persons and Arrangements & Non-Profit Organizations

22. Fiji has not yet conducted a formal ML/TF vulnerability review of the non-profit sector. The Law Reform Commission is currently examining the legal framework for NPOs to propose reforms. Different types of NPOs are currently subject to registration requirements under various acts. The registrars are all manually archived and lack capacity to monitor compliance with the reporting requirements under the relevant acts.

23. The company sector in Fiji is large, relative to the size of the economy, albeit unsophisticated. The company registrar is ill-equipped and manually maintained. There is however an on-going externally funded project to reform the registrar and to computerize it. The competent authorities, including the company registrar, have adequate investigative powers to access information for the purposes of determining ownership and control. Their technical ability to use these powers is however limited and is therefore insufficient to ensure the transparency of the sector. There is evidence of abuse of the sector for various purposes such as evading immigration, tax and customs laws.

24. The use of trusts in Fiji is limited. When the provisions of the FTR Act become adequately implemented by lawyers and accountants, this will contribute to the transparency of trusts.

National and International Co-operation

25. Fiji has the benefit of a functional national coordination committee (National Anti-Money Laundering Officials Committee, NAMLOC). The Committee facilitates both policy and operational coordination. Law enforcement authorities have well-established mechanisms of cooperation that have proved effective in recent years.

26. Fiji has not yet ratified the Palermo Convention but has implemented many of its measures into domestic law. The system for mutual legal assistance is comprehensive. The law permits providing mutual assistance regardless of the existence of treaties with the requesting state. There is no requirement of dual criminality to grant mutual legal assistance. There is lack of technical capacity, which undermines the ability of competent authorities to act on complex mutual assistance requests.

27. The legal framework for extradition in Fiji is well developed. Extradition Law 2003 minimizes the restrictions on extradition and allows extradition without a treaty subject to some conditions. The extradition framework of existing extradition treaties, which remain applicable, is more restrictive than the Act and may undermine the effectiveness of the Act in relation to some important treaty countries. Fiji's cooperation with other countries is also undermined by the lack of reciprocity on behalf of some of its key counterparts and the high cost of seeking extradition of persons to Fiji from foreign jurisdictions. Dual criminality for extradition purposes, while still required, is defined in an unrestrictive way under the Act.

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

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

Recommended Priority Action Plan to Improve Compliance with the Recommendations

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2 & 32)	<ul style="list-style-type: none"> • Determine the reasons for the lack of detection and pursuit of money laundering.
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • Expedite the enactment of a comprehensive anti-terrorism act that takes into consideration existing provisions under POC Act and FTR Act. • Amending the s.70A(2) offences to explicitly criminalize “collecting and providing” property to terrorist groups and to individual terrorists.
Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> • Build the capacity of the police and the DPP’s Office in using the powers available under POC Act.
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> • Expand the definition of “terrorist property” to include jointly held property and property of individual terrorists and those who finance terrorism. • Review the available mechanisms for prescribing organizations to ensure that they allow for designation of individuals. • Establish adequate systems to disseminate the lists of designated entities and individuals to FIs and provide guidance to FIs on the implementation of freezing. • Establish clear, effective and publicly known mechanisms for de-listing, unfreezing, challenging and reviewing of listing and freezing decisions, and measures to access restrained funds for necessary categories of expenses.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Review the operations of the FIU to determine the reasons for the build-up of un-finalized STRs and implementing measures to address the backlog and to prevent recurrence. • Issue guidance on the basis of current legislation for all institutions that are subject to the FTR Act. • Determine the FIU’s IT requirements to ensure that these requirements are fully met by the proposed IT system. • Formally establish the funding of the FIU budget and the RBF’s commitment to provide financial, technical and administrative support for the FIU. • Institute procedures to facilitate the collection and recording of detailed statistics which will enable an effective review to be conducted of the operations of the FIU and the reporting regime • Conduct an independent review of the implications of the FTR Act for the FIU. • Remove the seven-year mandatory deletion of STRs under Section 25(1)(g) of the FTR Act.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • Conduct an independent detailed review of the resources available to investigate and prosecute ML and TF cases. • Address the key resource constraints and build the capacity of the investigative agencies to conduct money laundering and terrorist financing investigations • Institute a mechanism to collect and regularly review detailed statistics relating to money laundering and terrorist financing investigations conducted by law enforcement agencies and on the use of the powers under the POC Act, to assess effectiveness.

Cross-Border Declaration and Disclosure (SRIX)	<ul style="list-style-type: none"> • Develop an action plan for the effective implementation of the declaration regime provided for under Part 5 of the FTR Act.
2. Preventive Measures–Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5– 8)	<ul style="list-style-type: none"> • Conduct a full vulnerability assessment and consider excluding less vulnerable sectors from the scope of AML/CFT measures. • Ensure non-bank foreign exchange and fund transfer service providers adequately implement their AML/CFT obligations under the Act. • Clarify the requirements to identify the “beneficial owner.”
Third parties and introduced business (R.9)	No Recommendations
Financial institution secrecy or confidentiality (R.4)	No Recommendations.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Determine that financial institutions, which do not pose ML/TF risk are exempted or subjected to simplified requirements. . • Ensure implementation through guidance and supervision.
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Take measures to exempt sectors that do not pose ML/TF risk from the obligations to conduct enhanced due diligence under or simplifying their obligations. • Revise the mandatory requirement to examine all transactions with persons in countries which do not or insufficiently apply the FATF recommendations to restrict it to situations where such transactions have no apparent economic or lawful purpose. • Put measures in place to advise financial institutions of countries that have weak AML/CFT measures in place.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • Revise the requirement in Section 14(1)(b) to report information that does not arise from a suspicious transaction involving the reporting institution. • Provide financial institutions with guidelines to assist in the implementation of their obligations.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Provide guidance to financial institutions on developing internal procedures, policies and controls relating to AML/CFT compliance. • Assess the capacity and nature of business of the newly covered non-bank financial institutions with a view to tailoring the guidelines to their specific business operations. • Ensure non-bank financial institutions, especially foreign exchange dealers, credit institutions, securities and insurance companies are adequately implementing internal AML/CFT policies and procedures.
Shell banks (R.18)	<ul style="list-style-type: none"> • Prohibit banks chartered by Fiji from (1) establishing or maintaining a correspondent banking relationship with any shell bank; and (2) acting as a correspondent bank for any foreign bank that permits its accounts to be used by shell banks
The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25 & 32)	<ul style="list-style-type: none"> • Clarify the provisions of the FTR Act with regard to the supervisory authorities’ ability to use their sanctioning powers to enforce compliance with AML/CFT standards. • Use the power available under the Act to designate supervisory authorities for the various sectors covered with a view to creating a better sharing of the supervisory burden. • Assign exclusive responsibility and provide the necessary power to the relevant prudential supervisors to supervise for compliance with AML/CFT measures. • Clarify the AML/CFT supervisory responsibilities over the foreign exchange and wire transfer sectors.

	<ul style="list-style-type: none"> • Ensure the availability of a wider range of sanctions including administrative and disciplinary sanctions. • Exempt low-risk sectors using a risk-based approach and determine the type of supervision/monitoring of the sector.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • Ensure effective supervision or monitoring of the sector.
4. Preventive Measures – NonFinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Where applicable, conduct a detailed risk assessment of the relevant activity to enable an appropriate threshold to be set. • Tailor the regulations that detail the obligations of DNFBPs to the nature and size of their operations.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Prescribe the threshold for the obligations to enter into force in a sequential manner and subject to adequate and realistic risk assessment. • Raise awareness of the obligations under the Act.
Regulation, supervision, monitoring, and sanctions (R.17, 24 & 25)	<ul style="list-style-type: none"> • Adopt a risk-based approach to determine the method and degree of monitoring to apply to each of the covered sectors of DNFBPs.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Conduct careful risk and resource assessment to determine the appropriate timeframe for introducing a threshold that will bring the obligations of these additional sectors into effect.
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Review the use of “share warrants” and introduce rules and restrictions to ensure the transparency of their ownership. • Enhance the ability of the office of the registrar to use the investigative powers given to it by the Companies Act.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Clarify the rules on customer due diligence in relation to express trusts and ensuring their effective implementation by all TCSPs.
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> • Gather information on the activities, size and other relevant features of the sector in the context of conducting the review of the legal framework for the NPO sector; • Conduct a risk assessment to determine the segment of the NPO sector that is more vulnerable to abuse for terrorist purposes; • Perform outreach to the sector that promote the value of transparency and integrity and raises the awareness of the sector with regard to vulnerabilities to terrorist abuse; • Implement the full range of measures introduced by the Interpretative Note to SRVIII.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Ratify Palermo and CFT Conventions. • Fully implement the UN Special Resolutions.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> • Enter into asset sharing arrangements with key jurisdictions, i.e.; jurisdictions with whom MLA is most likely or most frequent. .
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> • Revise the current treaty framework for extradition to ensure that it is

	reflective of the best practices endorsed by the Extradition Act.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none">• Enter into memorandum of understanding with relevant foreign supervisors. And if the FIU's supervisory powers are maintained, amend the Act to allow the FIU to exchange information with foreign supervisory authorities.• Introduce safeguards to ensure the proper handling of information received by the FIU from foreign counterparts.• Amend the FR Act to remove restricting the sharing of information to cases where there is investigation or prosecution underway.