



Anti-money laundering and counter-terrorist financing measures

Seychelles

Mutual Evaluation Report

September 2018





The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

For more information about the ESAAMLG, please visit the website: www.esaamlg.org

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CONTENTS

EXECUTIVE SUMMARY	5
Key Findings	5
Risks and General Situation	6
Overall Level of Effectiveness and Technical Compliance	7
Priority Actions	13
MUTUAL EVALUATION REPORT	17
Preface	17
CHAPTER 1. ML/TF RISKS AND CONTEXT	18
ML/TF Risks and Scoping of Higher-Risk Issues	19
ML/TF Vulnerability	21
Materiality	24
Structural Elements	25
Background and other Contextual Factors	25
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION	39
Key Findings and Recommended Actions	39
Immediate Outcome 1 (Risk, Policy and Coordination)	40
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES	46
Key Findings and Recommended Actions	46
Immediate Outcome 6 (Financial intelligence ML/TF)	50
Immediate Outcome 7 (ML investigation and prosecution)	59
Immediate Outcome 8 (Confiscation)	63
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION	72
Key Findings and Recommended Actions	72
Immediate Outcome 9 (TF investigation and prosecution)	75
Immediate Outcome 10 (TF preventive measures and financial sanctions)	76
Immediate Outcome 11 (PF financial sanctions)	78
CHAPTER 5. PREVENTIVE MEASURES	79
Key Findings and Recommended Actions	79
Immediate Outcome 4 (Preventive Measures)	81
CHAPTER 6. SUPERVISION	97
Key Findings and Recommended Actions	97
Immediate Outcome 3 (Supervision)	98
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS	106
Key Findings and Recommended Actions	106
Immediate Outcome 5 (Legal Persons and Arrangements)	108
CHAPTER 8. INTERNATIONAL COOPERATION	115
Key Findings and Recommended Actions	115
Immediate Outcome 2 (International Cooperation)	116
TECHNICAL COMPLIANCE ANNEX	122
Recommendation 1 - Assessing Risks and applying a Risk-Based Approach	123
Recommendation 2 - National Cooperation and Coordination	125

Recommendation 3 - Money laundering offence.....	126
Recommendation 4 - Confiscation and provisional measures.....	128
Recommendation 5 - Terrorist financing offence.....	130
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing	132
Recommendation 7 – Targeted financial sanctions related to proliferation	135
Recommendation 8 – Non-profit organisations.....	136
Recommendation 9 – Financial institution secrecy laws	139
Recommendation 10 – Customer due diligence	140
Recommendation 11 – Record-keeping.....	143
Recommendation 12 – Politically exposed persons.....	144
Recommendation 13 – Correspondent banking.....	144
Recommendation 14 – Money or value transfer services	145
Recommendation 15 – New technologies.....	146
Recommendation 16 – Wire transfers.....	147
Recommendation 17 – Reliance on third parties	149
Recommendation 18 – Internal controls and foreign branches and subsidiaries.....	150
Recommendation 19 – Higher-risk countries.....	151
Recommendation 20 – Reporting of suspicious transaction	151
Recommendation 21 – Tipping-off and confidentiality	152
Recommendation 22 – DNFBPs: Customer due diligence	152
Recommendation 23 – DNFBPs: Other measures.....	153
Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons.....	154
Recommendation 25 – Transparency and Beneficial Ownership of Legal Arrangements	162
Recommendation 26 – Regulation and supervision of financial institutions.....	166
Recommendation 27 – Powers of supervisors	168
Recommendation 28 – Regulation and supervision of DNFBPs.....	169
Recommendation 29 - Financial intelligence units.....	170
Recommendation 30 – Responsibilities of law enforcement and investigative authorities	173
Recommendation 31 - Powers of law enforcement and investigative authorities.....	175
Recommendation 32 – Cash Couriers	177
Recommendation 33 – Statistics.....	179
Recommendation 34 – Guidance and feedback.....	180
Recommendation 35 – Sanctions	181
Recommendation 36 – International instruments	182
Recommendation 37 - Mutual legal assistance	182
Recommendation 38 – Mutual legal assistance: freezing and confiscation	184
Recommendation 39 – Extradition	185
Recommendation 40 – Other forms of international cooperation.....	186
Summary of Technical Compliance – Key Deficiencies	193
List of Offenses for determining Criminal Conduct as predicate offenses in Seychelles	201

LIST OF ACRONYMS

ACCS-Anti-Corruption Commission of Seychelles
ANB-Anti Narcotic Bureau
AG-Attorney General
AML-Anti Money Laundering
AML-Act Anti-Money Laundering Act
AML/CFT-Anti Money Laundering/Combating the Financing of Terrorism and Proliferation
CBS-Central Bank of Seychelles
CDD-Customer due Diligence
CFT-Combating the Financing of Terrorism
CSL-Company holding a Special Licence under the Companies (Special Licenses) Act
CSL-Act Companies (Special Licenses) Act
CSP-Corporate Service Providers
DNFBP(s)-Designated non-financial businesses and professions
EARPCCO-East Africa Regional Police Chiefs Cooperation Organization
ESAAMLG-Eastern and Southern Africa Anti-Money Laundering Group
FATF-Financial Action Task Force
FIs-Financial Institutions
FIA-Financial Institutions Act
FIU-Financial Intelligence Unit
FSA-Financial Services Authority
TF-Terrorist Financing
ICSP-Act International Corporate Service Providers Act
IAIS-International Association of Insurance Supervisors
IBC-International Business Companies
KYC-Know Your Customer
LEAs-Law Enforcement Authorities
MACRMA-Mutual Legal Assistance in Criminal Matters Act
ML-Money Laundering
MLA-Mutual Legal Assistance
MOF-Ministry of Finance
MOU-Memorandum of Understanding
NRA-National Risk Assessment
NPOs-Non Profitable Organizations
PEPs-Politically Exposed Persons
POCA-Proceeds of Crime (Civil Confiscations) Act
PTA-Prevention of Terrorism Act
RoC-Registrar of Companies
SADC-Southern African Development Community
SARPCCO- Southern African Regional Police Chiefs Co-operation Organisation
SCR-Seychellois Rupee
SEYLII – Seychelles Legal Information Institute
SRC-Seychelles Revenue Commission
STRs-Suspicious Transaction Reports
TCSP-Trust and Corporate Service Providers
TSP-Trust Service Provider
TF-Terrorist Financing
UBO-Ultimate Beneficial Owner
UN-United Nations
UNSCRs-United Nations Security Council Resolutions

EXECUTIVE SUMMARY

1. This report provides a summary of the Anti-Money Laundering and Counter Financing Terrorism (AML/CFT) measures in place in the Republic of Seychelles as at the date of the on-site visit from 20 November – 5 December 2017. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Republic of Seychelles's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- Seychelles has just completed its Money Laundering/Terrorist Financing (ML/TF) National Risk Assessment (NRA) to determine the nature and extent of risks facing the country and the findings were released during the on-site mission. As a result, the current AML/CFT Strategy is not informed by the findings of the results of the NRA.
- The competent authorities have demonstrated a fairly good understanding of the ML/TF risks in Seychelles in general and their specific mandate in particular.
- Financial Institutions (FIs) demonstrated a fairly good understanding of the ML/TF risks facing the products and services they provide as well as the AML/CFT obligations that apply to them, albeit at varying degrees.
- Within the Designated Non-Financial Businesses Professions sector (DNFBPs), the International Corporate Services Providers (ICSPs) are the only reporting sector which demonstrated a good understanding of the ML/TF risks facing the sector as well as the AML/CFT obligations that apply to them.
- A high number of suspicious transactions reports (STRs) have been filed by commercial banks, distantly followed by ICSPs. Notwithstanding, the number of the STRs filed appear low taking into account the materiality and risk exposure of the commercial banks and the ICSPs. The rest of the reporting entities either had negligible reports or had no reports filed at all.
- While Seychelles has completed its ML/TF risk assessment, there is limited assessment of the Non-Profit Organisations (NPOs) sector to determine those NPOs which are considered as having higher TF risk exposure. Furthermore, the Registrar of Associations has no capacity to identify and supervise the NPOs which could be identified as posing higher TF risks.
- Law enforcement agencies have inadequate capacity (technical, material and human) to identify potential ML/TF cases for investigation and prosecution. Whilst the authorities have investigated a few ML cases arising from drug related offences including one conviction, the focus has been on predicate offences.
- The FIU, which is the only AML/CFT supervisor in Seychelles, has inadequate resources to effectively supervise or monitor compliance with AML/CFT requirements by reporting entities. As a result, the focus of the inspections has not been wide enough to cover the identified high risk reporting entities. It was, however, noted that the quality of the inspections conducted on commercial banks and ICSPs were

generally of a reasonable quality, though the lack of sanctions even where it appeared warranted has affected effectiveness.

- Reporting entities in Seychelles are required to establish the true identity of ultimate beneficial owners when establishing a business relationship or carrying out an occasional transaction. In addition, Seychelles requires ICPS to maintain within the country a register of UBO information of IBCs. In practice however, effective implementation of the UBO measures is more observed in the commercial banking industry, distantly followed by ICSPs, than other sectors.
- Seychelles' implementation of targeted financial sanctions against terrorist financing in terms of the United Nations Security Council Resolutions (UNSCRs) 1267 and 1373 (and its successor resolutions) is ineffective because of lack of proper coordination between the competent authorities.
- Seychelles does not have both a legal and institutional framework nor mechanisms in place to implement targeted financial sanctions relating to proliferation financing.
- Generally, MLA and extradition measures have been applied on predicate offences only and not on ML and TF cases. Effectiveness of the system on international cooperation could not be determined due to the absence of current case management system at the time of onsite visit.

Risks and General Situation

2. Seychelles is one of the most developed jurisdictions in Africa¹. Seychelles considerably opened up its economy in the 2000s after moving away from a dominant state intervention to a more market-oriented policy framework. The financial services, driven by a deliberate policy to grow the international financial centre operations, became one of the central pillars, along with tourism and fisheries, of Seychelles' economy.

3. Seychelles is an international financial centre with a significant share in this area in Africa. The country has been growing its global business appeal and financial connections (mainly to Western Europe and South Asia) and has experienced a considerable prominence in the early 2000s. Seychelles is regarded as having one of the most attractive legal and regulatory environment for company formation, which is the catalyst for the country's international financial centre operations. Therefore, Seychelles has a large number of companies providing company formation, management and administration to international clients.

¹ IMF Country Report 13/202, July 2013. <http://www.imf.org/external/pubs/ft/scr/2013/cr13202.pdf>

4. The financial sector is predominantly foreign-owned and diversified, which promotes significant integration with the global financial system. The sector accounts for the biggest share of transactions and contributes about 5 percent to the Gross Domestic Product (GDP) of the country. As at 2015, the total assets value was estimated at United States Dollar (USD) 1.26 billion. The National Risk Assessment (NRA) recognises the significant money laundering (ML) threat posed by non-resident clients. Financial Institutions (FIs) are allowed to rely on third parties or introduced business for customer due diligence (CDD) measures when opening a business relationship. For the international business operations, reliance on third parties or introduced business is only allowed if it comes from foreign regulated entities from jurisdictions deemed to have AML/CFT regulation and supervision. By law, however, the ultimate responsibility still rests with the principal.

5. Seychelles recognises the inherent threat of ML and TF emanating from being an international financial centre, most notably in relation to drug offences. The following sectors were identified as being vulnerable to ML/TF risks: commercial banks with operations in the international financial centre space; luxury real estate ; dealers in motors vehicles, yachts and boats; TCSPs in the international financial centre activities; and bureaux de change.

Overall Level of Effectiveness and Technical Compliance

6. The AML/CFT system in Seychelles is at an emerging stage. Seychelles has embarked on a number of legislative and institutional reforms informed by the findings of the 2008 mutual evaluation report (MER) and the ever-evolving AML/CFT landscape. Seychelles has just completed an ML/TF risk assessment at a national level. This has improved the level of understanding of ML/TF risks across the board (albeit at different levels), and is expected to inform future AML/CFT strategies and policies as well as implementation. The overall level of implementation, however, has been affected by inadequate capacity and enforcement in key competent authorities.

7. In respect of technical compliance, Seychelles amended a number of statutes in the international financial centre space to strengthen existing transparency requirements. Further, the Anti-Money Laundering Act (AML Act) and the Proceeds of Crime Act (POCA) have been amended several times since 2008 to strengthen the regime. The most notable positive changes include enhanced market entry requirements in the international financial sector operations; broadened the scope of ML/TF offences;

improved the powers and functions of the law enforcement agencies (LEAs); expanded the scope of key preventative measures and introduced a risk-based approach; and completed ML/TF risk assessment at a national level. The changes have significantly improved the level of technical compliance with the Financial Action Task Force (FATF) Standards. The major weaknesses identified related to: targeted financial sanctions; CDD including beneficial ownership information; autonomy and operational independence of the FIU; risk-based supervision framework; the narrow scope of sanctions for non-compliance with AML/CFT requirements; and operational capacity in most of the competent authorities.

8. In July 2017, Seychelles brought into force fundamental changes in the form of amendments to the POCA and the AML Act. The changes drastically affected the powers of law enforcement agencies and brought in new specialised units. Firstly, the Police were expressly conferred powers to investigate ML/TF cases, in addition to the same powers already being exercised by the FIU. Secondly, the asset forfeiture function at the FIU has been transferred to the Police. In this regard, the Police established a Commercial Crimes Unit which is still setting up operational capacity to undertake new core functions. Taking into account these changes, the assessment of effectiveness in Seychelles on ML/TF investigations and asset forfeiture is based on the laws which existed before the July 2017 amendments. Since the changes were made about 3 months before the on-site visit, the impact on effectiveness has been largely insignificant. Overall, there is inadequate investigative capacity within the competent authorities which is largely caused by lack of resources. Seychelles has experienced a relatively good implementation of the preventative measures in the financial sector. Lastly, the Designated Non-Financial Businesses and Professions (DNFBP) sector, with the exception of the ICSPs, is generally lagging in relation to implementation of the AML/CFT requirements. Seychelles has therefore not shown significant effective implementation of the AML/CFT measures. Therefore, AML/CFT system in Seychelles requires fundamental improvement in both technical compliance and effectiveness components. Improvements to the technical component of the AML/CFT system is already underway, in consultation with technical assistance providers.

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

9. Seychelles has just completed its NRA which identified the nature and extent of the risk facing the country. At the time of the on-site mission, the findings of the risk

assessment had not been shared with the stakeholders. The findings of the NRA were to be formally released in March 2018. Seychelles has established an AML/CFT Committee which is a multi-agency forum charged with the responsibility of coordinating AML/CFT issues in the country and advise government on policy and strategies. The Committee intends to use the findings of the NRA to develop and implement national AML/CFT Strategy and Policies as the basis for effective implementation. In general, the authorities and the private sector demonstrated a reasonably good understanding of the ML/TF risks facing the country. The existing AML/CFT Strategy and Policies are not informed by ML/TF risks. It is desirable therefore that Seychelles uses the findings of the NRA to develop and promote effective implementation of risk-based AML/CFT Strategies and Policies across the spectrum in order to optimise resources allocation and utilisation.

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

10. The Seychelles Financial Intelligence Unit (FIU) conducts analysis of transactions and other information it receives from reporting entities, and produces financial intelligence and other information which is disseminated for use by competent authorities to pursue potential ML/TF cases. The majority of the reports being analysed are from the banking sector, distantly followed by ICSPs. The lack of reporting by the DNFBPs (except for ICSPs) and limited reporting by non-bank FIs raises major concerns on production of different types of financial intelligence consistent with the risk profile of the country. Notwithstanding, the FIU produces relatively good financial intelligence and information which has been used by competent authorities. The FIU and competent authorities have access to a variety of information which is used to enhanced the quality of the information available for investigations and prosecutions. Seychelles has not demonstrated that investigative agencies actively conduct parallel financial investigation to identify and investigate potential ML cases. Only three ML cases, which are related to drug trafficking only, had been investigated, of which one conviction was secured through a plea bargain. The two remaining cases are before the courts. As a consequences, there has been no confiscation of criminal property on account of ML conviction. All the cases are related to drug-related offences brought by the National Drugs Enforcement Agency (NDEA). The cases show that Seychelles is pursuing the threat of drug trafficking and does not focus on the other threats of ML. Overall, the investigating authorities in Seychelles focus more on predicate offences than potential ML cases.

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

11. Seychelles has demonstrated a good understanding of the country's low TF risk profile. The NRA made this determination based on a number of factors which include the fact that there has not been terrorism and TF cases in Seychelles, nor has there been any TF cases in which a Seychellois was involved. The criminalisation of the offence of TF is broadly consistent with the FATF Standards. There has been no TF case investigated in Seychelles. Seychelles has inadequate legal and institutional framework to implement targeted financial sanctions related to both terrorist financing and proliferation financing requirements. The authorities should take expeditious steps to develop and implement appropriate measures to implement the UNSCRs targeted financial sanctions regimes.

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

12. The AML Act and the Prevention of Terrorism Act (PTA) are the primary statutes setting out AML/CFT obligations for FIs and DNFBPs in Seychelles. The AML Act requires FIs and DNFBPs to manage and implement mitigating controls on a risk sensitive basis. In general, the measures which apply to FIs also apply to DNFBPs. Almost all FIs and ICSPs have conducted institutional ML/TF risk assessments as the basis to implement the measures on a risk-sensitive basis. Generally, the FIs (mainly commercial banks) demonstrated a relatively good understanding of ML/TF risks facing them and the AML/CFT requirements that apply to them, as opposed to the DNFBP sector, except for the ICSPs. Overall, FIs and ICSPs in the international financial sector operations sector have implemented measures beyond what the local laws require especially regarding CDD. In the majority of the cases, they use databases at group level to establish the true identity of customers or transactions including UBO.

13. Further, the FIs in the international financial centre space rely on foreign regulated entities (i.e., third parties or introduced parties) through the ICSPs who source non-resident high networth customers from jurisdictions to have AML/CFT regulation in place. In addition to the fact that the ICSPs conduct CDD, the FIs carry out its own verification processes which include tapping into commercially available databases such as World Check and group CDD databases to satisfy themselves as to the true nature of the customer or transaction. The low levels of understanding of ML/TF risks and AML/CFT obligations in the DNFBP sector is a major concern more specifically as some

(e.g., luxury real estate by high net worth foreign customers) are regarded as high risk. The main reason for the lax application of AML/CFT obligations in the DNFBP sector (except for the ICSPs) is the lack of supervision and monitoring caused by inadequate supervisory capacity at the FIU. Overall, FIs and ICSPs have demonstrated a reasonably good understanding of the ML/TF risks faced by them and the implementation of the AML/CFT obligations that apply to them.

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

14. Regulators (e.g., the Central Bank of Seychelles and the Financial Services Authority) in Seychelles have adequate powers and procedures in place to ensure that fit and proper entities and individuals are permitted to conduct lawful business operations in the country. Seychelles has therefore demonstrated adequate measures to prevent criminals or their associates from owning or controlling a regulated entity. The sole AML/CFT supervisor (i.e., the FIU) and prudential supervisors namely the Central Bank of Seychelles (CBS) and Financial Services Authority (FSA) demonstrated a reasonably good understanding of ML/TF risks facing the reporting entities. However, the FIU is yet to develop and apply an effective risk-based approach to AML/CFT supervision and monitoring of reporting entities. The FIU is in the process of reviewing its inspection manual to introduce a comprehensive AML/CFT risk-based supervision and monitoring framework. The supervisory actions of the FIU are constrained by lack of capacity occasioned by high staff turnover, owing to the uncompetitive nature of conditions of employment at the FIU. Notwithstanding, the AML/CFT inspections conducted (and jointly with the CBS or FSA in the most recent times) by the FIU were generally of a reasonable quality in terms of scope and depth. During the period under review, the coverage of the inspections has been mainly on banks and ICSPs, while a number of non-bank FIs and other DNFBPs have not been inspected regardless of the risk profile. Whilst major AML/CFT contraventions worthy of issuing a sanction have been identified, the FIU is yet to issue any sanction. The current sanction regime does not provide the FIU with a wide range of sanctions, as only criminal sanctions can be applied for non-compliance with AML/CFT requirements. By contrast, the FSA which has powers to sanction for AML/CFT violations has issued sanctions mainly in respect of market entry requirements and not on non-compliance with AML/CFT obligations. The FIU has provided a number of training and outreach programmes to reporting entities to improve the level of compliance.

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

15. The legal framework in Seychelles provides for creation and registration of companies by the Registrar of Companies (ROC) for domestic legal persons under the Companies Ordinance Act. The FSA serves as the Registrar for international business companies (IBCs), international trusts (ITs), and international foundations under the International Business Companies Act, International Trusts Act and Foundations Act. The legal persons which can be formed under the Companies Ordinance Act are proprietary and limited companies. At the time of the on-site visit, there were 3 755 proprietary companies in existence (with 197 having been registered in 2016 alone) and 2006 limited companies (with 113 having been registered in 2016 alone). Further, there were a total of 198 274 IBCs (with 8 745 having been incorporated in 2017 alone), 719 international trusts, 673 Foundations, and 318 Company Special Licenses (registered by the Companies Registry but licensed by the FSA) under the purview of the FSA. Domestic trusts, including express trusts are not required to be registered in the Seychelles as they are operated under the Common Law.

16. The Companies Ordinance Act only provides for basic information to be obtained during registration of domestic companies. However, the AML Act requires all reporting entities to obtain information on beneficial ownership when establishing a business relationship and conducting a transaction with a legal person or arrangement. Incorporation of domestic companies is required to be done through barristers, notaries and attorneys who are reporting entities under the AML Act and therefore required to obtain and verify UBO information as part of their CDD obligations. In practice however, these reporting entities do not comply with this requirement. The arrangement on both basic and beneficial ownership for entities incorporated/registered under the FSA is a bit different. IBCs which are engaged in international financial centre business are incorporated through ICSPs. It carries out the CDD measures, including obtaining information on beneficial ownership.

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

17. With the Mutual Assistance in Criminal and Related Matters Act 1995 (MACRM Act) (as amended) and the Extradition Act 1995 (as amended), Seychelles adopted laws that enable it to provide international cooperation. Seychelles has ratified all the international instruments relevant to AML/CFT, which it has domesticated to support provision of international cooperation. In addition, Seychelles has entered into bilateral and multi-lateral agreements (e.g., the Harare/Commonwealth Mutual Legal Assistance (MLA) Scheme and Southern African Police Regional Chiefs Cooperation Organisation (SAPRCCO)) with other countries to facilitate international cooperation.

Further, the various domestic agencies, namely; the Police, Anti-Corruption Commission of Seychelles (ACCS), FIU, Customs Division of the Seychelles Revenue Commission (SRC), FSA, and CBS are able to exchange information with foreign counterparts. ML is extraditable offence in Seychelles. Moreover, the technical deficiency in relation to extradition and MLA limit the scope of international cooperation that can be requested and provided.

18. The FIU has a legal limitation on provision of international cooperation and exchange of information with foreign counterparts owing to the requirement to obtain prior approval from the Attorney General's Office (AGO). In practice, however, the FIU has provided such assistance without the approval of the AGO. The FIU uses a number of mechanisms (e.g., memorandum of understanding) and structures (e.g., multi-lateral through Egmont Group of FIUs) to facilitate exchange of information. The ability of Seychelles to demonstrate effectiveness of international cooperation was inhibited by lack of comprehensive statistics and cases in the absence of a system for the management and tracking of requests for international cooperation.

Priority Actions

- Use the findings of the NRA to develop and promote a coordinated and effective implementation of national strategies and objectives against ML/TF/PF in a risk-based manner.
- Build adequate operational capacity of law enforcement and prosecution agencies to investigate and prosecute TF, ML and associated predicate offences. In particular, Seychelles should ensure that the FIU, the Commercial Crimes Unit in the Police and the ACCS have sustainable capability to identify and investigate potential TF, ML, and associated predicate cases for prosecution by the AGO consistent with the risk profile of the country.
- Ensure that DNFBPs are implementing AML/CFT controls particularly high risk sectors such as real estate agents in the luxury property market, dealers in motor vehicles, yachts and boats, and accountants. Further, Seychelles should address the risks raised in relation to correspondent banking relationships and adequately implement UBO obligations across the reporting entities.
- As a matter of priority, develop sufficient legal mechanisms and coordinations to implement UNSCRs and enable implementation of measures relating to TF.

- Establish a legal, regulatory, and institutional framework to supervise or monitor, and effectively implement targeted financial sanctions related to proliferation financing and ensure that reporting entities are complying with the obligations.
- Establish an efficient case management system in the AGO's for collection and dissemination of MLA and extradition in timely manner necessary to review the effectiveness of the AML/CFT system.
- Develop and implement mechanisms such as outreach activities to enhance ML/TF risk understanding by the DNFBP sector as well as the AML/CFT obligations that apply to them which will enhance compliance with AML/CFT obligations by the sector.
- Prioritise provision of adequate resources to the FIU in order to enhance its analytical and supervisory capacity for effective implementation of the AML/CFT measures to achieve the desired outcomes. Should the authorities go through with the plans to designate the CBS and the FSA as AML/CFT supervisors for entities under their purview, there must be sufficient resources provided to ensure effective risk-based AML/CFT supervision or monitoring.
- Take the necessary steps to introduce and implement measures against proliferation financing consistent with the FATF Standards.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

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

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
PC	PC

Money laundering and confiscation

R.3	R.4
LC	PC

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
PC	PC	NC	NC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
C	LC	C	LC	C	C
R.15	R.16	R.17	R.18	R.19	R.20
NC	PC	LC	C	PC	C
R.21	R.22	R.23			
C	LC	LC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
LC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
PC	LC	PC	PC	C	C
R.32	R.33	R.34	R.35		
LC	PC	PC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
C	PC	NC	PC	LC

MUTUAL EVALUATION REPORT

Preface

19. This report summarises the AML/CFT measures in place in Seychelles as at the date of the on-site visit. It analyses Seychelles' level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

20. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Seychelles, and information obtained by the evaluation team during its on-site visit to Seychelles from 20-30 November 2017. The evaluation was conducted by an assessment team consisting of:

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- Mr. Oswaldo P. Santos (Financial Intelligence Unit, Angola);
- Ms. Nokwazi Mtshali (Financial Intelligence Centre, South Africa); and
- Ms. Dalitso Bonongwe (COMESA).

21. The report was reviewed by the FATF Secretariat and Mr. Masuatso Ebere (Financial Intelligence Authority, Malawi) .

22. Seychelles previously underwent an ESAAMLG Mutual Evaluation in 2006, conducted according to the 2004 FATF Methodology and the MER was adopted by ESAAMLG Council of Ministers in August 2008. The Mutual Evaluation concluded that Seychelles was compliant with 1 Recommendation; Largely compliant with 2; Partially compliant with 28, non-compliant with 17 and Not Applicable for Recommendation 22. The MER was published and is available online at <http://www.esaamlg.org/reports/me.php>.

23. Seychelles entered the follow-up process in 2009 and exited the process in April 2016. The reason for exiting was that Seychelles had addressed all its outstanding deficiencies under the MER.

CHAPTER 1. ML/TF RISKS AND CONTEXT

24. The Republic of Seychelles is situated in the western Indian Ocean, North West of Madagascar and consists of 115 granite and coral islands which cover a total area of 455.3 square kilometres. Victoria which is situated on the biggest island Mahé, is the economic and administrative centre of the Seychelles.

25. In 2017, the population of Seychelles was estimated at 93,920. It consisted mainly of people of French, African, Chinese, Indian and Arab origin. Creole, a derivative of French, is spoken by all Seychellois and became the first official language in 1981. The other official languages are English and French.

26. Seychelles gained independence from the British in June 1976 and has a multi-party political system with an executive President as head of State and Government. The President heads a Cabinet of 13 Ministers which includes the Vice President. The Constitution, which is the supreme law of the Land, established separation of powers between the Executive, Legislative and Judiciary. Legislative power is vested in a unicameral National Assembly of 33 members. General elections for the National Assembly are held every 5 years, with 25 members directly elected from the constituencies and up to 9 other members proportionately elected.

27. The legal system in Seychelles is based on English common law and the Napoleonic Code. Civil Law is based on the French Napoleonic Code adapted to Seychelles and is known as the Civil Code of the Seychelles. Company law is based on English common law. The judicial system consists of magistrates' courts, the Supreme Court, and a Court of Appeal. The Court of Appeal hears appeals from the Supreme Court in both civil and criminal cases. The Supreme Court has jurisdiction of first instance and acts as court of appeal in respect of cases from the magistrates' courts. Criminal cases are heard in magistrates' courts or the Supreme Court depending on the seriousness of the charge. Juries are called only in cases of murder or treason. The constitution guarantees normal legal protection to defendants including public trials and the right to counsel.

28. Seychelles' economy is heavily dependent on Tourism, Fisheries and the Financial Services Sector for growth. The economy has performed remarkably well so much so that in June 2015, the World Bank classified Seychelles as a 'high income economy as GNI per head (Atlas method) climbed to \$14,100.2 Furthermore, Seychelles has been able to maintain steady foreign direct investment especially in the tourism (Hotel) and fisheries sectors. At the same time, the government has moved to diversify the economy to reduce the dependence on tourism by promoting farming, fishing, and small-scale manufacturing.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

29. As an international financial centre, Seychelles faces inherent ML/FT risks emanating from outside of the country. Seychelles have completed an NRA in late 2017, few weeks before the on-site visit. Therefore the existing level of understanding of the ML/TF risks in Seychelles is not as a result of the findings of the NRA.

30. Seychelles used a variety of information and data from different sectors from the public and private when conducting the NRA. The exercise is used to determine the major sources of ML/TF threats and the ML/TF vulnerabilities in the financial and the non-financial sectors, taking into account both domestic and international dimensions.

² Economic Overview. <http://www.worldbank.org/en/country/seychelles/overview>

The NRA identified that a large portion of drugs proceeds are invested in neighbouring jurisdictions and onshore through domestic companies. The NRA therefore concluded that foreign businesses presented the major source of ML/TF threat to the financial integrity of Seychelles. The findings are premised on the fact that on many occasions, the business relationships and transactions involve non-resident customers, including high net-worth clients such as politically exposed persons and private individuals, who are being serviced by intermediaries.

31. The NRA further identified the most prevalent predicate offences that generated illicit proceeds in Seychelles, as follows (in order of volume of proceeds from 2014 to 2015): company fraud, drug trafficking, tax related cases, corruption/bribery and smuggling. However, there was lack of information on the volume of undetected ML occurring internationally and the value of the proceeds of crime in circulation in Seychelles. There have been a few cases detected where persons resident in Seychelles were found to be involved in foreign ML cases. The authorities have determined the overall ML threat as medium high.

32. The NRA has identified TF threat as low for various reasons. There have been no known cases of funds raised in and/or moved out of Seychelles for use in financing of terrorism within or outside of the country. Further, there are no known cases of Seychellois participating as foreign terrorist fighters. Whilst the authorities remain vigilant in respect of the potential link between piracy off the Somali coast and terrorism, there are no reported cases in this regard. There is, however, a general awareness of the threat and it is thus constantly being monitored. There are no known cases of domestic based terrorists targeting home or foreign jurisdictions, and no known cases of terrorists on a global scale targeting Seychelles. In general, the authorities are aware that the country's financial system could be vulnerable to TF if there were to be any engagement in transactions such as import/export with those countries, and thus they have remained vigilant.

33. The assessment team concurs with the conclusion by the authorities that; in the context of Seychelles, the risk of TF is less pronounced than ML.

ML/TF Vulnerability

34. Seychelles implements various AML/CFT measures to mitigate the inherent ML/TF risks associated with the country's high degree of integration of the financial sector with the global financial system. Both the public and private sector relevant to AML/CFT in Seychelles have taken some steps to put in place measures to address the risks.

35. In the private sector, most reporting entities such as banks and large non-bank FIs shared their preventative measures in place to mitigate the inherent ML/TF risks, as well as their understanding of the significance of the financial sector to combat criminal proceeds and TF given the materiality and risk profile of the sector. The measures include application of risk management and compliance and risk management programmes in relation to customers, transactions and delivery channels.

36. While market entry requirements by the FSA are robust for the ICSPs, the sector is yet to be adequately or comprehensively supervised and monitored for AML/CFT by the FIU. The NRA also recognises the inherent ML risks associated with company formation and management services offered by trust company services providers such as the ICSPs which could be abused for ML purposes through creation of complex corporate structures.

37. In addition, inadequate supervision and monitoring of the DNFBP sector in general and motor vehicle dealers, real estate and casinos in particular is a major ML concern. For instance, the luxury segment of the real estate sector attracts high-net worth non-resident clients from all around the world including foreign PEPs and prominent individuals in the private sector.

Country's risk assessment & Scoping of Higher Risk Issues

38. The NRA, which was concluded a few weeks before the on-site visit, uses the National Money Laundering and Terrorist Financing Risk Assessment Tool of the World Bank. The following teams: (1) Threats & Vulnerabilities; (2) Offshore encompassing fiduciary services; (3) Banking; (4) Designated Non-Financial Businesses and Professions (DNFBPs); (5) Other Financials incl. Insurance; and (6) Terrorist Financing. The process was facilitated by World Bank. Seychelles established 6 NRA Working Groups under the oversight of the AML/CFT Committee. The Working Groups comprised AML/CFT stakeholders both from the public and private sectors.

39. Before and during the on-site visit, the assessment team received and reviewed a number of materials from the authorities on their AML/CFT system. These include the detailed responses on technical compliance and effectiveness questionnaires, the NRA and other information from publicly available sources. The assessment team used this information and information independently obtained from other credible sources to identify and pay more attention to the eight high-risk areas listed below:

- **The banking sector** – reliance on third parties or introduced business to carry out CDD procedures is an integral part of the relationship between third party or introducers and the banking sector given that a significant share of financial activities, which are conducted on a non-face-to-face basis, are from the former. The assessment team spent a considerable amount of time on measures put in place by banks to satisfy themselves on the adequacy of the CDD measures (e.g., on ultimate beneficial owners) applied by foreign regulated entities (i.e., third parties or introducers) in the international financial centre operations including the extent to which all CDD information obtained is reliable, independent and swiftly available upon request.
- **TCSPs** – Since the clients of TCSPs, which mostly are carried out by ICSPs for the activities in the international financial centre, are mainly non-resident clients, the assessors dedicated a significant amount of time to this sector focusing on the nature and extent of CDD procedures being applied on ICSP clients to mitigate the ML/TF risks, with more emphasis on collection of ultimate beneficial ownership information.
- **Adequacy of AML/CFT supervision in the international financial centre activities** – a significant feature of the business activities in the international financial centre do not maintain physical presence in Seychelles which presents inherently higher ML/TF risks. As a result, the assessors paid a special attention to the resource capacity of, (i) the FSA and the CBS in enforcing market entry procedures, (ii) the FIU in supervising and monitoring compliance with AML/CFT mitigating controls of the market players, and (iii) coordination and cooperation on exchange of information between the regulators and the FIU (as the sole AML/CFT supervisor) to identify risks for risk-based supervision. Additionally, the assessors focused on measures in place including cooperation and coordination by the FSA, the CBS and the FIU to ensure effective

consolidated supervision of the regulated entities given the inherent interconnectedness of the business activities.

- **Ultimate Beneficial Ownership** –reporting entities are required to establish and verify the true identify of ultimate beneficial ownership of all relationships and transactions conducted particularly international business companies (IBCs). In addition, it is permissible to have nominee shareholders and corporate directors and the law does not require that sufficient information be provided on the nominators. While it was appreciated that the reporting entities are required under the AML Regulations to obtain beneficial ownership information from clients/ customers, assessors focused on the level of compliance by the reporting entities including ICSPs and FIs on BO requirements as well as accessibility of the information by different competent authorities.
- **Real Estate Sector** – The prime real estate market in Seychelles is significant and is dominated by non-resident clients. The assessors paid a special focus on the effectiveness of CDD measures applied by real estate agents and how the data and information obtained is reliable and available to competent authorities.
- **International cooperation** – since Seychelles is an international financial centre, the assessors concentrated on the extent to which compent authorities in Seychelles seek and provide international cooperation and exchange information with foreign counterparts when there is suspicious or investigation of a business relationship or transaction emanating from, or being processed to, jurisdictions identified as posing higher ML/TF risks to the country.
- **Parallel financial investigations and financial intelligence analysis** - Just before the assessment took place, Seychelles conducted an extensive legislative review of its statutes in relation to the scope of freezing of suspected criminal property, powers and functions of law enforcement agencies/FIU and reconfiguration of the investigative institutional arrangements. The assessors focused on the impact of the changes and capacity issues on '*financial intelligence-investigation-prosecution-confiscation*' value-chain.
- **High risk NPOs and targeted financial sanctions measures** – The level of TF risk in Seychelles is considered low. The assors paid special attention on the extent to which targeted financial sanctions and NPO measures are being implemented.

Materiality

40. Seychelles regards its international financial sector as one of the key pillars of its economy. Due to the small size of the economy and the business strategy for achieving economies of scale and diversifying investment portfolios, there is a marked interconnection between the activities in the international and domestic business sectors. For instance, CBS has a single license regime for international and domestic banking activities which allows for ease of engaging in either or both environments. At the centre of this is the international financial sector which is increasingly becoming integrated into the global financial system specially to Western Europe and South Asia. The financial services sector is the third largest contributor to GDP at about five (5) percent, after tourism and fisheries.

41. Banking dominates the financial sector in Seychelles, and, as a result, the majority of transactions are conducted through it. In 2016, banking comprised nine (9) commercial banks, of which seven (7) were either owned or controlled by international financial groups. Only two (2) of the seven (7) commercial banks engage in international business activities. This means that the risks of ML/TF in the international business sector appear to be concentrated in the two commercial banks. The total assets value of the banking sector in 2015 was estimated at USD1.13 billion. The total profit for banking in the same period amounted to US 33 million. In the foreign currency market, money business services providers (bureaux de change) transactions were valued at SCR 1.23 billion compared to SCR0.33 billion conducted by banks in 2015. It represents about 78 percent and signals its importance to the economy of Seychelles.

42. All DNFBPs, as defined by the FATF, conduct business in Seychelles. The AML Act requires the DNFBPs to comply with AML/CFT obligations. Seychelles international financial centre business activities comprises 67 companies holding ICSPs license, 25 companies holding an international trustee service license (ITSPs) and 14 companies holding a foundation service license which are issued under the ICSP Act. The licensees consist of large international and small domestic businesses. A few accountants and legal practitioners engage in the latter. The sector employs around 300 persons, ranging from companies with 2 to 40 staff, depending on the size of the service provider. The ICSPs business activities involve assisting international clients with the formation, management, and administration of international business centre entities in Seychelles, serve as registered agents, directors and nominee shareholders on specified entities.

43. The authorities have identified vehicle dealers and boats yacht dealers as posing higher ML/TF risks and have thus brought them within the scope of DNFBPs. Accountants, auditors and lawyers are the largest groups among independent legal and accounting professionals. There are about 48 Licensed Legal Practitioners in Seychelles (excluding the members of the Attorney General's Chambers). There are five licensed Casinos, of which three are active.

Structural Elements

44. In general, Seychelles has key structural elements for implementation of an effective AML/CFT system. These are: a stable democracy which significantly contributed towards political and institutional stability, accountability, the rule of law and an independent judiciary. The World Bank's Worldwide Governance Indicators (WGI) Report shows that in most dimensions of governance (voice and accountability, political stability, government effectiveness and rule of law), Seychelles is above the 50 percentile rank among the 212 countries surveyed. Furthermore, the 2017 Mo Ibrahim Index of African Governance shows that in 2016, Seychelles' overall score was 73.4 (out of 100). Its ranking remained unchanged at second place out of the 53 African countries. Its most notable improvement was in the category "rule of law, transparency and corruption" where Seychelles's score rose by 5.4 points between 2007 and 2016.

45. The assessment team noted with concern the negative effect that the recent changes to the AML Act, POCA and institutional arrangements since the introduction of the July 2017 legislative amendments have had on the efficient functioning of the AML/CFT system particularly in relation to freezing of bank accounts suspected of holding illicit proceeds. Notwithstanding this, Seychelles has made a clear high-level commitment from the highest office in the country to implement AML/CFT measures consistent with the FATF Standards. Going forward, Seychelles intends to use the NRA results as the basis to develop and implement a risk-based AML/CFT system.

Background and other Contextual Factors

Overview of AML/CFT strategy

46. The AML/CFT system in Seychelles is at an emerging stage despite being in place for over 10 years. Since the 2000s, the system has been characterised by changes to legislative and institutional arrangements which are underpinned by AML/CFT

Strategies and Policies. There has been some noticeable positives in the AML/CFT environment in Seychelles³. However, the overall AML/CFT approach is not informed by identified ML/TF risks. This has had a negative impact on Seychelles' overall effectiveness in relation to compliance with the global AML/CFT standards.

47. The 2016 Elections heralded a new political order in the history of Seychelles⁴. For the first time in 40 years, the opposition alliance won a majority in the National Assembly. Thereafter, Seychelles completed a review of its AML/CFT legislative and institutional framework intended to improve the system. While the changes brought some positives, there are specific changes in respect of the AML Act and the POCA which have had adverse impact on the effective implementation of AML/CFT measures in the country. The removal of bank accounts from the definition of property for purposes of application of provisional and confiscation measures under the POCA as well as the transfer of the asset recovery unit from the FIU to the Police which had no capacity, have adversely impacted on the effective implementation and effectiveness of the AML/CFT system in Seychelles.

48. Following the 2008 financial crisis, Seychelles embarked on significant macro-economic stabilisation programme anchored on strengthening its AML/CFT regime and improving the transparency of business operations in the international financial centre space.

49. Seychelles' banking sector experienced unprecedented termination of some correspondent banking relationships (CBRs) in recent years due mainly to concerns over, *inter alia*, the adequacy of AML/CFT measures in the country⁵. While it is recognised that this is a global trend which does not only affect Seychelles, the authorities have taken significant steps to mitigate the risks. The measures taken include promotion of enhanced transparency in the international financial business sector and the on-going review of the overall AML/CFT regime.

50. Seychelles, with the assistance of the International Monetary Fund (IMF), established in March 2016 a Financial Stability Committee (FSC) which comprises the CBS, the Ministry of Finance, the FSA, and the FIU. The mandate of the FSC is to

³ https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2016.pdf

⁴ Financial Services Authority of Seychelles Annual Report 2016

⁵ International Monetary Fund: Seychelles, Staff Report for 2017 Article Consultation and Sixth Review under the Extended Arrangement, March 18, 2017

promote overall financial stability in the country including AML/CFT matters. The functions of the FSC are rooted on a draft Strategy intended for:

- Ensuring that banks' risk compliance and management framework are globally accepted;
- Strengthening regulation and monitoring of transparency in the offshore financial sector;
- Enhancing international cooperation and exchange of information with other jurisdictions; and
- Ensuring that banks have adequate capacity to comply with requests from global banks specially on CBRs.

51. Lastly, authorities at the time of the on-site visit were yet to share the NRA results with the relevant AML/CFT stakeholders both in the private and public sectors. The authorities advised that Cabinet was scheduled to approve and release the report in March 2018. Moreover, the authorities intended to require the stakeholders to take into account the findings of the NRA when designing and implementing measures to manage and mitigate the identified risks. Most importantly, the authorities viewed the NRA as an opportunity for Seychelles to, (i) design and introduce a risk-based framework to implementation of the AML/CFT measures across the board; (ii) promote national cooperation and coordination; and (iii) enhance better utilisation of scarce resources for effective implementation of AML/CFT Strategy and Policies against ML, TF and PF in accordance with international standards.

Overview of the legal & institutional framework

52. Seychelles has established various agencies/institutions and mechanisms to administer and oversee implementation of the AML/CFT regime. Some of them are as follows:

- ***Seychelles Financial Intelligence Unit (SFIU)***: is charged with the responsibility to conduct the core functions (i.e., receipt, analysis and dissemination of reports) of an FIU, investigate ML/TF cases, supervise and monitor AML/CFT compliance of all reporting entities, coordinates the functions/activities of the National AML Committee.
- ***Central Bank of Seychelles***: is the regulator and prudential supervisor of banks, credit unions, money transfer and foreign currency services providers.
- ***Seychelles Financial Services Authority (FSA)***: is the regulator and supervisor of non-bank FIs, TCSPs in the international financial centre operations, and has explicit

powers under the FSA Act to take enforcement actions against its regulated entities for non-compliance with market entry and AML/CFT obligations.

- **Seychelles Police:** is responsible for investigation of ML/TF and freezing and confiscation of proceeds of crime through the Commercial Crimes Unit.
- **Attorney General's Office (AGO):** is responsible for drafting of AML/CFT laws, decisions on whether or not to prosecute ML and TF cases, mutual legal assistance and extradition as the central authority.
- **Seychelles Revenue Commission (SRC):** is responsible for conducting investigation of tax crimes and manages cross-border currency and bearer-negotiable instruments declarations at ports of entry and exit.
- **Department of Foreign Affairs:** is responsible for managing the country's diplomatic relations with other countries and international organizations and sharing information with relevant stakeholders including the FIU on the UNSCRs relating to targeted financial sanctions.
- **The Anti-Corruption Commission of Seychelles (ACCS):** is responsible for investigation of crimes related to corruption and refer potential ML cases to the FIU or Police for investigation. It was established and started operation in 2016 and is yet to have capacity to properly conduct its mandate.

Overview of the financial sector and DNFBPs

53. The FIU is the sole competent authority in Seychelles responsible for supervising and monitoring AML/CFT compliance by the FIs and DNFBPs. In addition, the FSA Act provides AML/CFT enforcement powers to the FSA on its regulated entities for non-compliance with AML/CFT obligations.

TABLE 4: STRUCTURE AND SIZE OF THE FINANCIAL SECTOR

Type of Financial Institutions	Domestic			Global Business		
	No. of Licensed/Regulated/Registered	Total Assets (in USD)	Foreign Majority/ Locally Majority Owned (Number)	No. of Licensed/Regulated/Registered	Total Assets (in USD)	Foreign Majority/ Locally Majority Owned (Number)

			er)			er)
Banks	2	531,043,000	Locally majorit y owned (2)	7	784,937,000	Foreign majorit y owned (7)
Credit finance	2	18,812,000	Locally majorit y owned (2)	0	0	
Factoring	0	0	0	0	0	0
Leasing	0	0	0	0	0	0
Microfinan ce	1	22,689,000	Locally majorit y owned (2)	0	0	0
MVTS	11	15,250,000	Locally majorit y owned (11)	3	3,239,000	Foreign majorit y owned (3)
Money changer	12	927,000	Locally majorit y owned (12)	0	0	0
Life Insurance	2	38,782,154	Locally majorit y owned (2)	3	29,926,472	Foreign majorit y owned (3)
General Insurance	4	30,634,759	Locally majorit y owned (2)	2	2,035,181	Foreign majorit y owned (2)

			Foreign majorit y owned (2)			
Composite Insurance	0	0	0	1	24,222,658.25	Foreign majorit y owned (1)
Captive Insurance	0	0	0	1	318,764.28	Foreign majorit y owned (1)
Insurance brokers	14	1,592,882	Locally majorit y owned (14)	1	25,902.50	Foreign majorit y owned (1)
Collective Portfolio manageme nt	0	0	0	0	0	0
Mutual funds	0	0	0	13	USD660mi llion	Foreign majorit y owned (13)
Fund administra tor	4	These do not hold assets under their manageme nt. They provide fund accounting services and	Locally majorit y owned (3) Foreign majorit y owned (1)	0	0	0

		administer client investing and divesting into fund				
Investment Advisor	4	Note (1) These do not hold any asset under their management. They have the possibility of managing a portfolio of securities without holding these securities or client funds.	Locally majority owned (3) Foreign majority owned (1)	0	0	0
Securities Dealer	2	Do not hold any asset under their management. Although they hold client funds = USD1.4million (as at end 2016)	Foreign majority owned (2)	12	Do not hold assets under their management. Although they hold client funds = USD18million (as at end 2016)	Foreign majority owned (12)
Securities Exchange	1	Does not hold any asset under	Foreign majority	0	0	0

		managem nt. Market Cap is USD258.66 million (as at end 2017).	owned (1)			
Clearing Agency	1	Does not hold any asset under managem nt.	Foreign majorit y owned (1)	0	0	0
Securities Facility	1	Does not hold any asset under managem nt. Holds the register of securities.	Foreign majorit y owned (1)	0	0	0
CIS Administra tor	1	638,808,000	Locally majorit y owned (1)			

Source: Information and data provided by the Authorities in Seychelles

Banking is the pillar of the financial sector in Seychelles. The financial sector contributed 5 percent to GDP of Seychelles in 2016. During the same period, the total asset base of the banking sector was USD 1.26 billion. Commercial banks predominates the sector as the majority of financial transactions are processed through the sector. As at 2016, Seychelles had nine active (9) banks. Seven (7) of these are international banks, of which two provide international financial business services. Since 2011, banks in Seychelles were allowed to conduct domestic and international financial business activities under a single license. One of the nine banks is yet to start operations.

Securities sector is relatively small in size and emerging, but a third pillar of the country's economy. It comprises securities exchanges (1, which went live in August

2013), security facility (1), clearing agency (1), securities dealers (10), securities dealers representatives (2), and investment advisors (3), and investment advisors. The market capitalisation is around USD104million. The sector is regulated and supervised (prudentially) by the FSA.

Insurance sector plays a significant role in the financial sector of Seychelles. In 2016, there were 12 licensed insurance companies, out of which five (5) were operating in the domestic market, whilst seven (7) were operating in the international financial centre space. There were fifty three (53) insurance intermediaries. At the end of 2016, insurance intermediaries consisted of twelve (12) brokers, two (2) agents, thirty five (35) sub-agents, three (3) principal insurance representatives (PIR) and one (1) insurance manager. In 2016, the total assets value of the insurance sector was SCR 259, 061, 685, of which long term insurance contributed SCR54, 573, 850.

Foreign Currency Exchange Bureaux and MVTS in Seychelles is serviced by commercial banks (use SWIFT for cross-border transfers) and Class A Bureau De Change (conducts both money transfer and foreign currency exchange businesses) which provide intermediary services for traditional money transfer operations such as Western Union. Class A Bureau De Change are licensed by the CBS under the FI Act and the National Payment Systems Act (NPS Act). In 2015, the total transaction value amounted to about SCR 3 billion compared to SCR 10 billion by commercial banks. This demonstrates the importance of the sector in the financial sector of Seychelles. There is no *hawala* or similar service provider in Seychelles. As regards buying and selling of foreign currency, Class B Bureaux De Change (do not engage in money transfer business) and commercial banks conduct the transactions. In 2015, the former's transactions totalled SCR 1.23 billion as compared to SCR0.33 by commercial banks, signifying the importance of this industry in the financial sector of Seychelles.

Credit Unions operate under the Credit Union Act, 2009 (as amended) and regulated by the CBS. As at end of 2014, the credit unions had total assets value of SCR221 million, which represents about 1 percent of total assets value of all credit granting institutions in Seychelles. It plays a critical role in mobilising resources for the benefit of its members.

Overview of the DNFBP sector

54. The DNFBP sector in Seychelles comprises casinos, accountants and auditors, real estate agents, precious metals and precious stone dealers, and lawyers. In addition, the

scope of DNFBPs was extended to also cover dealers in motor vehicle, boats and yachts as they are considered to pose higher ML risks.

Casinos are regulated by the FSA. The casino industry in Seychelles is relatively small in size. Out of the five (5) licensed casinos, only three are active. On-line gambling is not allowed in the country.

TCSPs in the international financial sector are provided by ICSPs (67), ITSPs (25) and FSPs (14) regulated by the FSA. The license holders range from international companies to small domestic companies, generally owned by accountants and legal practitioners. The primary function of the ICSPs are to provide international financial sector clients with formation, management and administration of IBCs in Seychelles licensed under the IBC Act. They further act as registered agents, director and nominee shareholder on specified entities. As at October 2016, there were 198, 274 IBCs in Seychelles, compared to 650 companies when it was first launched in 1996⁶. However, out of this, only 90, 666 IBCs were active. On average, an ICSP is responsible for 1300 IBCs. Seychelles does not require IBCs to submit audited financial accounts and, as a result, there is no information on the total assets value held by them.

Legal practitioners in Seychelles comprises admitted attorneys-at-law, notaries, persons authorised to provide legal advice and lawyers in the Attorney-General's Office. Legal practitioners are required by law (Legal Professionals Act, Legal Professionals Licensing Regulations, and Professionals Conduct Rules) to obtain a license from the Registrar of the Supreme Court. In general, the Supreme Court exercises oversight role on legal practitioners in Seychelles. There are about 48 licensed legal practitioners in Seychelles (excl. lawyers at the Attorney General's Office). Legal practitioners engage in business activities (e.g., real estate and company formation etc) falling under the scope of the activities subject to AML/CFT obligations under the FATF Standards.

Accountants and Auditors fall under the oversight role of the Association of Accountants, which is a self-regulatory body. However, membership is not compulsory.

Real estate agents fall under the Real Estate Agency Board in the Ministry of Habitat, Lands, Infrastructure and Land Transport. Real estate agents must apply for a five-year license to the Board to conduct the business of selling and buying real estate in

⁶<http://www.seychellesnewsagency.com/articles/4026/Seychelles+rated+'largely+compliant'+by+OECD+-+continued+vigilance+and+reforms+needed+to+uphold+status,+says+finance+minister#sthash.xgUr73lf.qNgilmfh.dpuf>

Seychelles. The licensing regime distinguishes transactions conducted by local and foreign clients as the latter is considered to pose higher ML risks. In this regard, there is more rigour in the assessment of transactions when the buyer is a foreigner than a local. In this case, the real estate agent must get an approval (i.e., the transaction must be sanctioned) from the Government for such a transaction. Therefore, all real estate transactions where the buyer is a foreigner are subjected to vetting by the FIU and sanctioned by the Ministry.

Overview of preventive measures

55. The primary legal and regulatory framework prescribing AML/CFT obligations for FIs and DNFBPs are set out in the AML Act, 2006 (as amended), its Regulations and its Guidelines and the Prevention of Terrorism Act (PTA), 2004 and its Regulations. The AML/CFT laws cover all FIs and DNFBPs as required by the FATF. In addition, Seychelles has expanded the scope of DNFBPs to include dealers in motor vehicles, yachts and boards. The AML/CFT obligations for FIs generally also apply to DNFBPs. The AML Act requires FIs and DNFBPs to apply preventative measures on a risk-sensitive basis. While the AML/CFT measures have been improved through a series of amendments since 2008 (mainly to the AML Act), some of the key AML/CFT requirements require further improvements. These include: assessing risk and applying a risk-based approach, risk management and compliance programme, UNSCRs on targeted financial sanctions, CDD measures particularly on UBO and new technologies.

Overview of legal persons and arrangements

56. Companies may be formed and registered in the Seychelles under the Companies Act, 1972 (as amended). A minimum of two persons may incorporate a company with limited liability. All applications for the incorporation of a company submitted to the Registrar of Companies must be accompanied by a signed declaration by a barrister, attorney or notary to certify that all the requirements for the incorporation of the company under the Companies Act 1972 have been complied with. As a matter of practice, all applications for the incorporation of a company are submitted to the Registrar of Companies through a legal practitioner who prepares the Memorandum and Articles of Association. As at the date of the on-site visit, there were over 2006 limited companies registered under the Companies Act.

57. Every company must have at least two directors, a secretary and a registered office in the Seychelles. Corporate directors are not allowed under the Companies Act. It is not allowed to issue bearer share certificates nor bearer debentures.

58. In addition to holding movable assets, a company may hold land in any part of the Seychelles. The Companies Act also provides for the incorporation and registration of proprietary companies. Proprietary companies are subject to a number of restrictions and may not have more than 50 shareholders or issue shares to the public. Corporate members or directors are not allowed for proprietary companies. All directors of the proprietary companies are members of the company. Proprietary companies are subject to the requirements to keep a register of its members and directors and all changes thereto must be notified to the Registrar of Companies. A proprietary company cannot issue preference and bearer shares. As at the date of onsite visit, there were 3,755 proprietary companies registered in Seychelles.

59. IBCs are registered with the Registrar of International Companies (the functions are carried out by the FSA) through Registered Agents (i.e, ICSPs), which are licensed corporate service providers in the international business sector. One or more persons may, by subscribing to a Memorandum, incorporate a company under the IBC Act. A company incorporated under the laws of a jurisdiction outside Seychelles may where it satisfies the requirements of the IBC Act, continue as a company incorporated under the IBC Act.

60. The business affairs of an IBC must be managed by a board of directors that consists of one or more persons who may be individuals or companies. IBCs are not allowed to issue shares to bearer in terms of the IBC Act.

61. IBCs are subject to a number of restrictions. They cannot carry on businesses in Seychelles and cannot carry on the business of banking, insurance, trust business or the business of providing registered office for companies. They must at all times have a registered office and a registered agent in the Seychelles.

62. An IBC must keep at its registered office or such other place as the directors determine, a share register, a register of its directors and officers and such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company. As at the date of onsite visit, there were 198,274 IBCs registered in Seychelles.

63. The legal framework for trusts does not exist in the Seychelles. An international trust may be established under the International Trust Act 1994 (as amended). An international trust is defined under the ITA as a trust or constructive trust in respect of which-

- the settlor is not any time during the duration of the trust a resident of the Seychelles;
- at all times at least one of the trustee is a resident of Seychelles, an IBC (authorised by the FSA) or a financial institution.

64. Generally, any property other than property situated in the Seychelles may be held on trust. However, with the approval of the FSA, the trustee of an international trust may own immovable property as may be required for office accommodation of the trustee and may invest in securities and hold other investments in the Seychelles. As at the date of the onsite visit, there were 719 trusts on the Register of International Trusts.

65. The NPO sector is regulated by the Registrar of Associations in the Office of the Registrar General, which is also responsible for companies and land registries. In general, the laws governing the regulation of the sector require significant review to improve the regulation and monitoring of the sector. In addition, the Registrar has resource constraints to supervise and monitor the sector effectively. At the time of the on-site visit, 397 NPOs were estimated to be registered in Seychelles. The NRA indicated that the figure could not be confirmed as it was possible that some might be dormant, as shown by the poor questionnaire responses received during the NRA process. The focus of the majority of Seychelles NPO's was on domestic rather than international issues. Foreign donations to NPO accounts were rare. At the time of the on-site visit, Seychelles was yet to conduct a risk assessment of the sector necessary to identify and supervise the NPOs regarded as having higher TF risks. With the assistance of Common Market for Eastern and Southern Africa (COMESA), Seychelles has engaged a consultant to assist the authorities to review the legislation and carry out NPO sectoral risk assessment to inform future activities for effective regulation and supervision of the sector.

Overview of supervisory arrangements

66. The primary regulators of FIs and DNFBPs are the FSA and the CBS. The CBS is responsible for regulation of commercial banks, credit unions, bureaux de change and money remitters. Further, the CBS has adequate prudential supervision capacity. The FSA is responsible for licensing of the non-bank FIs (e.g., insurance and capital markets) except for those licensed by the CBS. The FSA licenses ICSPs which provide creation, management, and administration of IBCs which operate in the international financial centre only. The FSA further registers IBCs which are licensed by the Registrar of Companies.

67. The FIU is the AML/CFT supervisor under the AML Act. The FIU does not have sufficient resources and supervision tools to properly supervise and monitor FIs and

DNFBPs, on a risk-sensitive basis, for compliance with AML/CFT requirements. As a consequence, a number of FIs and, to a large extent, DNFBPs have not been supervised for compliance with AML/CFT obligations during the period under review. In addition to the FIU having powers to issue sanctions under the AML Act, the FSA has similar powers under the FSA Act in respect of the reporting entities under its purview.

68. The FIU, the FSA and the CBS have a tripartite MoU which establishes a coordination structure for exchange of information, cooperation and coordination of prudential and AML/CFT regulatory supervisory actions. To some extent, the tripartite members have undertaken supervisory actions which have contributed positively to AML/CFT compliance. However, there is need to enhance cooperation through exchange of inspections information to promptly identify and address possible systemic risks which may arise from non-compliance issues.

Overview of international cooperation

69. Seychelles has ratified all the international instruments relevant to AML/CFT, which it has domesticated to support its international cooperation requirements. The legal framework for extradition and MLA is set out in the Mutual Assistance in Criminal Matters Act 1995 (MACRM Act) and the Extradition Act 1995. In addition, Seychelles has entered into bilateral and multilateral agreements (e.g. the Harare / Commonwealth MLA Scheme and East African Police Chiefs Cooperation Organisation (EAPCCO) and SAPRCCO with other countries to facilitate international cooperation. The LEAs and the AGO (which handles MLA requests) have made and received requests on cases with their foreign counterparts but are not mostly related to ML/TF. The FIU has signed MoUs with other FIUs including FIUs in the ESAAMLG region to facilitate exchange of information. As at the date of the onsite visit, the FIU Seychelles had exchanged information with counterparts such as in France, United Kingdom, South Africa, Madagascar and Mauritius. The FIU as the AML/CFT supervisor, the CBS and the FSA can cooperate and exchange information with foreign counterparts.

70. ML is an extraditable offence in Seychelles, but TF is not. Section 4 of the Extradition Act provides that an offence is only extraditable if the facts constituting the offence would constitute an offence as per the offences listed in the First Schedule to the Act. This means that it is not enough that the offence for which a request for extradition is being made is described by the same name as an offence in Seychelles, but the elements of the offence should also constitute an offence in Seychelles. The Extradition Act places a minimum threshold of 12 months imprisonment for an offence to be extraditable.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- There is generally a good understanding of ML/TF risks by the majority of the AML/CFT stakeholders at a national level. ML risk in Seychelles is rated as medium high, mainly as a result of the inherent threats associated with the international financial centre operations, as well as the vulnerabilities arising from inadequate AML/CFT measures implemented by reporting entities and competent authorities.
- TF is regarded as low based on a number of considerations. Whilst Seychelles is in a region characterised by political instability and insecurity fuelled by maritime piracy and terrorism activities, there are no known cases of funds generated and moved from Seychelles used to finance terrorism domestically or abroad, nor are there any known cases of its nationals participating as foreign terrorist fighters
- Seychelles' multi-agency AML/CFT Committee coordinates national efforts to develop and implement AML/CFT measures. Seychelles is yet to develop and implement an AML/CFT Strategy which is informed by identified ML/TF risks. The priorities and objectives of the competent authorities are therefore not based on the risks identified and AML/CFT/PF Strategy and Policies.
- The FIs and ICSPs apply proportionality of CDD measures to transactions and customers based on categorisation of risk levels contained in their own institutional ML/TF risk assessments. The rest of the DNFBP sector do not apply CDD proportionality in the absence of institutional ML/TF risks.
- The private sector, particularly FIs and ICSPs, demonstrated a good awareness of the ML/TF risks prevalent in the country and relevant to the type of business activities they are respectively engaged in.

Recommended Actions

Seychelles should:

- Develop a national action plan to address the identified ML/TF risks. Promote a shared understanding of ML/TF risks amongst all stakeholders (public and private sectors) at a national level through targeted stakeholder engagements centred on the results of the ML/TF risk assessment.
- Ensure that AML/CFT policies and activities are implemented on the basis of a national strategy informed by identified and up-to-date ML/TF risks. This also means

that the results of the findings of the NRA should be used for the development and implementation of ML/TF policies and operational plans.

- Under the responsibility of the AML/CFT Committee, set up mechanisms aiming at coordinating efforts at the national level, with the view to implement future national AML/CFT strategy.
- Have mechanisms to update information on ML/TF data / information, including through maintaining of comprehensive statistics to identify emerging ML/TF risks and review the effectiveness of the AML/CFT system.
- Provide competent authorities with adequate resources (material, technical and human) to prioritise and mitigate identified higher risks particularly the FIU, the ACCS, the Commercial Crimes Unit of the Police as well as the FSA and the CBS in the event they become AML/CFT/PF supervisors.
- Ensure that accountants, auditors and legal professionals providing services of creation, administration and management of legal persons and arrangement are adequately assessed to understand potential ML/TF risks, and apply appropriate mitigating controls to address the identified risks.

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

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

71. There is generally a good appreciation of ML/TF risks by the AML/CFT stakeholders (private and public sectors) in Seychelles, albeit at varying degrees. In particular, the competent authorities in Seychelles demonstrated a good understanding of the ML/TF risks and their respective areas of responsibilities in the AML/CFT system. The variance in the understanding of ML/TF risks in the country is more pronounced between FIs and ICSPs and the rest of the DNFBPs. The authorities showed appreciation for the nature and extent of the different risk types, the underlying causes, and the level of impact among the stakeholders, to inform a shared understanding of the risks, and application of appropriate mitigating strategies. Seychelles finalised the assessment of ML/TF risks at a national level a few weeks before the on-site mission. The results of the NRA were yet to be shared with the rest of the relevant public and private sectors. The

formal publication of the results of the NRA was expected be approved by Cabinet in March 2018.⁷

72. A number of key AML/CFT stakeholders participated in the NRA. The authorities used both quantitative and qualitative analysis techniques, relying on the World Bank NRA tool, and which focused on threats and vulnerabilities in the country's AML/CFT system. The NRA has highlighted information and data gaps in certain sectors and public institutions, and further recognised the resultant practical challenges of determining accurately the ML/TF risks. Notwithstanding these, the challenges are not material enough to invalidate the credibility, reasonableness, and usefulness of the NRA findings for purposes of informing the country's AML/CFT strategies and policies.

73. The authorities demonstrated a reasonable understanding of those FIs and DNFBPs posing higher ML and TF exposure. The NRA considers the non-face-to-face nature of customers and transactions in the international financial centre operations of Seychelles as posing a significant threat. Both the private and public sectors, for instance, single out intermediation through ICSPs as posing significant risks due mainly to the fact that, *inter alia*, the customer base is high net-worth and are resident in foreign jurisdictions. Across the spectrum, it is understood that although reliance on foreign regulated entities (i.e., third parties or introduced business) to obtain and retain CDD information is permitted under certain circumstances, the reporting entities and the authorities are aware of the inherent risk of not getting all the relevant CDD information including UBO, or swiftly, to enable reporting entities to satisfy themselves about the veracity of information provided. Due to the appreciation of the inherent risk, the reporting entities recognise the obligation that the ultimate responsibility lies with the reporting entity relying on a third party. In practice, onboarding of customers in the international financial centre sector, in particular commercial banks and ICSPs, reporting entities conduct their own verification processes using reliable independent sources of information such as commercially available databases and group network to satisfy themselves about the true identity of the customer.

74. The authorities demonstrated a reasonable understanding of ML risks including laundering of the unlawful proceeds, the methods and the sectors misused in the Seychelles. The NRA has identified the major predicate offences generating the most

⁷ The authorities indicated that they have shared the results of the NRA to all relevant stakeholders, both public and private, albeit after the onsite examination (i.e., since April 2018)

proceeds (e.g., drug trafficking, smuggling and tax evasion), customer profiles (in relation to types of transactions, products and customers) and jurisdictions in regions around the world (e.g., East Africa, Western Europe and South Asia) impacting on the overall risk profile of Seychelles. Across the key public AML/CFT stakeholders, the majority of FIs and ICSPs, there is a shared understanding of the major ML risks facing the country. For instance, both the public and private sector regard tax evasion, as did the NRA, through misuse of personal bank accounts to conduct company business transactions by company executives, as a major ML concern.

75. It is understood across the spectrum that bureaux de change, commercial banks, luxury real estate, dealers in new motor vehicles, professional intermediaries, and companies are vulnerable to ML risk. For instance, the NRA recognises that there are significant amounts of proceeds from Seychelles being laundered in foreign jurisdictions in and outside the region through these sectors. However, there are no estimates available to gauge the magnitude of the proceeds with foreign elements. It appears that cash payments are the preferred channel for moving the criminal proceeds for laundering through luxury real estate and foreign currency exchange transactions. In addition, the proceeds are moved by cash couriers to foreign destination.

76. Seychellois often act as nominee on foreigners' real estate transactions (the law requires government to subject transactions conducted by foreigners to enhanced scrutiny sanctioning regime before approval is granted by government), in order to assist them to circumvent the stringent due diligence mechanisms. The nominee later on would relinquish the 'ownership' of the property into the hands of the '*bona fide*' owner. Overall, Seychelles has concluded that the risk of ML is medium high. The assessment team also supports this view.

77. The authorities identified TF and terrorism as low risk in Seychelles. The NRA recognises that there are potential TF threats emanating from the East African region due to the on-going political instability and insecurity situation. The authorities maintain great awareness of the potential link between maritime piracy carried out by known terrorist groups in Somalia and financing of terrorism. There is no evidence to suggest that any pirates investigated and/or convicted in Seychelles had or have links with any terrorist groups. Further, there are no known cases of funds from Seychelles raised or used to finance terrorism domestically or abroad, nor are there any known cases of Seychellois being foreign terrorist fighters. Further, there has been no NPO in Seychelles

linked to financing of terrorism inside or outside of the country during the period under review.

78. The assessment team does not share the views of the country that accountants, auditors and legal professionals are medium low risk for ML in Seychelles. The assessment team identified that the three DNFBPs create, administer and manage legal persons and legal arrangements in the domestic and international financial centre operations; are less supervised; and demonstrated inadequate level of adherence to AML/CFT requirements. Based on these factors, the assessment team is of the view that ML risks in the sectors could be medium-high, as opposed to the conclusion made in the NRA.

National policies to address identified ML/TF risks

79. Seychelles introduced its national AML/CFT Strategy 2015-18 as the basis for implementation of AML/CFT measures. The Strategy, however, is not informed by ML/TF risks. The Ministry of Finance oversees implementation of the Strategy. The NRA process was completed a few weeks before the on-site visit. Seychelles has not yet developed a national AML/CFT Strategy and policies based on ML/TF risks identified. Seychelles regards the findings of the NRA as a starting point for the development of coordinated ML/TF policies and strategies.

Exemptions, enhanced and simplified measures

80. Most FIs conducted ML/TF risk assessments which are used to inform application of AML/CFT obligations. On the basis of these assessments, FIs are able to categorise the risk level of their customers, transactions and delivery channels. These risk-ratings are the basis for simplified and enhanced due diligence and simplified due diligence measures being applied as allowed under the AML Act and its Guidelines. There are no exemptions provided under the Seychelles AML/CFT regime.

81. FIs apply enhanced due diligence measures as per the AML Act and the Guidelines in respect of certain customers (e.g., PEPs, motor vehicle dealers, real estate agents) and transactions (e.g., cash and cross-border wire transfers) which are considered high risks for ML and therefore require EDD and on-going monitoring.

82. For some sectors (e.g., insurance) that are considered low risk, FIs and DNFBPs apply simplified measures (See IO.4 for details). Seychelles intends to use the findings of

the recently completed ML/TF risk assessment to further inform proportionality of the implementation of the measures.

83. With the exception of the ICSP sector, DNFBPs have not conducted institutional ML/TF risk assessment to inform the proportionality of the mitigating measures. The level of understanding of ML/TF risks and AML/CFT application particularly relating to proportionate CDD measures, is not yet developed. As a result, there is less focus on application of the different CDD measures based on ML/TF risk differentiation when entering into business relationships or conducting transactions.

Objectives and activities of competent authorities

84. The objectives and activities of competent authorities in Seychelles are not informed by any ML/TF risk assessment, as the 2015 – 2018 National AML/CFT Strategy is not premised on identified risks. Whilst the FIU demonstrated a good understanding of ML/TF risks of the supervised entities, rule-based supervision is still being applied to supervise and monitor reporting entities. Both the CBS and the FSA apply a risk-based approach to prudential supervision of its licensees which, in the process, generates information on operational risks which are also relevant to AML/CFT, but the information is not shared with the FIU as the AML/CFT supervisor.

85. Seychelles is in the process of building investigative capacity in a number of LEAs following the July 2017 amendments to the AML Act and the POCA which expressly designated the Police as the competent authority for ML/TF investigations, along with the FIU. The Police had not yet developed the necessary investigative capacity in ML/TF at the time of assuming these functions after the amendments to the laws. The process of setting up the ML/TF Specialised Unit within the Police is overseen by the President's Office given the significance of the changes. At the time of the on-site visit, the Unit comprised investigators which were transferred from the FIU. There was the intent to bring in expertise from the FIU and SRC.. However, the Unit has not yet carried out any investigation. The Authorities expressed optimism that once the results of the NRA are made public, they would develop and implement financial investigation programmes taking into account the identified risks and mitigation strategy.

National coordination and cooperation

86. Seychelles has in place an AML/CFT Committee which was established in 2006 for coordination of AML/CFT Strategy and Policies. Chaired by the FIU, the Committee is a

platform for provision of advice to government on AML/CFT matters, fostering of domestic exchange of information, carrying out of national ML/TF risk assessment, and provision of technical support to the National CFT Committee in respect of implementation of UNSCRs on TF and PF. The AML/CFT Committee is a multi-agency structure and has successfully coordinated AML/CFT Strategy 2015 -18 and NRA exercise. It is responsible for coordinating and promoting implementation of AML/CFT framework in the country. The Committee includes a variety of key agencies such as the CBS, FSA, AGO, SRC and the FIU as the chair and coordinator. The Committee meets quarterly to consider AML/CFT developments affecting the country, and proposes intervention.

87. The AML/CFT Committee advised that it would use the findings of the NRA to review the current Strategy and Policies to promote effective cooperation and coordination of implementation programmes based on the identified ML/TF risks.

88. There is a tripartite MoU involving the FSA, the FIU and the CBS which fosters coordination and cooperation on prudential and AML/CFT supervision. To some extent, the tripartite alliance has demonstrated positive outcomes in relation to supervision of reporting entities. It was observed that a few joint inspections have been carried out under the arrangement. There are some cases where the FIU had referred matters to the FSA and the CBS in respect of AML/CFT non-compliance issues (mainly market entry violations) involving entities under their purview, for further action. There is evidence that the FSA and the CBS have taken enforcement actions against the concerned entities, including termination of business licenses but only in respect of market entry matters. However, there is no evidence that the FSA and the CBS had exchanged information with the FIU on matters relevant to its AML/CFT mandate.

89. The assessors observed that the LEAs have no mechanism in place to coordinate their actions and cooperate with each other on investigations. It is the view of the assessors therefore that this could be attributed to the limited attention being paid to carrying out parallel financial investigations and ML cases, in addition to the lack of capacity.

90. Seychelles has no mechanism in place which promotes coordination and cooperation in respect of proliferation financing.

Private sector's awareness of risks

91. The private sector demonstrated a varying level of awareness of the ML/TF risks in Seychelles. FIs demonstrated a fairly good awareness of ML/TF risks more than the DNFBPs with the exception of ICSPs. This awareness is not directly informed by the results of the NRA as it was yet to be shared with the private sector. The understanding of ML/TF risk is mainly because of the fact that the majority of the FIs have conducted institutional ML/TF risk assessment, which include types of customers, transactions and delivery channels. The opposite is true of the DNFBPs, other than the ICSPs. This is concerning given that the majority of the DNFBPs are vulnerable to ML/TF risks.

Seychelles is rated Low Level of effectiveness for IO.1.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO6

- Seychelles FIU is the central agency for receipt and analysis of transaction reports, and dissemination of financial intelligence and other information to identify and investigate potential ML/TF and associated predicate offences.
- The FIU has access to a variety of public and private sector databases to enhance the quality of financial intelligence and other information it produces and provide to LEAs. The information accessed has been used to produce and provide reasonably good financial intelligence and other information which has been, to some extent, used by the LEAs to pursue cases of a few ML and a number of predicate offences.
- The absence of suspicious transactions reports from the DNFBPs (except for the ICSPs) and the majority of non-bank FIs limits the availability and use of such reports to detect and combat potential financial crimes.
- The FIU is yet to conduct strategic analysis useful to identify emerging risks and assist law enforcement to pursue potential ML investigations in particular and contribute to broader AML/CFT initiatives in the country.
- Feedback to reporting entities on the usefulness of the STRs filed to and analysed by the FIU is not regular and unstructured to effectively impact on the behaviour of the reporting entities in respect of discharging their reporting obligations. Similarly, the FIU receive *ad-hoc* and informal feedback from competent authorities on the extent to which financial intelligence support investigations. In both instances, the lack of such feedback affected the efforts to assess and improve the quality of STRs filed and financial intelligence disseminated.
- The FIU lacks sufficient capacity including budget to recruit and retain skilled personnel to build a sustainable organisation capable of discharging its core duties

effectively. Notwithstanding, the FIU has been able to produce financial intelligence and other information which has been used by law enforcement agencies to initiate or support potential ML and associated predicate offences cases.

IO7

- LEAs in Seychelles generally do not have adequate capacity to enable them to identify and investigate potential cases of ML including conducting parallel financial investigations and apply special investigation techniques. As a result, only three ML cases have been investigated, of which one resulted in a conviction through a plea bargain. The remaining two ML cases are with the Attorney-General Office for consideration.
- With the exception of the three (3) ML cases (drug trafficking offences) so far, Seychelles is yet to conduct an investigation of ML case arising from any of the identified high risk predicate offences such as tax evasion.
- In the absence of a sentence for conviction of ML offence other than through the plea bargain, it was not possible to determine the extent to which sanctions for commission of ML is proportionate, dissuasive and effective.

IO8

- The framework which was in place before August 2017, where all cases of ML and confiscation of illicit proceeds were done by the FIU, was more structured and effective. However, at the time of the on-site, the asset forfeiture function within the FIU had recently been transferred to the Commercial Crimes Unit of the Police in August 2017. The confiscation of proceeds of crime was seriously affected by the transfer of the function and amendments of the POCA as the majority of the restrained assets had to be released as a result of this development.
- Due to the resignation of experienced and trained officers in asset identification, tracing and seizure at the time of the transfer to the Police, the Asset Recovery Unit was left incapacitated to effectively handle asset forfeiture cases. In addition, the Commercial Crimes Unit had no capacity including trained officers to identify, trace, seize and recover illicit proceeds at the time of transfer.
- Parallel financial investigations to determine whether some of the high risk predicate offences being investigated had not generated proceeds of crime likely to be confiscated were not being done.
- There is no capacity to identify proceeds generated from foreign predicate offences and confiscate them.
- There has not been any cases involving repatriation, sharing or restitution of proceeds or instrumentalities of crime with other jurisdictions.

Recommended Actions

Seychelles should:

IO6

Seychelles should:

- Expedite provision of sufficient resources to the FIU to enable it to acquire adequate analytical capacity including skilled personnel to conduct operational and strategic analysis, and produce quality ML typologies and trends necessary to identify emerging ML/TF risks and inform the objectives of LEAs and the reporting entities. Further, Seychelles should take necessary steps which will enable the FIU to retain skilled staff through implementation of competitive conditions of service to ensure sustainability and effectiveness of the FIU. The authorities should benchmark against comparable competent authorities such as the CBS which has been able to attract and retain staff.
- Take necessary steps to ensure that domestic cooperation and exchange of information between the FIU and LEAs lead to detection, investigation and prosecution of ML and associated predicate offences. Further, the authorities should maintain the on-going efforts on identification, tracing and confiscation of criminal proceeds but should focus more on laundered property.
- Ensure that the FIU keeps comprehensive statistics on the number of STRs and other reports received and analysed, and disseminations made as well as the results thereof, to enable the authorities to assess the effectiveness of financial intelligence and other information provided by the FIU to combat criminal proceeds and TF throughout the national AML/CFT system.
- Take necessary steps, including through provision of parallel financial investigations training, to ensure that the LEAs, particularly the newly established ML/TF unit of the Police and the ACCS are well equipped to appreciate the value and use of the financial intelligence and other information from the FIU to actively pursue ML/TF cases and associated predicate offences.
- The FIU should develop mechanisms to elicit feedback on the usefulness of the financial intelligence and information disseminated to LEAs, and provide feedback to reporting entities. The information generated through the feedback process should be used to improve the feedback mechanism through formalised structures between the FIU and the law enforcement agencies, on the one hand, and reporting entities, on the other.
- Should the authorities proceed with and successfully complete the policy intention to designate the FSA and the CBS as AML/CFT supervisors in respect of their

licensees, the FIU and these supervisors should develop and implement a mechanism for provision of consistent and harmonised feedback to reporting entities.

IO7

Seychelles should:

- Take the necessary steps including provision of resources to build adequate capacity and capability of the LEAs (the FIU, Anti-Corruption Commission, Seychelles Revenue Authority, and the Commercial Crimes Unit of the Police) charged with the responsibility to investigate ML, TF, and associated predicate offences, including parallel financial investigations and adequately apply special investigative techniques.
- Use the results of the NRA to promote prioritisation of investigation and prosecution of cases including foreign predicate offences in accordance with the identified risks in Seychelles.
- Ensure that all LEAs, not just the NDEA, conduct parallel financial investigations necessary to identify potential ML cases and criminal proceeds, and refrain from putting more focus on predicate offences.
- Ensure that LEAs pursue different types of ML cases and criminal proceeds consistent with the ML and associated predicate offences risks facing the country.
- Keep comprehensive statistics relating to ML investigations and prosecutions to enable adequate assessment or review of the effectiveness of the AML/CFT regime in the country.

IO.8

Seychelles should:

- Consider whether transferring the functions of the Asset Recovery Unit to the Police and the amendments in July 2017 to the POCA were in the best interest of the asset forfeiture regime of Seychelles specifically and AML/CFT system in general, as these actions had adversely impacted on the administration of asset forfeiture in Seychelles given the limited capacity and practical experience in the Police to effectively execute the asset recovery function. The authorities need to strengthen the function in the Police by making it more a specialised function.
- In order to make the Asset Recovery Unit effective again, the authorities need to provide more resources in the form of: i), adequate officers, ii), training the officers in both investigating ML and identification and tracing of proceeds of crime, and iii) capacitating and training the Unit to conduct parallel financial investigations necessary to identify proceeds generated by high risk ML and associated predicate offences.

- Prioritise cases to pursue in the recovery of proceeds of crime based on the risk profile of the country and have a proper case management system to assess efforts in place to deprive criminal property effectively.
- Improve on the capacity of LEAs to identify proceeds and confiscate proceeds generated from foreign predicate offences.
- Introduce a more reliable case management system with foreign countries in cases involving repatriation, sharing or restitution of proceeds or instrumentalities of crime arising from domestic or extraterritorial cases.

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

Immediate Outcome 6 (Financial intelligence ML/TF)

Background and Context

92. Seychelles has a reasonably developed Financial Intelligence Unit known as Seychelles FIU. The FIU is the central agency for the receipt and analysis of suspicious transactions and other reports from reporting entities, and dissemination of financial intelligence and other relevant information to LEAs to identify potential cases of ML, TF and associated predicate offences. Before July 2017, following the amendments to the AML Act and the POCA (which now makes it an administrative type), the FIU was a hybrid type, leaning more towards law enforcement functions. This was because in addition to the core functions, the FIU had asset recovery unit and ML/TF investigation mandates. After the July 2017 amendments, the asset recovery unit of the FIU was transferred to the Police, in addition to being expressly designated to conduct ML/TF investigation. The FIU is a member of the Egmont Group of FIUs, which provides it with a platform to exchange information with foreign counterparts.

93. The FIU has a shortage of resources to adequately conduct its core functions. The personnel who performed the investigations and assets forfeiture roles are no longer with the FIU, either because they left the employ of the public service or were transferred to the new ML/TF investigation unit in the Police, the Commercial Crimes Unit. At the time of the on-site visit, the FIU had 19 Technical Staff, inclusive of 8 Analysts.

94. The FIU is housed in a stand-alone building with adequate physical structure and security. Whilst the current organisational structure appears to support the performance

of the core functions, the FIU is undertaking organisational realignment to take into account the July 2017 amendments to the AML Act and the POCA which, *inter alia*, transferred from the FIU the asset recovery function to the Commercial Crimes Unit in the Police whilst awaiting the creation of Financial Crimes Investigation Unit.

95. There is high staff turnover at the FIU, which has limited the FIU to develop and sustain capacity. For instance, the FIU has difficulties to attract and retain skilled staff, mainly due to lack of funding for better competitive conditions of service. The analysis section is severely under-staffed, and it appeared it might be for a while unless there are significant increases with regards to the budget of the FIU and changes to the structure of the conditions of service. For instance, some successful candidates interviewed for positions at the FIU have declined to join on account of the unsatisfactory emoluments offered, which are not comparable to similar government agencies such as the CBS.

Use of financial intelligence and other information

96. Competent authorities in Seychelles have access to a wide range of financial intelligence and other information through direct and indirect channels. The FIU adequately exercises its powers under the AML Act to access any information, in the public or private domains, relevant to the execution of its core mandate. The FIU and the competent authorities have sufficient access to records and other information held by various public authorities (mostly obtained upon requests for information based on memoranda of understanding) and privately-owned databases such as Nexus Lexus and World-Check (direct access through payment of subscription). Access to public databases include company registry and the FSA - beneficial ownership information; Seychelles Licensing Authority - verification of business licenses; SRC - taxpayers information; and Police -for criminal records information. In addition, the competent authorities access beneficial ownership information on IBCs from ICSPs and banks using relevant legal powers to access the records. The number of databases being accessed by the competent authorities and the FIU are sufficient to generate reasonable financial intelligence and other information for purposes of pursuing criminal proceeds and TF.

97. The FIU receives large Cash Transaction Reports (CTRs) at above SCR 5,000.00 threshold from Bureaux *de* Change. Bureaux *de* Change are considered high risk for cash transactions most notably unlawful proceeds related to drug offences, which is a very significant ML predicate offence in Seychelles. There have been three suspected ML

cases⁸, taken to court by the FIU, in which bureaux *de change* appeared to have been misused.

98. By law, cross-border cash and BNI declaration/disclosure information, which is an important source of intelligence and information for purposes of initiating or advancing ML/TF investigations, is available to the FIU via the customs department of the SRC. However, the manner in which it is being accessed is insufficient to enable the FIU to generate the kind of financial intelligence and information required to assist law enforcement agencies in relation to ML/TF cases related to cross-border cash or BNI declarations. The process is that, customs officers at the ports of entry and exit have direct telephone contact with the FIU Director, or a designate, who calls when cash declarations above the threshold reports are received for the FIU to interview the passenger/declarant to establish the source and purpose of the cash. The airport and seaport are at relatively short distances from the FIU, so the declarants are not unreasonably held for long hours at the airport/seaport. The FIU basically does not therefore have access to the declaration reports databases necessary for establishing links and improving the quality of operational analysis and strategic analysis. This presents a significant threat as cash couriers involving drug trafficking is a major ML risk in Seychelles. The last significant seizure was on 15th July 2014 whereby USD 83, 050 and EURO 13, 700 were seized at the Seychelles International Airport.

99. The ability of LEAs (with the exception of the Narcotics Bureau in the Police Force formerly known as National Drug Enforcement Agency and the asset recovery unit in the FIU) to access and use a wide range of information sources and financial intelligence in ML investigations is yet to be tested and proven, given that the LEAs have, to date, barely conducted any ML or TF investigations.

STRs received and requested by competent authorities

100. The FIU receives STRs from reporting entities through hardcopy or dedicated email address. In addition to STRs, the FIU receives reports on foreign currency transactions from Bureaux *de Change* at and above SCR 5,000 threshold. The FIU applies prioritisation method for analysing STRs received. For instance, the FIU gives preference to STRs from or involving entities in the international financial centre operations due largely to its inherent high risk nature. Similarly, STRs involving TF (no TF cases as yet)

⁸ For instance, one such case is *The Republic v Derreck Poris*

would be prioritised due to the national security nature of the crime. About 60 percent of the STRs received are of good quality. There are on-going efforts such as outreach sessions to reporting entities, to address the problem. This challenge is mitigated by requests for additional information relating to the transaction in question to enable the FIU to determine the usefulness of the suspicion reported.

Number of STRs received, 2013 - 2016

2013	2014	2015	2016	Total
102	80	143	100	362

101. The majority of STRs received are from banks (In Seychelles, the majority of transactions are processed through the banking sector), distantly followed by the ICSPs (gateway for IBCs to participate in international financial centre operations), which is consistent with the risk profile of the country. In the view of the assessors, it appears therefore that on the basis of the size and the inherent nature of the international financial centre operations, the STRs received could be higher than in the table above (IO.4 for details). In addition, the lack of STRs by other FIs and DNFBPs (except the ICSPs) potentially deprives the FIU of the necessary transaction information to identify possible cases of criminality. The significant variance on 2015 and 2016 STRs received emanates from termination of provision of non-resident accounts services by two major banks. Banks in Seychelles file STRs when there is doubt about the veracity and lack of CDD information provided (See IO.4 for more details).

102. There are two main reasons for the low number of STRs in general and non-bank FIs and DNFBPs in particular, namely, (i) apprehension to file STRs due to the automatic freezing of accounts requirement, and (ii) lack or inadequate supervision and monitoring of the sectors for implementation of AML/CFT obligations including monitoring and reporting of transactions.

103. There was no STR received with funds suspected of involving TF in Seychelles during the period under review. This appears consistent with the position that Seychelles has a low level of TF profile (IO.1 for details). In respect of TF transactions and business relationship, the analysis process involves checking, using commercial software such as World-Check, the names of person involved in a transaction against the UNSCR List. There has been no positive match at the time of the on-site mission.

104. The FIU has used its legal authority to request for additional information from reporting entities in order to enhance analysis of STRs and other information received, and has received positive responses from the reporting entities. Of all the reporting entities, banks responded quicker (within seven days) and generally the majority of the reporting entities appeared to provide the relevant CDD information. However, the FIU indicated that such cases are rare and do not generally impact negatively on its work.

Number of Requests from competent authorities to the FIU

No of request	2013	2014	2015	2016	Totals
Made	8	209	405	522	1144
Granted	8	209	405	522	1144
Refused	0	0	0	0	0
Avg respond time	1 to 4 weeks				

105. The FIU responded 100 percent to all requests for information made by domestic competent authorities. The FIU receives *ad-hoc* feedback from LEAs on the usefulness of the responses provided, and it is the view of the assessors that this undermines the opportunity to improve on the quality and relevance of the responses provided. In general, the LEAs (e.g., NDEA and SRC) gave a positive impression on the quality and value of financial intelligence received from the FIU in relation to their respective investigative needs. In particular, the NDEA cited a number of cases where it successfully used the FIU information either to initiate or support drugs-related offences including on the three ML cases (IO.7 for details).

106. The Police has recently acquired the express powers to investigate ML and TF cases, co-sharing the responsibility with the FIU following the July 2017 amendments to the AML Act and the POCA. Seychelles has just recently established Anti-Corruption Commission of Seychelles (ACCS) which was yet to use dissemination from the FIU on corruption and alleged ML cases. Seychelles is in the process of establishing investigative capacity within both the Police and the Anti-Corruption Commission. As a result, there were no case examples provided by these LEAs to demonstrate how the responses from the FIU were used to identify potential cases of ML/TF and associated predicate offences. Overall, the majority of the disseminations are used largely by the NDEA and the Asset Recovery Unit, and, to a lesser extent, the SRC, to initiate or support their respective

operational needs. The Asset Recovery Function within the Commercial Crimes Unit of the Police and the ACCS are yet to access and use financial intelligence and other information generated by the FIU owing to their recent nature.

Operational needs supported by FIU analysis and dissemination

107. The FIU has developed a reasonably good ICT infrastructure and structures on physical protection of the information in its possession. Notwithstanding the fact that the current budget and the number of personnel available to the FIU are inadequate to discharge its core functions effectively, the FIU has been able to produce reasonably good financial intelligence and information which has been used, to some extent, by LEAs. The FIU uses i2 analytical software tool to process STRs and other information (e.g., CTRs from bureaux de change), and capture and perform analysis. Whilst the amount of information used for analysis is dependent on the nature and extent of the subject matter, the FIU generally uses all transactions and other information (e.g., from internet search engines) when conducting its operational analysis. Further, the FIU relies on a combination of information generated through access to privately-owned/commercial and public databases to enrich the quality of the financial intelligence and other information for use by LEAs, either to support or initiate an investigation.

108. To some extent, the LEAs use financial intelligence and other information from the FIU to initiate or support investigations in respect of predicate offences and ML. The table below indicates the number of disseminations made by the FIU to LEAs from 2013 to 2016.

Disseminations per investigative agency

Agency	2013	2014	2015	2016	TOTAL
Police	0	0	0	0	0
Asset Recovery Unit within the FIU	11	16	20	3	50
Seychelles Revenue Commission	1	0	5	6	12
Anti-Corruption Commission	0	0	0	0	0
National Drugs Enforcement Agency	1	1	1	2	5

109. The Asset Recovery Unit, which formed part of the FIU, was charged with the responsibility to pursue confiscation of criminal property. In this regard, it received financial intelligence and other information from the Compliance and Analysis Division

of the FIU which it used to identify and trace criminal property. There has been successful investigations in respect of identifying, freezing and confiscation of assets by the Unit using the disseminations from the Compliance and Analysis division of the FIU (IO.8 for details). The case examples below illustrate the use of disseminations to support operational needs.

Case Example 1: Dissemination used on investigation and confiscation of large sums of money under the AML Act and the POCA

Following receipt of a suspicious transaction report, the FIU initiated extensive investigations on two International Business Companies (IBCs) which had USD accounts at a bank in Seychelles. The ultimate beneficial owners (UBOs) and the intended nature of the business relationship (oil and gas exploration and production) of the IBCs were duly identified and verified by the bank and the International Corporate Service Provider (ICSP), and was provided to the FIU. The UBOs using the business relationship to transact extremely large round-dollar cross-border wire transfers which involved: (a) politically exposed persons, (b) state-owned entities, and (c) private corporate vehicles in various jurisdictions (France, Egypt, Malta, Spain, United Kingdom, and Equatorial Guinea). The account was misused by about seven companies without legitimate business reason, to move huge sums of money in USD. The analysis by the FIU revealed that the USD bank account in Seychelles was used to channel substantial transfer of public funds from an oil-rich West African country whose conduct constituted offence of money laundering in Seychelles. Further, it was discovered that the UK company was a shell company. The FIU successfully sought and received international cooperation and exchange of information in the majority of the countries involved in the transactions. The account was frozen, and the case is ongoing.

Case Example 2: Dissemination used to investigate and confiscate large sums of

money under the AML Act and the POCA

The FIU analysed information received in Seychelles and abroad relating to an IBC which had triple currency accounts (USD, GBP and EURO) which was suspected of moving proceeds of fraud and theft for laundering purposes through the Seychelles financial services sector. The FIU established UBOs (individual and corporate) and initial intended business of the business relationship. The company had criminal charges to respond to in the UK for engaging in unlicensed business activities as well as in Poland and other jurisdiction. The proceeds thereof were moved to Seychelles through the IBC. The dissemination was used by the Asset Recovery Unit to freeze the account on the ground that the funds in the three accounts constituted money laundering in Seychelles and other jurisdictions (e.g., UK and Poland) were criminal investigations were on-going. The case is on-going.

110. The majority of crimes being referred through the disseminations by the FIU include the following: human trafficking, unlicensed general trading, drugs, tax, Ponzi Schemes and public sector corruption. Further, the FIU focuses on IBCs and UBOs involved in the transaction and business relationship subject to the allegations of ML and associated predicate offences. Overall, the crimes identified are consistent with the risk profile of Seychelles.

Number of Investigations resulting from FIU financial intelligence, 2012 to 2016

Crime Type	2012	2013	2014	2015	2016	TOTAL
ML	1	0	4	12	7	24
TF	0	0	0	0	0	0
Other	1	0	4	12	1	18
Total	2	0	8	24	8	42

111. The number of disseminations to LEAs (excluding Asset Recovery Unit) which led to investigations appears moderate relative to the inherent risk and context of the jurisdiction as an international financial centre as well as the number of STRs received.

The authorities attribute this to the fact that the FIU itself was mandated to investigate ML/TF cases, as well as being an assets recovery unit before the changes brought about by the July 2017 POCA amendments. The FIU was therefore in essence analysing STRs for use in investigations conducted by itself.

112. The disseminations were used by LEAs mainly to identify, trace, seize and confiscate criminal assets through a civil process under the POCA (See IO.8 for more details), rather than for criminal investigation and prosecutions. This could explain why there have been only 3 case files passed onto the Attorney General's Office for criminal prosecution since the FIU was established in 2006. All the 3 cases are relatively recent, with one resulting in a conviction (through a plea bargain), while the other 2 are still ongoing. The 3 cases originated from investigations initiated by the NDEA, which focused on the drugs related predicate offences, whilst the FIU provided support in the ML aspects.

113. The FIU is yet to conduct strategic analysis to identify trends and patterns, and inform stakeholders on emerging risks. The FIU attributes this to lack of human resources. It is the view of the assessment team that the absence of strategic analysis impacts negatively on the sharing of information to identify ML/TF risks, inform coordinated interventions, and promote a shared understanding of the risks facing the country.

Cooperation and exchange of information/financial intelligence

114. The FIU and competent authorities in Seychelles cooperate and exchange information/financial intelligence, to some extent. This is primarily based on the dissemination of financial intelligence and information (upon request and spontaneously), discussions held and mechanisms (e.g., MoUs) in place. The NDEA (e.g., drugs offence and related ML cases), the Asset Recovery Unit (e.g., seizure and confiscation of criminal property) and the SRC (e.g., tax evasion) have somewhat demonstrated domestic cooperation and exchange of information / financial intelligence with the FIU relative to the ACCS and the Police (are still in the process of building investigative capability). The exchange of information, albeit to some extent, with the Asset Recovery Unit, the NDEA and the SRC is consistent with the ML risk profile of the country, in that drug trafficking and tax related crimes are identified as posing higher ML risk in Seychelles.

115. The Asset Recovery Function housed within the Commercial Crimes Unit in the Police (ML/TF investigations post the 2017 POCA amendments) and ACCS (mandated to investigate corruption and refer suspicion of ML to the FIU or the Police) were in the process of setting up operational capacity and therefore, in practice, not in a position to cooperate and exchange information with the FIU to fulfil their respective mandates.

116. The FIU exchanges information with similar bodies through bilateral and multilateral arrangements. For instance, there were twelve (12) MoUs signed with foreign counterparts, out of which nine (9) are ESAAMLG members⁹. Further, being a member of the Egmont Group has provided the FIU with a global platform to cooperate and exchange information with foreign counterparts. The case examples show that UBOs, cross-border wire transfers, restraining of criminal property and PEPs transactions dominate information or financial intelligence provided between the FIU and its foreign counterparts using either or both channels.

117. The FIU demonstrated that it has adequate measures for the safeguarding and protection of information being exchanged or used, either with domestic LEAs (e.g., MoUs) or foreign counterparts (e.g., Egmont Group Secure Web). Physical security and ICT infrastructure including high parameter walls with 24 hour guards, electronic office card access system and anti-malware software are robust to restrict access and safeguard the information.

Seychelles has achieved a **Low Level of Effectiveness** for Immediate Outcome 6.

Immediate Outcome 7 (ML investigation and prosecution)

Background Information

118. Since 2006 when the offence of ML was criminalised in Seychelles, the AML Act has undergone several amendments, the latest of which being July 2017. The FIU and the Police have powers to investigate ML cases. In addition, SRC has powers to investigate tax related crimes and associated ML cases whilst the ACCS investigates corruption cases and refers ML cases to the Police or the FIU. Furthermore, since only the FIU and the Police had powers under the AML Act to investigate ML cases before the July 2017

⁹ Since then, (December 2017), the FIU has signed a further MoU with the FIU of Canada (FINTRAC).

amendments, the assessment of effectiveness relates mostly to the work done by the FIU and, to a lesser extent, to the Police. The actual investigation of ML and TF was recently moved to the Commercial Crimes Unit in the Police, although the FIU still retained its power to investigate ML and TF under the AML Act. At the time of the on-site visit, ACCS had just been recently formed with the appointment of 5 Commissioners in August 2016. As a result, there has been no investigation of corruption and ML cases by the newly formed structures. Overall, the biggest challenge for the LEAs in general is lack of capacity (human, technical and material) to execute their functions in terms of AML/CFT.

ML identification and investigation

119. Since the AML Act came into force, only three ML cases have been investigated and passed on to the Attorney General's Office for prosecution in Seychelles. The Police through the Commercial Crimes Unit is aware of their duty to investigate ML cases. However, they are not yet equipped in terms of resources and training to handle ML investigations. The meetings held with the LEAs revealed that there was generally low capacity in all the LEAs (including the FIU) to conduct parallel financial investigations and ML investigations. The Commercial Crimes Unit was in the processes of familiarizing themselves with the recently acquired responsibilities following the July 2017 amendments which broadened their scope of work.

120. The ACCS was formed in March 2016 with the mandate to detect, investigate and prevent corruption and refer suspected ML cases to the FIU or the Police. At the time of the on-site visit, there were no corruption cases prosecuted in Seychelles, nor dissemination of financial intelligence reports by the FIU to the ACCS due to lack of manpower at ACCS at the time it was newly formed. This is attributed to the fact that, overall, the ACCS is still in the initial phase of setting up its operations. However, the ACCS has requested for information to assist with its investigations from reporting entities through the FIU.

121. The SRC had identified possible ML cases arising from tax evasion but were not being pursued, or referred to another LEA for investigation and possible prosecution as the SRC only focused on recovery of taxes due. The SRC was also not aware that in terms of the AML Act it is mandated to investigate ML arising from tax related cases and added to this, it also did not have the capacity to investigate ML cases.

122. The AGOs office which has the powers to guide Police investigations does not have adequate resources and appropriately skilled personnel to effectively guide investigations and prosecute ML cases. When a case is submitted to the Attorney General, the evidence is assessed and where it has shortcomings the file is sent back to the LEAs with instructions. When the file is returned by an LEA with sufficient evidence it is allocated to a prosecutor on the basis of experience and competence.

123. At the time of the on-site visit, Seychelles had only one completed case of ML. The case is summarized in the table below.

Drug Related ML Case – Conviction
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The NDEA had received information that a certain individual was leaving the jurisdiction with a large amount of cash. The report went further to say that the cash was meant to purchase drugs overseas. The individual was stopped at the airport and interviewed. The interview led to a search wherein only USD3000.00 was found in his possession. The individual, together with his girlfriend and child did not board the plane with other passengers at the time of boarding. All of a sudden the individual told the ground staffs that he needed to use the bathroom. Upon his return from the bathroom he was holding a white paper bag which he did not have before. The bag was searched by security and was found to have large amounts of cash. The Police and NDEA were called. The individual eventually pleaded guilty to the offence of money laundering and was convicted and sentenced.
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124. The above case on its own cannot give a definitive insight into how well the LEAs in Seychelles are investigating or are capable of investigating ML cases.

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

125. At the time of the on-site visit, Seychelles had recently completed its NRA. Seychelles has a three year AML/CFT Strategy which came into effect in September 2015 and is to run until December 2018. The Strategy which was implemented before the completion of the NRA, was not guided by the findings of ML/TF risk assessment nor was it guided by any known ML/TF risks. The Strategy has a general approach to combating ML and its main aim is to protect the reputation of Seychelles by sustaining and enhancing coordinated national initiatives undertaken to combat ML and TF

through the implementation of internationally recognised standards and good practices. This approach is too high level to provide a strategic direction for Seychelles LEAs based on specific high ML/TF risks, not to mention that most of them are struggling to get sufficient resources to conduct ML investigations and prosecution. The LEAs in Seychelles are not informed by AML policies to pursue ML investigations and prosecution consistent with the threats and risks facing the country.

Types of ML cases pursued

126. All the three ML cases investigated by the NDEA and the FIU during the period under review were in respect of proceeds arising from drug trafficking. As indicated above, there are concerns in respect of the capacity of the LEAs to successfully pursue ML investigations. Most of the referrals from the FIU which were investigated did not result in ML investigations and prosecution due to a lack of sufficient evidence collected by the LEAs to institute successful ML prosecution of the cases. Further, the authorities did not identify and categorise investigated cases according to elements of foreign predicate offences. At the time of the on-site visit, no foreign predicate offences had been identified and investigated by the authorities. This is of serious concern considering the international financial nature of activities which take place in the jurisdiction. The situation could also being exacerbated by the fact that there is still limited awareness on the different types of ML offences.

Effectiveness, proportionality and dissuasiveness of sanctions

127. At the time of the assessment, there was only one completed ML case under the AML Act (through a plea bargain) which, in the view of the assessors, is insufficient to enable proper determination of the effectiveness of the available sanctions. In the circumstances, the assessment team could not definitively determine the application of the ML sanctions under the AML Act. Furthermore, the Authorities had not applied other criminal justice measures in respect of possible ML cases particularly as they are in the early stages of focusing on ML cases, moving away from focusing on predicate offences.

Seychelles has achieved a Low level of effectiveness for IO7

Immediate Outcome 8 (Confiscation)

Background

128. Seychelles has a sound legal framework for provisional and confiscation measures related to ML, TF and associated predicate crimes. Following the recent amendment to the POCA in July 2017, the Police incorporated the Asset function under the Commercial Crimes Unit as a designated structure to carry out freezing and confiscation functions (previously done by the FIU). However, there is lack of necessary expertise and other resources to carry out this mandate mainly because it had just been acquired from the FIU. Therefore, the assessment of the effectiveness of the Immediate Outcome 8 is largely based on the FIU's performance during the period under review. In respect of process, the AG makes an application to the courts for an order to freeze and confiscate proceeds of crime under the POCA.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

129. In 2008, Seychelles introduced civil forfeiture and these powers were given to the FIU to implement in terms of the AML Act and POCA. As already indicated under IO 6 and 7 of this Report, from 2008 until the amendments to the AMLA in 2017, the FIU received and analysed STRs, and investigated potential criminal cases identified in the financial intelligence reports. From 2008 to July 2017, the FIU thus had a standing position to investigate nearly all the financial intelligence reports it generated and sent alleged criminality to the AG's Office for consideration. In all these matters, recovery of proceeds of crime was also pursued as a priority. Therefore, the main objective of the FIU together with ML investigations was to identify, trace and confiscate illicit proceeds through civil forfeiture court applications. The evidence provided and discussion held with the authorities show that the FIU became quite effective in ensuring that proceeds of crime were confiscated and to achieve this, it worked with the various competent authorities, particularly Customs and the Anti-Narcotics Bureau in law enforcement.

130. The Director of the FIU was also managing the assets recovered and the Receivership Account where recovered funds were deposited. However, with the amendments to AML Act and POCA, the role of recovery of proceeds of crime was transferred to the Police end of August 2017. The interviews conducted during the on-site indicated that this was a serious draw back to the Seychelles asset forfeiture regime as only one of the officers who had been seconded to the FIU from the police and trained

in asset forfeiture went back to the Police following the transfer of the asset recovery function to the Police. The head of the Asset Recovery Unit in the FIU, who was an expatriate also resigned. At the time of the on-site, it was clear that the Commercial Crimes Unit where the asset recovery function was transferred to, had not been prepared to take over this function as it had no capacity to handle asset forfeiture matters and had not put in place a structure to deal with such matters. This was coupled, in practice, by the role of investigations of ML being moved to Commercial Crimes Unit when the Unit had no experience or trained officers in financial investigations to handle the crimes of ML, let alone identifying and tracing proceeds of crime. At the time of the on-site visit, the asset recovery unit for the three months it had been moved to the Commercial Crimes Unit of the Police, had only handled one asset civil forfeiture case, which was still on-going in court.

131. No parallel financial investigations to determine whether any of the predicate offences being investigated had generated proceeds which could be laundered were being conducted. In addition, the Commercial Crimes Unit had no capacity to carry out such kind of investigations. It was noted that at the time of the on-site visit, there were only 6 officers in the Unit, and the majority of the trained officers in investigating ML were said to have left the Police. Some of the proceeds connected to the predicate offences being investigated were not being identified for purposes of confiscation. Also, affected in the process of the changes brought in by amendments to POCA and AML Act to the asset forfeiture regime of the Seychelles was the implementation of provisional measures such as freezing and seizing of suspected proceeds of crime, which before the transfer of that function to the Police, were being initiated by the FIU through a legal counsel who was seconded to the FIU, who after all the preliminary work had been done on the case, including handling of interlocutory applications, would hand over the matter to the AG's Office for prosecution.

132. The authorities could not provide a good explanation as to why the function of the AFU had been taken away from the FIU where it seemed was being properly implemented and managed as a priority and moved to the Police which, according to the authorities themselves, was not yet ready to take up this function. This has thus affected all the achievements which had been done by the FIU for an effective and efficient asset forfeiture regime in Seychelles.

133. The 2017 amendments to the POCA, in addition to have weakened the asset forfeiture regime of the Seychelles by transferring the functions of the Asset Recovery

Unit from the FIU to the Police (as described), had a huge negative impact on other areas of the asset forfeiture requirements. The other additional change brought in by the amendments was that bank accounts were excluded from the definition of property¹⁰ where any provisional or confiscation measures could be applied. Pursuant to this there was a further amendment to the same law which gave the FIU as the investigator of ML cases at that time, only 1 month from the date of commencement of the amendment to file charges against the owners of the bank accounts, failing which the frozen funds held in these accounts would be released and no further action would be taken regarding such funds in these accounts¹¹. It became impractical for the FIU to investigate and file charges against all persons whose bank accounts had been frozen within the short period of 1 month which had been prescribed by the amendment resulting with most of the bank accounts being unfrozen and the owners having immediate access to these funds.¹² The table below illustrates the amounts which were unfrozen and released based on the amendment:

CASE DETAILS		AMOUNTS RELEASED				Assets
		USD	EUROS	POUNDS	SRC	
1.	-----Ltd	459 831				
2.	-----Ltd	110 597	8			
3.	-----Individual				814 021	
4.	-----Plc	55 993	16 542	494 014		
5.	-----Ltd	69 445	1,768,476			
6.	-----Ltd		451,957		119,744	Maison on Eden Island and Boat
7.	-----Capital	67 517.91				

¹⁰ S. 2(a) of the Proceeds of Crime (Civil Confiscation)(Amendment) Act, 5 July 2017

¹¹ S. 2(h) of the Proceeds of Crime(Civil Confiscation) (Amendment) Act, 5 July 2017

¹² At the time of the Face to Face meeting, the High Court of the Seychelles had just released a judgment which was not favourable to these amendments, see *Financial Intelligence Unit v Contact Lenses Limited and Another*

8.	-----Ltd	7, 245,589				
9.	-----Ltd		61 812			
10.	-----Ltd	84 665	4 905	552 925		
11.	-----Ltd	37,998	49,961	313,032		Eden Island Apt worth Euros 650k and Boat worth USD 280k
12.	-----Capital	618 470				
13.	-----Ltd	2, 026, 708				
14.	-----Ltd	320 551				
15.	-----Ltd	5,426, 578				
16.	Individual	120,006	34		69,681	
17.	Two individuals (a couple)	470			76,961	8 cars
18.	IBC A	52,096.84	178,154			
19.	International Trust A		242,510			
20.	Company A Ltd	2012		2,565		
21.	Individual				75,000	
22.	Individual	119,740	551		16,009	2 jeeps + 7 boats
23.	-----Ltd		17,909			
24.	TOTAL	16,766,169	2,614,665	1,362,536	1,171,416	

Source: Seychelles Authorities

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

134. The authorities did not provide any statistics or cases of confiscations involving proceeds from foreign predicate offences or where proceeds were located abroad. Most of the cases presented by the authorities were for confiscations of proceeds of crime from domestic predicate offences. The confiscations covered a wide range of offences with some more dominant than the others.

135. The prevalent predicate offences that generated most of the illicit proceeds were drug trafficking, tax related cases, fraud, and forgery. The amount seized and confiscated and the number of cases involving freezing of ML related assets has been increasing gradually over the period under review and confiscation peaked from 2014. See the table below:

STATISTICS RELATING TO THE FREEZING, SEIZING AND CONFISCATION OF ASSETS

Freezing, Seizure and Confiscation of ML Related Assets						
	2012	2013	2014	2015	2016	
No. of cases involving freezing of ML related assets	3	7	31	17	30	
Amount of ML related assets frozen						
No. of cases involving seizure of ML related assets					4	
Amount of ML related assets seized						
No. of cases involving confiscation of	3	7	31	17	30	

ML related assets						
Amount of ML related assets confiscated	3 Eur 1.732 million USD 1.070 million	7 Euro 977,251 USD 1.364 million	31 Euro 2.040 million USD 2.063 million GBP 828,641	17 Euro 497,298 USD 1.059 million	30 Euro 1.120 million USD 6.277 million GBP 460,123	All these sums have been forfeited to the state

Methodology used to calculate the proceeds of crime by type of predicated offences.

<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Offence</i>	<i>No of Cases Reported</i>	<i>No of Convictions</i>	<i>Value Involved (USD³⁸)</i>	<i>Amount of Proceeds Confiscated (USD)</i>	<i>Estimated Proceeds of Crime (USD³⁹)</i>
<i>Drug Trafficking</i>	57	42	1,500,000	420,000	5,528,441.52
<i>Fraud/Forgery</i>	19	3	520,000	0	552,844.15
<i>Corruption / Bribery</i>	3	0	24,000	0	2,764,220.76
<i>Tax Evasion</i>	4	0	3,200,000	0	4,607,034.60
<i>Robbery</i>	23	15	32,000	0	184,281.38
<i>Theft</i>	27	12	272,000	32,500	184,281.38
<i>Company Fraud</i>	5	0	2,400,000	0	921,406.92

<i>Smuggling (information was not fully provided)</i>	-	-	-	-	3,685,627.68
TOTAL	138	72	7,948,000	452,500	14,558,229.33

The table shows statistics on the proceeds of crime generated from predicate offences, 2014 to 2015.

A	B	C	D	E	F
Offence	No of Cases Reported	No of Convictions	Value Involved (USD³⁸)	Amount of Proceeds Confiscated (USD)	Estimated Proceeds of Crime (USD³⁹)
Drug Trafficking	57	42	1,500,000	420,000	5,528,441.52
Fraud/Forgery	19	3	520,000	0	552,844.15
Corruption / Bribery	3	0	24,000	0	2,764,220.76
Tax Evasion	4	0	3,200,000	0	4,607,034.60
Robbery	23	15	32,000	0	184,281.38
Theft	27	12	272,000	32,500	921,406.92
Company	5	0	2,400,	0	3,685,62

Fraud			000		7.68
Smuggling (information was not provided)	-	-	-	-	-
TOTAL	138	72	7,948, 000	452,500	18,428,1 38

136. The column of seizures in table above refers to all properties (in monetary value) recovered by LEAs from the criminals or their associates. Confiscations indicated in Column E include assets confiscated by the Court both in absolute terms under the POCA and also in pecuniary terms following a criminal conviction.

137. Based on statistics obtained from the LEAs¹³, the total value prejudiced through the various predicate offences is USD7,948,000 and value seized and recovered by LEAs represented an amount of USD452,500 during the period under review.

138. The predicate offence representing the most proceeds of crime is company fraud with a total value of USD2.4 million. This figure was obtained from the Police and the elements of company fraud were not broken down further.

139. Drug trafficking follows at USD1.5 million of the value of the proceeds provided over the review period. This figure is, however, a conservative figure as other information obtained during the course of the NRA indicated that a large number of investments being financed from proceeds of drug trafficking are invested overseas in neighboring countries and locally using domestic companies and legitimate businesses. This was also supported by proceeds of crime in civil confiscation cases where the respondents claimed in their defense that they were businessmen but could not explain the source of their wealth. ML offences with drug trafficking as the predicate offence are very low with only 3 being recorded as investigated by the LEAs and only one having a conviction as a result of a plea of guilty and the other case was withdrawn. The third case was on-going at the time of the on-site visit. There are, however, a number of civil confiscation cases taken to Court under the POCA where it was stated by the FIU that the criminal evidential threshold could not be met to charge the offenders with the offence of drug trafficking. However, the offenders had amassed unexplained wealth for

¹³Statistics taken from the NRA, Page 32

which they could not explain the sources and where they tried to do so, the explanation could not be corroborated resulting with some of such properties being seized and eventually being confiscated through the civil processes.

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

140. Seychelles follows a declaration system to regulate cross-border transportation of currency. All persons entering or leaving Seychelles are required to fill in declaration forms. Although the LEAs appear to be working together in the confiscation of undeclared or falsely declared cross-border currencies, there is no systematic way of handling such issues. Where a person declares an amount of USD10 000 he/she is obliged to indicate such in the declaration form. Where a declaration of above USD10 000 is made, the practice is that Customs will immediately call the FIU to come and interview the person, joined by officials from the Customs and the NDEA (depending on the nature of the case). This is routine practice regardless of whether there is suspicion or not.

141. The said interviews are carried out at the point of entry and if there is a need to detain the cash it will be the duty of the FIU to detain the cash. At the time of the on-site visit, there were only three passengers who had been subjected to such interviews; however, the interviews did not result in any seizure. There have been no cases of cash being detained at the ports of entry during the period under review.

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

142. At the time of the on-site visit, it was clear that with all the changes which had been recently effected by the authorities to their AML/CFT legal framework, investigation of ML and let alone confiscation of illicit proceeds was not being effectively implemented nor was it linked to any AML/CFT policies and prioritised according to Seychelles ML/TF risks. At the time of the on-site visit, Seychelles had just completed its NRA. Although some of the authorities (with the exception of the FIU) indicated during the interviews that confiscation was done as a policy objective, there was no evidence to suggest existence of national policies making confiscation of proceeds of crime in any form, a priority and objective of the country. However, it was apparent that the authorities were aware of the offences likely to generate proceeds that could be laundered but what the authorities could not demonstrate to the assessors was that illicit

proceeds from these high risk offences were being pursued with the objective to confiscate them and that indeed confiscation was happening pursuant to objectives, policies and strategies in place to prioritise confiscation relating to these known high risk offences to mitigate the risk.

Seychelles has achieved a Low Level of effectiveness in IO8.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO9

- Seychelles has identified TF as low risk based on internal and external considerations directly impacting on the TF threats in the country. They include that Seychelles has a sound CFT legal framework and, there has not been incidents of terrorism and its financing in Seychelles and generally in the southern Africa region where the country is located.
- The FIU demonstrated a fairly good understanding of TF risks present in Seychelles. Furthermore, the competent authorities have adequate powers to investigate and prosecute TF cases. However, they do not have adequate capacity to identify and carry out potential TF investigations. The Police are in the process of setting up a specialised anti-terrorist financing unit under the Commercial Crimes Unit.
- There has been no TF case identified or investigated in Seychelles on which to apply the understanding of TF risks and powers of the competent authorities to determine the extent to which effectiveness could have been achieved. As a result, there has been no seizures or confiscation of terrorist property in the country.
- Seychelles has not criminalised the financing of an individual terrorist. It has also not criminalised financing of individuals who travel for TF training and there is no sanctions for legal persons.

IO10

- The National Counter Financing of Terrorism Committee as a key structure in the implementation of the UNSCRs is yet to be operational after it was constituted during the on-site mission. As a result, the implementation of the UNSCRs framework is overly delayed from the receipt and dissemination of the List by the Department of Foreign Affairs and the FIU respectively, resulting in Seychelles not implementing the measures without delay.

- Seychelles has not comprehensively reviewed its legislative and regulatory framework as well as conducting a sectoral TF risk assessment of the NPO sector. Although the NRA cover the NPO sector, the scope and intensity of assessment conducted could not determine the nature and extent of NPOs exposed to higher TF risks which will serve as the basis for monitoring and oversight of the sector. Seychelles is in the process of undertaking the review of the sector. As a result, the Registrar of the Associations is yet to develop capacity to supervise and monitor those NPOs identified as posing higher TF risk.
- Seychelles has not found a match in respect of TF property within its country and therefore there has been no freezing under the UNSCRs nor freezing and confiscation of terrorist property following investigation and prosecution of a TF case. This appears to be consistent with the TF risk profile of the country.

IO.11

- Seychelles does not have both a legal and institutional framework nor mechanisms in place to implement targeted financial sanctions relating to proliferation financing.
- There is very little awareness and understanding in regards to implementation of targeted financial sanctions relating to proliferation amongst the reporting entities in Seychelles.

Recommended Actions

IO.9

Seychelles should:

- Use the understanding of the TF risk profile of the country to develop and implement a comprehensive national counter financing of terrorism strategy.
- Build operational capacity including providing specialised TF training of the competent authorities responsible for investigation and prosecution of TF particularly the FIU, the Commercial Crimes Unit in the Police and the Attorney-General's Office to enable the agencies to identify, investigate and prosecute potential TF cases.
- Apply alternative measures against TF where it becomes apparent that getting a conviction may not be possible.
- Where conviction has been achieved, Seychelles should apply proportionate, dissuasive and effective sanctions.
- Seychelles should maintain statistics relating to TF cases investigated,

prosecuted, convicted, and sanctions applied to enable the authorities to measure and review the effectiveness of the TF measures.

IO.10

- Seychelles should expeditiously take necessary measures to operationalise the National Counter Financing of Terrorism Committee including training and putting in place processes and procedures.
- Seychelles should ensure that there are clearly defined procedures and processes in place to enable the competent authorities (Department of Foreign Affairs, National Counter Financing of Terrorism Committee and the FIU) to effectively coordinate and implement the UNSCRs without delay.
- The authorities especially the FIU as the AML/CFT supervisor should ensure that reporting entities understand and implement the UNSCRs requirements for a timely execution of the obligations.
- Seychelles should take the necessary steps to complete the on-going legislative review and undertake sectoral risk assessment which will be the basis upon which the Registrar of Association will build appropriate capacity to have outreach and monitor high risk NPOs.
- Where there are TF cases and convictions, Seychelles should actively freeze without delay and confiscate TF property and ensure that there is proper statistics to demonstrate effectiveness and review the TF measures.

IO.11

- Develop and implement regulatory and institutional framework to implement the measures relating to the combating of proliferation financing in a manner consistent with the FATF Standards.
- Conduct outreach to both public and private sector entities to ensure that they fully understand and effectively implement their obligations concerning the detection and prevention of transactions related to financing of proliferation of weapons of mass destruction.
- The FIU as the AML/CFT supervisor should supervise and monitor compliance with the obligations relating to proliferation financing by the reporting entities. Should the authorities proceed with and complete the policy shift to designate the FSA and the CBS as AML/CFT supervisors in relation to their licensees, the same should cover proliferation financing.

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

Immediate Outcome 9 (TF investigation and prosecution)

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

143. There has been no instance which required investigation on TF and terrorism in Seychelles. The TF risk profile in Seychelles is considered low (IO.1 for details). Competent authorities (e.g., FIU and Police) demonstrated a fairly good understanding of the TF risk profile in Seychelles. For instance, they were aware that while there has not been any TF or terrorism activities identified within the country, or elsewhere which involve Seychellois, the international financial centre operations could be targeted as conduit for funding of terrorist activities. Furthermore, it was observed that the FIU and the Police had access to a variety of sources of information relevant to support efforts to understand TF risks.

144. LEAs in particular the Police were in the process of setting up a specialised unit to handle TF and terrorism. Furthermore, Seychelles was finalising a Bill to strengthen domestic intelligence gathering capability including collection and analysis of TF and terrorism related risks. Whilst TF risk is identified as low, the country has inadequate capacity to carry out investigations and prosecutions of TF cases if they were to arise. This presents TF vulnerability to Seychelles.

TF identification and investigation

145. The FIU has been the designated authority to investigate TF since its formation. The July 2017 amendments expressly designated the Police to investigate TF even though the same could be done under its general powers to investigate any crime in the country. There has been no STR related to TF filed to the FIU which could generate information to identify potential TF cases. At the time of the on-site visit, there had not been any identified case of TF in Seychelles. In general, Seychelles has inadequate capacity to identify and investigate potential TF cases, in the event of such cases arising.

TF investigation integrated with -and supportive of- national strategies

146. Seychelles is yet to develop and implement a national strategy to counter financing of terrorism. Seychelles promulgated Regulation 4 of the PTA Regulations to set up

National Counter Financing of Terrorism Committee to coordinate implementation of strategies, but there were no officers appointed into the Committee. Since Seychelles had not carried out any TF investigation, it was not possible to assess the effectiveness of the measures in place. During the on-site assessment, the authorities constituted the National Counter Financing of Terrorism Committee following promulgation of the PTA Regulations by the President. The assessors did not get the opportunity to meet with this Committee as it was appointed towards the end of the on-site visit. Whilst there had not been any designation, the designation mechanisms were elaborate in the law but not comprehensively implemented in practice to enable identification of assets related to TF without delay.

Effectiveness, proportionality and dissuasiveness of sanctions

147. Since no TF cases had been identified, investigated and prosecuted, there could be no sanctions issued. As a result, effectiveness could not be determined.

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

148. Seychelles is yet to encounter a TF situation which would require countermeasures. Seychelles has deported individuals to a foreign jurisdiction on suspicion of commission of terrorism. The authorities have not yet used tracing of assets and provisional measures to complement targeting of terrorist assets. Although the authorities particularly the police indicate that they do parallel financial investigations they are done mainly to obtain evidence on other predicate offences investigated and have not been done relating to terrorism cases or with the intention to target terrorist assets. Seychelles has not had any (suspected) TF cases and therefore no countermeasures of any type had been used. It was unclear how the authorities would deal with a TF matter where it would not be possible to convict an offender. Therefore, the level of effectiveness could not be determined.

Seychelles has achieved a Low level of effectiveness on Immediate Outcome 9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Background and Context

149. Seychelles has enacted the Prevention of Terrorism Act and its Regulations which serve as the basis for legal and institutional framework to combat TF and terrorism including the UNSCRs 1267/1373 related to targeted financial sanctions. In general, there

has been little to no implementation of the measures primarily due to lack of institutional framework. In respect of the NPO sector, Seychelles has enacted the Registration of Associations Act , Foundations Act and International Trust Act as the main laws governing the sector. The Registrar of Associations is the responsible authority for ensuring compliance by the NPOs with laws governing the sector. Seychelles has not conducted a risk assessment of the NPO sector to determine those NPOs which are high risk and apply the monitoring measures required under R.8 of the FATF Standards.

Implementation of targeted financial sanctions for TF without delay

150. The Department of Foreign Affairs is the responsible authority for the receipt of the UN Sanctions List relating to the UNSCR 1267 and its successor resolutions from Seychelles' United Nations Mission in New York, United States of America. By law, Department of Foreign Affairs should send the List to the National Counter Financing of Terrorism Committee for consideration and onward transmission to the FIU. The FIU is charged with the responsibility for dissemination of the List to the reporting entities and ensure compliance thereof. However, due to the fact that the Committee is in the process of being operationalised (it was promulgated during the on-site mission), the FIU receives the List directly from the Department of Foreign Affairs and disseminate it to reporting entities and receive feedback. At the time of the on-site visit, there has been no match pursuant to the UNSCRs in Seychelles.

151. Based on the information obtained from the authorities, it takes an average of one month from the time the UN publishes the List, to when it is received by the reporting entities. Further, the List is distributed intermittently, and not as and when published by the UN. With the exception of some banks, the rest of the reporting entities had either not received any lists at all, or on limited occasions. The reporting entities did not understand their obligations under the UNSCRs, and neither had the FIU provided the requisite guidance. It is therefore the view of the assessors that the current process of implementing the Sanction List has significant delays which makes it difficult for the authorities and the private sector to effectively identify and freeze assets of the listed individuals and entities.

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

152. At the time of the on-site visit, 397 NPOs were estimated to be registered in Seychelles. The NRA indicated that due to the low number of questionnaire responses

received during the process, the figure could not be confirmed, as it was possible that some might be dormant. The NPO sector consists of associations and charitable trusts and foundations.

153. The Registrar of Associations is charged with the responsibility of regulating and monitoring the NPO sector in Seychelles. The Registrar does not have necessary capacity to effectively exercise oversight of the sector. Seychelles has reviewed and assessed the TF risks relating to the NPO sector through the NRA process. However, the extent of coverage of the NPO sector and the findings do not made identify the NPOs which pose higher TF risks to warrant targeted outreach and monitoring by the Authorities. At the time of the on-site visit, the Authorities had, with the assistance of the Common Market for Eastern and Southern Africa (COMESA), engaged a private consultant to review the legal framework and conduct an assessment of TF risks facing the sector. Although the Registrar receives annual financial returns from NPOs, there is no analysis conducted to identify questionable transactions or NPOs with higher TF risk exposure. As a result, Seychelles is yet to apply a risk-based supervision to monitoring of the NPO sector

Deprivation of TF assets and instrumentalities

154. Seychelles has not conducted TF investigations and prosecutions nor found any match in terms of designation under the UN Sanctions. It was therefore not possible to ascertain the extent to which terrorists, terrorist organisations and terrorist financiers are deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities.

Consistency of measures with overall TF risk profile

155. The authorities regard the overall TF risk profile as low in Seychelles. This view is shared by the assessors. However, the absence of an effective legal and institutional framework to monitor and regulate NPOs on a risk-based approach may potentially increase the risk of TF in Seychelles. For reasons stated above, it was not possible to ascertain the extent to which any counter-measures could have been consistent with the overall TF risk profile.

Seychelles has achieved a Low Level of effectiveness for Immediate Outcome 10.

Immediate Outcome 11 (PF financial sanctions)

Background

156. Seychelles has no legal and institutional framework to implement UNSCRs on proliferation of weapons mass destruction (WMD). There are no guiding principles nor general awareness by competent authorities and reporting entities in Seychelles on how

to deal with their obligations in relation to the financing of proliferation. Generally, the same weaknesses pertaining to implementation of targeted financial sanctions relating to UNSCR 1267 and 1373, also apply to implementation of targeted financial sanctions relating to UNSCRs on proliferation.

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

157. There are no administrative or voluntary mechanisms in place for reporting entities to apply measures relating to identified assets and funds held by designated persons or entities, and prevent them from operating or executing financial transactions related to proliferation. Seychelles considers the requirement to identify assets and funds held by designated persons/entities and prohibitions thereof as a new area to them. The Authorities plan to build the necessary awareness and measures in the public and private sectors.

FIs and DNFBPs' understanding of and compliance with obligations

158. There are no obligations for and understanding by FIs and DNFBPs to detect and combat proliferation financing. As a result, there is generally no implementation of measures on proliferation financing.

Competent authorities ensuring and monitoring compliance

159. There is no designated supervisor for ensuring compliance with measures against proliferation financing in Seychelles. The FIU (as the AML/CFT supervisor), the FSA (regulator for non-bank FIs and casinos) and the CBS (regulator for banks, credit unions and bureaux de change) did not demonstrate appreciation of proliferation financing.

Seychelles has achieved a Low Level of effectiveness for Immediate Outcome 11.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- FIs have conducted institutional ML/TF risks assessments which have contributed to a better understanding of ML/TF risks and implementation of AML/CFT

obligations than the DNFBPs, bar the ICSPs. The lack of ML/TF risks assessment in the remaining DNFBP sector and compliance monitoring programmes represents a significant vulnerability for ML and TF in Seychelles.

- Generally, reporting entities are aware of their AML/CFT obligation to carry out CDD before and during the process of establishing business relationship and when conducting a transaction, either once-off or within an existing relationship. Large FIs and ICSPs have extensive CDD database networks and use sophisticated independent sources of information to conduct customer due diligence procedures such as EDD, on-going due diligence and transactions monitoring in respect of high risk customers.
- The majority of FIs and ICSPs showed a good appreciation of the different types of legal persons and arrangements and the associated ML/TF risks in Seychelles, and have reasonable measures in place to establish the true identity of a beneficial owner than some FIs and DNFBPs.
- The obligation for reporting entities to automatically freeze an account for five days while the the FIU investigates the ground for suspicion has undermined the number of STRs to the FIU as, in some instances, (a) the reporting entities prefer not to file STRs to avoid the duty to freeze the account and (b) are apprehensiveto file STRs for fear of reprisal from their customers.
- The number of STRs filed to the FIU are predominantly from commercial banks, distantly followed by the ICSPs. The majority of the FIs and other DNFBPs have negligible and no filing of STRs respectively, which is largely attributable to inadequate supervisory actions.
- The number of banks with CBRs arrangements were in the process of de-risking such that new customers were no longer being accepted. The banks and the Central Bank of Seychelles require thatobtaining of full CDD information must be provided before the funds are released and the latter monitors the process on a regular basis. Funds that are not released due to the failure to meet the CDD obligations are transferred to and managed by the Central Bank of Seychelles.
- Large commercial banks belonging to international groups and ICSPs demonstrated a better understanding and application of UNSCRs TF targeted financial sanctions than non-bank FIs and other DNFBPs.

Recommended Actions

Seychelles should:

- Ensure that reporting entities conduct, or review, their own ML/TF risk assessments to take into account the findings of the national ML/TF risk assessment once shared with them and implement commensurate AML/CFT programmes to mitigate and manage the identified risks.
- Ensure that reporting entities particularly DNFBPs conduct ML/TF risks assessment, taking into account the results of the NRA, as the basis to identify, assess and understand the risks faced by them to inform implementation of AML/CFT

obligations appropriate AML/CFT controls commensurate to the risks identified when engaging with customers.

- Ensure that reporting entities (other than commercial banks and ICSPs) detect and file STRs on transactions containing funds suspected of being involved in criminal activities or financing of terrorism consistent with the risk profile of the products and financial services they offer.
- Take necessary legislative measures to remove the requirement for reporting entities to automatically freeze funds suspected of criminality following submission of an STRs and consider conferring powers on freezing of accounts to the FIU as this will address the apprehension by reporting entities to file STRs, , and potentially increase the number of STRs received reported.
- Reporting entities (other than ICSPs and large FIs) should develop an understanding of UNSCRs and implement necessary procedures and transactions monitoring mechanisms to adequately implement the measures.
- Ensure that reporting entities have AML/CFT training programmes and provide on-going training on AML/CFT requirements to staff for effective implementation of their AML/CFT requirements.

The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CFT obligations

160. The AML/CFT legal and regulatory framework obliges FIs and DNFBPs to have regard to ML/TF risks when implementing AML/CFT obligations on financial services and products they offer to clients. Seychelles demonstrated a varied understanding of ML/TF risks and AML/CFT obligations facing their business activities. The variance is mainly because of the size, ownership and sophistication of the FI and DNFBP concerned. The large-sized, foreign-owned or controlled and highly sophisticated FIs and DNFBPs demonstrated a good level of understanding of ML/TF risks and application of appropriate mitigating controls. For instance, ICSPs and well-resourced, large FIs demonstrated a better awareness and understanding of ML/TF risks and AML/CFT obligations that apply to them than the rest of the FIs and DNFBPs which demonstrated either little or an emerging understanding of ML/TF risks and implementation of AML/CFT obligations.

161. Although Seychelles had just completed its ML/TF risk assessment a few weeks before the on-site visit, the findings were not yet shared with the FIs and the DNFBPs at the time of the on-site visit. The level of understanding of the ML/TF risks demonstrated by the FIs and DNFBPs is therefore directly derived from documented institutional ML/TF risk assessments and the general appreciation of ML/TF risks arising from interacting with customers. While FIs and ICSPs apply the AML/CFT obligations on a risk-sensitive basis determined through institutional ML/TF risk assessments, the rest of the DNFBPs have generally demonstrated a lesser application of mitigating controls with little regard to ML/TF risk levels.

162. Through the ML/TF risks assessment, FIs and ICSPs identified financial services/products, payments methods, types of professional intermediaries and customer profiles which are the main determinants on the ML/TF risk rating and use the findings thereof to determine the overall risk appetite, on whether or not to accept or reject a customer or a transaction as well as the appropriate mitigating controls.

Financial Institutions

163. Domestic and foreign-owned or controlled commercial banks interviewed during the on-site visit demonstrated a fairly good understanding of the inherent ML/TF risks and the application of AML/CFT requirements to business relationships and transactions they engage in with their customers. The understanding and implementation of the mitigating controls is informed by their own ML/TF institutional risk assessments. The foreign-owned or controlled banks have over the years benefitted from their group synergies whose policies require regular comprehensive group-wide risk assessments and developing mitigating measures commensurate with the risks identified. As a result, they have put in place the relevant AML/CFT procedures to address the risks identified by relying on the AML Act and group AML/CFT policies of their respective countries of origin.

164. All the commercial banks interviewed during the on-site visit highlighted smuggling of drugs, international business activities (including correspondent banking relationships) and PEPs as potential areas of high risks on which enhanced due diligence measures are applied. Although tax evasion is not recognized as a predicate offence under the Seychelles laws, some banks were able to highlight it as a potential high ML risk. For instance, some of the commercial banks shared with the assessment team examples of transactions involving private (individuals) bank accounts being used to channel business transactions to avoid taxes due. The misuse of private bank accounts was also substantiated by the FIU which reported receipt of STRs from banks in respect of this typology.

165. The insurance sector in Seychelles has generally an emerging level of understanding of the ML/TF risks facing their operations and AML/CFT obligations. Whereas large insurance companies demonstrated a fair appreciation of ML/TF risks, this could not be said of the smaller companies and brokerage firms whose understanding is not yet developed. This is attributed to the lack of or limited AML/CFT inspections on insurance companies and brokers by the FIU.

166. MVTS have a general awareness and emerging understanding of ML/TF risks and their AML/CFT obligations, albeit at varying degrees. Class A bureaux de change demonstrated a high level of understanding of their ML/TF risks mainly due to their affiliation to globally licensed and recognised money transfer operators. This was not the case with Class B bureau de changes who demonstrated an emerging understanding of their ML/TF risks and obligations.

167. The size of the securities sector in Seychelles is very small in comparison to similar international financial centres in the region and globally. The sector demonstrated a relatively fair understanding of the potential ML/TF risks and implementation of AML/CFT obligations. The sector indicated that due to the nature of the customers who are mainly from the international business activities, the ML/TF risks are therefore inherently high.

DNFBPs

168. In general, the DNFBP sector showed a relatively low level of understanding of the ML/TF risks and their AML/CFT obligations. This may be mainly attributed to either little or no AML/CFT monitoring by the FIU during the period under review. For instance, the assessors noted that almost all reporting entities in this sector have not had AML/CFT compliance inspection from the supervisory authority (i.e., the FIU) during the period under review. Real Estate Agents rely on the FIU to conduct the sanctioning process of their customers as part of the on-boarding process. Once the FIU sanctions, the DNFBPs engaging in real estate transactions do not carry further independent verification procedures of the customers concerned. This is in direct contravention of the AML Act which requires that all real estate transactions be subject to CDD measures. Further, the level of awareness and training in the sector is very limited. The reliance by real estate agents on the sanctioning due diligence conducted by the FIU clearly shows the lack of appreciation of the ML risks facing the sector particularly as the luxury real estate market is dominated by foreign PEPs and high net-worth foreign clients.

169. The TCSPs (e.g., accountants, legal professionals and auditors) in the domestic market are largely individually-owned operations. By contrast the TCSPs in the international business activities sector are companies (e.g., ICSPs). Interviews during the on-site visit revealed existence of varying degrees of understanding and appreciation of ML/TF risks and application of AML/CFT obligations in the TCSP sector. The ICSPs fared much better than domestic TCSPs in relation to the level of understanding of ML/TF risks and application of AML/CFT requirements. The assessors are of the view that the lack of institutional ML/TF risk assessments in the DNFBP sector (except ICSPs) and absence of adequate compliance monitoring programmes represents a significant ML vulnerability.

170. Overall, FIs and DNFBPs regard TF risk level as low. FIs and ICSPs demonstrated a reasonable awareness of the TF risks facing Seychelles particularly in respect of the regional security situation and absence of known TF or terrorism cases in the country.

Application of risk mitigating measures

171. The AML/CFT framework in Seychelles obliges FIs and DNFBPs to apply AML/CFT measures on the basis of identified ML/TF risks. It was observed that there is significant variance in the application of mitigating measures between various FIs and DNFBPs in Seychelles. The AML/CFT framework has identified certain clients and transactions posing higher risks than others, to which appropriate mitigating measures must be implemented as prescribed in the AML/CFT legal requirements. Depending on the level of ML/TF risk identified, FIs and DNFBPs may apply normal, simplified and enhanced measures.

172. It was identified that FIs and DNFBPs with ML/TF risk assessments in place demonstrated a fairly good application of the AML/CFT measures than those without. In particular, the large and well-resourced FIs and ICSPs applied more rigorous mitigating measures (such as several levels of senior management approvals and on-going monitoring) on customers or transactions considered high risk. These include non-face-to-face customers, PEPs particularly non-resident customers, cash-intensive industries (e.g., real estate and bureaux de change businesses), casinos and cross-border wire transfers. From the onset, the assessment team observed that there is more rigour on these clients and products as required under the AML Act and the Guidelines than on those considered posing lesser ML/TF risks. In this regard, FIs with institutional ML/TF risk assessments have different mitigating controls for each type of risk identified consistent with the customer or transaction than other FIs. With the exception of the ICSPs, the rest of the DNFBP sector demonstrated a limited appreciation of the TF risks

and application of the appropriate mitigating controls such as screening of customers or transactions prior to approval including using commercial databases for screening of customers and transactions against UNSCRs targeted financial sanctions List.

Financial institutions

173. Based on their own institutional ML/TF risk assessment, FIs have developed and implemented AML/CFT policies and procedures to mitigate and manage identified ML/TF risks, and regularly adjust the control measures in line with changes in business activities, customer profile, services and products offered, payment methods and jurisdictions observed. This approach has, to a larger extent, made it possible for the FIs to implement mitigating controls commensurate with the risks identified.

174. FIs have systematically over the years put in place the relevant AML/CFT policies and procedures to address the risks identified and some are leveraging on their international network to improve the systems. It further emerged that the relevant AML/CFT measures were in place, which include: compliance functions, staff training programmes, on-boarding and record keeping policies and procedures, systems for monitoring and reporting of transactions and screening of customers on the UNSCRs targeted financial sanctions lists. Furthermore, most FIs use the FATF website to continuously and timely update their information on high risk jurisdictions and apply appropriate mitigating measures on transactions or business relationships emanating from such countries.

175. With regard to life insurance and securities sectors, there are checks and balances to ensure that brokers apply the appropriate AML/CFT measures and pass on the collected information to the principal for decision, depending on the risk profile of the customer. The assessment team observed that similar measures are being applied by the remaining FIs such as the MVTs.

DNFBPs

176. The DNFBPs (except for the ICSPs) in Seychelles have not undertaken institutional ML/TF risk assessments to identify, assess and understand their risks to inform application of AML/CFT requirements. With the exception of ICSPs, the rest of the DNFBPs demonstrated limited understanding of ML/TF risks that apply to them. Resultantly, these DNFBPs have demonstrated limited application and implementation of their respective AML/CFT obligations across the board. For instance, the sector

reflected a misconception that their respective AML/CFT training for their staff is the sole responsibility of the FIU. The non-filing of STRs, insufficient and absence of AML/CFT policies, absence of enhanced due diligence measures for high risk customers and transactions as well as the lack of staff training and screening procedures for AML/CFT purposes, confirm that the sector does not adequately apply the controls. Owing to the low understanding of their respective ML/TF risks, most of them have not yet instituted risk mitigation measures. This is a major concern as the luxury real estate sector, casinos, motor vehicle dealers, and domestic TCSPs are vulnerable to ML activities.

Application of enhanced or specific CDD and record keeping requirements

177. The AML/CFT framework in Seychelles requires FIs and DNFBPs to adopt CDD and record keeping measures in respect of their customers as informed by identified ML/TF risks (i.e., categories of risk levels for purposes of proportionate application of CDD measures). In general, FIs and DNFBPs have these measures in place, albeit at varying degrees. The AML Act and the Guidelines require that the FIs and the DNFBPs should understand their institutional ML/TF risks in order to apply commensurate CDD measures based on the level of risk exposure.

Customer Due Diligence

178. Generally, reporting entities are aware of their AML/CFT obligation to carry out CDD procedures before and during the process of establishing business relationship and when conducting a transaction, either once-off or within an existing relationship. All FIs conduct further CDD measures by identifying and verifying the customers where they have suspicion of ML/TF or where they have doubts about the veracity of the previously obtained customer identification data. The FIs take steps to request the information from the customers and, where necessary, use other independent sources of information including leveraging off international group databases and commercial databases.

179. For purposes of KYC on individual customers or natural persons, the reporting entities require information such as; full name, date of birth, country of origin, permanent residential address, national identity number (NIN) or driver's license, employment details, utility bill reflecting the address valid for the past 3 months, financial status; and, in addition, foreign individuals are required to submit a copy of passport and/or a work permit and a bank reference letter.

180. CDD information for corporate clients include, NIN for authorised officials and directors, identity of principal shareholders and their permanent residential address, passport numbers, nationalities, articles of association, memorandum of association, certificate of incorporation, latest audited copy of financial statement.

181. FIs and DNFBPs conduct verification through bank reference checks, use of reliable independent sources like social media, commercial databases, registrar of companies, internet search engines, high commissioners and embassies, and in all cases requesting for notarised documents, among others. With regard to remediation of legacy accounts, banks have conducted a significant client information remediation process on a risk-sensitive basis, particularly in relation to CBR relationship. However, the other sectors are yet to undertake the customer remediation exercise. Overall, customer CDD remediation in the banking and ICSPs sectors is more than eighty five percent (85), largely due to dormant accounts. It is the view of the assessors that this figure represents a considerable achievement for Seychelles taking into account the significant materiality and ML risk exposure of both the sectors. It was also observed that since the enactment of the AML Act in 2006, the authorities had not issued or provided a remediation deadline, and this may have contributed to the low remediation appetite by other sectors. Identification and verification of ultimate beneficial owners (UBOs) was applied at varying degrees. For instance, most of the non-bank FIs and DNFBPs were not extending their verification process sufficiently to establish the true UBOs. ICSPs apply CDD procedures on clients from foreign regulated entities (third party or business introducers) as required under the 2016 amendments to the IBC Amendment Act (2016) and the AML Act. Broadly, ICSPs obtain and retain CDD information, including on UBO, from the regulated entities on a risk-sensitive basis (i.e., ML/TF risk categorisation of customers) which informs the extent of application of due diligence required before and after on-boarding processes. For example, it was found that ICSPs subject CDD information (such as audited financial statements, bank references, and company incorporation / home-country business licenses) obtained from a foreign regulated entity to two layers of vetting before an onboarding decision is made, depending on the risk rating. As a start, an ICSP collects all original or certified CDD information of the proposed business relationship from a foreign regulated entity for verification by a dedicated onboarding unit to determine the adequacy of the information / data provided against the CDD requirements. Once completed, the CDD information is further vetted by a different compliance unit, which returns the CDD file when information is insufficient or unclear; for instance, to determine the true identity of the customer,

source of capital and intended purpose of the relationship. For instance, the ICSPs stated that verification of normal CDD information poses a less challenge than UBO and determining the intended purpose of the relationship particularly when the nature of business activities being carried on by the customer is not clearly described in the documentation provided.

182. In order to mitigate the risk, the ICSPs conduct checks on the CDD information using sophisticated CDD softwares and general internet search engines, as well as employing group CDD warehouses (for foreign subsidiary ICSPs). Furthermore, the ICSPs direct the foreign regulated person to collect further information, where necessary, failing which the relationship will not be established. For instance, the ICSPs rejected high-risk customers who, (a) appeared on sanctions lists (includes those not covered under the FATF Standards), (b) emanating from high-risk jurisdictions (e.g., use of the FATF ICRG List), (c) conduct restricted business in Seychelles, and (d) PEP or influential private person holding a high-risk position.

183. The brokers do independent CDD on customers for on-boarding and only submit the completed agreement form to the principal company indicating that they have collected all the CDD information as required. Where full CDD is not carried out by brokers, the prospective customer will not be on-boarded. With regards to agents, they are treated as introducers only, as the principal remain fully responsible for the CDD process before the relationship is established. This means that the principal ultimately shoulders the responsibility of conducting CDD verification and makes a decision on the proposed business based on the risk appetite as required under the AML Act.

Application of EDD measures

184. FIs have a reasonably good understanding and application of enhanced due diligence and on-going transactions monitoring measures on high risk customers using technologically appropriate mechanisms to monitor transactions and other activities. Foreign-owned or controlled FIs carry out EDD and on-going transaction monitoring procedures on high ML/TF risk clients and transactions using a variety of reliable sources of information such as commercial databases and parent company CDD databases. In the case of PEPs, declaration forms are required (FIs take reasonable steps to independently verify the information) in addition to senior management approval before a relationship is established. Furthermore, reporting institutions also conduct

EDD on customers from high risk jurisdictions and where they are considered to be outside of the risk tolerance level of the FI, such relationships are not on-boarded. Whereas some DNFBPs in particular ICSPs apply EDD, the majority had limited capacity to do so.

On-going Due Diligence

185. The existence of the institutional ML/TF risk assessments by the FIs and ICSPs is facilitating a distinction of the extent of CDD measures required on customers and transactions. The relevant risk factors taken into account include the country profile, materiality of business operations, transaction type, adverse media reports, FATF ICRG List, UNSCRs targeted financial sanctions Lists and the nature of an economic sector which are applied to determine the extent to which on-going due diligence measures is applied. The FIs indicated that they applied sophisticated automated systems to identify and monitor outliers in the patterns and behaviour of customers and transactions. The alerts generated are first subjected to interrogation by dedicated personnel to determine whether or not on-going due diligence measures are required to curb the risk. All information generated throughout the review of the alerts or customer profiles are kept in file as prove of consideration of the concern, and further fits into the database used to review the ML/TF risks associated with the relationship.

186. Where high risk behaviour on the customers and transaction are identified, FIs reclassify the risk level and apply on-going due diligence which includes continuous transaction monitoring. Where a low risk behaviour is identified, the FIs apply regular due diligence measures. The assessment team determined therefore that, in practical terms, FIs apply risk categorisation based on relevant risk factors to inform proportionate on-going due diligence measures.

187. Apart from the large-sized and sophisticated FIs, the remaining ones (e.g., life insurance, securities and money lenders) specially with domestic business operations tend to apply on-going due diligence processes using a combination of manual systems and less sophisticated CDD software solutions. In general, these sectors are less risky for ML/TF purposes.

188. With the exception of the ICSPs, the rest of the DNFBP sector demonstrated a low level of appreciation of enhanced due diligence and transactions monitoring measures. The assessment team identified that the ICSPs have generally adopted different levels of

CDD measures dependent on their own ML/TF risk assessment, as the sector recognises the critical role they play as gatekeepers between the IBCs and the FIs such as banks.

Record Keeping Requirements

189. There is a good awareness and implementation of record keeping requirements across the reporting entities. Both FIs and DNFBPs apply record keeping requirements in terms of the AML Act relating to CDD and transaction information and any other information including any reviews conducted on customers and transactions. It was further noted that most reporting entities in addition to keeping physical records, they were also keeping electronic records for periods above the legal requirement of 7 years.

Politically Exposed Persons

190. The FIs and the DNFBPs recognise the specific emphasis placed on them by the AML/CFT Regulations to implement additional risk management procedures in respect of PEPs in addition to the normal CDD obligations. All reporting entities have put appropriate measures in place, albeit at varying level of sophistication, to mitigate risks relating to PEPs particularly non-resident ones. FIs and some DNFBPs regard both domestic and foreign PEPs as high risk and apply enhanced due diligence and on-going monitoring of the transactions and business relationships, albeit at varying rates. The EDD measures extend to PEP's close associates, relatives and friends.

191. During the interviews reporting entities indicated that when on-boarding PEPs, the institutions conduct screening and have the requisite processes in place for vetting PEPs which include measures to establish the source of funds/source of wealth information and, senior management approval before on-boarding. The assessors noted that reporting entities require all new customers to complete a declaration form on their PEP status before on-boarding. Further, reporting entities carry independent checks from other online databases such as Worldcheck and if any person is identified as a PEP, he is upgraded into PEP category. The appropriate measures would then apply which include EDD and ongoing monitoring. Despite the legal provision requiring PEP status to be removed after 3 years of being a public figure, most reporting entities indicated that they would continue to monitor the client until they are satisfied or the circumstance around the individual do change drastically that is when they can reclassify. Otherwise they indicated that *"once a PEP, always a PEP"*.

192. The assessors further determined that in some cases there are difficulties in obtaining the necessary information where the UBO is a PEP particularly in the international financial sector operations. For reporting entities with sophisticated CDD databases and have parent companies outside of the country, they are able to take further reasonable steps to satisfy themselves of the status of the relationship or transaction being conducted. Depending on the risk appetite of the FI or DNFBP, they may decide not to process the onboarding or transaction, or terminate the relationship where it becomes apparent that the CDD information available is not sufficient to establish the true identity of the customer.

High Risk Jurisdictions

193. Most FIs and a very few DNFBPs (notably ICSPs) take reasonable measures to identify high risk jurisdictions when entering into business relationship and conducting occasional transactions. They use a variety of sources of information such as the FATF website, commercial databases and open source information to determine the nature and extent of the risks posed by customers and transactions emanating from high risk jurisdictions, and apply enhanced due diligence and on-going monitoring measures. The DNFBPs, with the exception of ICSPs, demonstrated low regard for application of proportionate mitigating controls including EDD and on-going monitoring when engaging in business relationships and conducting transactions from jurisdictions considered as posing high ML/TF risks.

Correspondent Banking Relationships

194. The assessors found that a number of banks with CBR arrangements were in the process of de-risking the relationships, such that new customers were no longer being accepted. The de-risking process started about 3 years before the on-site visit which has resulted in a number of relationships been terminated¹⁴. The banks and the CBS

¹⁴ The cabinet has endorsed a plan of action to mitigate the risks of further losses of the correspondent banking relationships. These include strengthening the AML/CFT framework for the banking sector and formulation of a new strategy for the international financial services center with a greater focus on transparency and ensuring international standards are being adhered to. In addition, it advocates for closer interaction with global correspondent banks and international regulators to find solutions to this phenomenon. Finally, it makes provision for a communication strategy to remove negative perception about the jurisdiction.

indicated that customers must provide full CDD information before funds could be released, and CBS was receiving regular updates on the process. In establishing any possible CBR, the banks interviewed reflected that they do the following: (a) have adopted a risk-based approach to determine the extent of due diligence required in such relationships, (b) apply further CDD measures including gathering sufficient information so as to fully understand the nature and purpose of the business of the bank, (c) satisfying itself on the adequacy of the AML/CFT measures in place, (d) determine the soundness and the effectiveness of AML/CFT controls applied by the respondent bank, and (e) obtain senior management approval before establishing a correspondent banking relationship. Furthermore, the banks involved in CBRs have dedicated units handling customers and transactions under the CBR arrangement. The CBRs are monitored and reviewed on an on-going basis or as and when there are material changes that may impact on the robustness of the measures applied on the relationship. The Seychelles Cabinet has endorsed a plan of action to mitigate and manage the risks of further losses of the CBRs which includes improving AML/CFT compliance levels consistent with international standards.

Cross-Border Wire Transfers

195. MVTS (in particular Class A Bureaux de changes) and banks act as agents to internationally recognised money transfer businesses while some banks provide it through telegraphic transfers using the SWIFT channel. All banks comply with SWIFT messaging standards which require originator and beneficiary information such as names, address, amount, unique reference and date, among others, whilst the same applies to Class A bureaux de change. The assessors are of the view that the information obtained or collected accompanying cross-border wire transfers appear to be reasonable to establish the correctness of the transaction conducted.

Simplified CDD

196. Reporting entities understand that the AML/CFT regulatory framework in Seychelles allows for application of simplified CDD measures based on identified risks. The assessment team observed that due to the inclusiveness of the financial sector in

Seychelles, the option has less significance. For instance, financial inclusion data from the 2016 survey by FinMark Trust¹⁵ reflect that 94% of Seychelles are banked and this places the country as the most financially inclusive country in the SADC region. It has thus become less attractive for the authorities and the reporting entities to provide financial services which require a strong emphasis on simplified CDD measures with a view to promoting financial inclusion in Seychelles.

New Technologies

197. The AML/CFT regulatory framework of Seychelles does not expressly require FIs and DNFBPs to continuously assess existing and new technological products with a view to identify ML/FT risks. However, FIs are aware that the AML Act obliges them to implement AML/CFT measures on a risk-sensitive basis regardless of the nature of the business relationship, transaction and payment method. The FIs indicated that they follow the “*Advisory 2/2015 Obligations to identify and assess money laundering and financing of terrorism risks regarding new technologies*” when implementing new products or service through technologies. For instance, MVTS businesses have put in place control measures such as threshold limit on transactions to manage the ML/TF risks associated with the technological advancement. All FIs that provide cross-border wire transfers identify and assess ML/TF risks on new products including mobile payment services prior to the launch of the products.

Targeted Financial Sanctions Relating to TF

198. The UNSCRs lists are disseminated by the FIU to the reporting entities via their respective supervisors and in some cases directly. Some indicated that they do subscribe to online websites to obtain additional information as a way of ensuring that, they identify the high risk customers and jurisdictions. Assessors noted that there was no clear guidance to the reporting entities on how to use the list (*see IO.10*). The assessors further identified that a number of the FIs (with the exception of the banking sector) and DNFBPs (with the exception of CSPs) were not familiar with their UNSCRs obligations, and therefore demonstrated a very low level of implementation.

Reporting obligations and tipping off

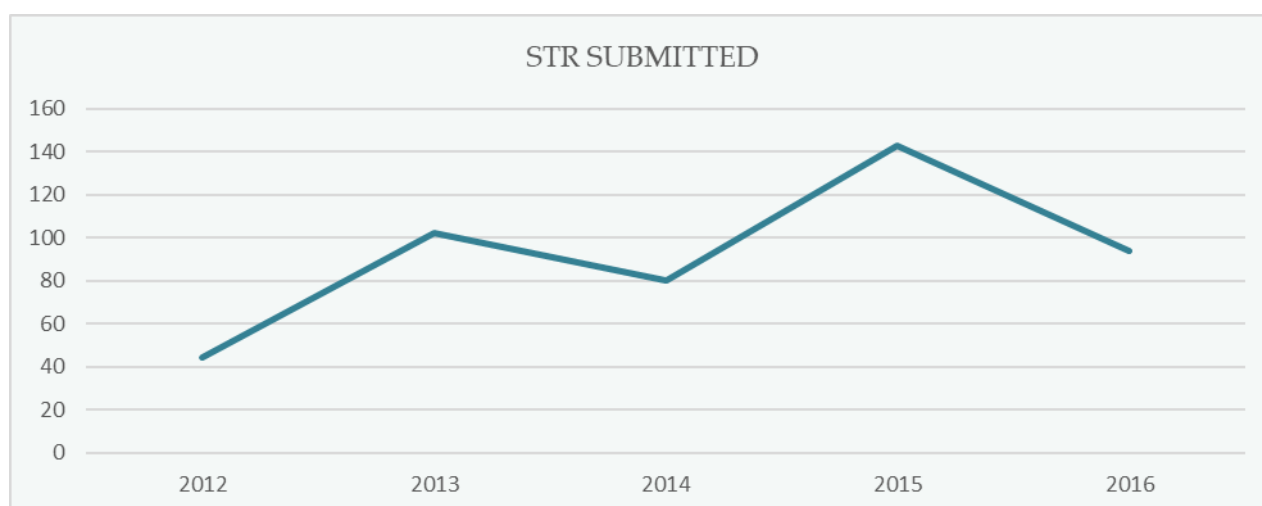
¹⁵ Financial Literacy Baseline Survey Seychelles, 2016

199. More than 98% of the STRs filed to the FIU over the period under review were largely filed by big banks and ICSPs. In contrast, non-banking FIs have extremely low reporting levels while other sectors have not filed any STR during the period under review. The low level of STRs over the years can be attributed to limited supervisory enforcement, awareness and training on implementation of the AML/CFT control measures. The STR trend indicated sharp increases in 2012/13 and 2014/15 representing increases of more 132% and 79% respectively before going down drastically by 30% in 2016. De-risking by banks may also explain the major increase for the period 2014/15. The table below provides the detail.

SUSPICIOUS TRANSACTION REPORTS

Sector	Number of STR received					
	2012	2013	2014	2015	2016	
Banks(	29	88	63	120	78	
CSP(67)	13	13	16	19	21	
Bureau de Change	Nil	Nil	1	Nil	1	
Credit Union	Nil	1	Nil	Nil	Nil	
Insurance	Nil	Nil	Nil	Nil	Nil	
Others	2	Nil	Nil	4	Nil	
Total	44	102	80	143	100	

STR submission Trend from 2012 to 2016



200. The assessors found that the obligation on reporting entities to automatically freeze, for a period of five days, an account of a customer against whom an STR has been filed until the FIU provides guidance on the next course of action, has had unintended consequences. The account remains frozen for five days after which transactions can take place if the FIU does not direct otherwise. During the interviews, the majority of the reporting institutions considered this as tantamount to possible tipping-off since customers would automatically know about transactions being reported to the FIU. Further, reporting entities expressed a discomfort regarding the automatic freeze requirements and indicated that most of the times they would prefer not to file an STR in order to avoid the onerous obligation of freezing accounts which, in the views of the reporting entities, pits them against their customers. They expressed support for introduction of a legal provision which would give the FIU the power to instruct the reporting entities to freeze the account. This is because, in the view of the reporting institutions, the freezing of the accounts will be based on a lawful instruction from the FIU rather than on the basis of a mere suspicion from the reporting institutions.

Internal controls and training

201. Most reporting entities in Seychelles have in place AML/CFT compliance function headed by a Compliance Reporting Officer as per the AML Act and its Guidelines. The compliance function is responsible for setting up of AML/CFT policies and procedures in the reporting entities which is the basis for implementation of specific internal controls measures in respect of business relationships and transactions. The compliance function in place has regard to the size, nature and complexity of the business and ML/TF risks of the reporting entity. In the majority of the cases, it is the size, ownership or control structure and sophistication of the reporting entity which determine the nature and extent of normal business operations controls, levels of AML/CFT compliance risk management, and assurance thereto. The large and well-resourced domestic FIs and affiliates of foreign groups have demonstrated presence of robust internal controls and procedures such as board approvals, onboarding and monitoring of relationships, reporting of STRs, keeping and accessing of records, and audit (internal and external testing). The assessors identified that in the DNFBP sector, only the ICSP sector have in place similar internal controls and procedures arrangements including processes to treat introduced business from regulated entities (which bring in customers from other countries) in terms of their own AML/CFT controls in compliance with Seychelles AML/CFT requirements. The remaining DNFBPs and the smaller FIs have in place internal controls but are less sophisticated and robust than the larger ones. For instance, the majority of them have internal controls and procedures as part of the general financial management and risk compliance framework.

202. The bigger and well-resourced banks have in place independent compliance audit procedures to test the rigour and compliance with internal procedures. With the exception of banks and large insurance companies, the reporting entities conduct very limited training of their employees. In most instances, the reporting institutions erroneously regard training as the responsibility of the FIU and therefore do not regard AML/CFT training to their own employees as their obligation under the AML Act. As a result, the level of understanding and implementation of the AML/CFT obligations in Seychelles has been hampered by the lack of training of staff by the reporting entities

203. The screening for new employees was applied across the board. Some of the entities reported that they seek past employment references, police clearance and publicly known databases and photographs as additional measures to ensure that they do not employ persons of questionable character.

Seychelles is rated Moderate level of effectiveness with IO.4

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- Seychelles applies sound market entry requirements which prevent criminals and their associates from holding or being a beneficial owner of significant interest or holding a management function in institutions.
- The FIU as the AML/CFT supervisor demonstrated a generally good understanding of ML/TF risks facing the reporting entities. However, the FIU is yet to use the understanding on ML/TF risks to develop and implement a risk-based supervision framework.
- The FIU has resource constraints which have negatively impacted on its capacity to effectively supervise and monitor reporting entities for compliance with AML/CFT requirements. Notwithstanding this, the scope and quality of the inspections conducted is generally reasonable to determine the level of compliance and the required remedial actions and sanctions for non-compliance by inspected reporting entity.
- The scope of remedial actions and sanctions available to the FIU under AML Act to reporting entities which fail to comply with AML/CFT obligations is not broad enough. By contrast, the remedial actions and sanctions under the FSA Act available to the FSA to enforce the AML Act obligations against its licensees are generally dissuasive, proportionate and effective.
- Although the FIU has through inspections identified areas of non-compliance by reporting entities which warranted enforcement action, there has been no sanction issued for violation of AML/CFT requirements in Seychelles, and therefore unable to determine if, in practice, the sanctions are dissuasive, proportionate and effective.
- The FIU has undertaken numerous outreach and awareness-raising initiatives to promote the understanding and implementation of AML/CFT obligations by reporting entities. The impact of the initiatives are varied, with the majority of FIs and ICSPs demonstrating a good appreciation of ML/TF risks and AML/CFT obligations than a few FIs and other DNFBPs.

Recommended Actions

Seychelles should:

- Use the findings of the NRA to formally document its understanding of ML/TF risks facing the reporting entities and adopt a risk-based supervision. Should the authorities follow through with the proposed AML/CFT supervision policy changes to designate the FSA and the CBS (sector supervisors) for AML/CFT supervision of entities under their purview, this recommended action should apply thereafter.
- Provide adequate resources (material, human and technical) to the FIU, and later on CBS and (or any other future supervisor) to enable effective risk-based supervision

and monitoring of reporting entities including expanding the coverage of inspections being carried out. Should the authorities follow through with the proposed AML/CFT supervision policy changes to designate the FSA and the CBS (sector supervisors) for AML/CFT supervision of entities under their purview, this recommended action should apply thereafter.

- Ensure that there is adequate legal basis for and apply a wide range of enforcement actions which include proper processes and sanctions which are dissuasive, proportionate and effective against AML/CFT violations.
- Ensure that the FIU continues to carry on outreach programmes to reporting entities having regard to their sectoral risk profiles in order to promote adequate understanding of the ML/TF risks facing them and proper implementation of mitigating controls on a risk-sensitive basis.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

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

204. Seychelles has a comprehensive framework for licensing and registering market entry for FIs and DNFBPs. The supervisory bodies perform fit and proper assessments in respect of stakeholders, directors and administrators of FIs and DNFBPs at the point of market entry and on an on-going basis as and when changes occur through compliance checks. The fit and proper assessments include the evaluation of the integrity of shareholders, directors and administrators with particular regard to criminal proceedings or convictions. The information is applied to determine suitability of participating in the sectors. The licensing requirements are detailed and require the applicants to submit various documentation such as memorandum and articles of association and certificates of incorporation from the Registrar of companies. The applicants are also required to submit tax clearance certificate, audited financial statements, bank reference letter, police clearance, academic and professional certificates, identification documents for natural persons, corporate bodies/ non-individual shareholders, individual shareholders, directors and senior management officers. Where an applicant is a regulated entity in another jurisdiction, commitment by the regulator to cooperate with the domestic regulator is obtained

205. The CBS declined two license applications during the period under review due to AML/CFT concerns that arose from the process of evaluating the fitness and probity of shareholders, directors and administrators. During the same period, the FSA imposed sanctions to some of their regulated entities for breaching market entry requirements.

The supervisory authorities also cooperated at market entry stage where for instance, they consult the financial intelligence unit and other regulatory authorities as part of the vetting process.

206. However, authorities indicated that one of the challenges faced at market entry was delays in receiving feedback from cooperating parties outside Seychelles especially in view of the statutory obligations to complete the licensing process within a stipulated time period. In all cases, no license has been issued when information has not been provided regardless of the statutory requirement to process all business license application with a stipulated period. Furthermore, regulatory bodies in the Seychelles have implemented measures to detect unauthorised or unlicensed business activities such as compliance checks in collaboration for law enforcement agencies. For instance, the authorities investigated and sanctioned an entity which was carrying out jewellery business without a license in contravention of the applicable laws. Due to the small size of the country, the authorities had not had challenges to conduct routine checks to identify and sanctions entities operating without a license from the regulator and the Seychelles Licensing Authority. There are no known breaches which can be attributed to the size of the country. Based on the extent to which market entry and monitoring processes in place, the assessors are of the view that the authorities would be in a position to detect and sanction such incidents in the event that they occurred. Seychelles conducts verification of beneficial owners at market entry stage and on an on-going basis as the authorities recognise its status as an international financial services centre.

207. The regulatory authorities obtain information on the identification and verification of beneficial ownership in respect of a shareholder who meets the threshold for substantial shareholders or holds a controlling interest of 10% and above. The information received is verified against the domestic registries and the country of origin to establish the true identity of the persons behind the licensee. Generally, the authorities demonstrated a good understanding of beneficial ownership requirements for their various sectors.

Supervisors' understanding and identification of ML/TF risks

208. The FIU is the sole AML/CFT supervisor for all reporting entities in Seychelles. The FIU demonstrated a reasonably good understanding of the ML/TF risk for its supervised entities, though it could be further strengthened. The FIU relied on various sources of information to enhance its understanding of inherent ML/TF risks facing reporting entities. These include inspections reports, suspicious transactions reports, cash courier reports, cash threshold reports, the NRA data / information. The FIU has access to due diligence information it performs on behalf of other public institutions

thereby placing it in a unique position to collect and analyse relevant information and data to identify, assess and understand ML/TF risks in various sectors.

209. The regulatory team (i.e., inspectors) at the FIU had a reasonably good understanding of risks and the team used the findings from inspections to inform and sharpen their understanding of ML/TF risks. However, all team members had only been at the FIU for not more than eight months at the time of the on-site assessment and could not therefore, articulate the evolution of ML/TF risks for prior periods.

210. The FIU further indicated that they intended to leverage off the raw information and data as well as the findings of the NRA to consolidate the understanding of ML/TF risks. The scope of the NRA included assessment and identification of ML/TF threats and vulnerabilities in Seychelles and would in that regard be a useful source of information to the FIU's understanding of ML/TF risks in the country. Although the FIU does not have a formal RBA framework, it performs assessments of ML/TF risks by taking into account risk factors in customer types, delivery channels, products as well as geographical factors after selecting an entity for inspection. On the basis of such assessments, they have identified international corporate service providers, correspondent banking, politically exposed persons, cross-border wire transfers, luxury real estate purchases by non-residents and class A bureau de change (performs currency exchanges and cross-border wire transfers) as high risk areas.

211. Furthermore, the FIU intended to leverage off the findings of the NRA to improve their understanding of ML/TF risks once the report has been adopted by the authorities. The scope of the NRA included assessment and identification of ML/TF threats and vulnerabilities in Seychelles and would in that regard be a useful source of information to the FIU's understanding of ML/TF risks in the country. The assessors noted that although the FIU does not have a formal RBA framework, it performs assessments of ML/TF risks by taking into account risk factors in customer types, delivery channels, products as well as geographical factors. On the basis of such assessments, they have identified corporate service providers, correspondent banking, politically exposed persons, cross-border wire transfers, luxury real estate purchases by non-residents and class A bureau de change (performs currency exchnages and cross-border wire transfers) as high risk areas.

212. The CBS performs ML/TF risk assessment using its overall risk assessment framework under the operational risk component. Based on the assessment¹⁶, the CBS

¹⁶ See table for the AML/CFT Return for granular details of information banks are required to submit to the CBS

has designed a return that banks are required to submit which includes information on each bank's risk grading and the number of natural persons and legal persons in each category and the total value of deposits. In addition, the return provides for disaggregated data for politically exposed persons, cross-border wire transfers and suspicious transactions. Although this information could be of value to improve the FIU's understanding of risks, there was no evidence that the CBS shared the information with the FIU despite the availability of relevant mechanisms for the exchange of information among the supervisory authorities.

213. However, it was noted that the FIU does not receive cash declaration reports from the Seychelles Revenue Commission to form as part of transaction analysis. It was the view of the assessors that this deprives the FIU from extracting intelligence from cases that may be related as well as limiting the FIU's ability to form a comprehensive view of potential ML/TF risks arising from cash couriers. This is, however, been mitigated by the FIU has a good understanding of the trends and methods relating to cash couriers and the specific regulated entities (e.g., bureau de change and banks) which are at the risk of being abused by laundering the proceeds.

Risk-based supervision of compliance with AML/CTF requirements

214. The FIU has an inspection manual which sets out the importance of conducting sectoral and reporting entity risk assessments to inform supervisory action including the calendar of inspections. The FIU, however, had not conducted sectoral ML/TF risk assessments, as contemplated in the inspection manual, to inform supervisory actions. The FIU recognises the value of such assessments as regards to ensuring that inspectors have shared knowledge on the nature of business and associated risks before carrying out a supervisory action (e.g., inspections). The absence of documented ML/TF risk assessments is mitigated by the fact that the FIU was able to identify and demonstrate a good understanding of the inherent risks with customer categories, products, delivery channels as well as geography as the main determinants of the risk profile of an entity. A major concern is that fact that the FIU does not risk rate the sectors nor reporting entities in order to inform supervisory activities of the FIU. There are reform plans underway to review the Inspection Manual informed by the results of the NRA.

215. The AML/CFT risk-based framework at the FIU is less developed to enable adequate and effective supervision and monitoring of reporting entities. It is unclear how the FIU selects one reporting entities over another for inspection. The inspection schedule is determine in the beginning of the financial year. The practice is that, the FIU starts ML/TF risk profiling after choosing an entity for an inspection. The outcome of the

exercise is used to determine the nature or type and intensity of the inspection, namely; full scope, targeted and spot examination in respect of that entity.

216. The AML/CFT supervision is still evolving and relatively new in Seychelles. Review of on -site inspections reports by the FIU show that for the period 2013 to 2016 (see Table below) a total of 17 inspections were conducted covering banks (9), credit finance (1), money value transfer services (3), money changers (3), insurance brokers (4) and securities (1). The FIU supervisory framework is relatively new

Number of AML/CFT on-site inspections of FIs, 2013 - 2016

Type of FIs	Number of AML/CFT on-site examinations				Total
	2013	2014	2015	2016	
Banks	0	3	1	5	9
Credit finance	0	0	0	1	1
MVTS	0	1	1	1	3
Money changer	0	1	1	1	3
Securities	0	0	0	1	1

217. The following sectors had not been inspected over the same period: microfinance, life insurance, general insurance, insurance agents, investment agents, pension funds, collective portfolio management, investment dealers, investment advisors, safekeeping, asset management, CIS Administrators and CIS Managers. This is mainly due to inadequate resources at the FIU.

218. In the case of DNFPBs, the FIU conducted on-site inspections of 16 reporting entities from 2013 to 2016. The inspections included casinos (1), Trust and Company Service Providers (13) and motor vehicle dealers (2) as per table below out of a total of 150 (as at 2016). The focus on TCSPs is based on the recognition of the risk nature of the sector.

Number of AML/CFT inspections of DNFBPs, 2013 to 2016.

Type of Reporting Entity/sector	Number of AML/CFT on-site examinations					Total
	2013	2014	2015	2016		
	No. of Insp No. of Insp	No. of Insp	No. of Insp	Total No. of Entities	No. of Insp	
Casinos	0	0	0	3	1	1
TCSPs	6	5	0	20	2	13
Other Motor Vehicle Dealers	0	0	0	23	2	2

219. Seychelles has recognised the negative impact of resources challenges on the ability of the FIU to effectively supervise and monitor the reporting entities for compliance with AML/CFT obligations. The authorities are in the process of reforming the supervisory framework so that prudential supervisors (FSA and CBS) will be responsible for AML/CFT/PF supervision and monitoring of reporting entities under their purview. The FIU will be responsible for all DNFBPs and reporting entities without a regulator.

Remedial actions and effective, proportionate, and dissuasive sanctions

220. Seychelles is yet to apply sanctions for violation of AML/CFT requirements by FIs and DNFBPs primarily due to a lack of capacity to monitor and enforce compliance and issue appropriate sanctions. The nature and extent of inspections carried out by the FIU were sufficient to determine (non) compliance levels with the AML/CFT requirements by a supervised entity. Further, the assessors identified that there were a number of regulated entities which had not been inspected due mainly to inadequate supervisory capacity within the FIU.

221. The analysis of the inspections reports and discussions on AML/CFT compliance issues held with the FIU and the inspected regulated entities found the following as main areas of non-compliance: customer due diligence, reporting and quality of STRs, AML/CFT internal programs and record keeping. In some instances, reporting entities did not institute enhanced due diligence measures in high risk situations. At the time of the on-site visit, it was noted that the FIU had not sanctioned any reporting entity for breaches or failure to comply with AML/CFT requirements in terms of the AML Act.

222. It further indicated that the nature and extent of the non-compliance were sufficient to attract application of sanctions but, as indicated above, no concomitant action was taken by the FIU. At the end of the inspections, a formal letter and the full examination report are sent to the inspected entity, outlining both the areas of compliance and non-compliance, as well as the remedial actions required to address the identified non-compliance areas. The assessors found that the formal letter is not issued in terms of the provision of the AML Act and therefore would not be legally enforceable in the event that the inspected entity fails to remedy the non-compliance areas. As a result, there could not be sanctions issued as the AML law puts as a precondition proof that the inspected entity failed to comply with a lawful instruction issued by the FIU to remedy the situation *before* (our emphasis) any further action (i.e., issuance of a sanction) could be considered against the inspected entity which fails to comply with the legal instruction. At the time of the on-site visit, there were no sanctions issued under the AML Act for non-compliance with AML/CFT requirements. In the absence of sanctions and remedial actions imposed, the effectiveness of the regime could not be determined.

Impact of supervisory actions on compliance

223. The supervisory activities so far undertaken by the FIU were less influential to positively change compliance behaviour of the FIs and DNFBPs. Inspections conducted clearly indicate existence of differential in the application of the AML Act by the regulated entities, with commercial banks, securities, and large insurers fairing relatively well in contrast to the other non-bank FIs and DNFBPs (except for ICSPs). Due to the lack of enforcement capacity within the FIU and the fact that AML/CFT supervision is not informed by risks, there has not been sufficient remedial actions and sanctions pursued necessary to determine the positive impact of supervisory actions on FIs and DNFBPs. The supervision focus of the FIU is on commercial banks, bureau de change and ICSPs (considered high risk), while sectors such as luxury real estate market (also considered high risk) is left unsupervised. The results are that the unsupervised entities are vulnerable to ML/TF risks, as they demonstrated inadequate appreciation of ML/TF risks and application of AML/CFT obligations.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

224. The FIU has undertaken numerous initiatives to create awareness among reporting entities about ML/TF risk and the obligations arising from AML/CFT legal and regulatory framework. This has been done through the issuance of circulars, advisory notes and guidelines to reporting entities. Similarly, the FIU has conducted workshops and seminars as part of the sensitization programmes in addition to occasional programmes on television. It also has an on-going training programmes for reporting entities with the objective of enhancing the effectiveness of FIs and DNFPBs to implement mitigating controls effectively. The FIU has also provided feedback to reporting entities aimed at enhancing reporting entities' understanding of ML/TF risk and transaction monitoring and reporting. Further, reporting entities receive a copy of the inspection report containing the outcomes of an on-site inspection focusing on the ML/TF risks and vulnerabilities identified and remedial measures required to address them. The majority of the reporting entities confirmed that the FIU undertook awareness raising activities. The assessors noted differential impact of these initiatives on reporting entities. Banks demonstrate a good understanding of their obligations and generally had robust AML/CFT internal control programmes. On the other hand, understanding of AML/CFT obligations as well as ML/TF risks among DNFPBs was low with the exception of ICSPs.

225. Despite these initiatives, a number of reporting entities especially in the DNFPBs sector did not have a sound knowledge and understanding of key AML/CFT risks to which they are exposed. Real estate agents, in particular, did not appear to understand when to apply enhanced due diligence measures despite the sector recognising the high risk ML cases it faces. Furthermore, they did not also seem to understand the risks associated with PEPs and treated them just as any other customer type. In addition, there was a general sense of comfort, which is misplaced in the view of the assessors, that because the FIU is involved in the vetting process as part of obtaining sanction on foreigners to acquire land, the real estate agents did not need to undertake any due diligence.

Seychelles has achieved a Low Level of effectiveness for IO.3.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- The NRA was not comprehensive enough as it did not fully analyse the activities and the ML/TF risks associated with legal persons and arrangements. It did not quantify the levels of the risks associated with the sectors and the full impact of such risks at both national and international level in order to adequately define mitigating measures.
- Notwithstanding the mitigating controls in place, the use of foreign regulated persons¹⁷ by ICSPs to get information on basic and beneficial ownership on international business companies intending to register in the Seychelles pose an inherent risk of the information not being accurate and up-to-date and a likelihood of ICSPs not successfully verifying the information due to the non-face to face nature of the transaction.
- Although barristers, notaries and attorneys as reporting entities are supposed to obtain information on BO when engaged to incorporate a domestic company, in practice, a majority of them were not doing it.
- It is noted that through the enactment of the International Business Companies Act 2016, the IBCs that are administered by FSA are under an obligation that requires them to keep at their registered offices (the office of its registered agent, (ICSP)), a Register of Beneficial Ownership which requires obtaining of BO information by the IBC of individuals from a threshold of 25% shareholding. However, the use of corporate shareholders and nominees for IBCs which can use opaque layers of ownership structure also poses a risk to the authorities in determining and making a proper assessment of the natural ultimate person involved.
- Trustees should keep or cause to be kept at the trustee's principal place of business in Seychelles, an up to date International Trust Register, containing information on the full name, address, nationality or place of incorporation of each trustee, beneficiary or settlor; the date on which a person is appointed or otherwise becomes a trustee, beneficiary or settlor; the date the person ceases to be a trustee, beneficiary or settlor. In practice it could not be demonstrated that the International Corporate Trustees, where the trustee, beneficiary or settlor is a corporate body, they go beyond the requirements of the law and obtain information beyond the name, address and place of incorporation of the corporate trustee to determine the ultimate natural person behind the corporate trustee, beneficiary or settlor.
- The limited scope of predicate offences where law enforcement agencies (with the exception of the FIU) through the Office of the Attorney General can apply for a

¹⁷ In other jurisdictions, they are referred to as 'professional introducers'.

court order to access information in possession of a trustee, restricts the kind of information which can be obtained by these agencies.

- Both the FSA and the Companies Registrar have taken drastic measures to sanction entities under their purview, including imposition of fines and striking off of both domestic and international business companies for various violations ranging from failure to file annual returns, failure to hold information on directors and shareholders, failure to provide information required by SRA, to failure to have a registered agent. However, the FSA has not yet started strict monitoring of keeping of the UBO Registers by IBC/Trust on BO information. As a result, no ICSP or ITSP had been sanctioned for violations relating to such information during the period under review.

Recommended Actions

Seychelles should:

- , the authorities should carry out risk assessments specifically aimed at clearly identifying and understanding the ML/TF risks associated with the sectors so that they can come up with informed mitigating measures given the complexities of and important role played by the both IBCs and ITSPs in the Seychelles.
- Ensure that the barristers, notaries and attorneys involved with incorporation of domestic companies are effectively monitored for compliance with UBO requirements in the AML Act in respect of the companies they facilitate to incorporate.
- Ensure compliance with measures in place relating to better implementation of the regulation of the information obtained by regulated foreign persons on behalf of ICSPs and the relationship between the ICSPs and the regulated foreign persons which provide such non-face to face services to improve on the quality and reliability of the information they provide.
- Develop and implement measures which enable more reliable means of obtaining accurate and up-to-date information on BO from all domestic legal persons.
- Ensure in practice that information obtained by IBCon BO also covers nominators of nominee shareholders and natural persons who ultimately own or control corporate shareholders.
- Ensure that the requirements on obtaining of BO information relating to international trusts should directly require that where the trustee, beneficiary or settlor is a corporate body, the ITSPs go beyond obtaining of the name, address and place of incorporation of the corporate trustee to determining the ultimate natural person behind the corporate trustee, beneficiary or settlor in order to satisfy the requirement to obtain and maintain adequate BO information on international corporate trustees in the International Trust Register.
- Increase the scope of predicate offences where competent authorities, particularly law enforcement agencies can apply for an order through the Attorney General's Office to access information from trustees of international trusts.

- The FSA needs to start taking measures to effectively implement the sanctions available to it on failure to maintain adequate information on BO by ICSPs and ITSPs in the BO registers.
- Given the difficulties and at times unclear provisions relating to obtaining of BO information by ICSPs and ITSPs, both the regulatory and supervisory authorities should start inspecting the extent of the information being maintained by the ICSPs and ITSPs in both the beneficiary ownership register and the international trust register so that the authority can recommend appropriate changes to the laws to enable effective collection of more reliable and accurate information on BO in the offshore sector.

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

Immediate Outcome 5 (Legal Persons And Arrangements)

226. In the Seychelles the creation of legal persons and the recording and obtaining of basic and beneficial ownership information is set out in the Companies Ordinance Act, International Business Companies Act 2016, , the International Trusts Act 1994, the Foundations Act 2009 and the Limited Partnership Act 2003.

227. For all trusts registered in the Seychelles' international financial sector the trust are serviced by international corporate/trustee service provider (ICSP/ITSP) which is a licensee regulated and supervised by the FSA and is also a reporting entity under the AML Act supervised by the FIU.

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

228. There are two regimes of registering companies in Seychelles. Domestic companies are registered by the Registrar of Companies (ROC) whilst international business companies (IBCs) are registered by the Chief Executive Officer of the FSA as the Registrar of such companies.

229. Information on the creation of IBCs, foundation and LPs is found in the IBC Act, Foundations Act and LPA, respectively. These legislations can be easily accessed physically at the FSA's head office and is also available online on the website of the FSA and SEYLII (being an independent organisation established on 2012 offering free access to all legal materials of Seychelles).

230. The website of the FSA also provides information through guidelines on the procedures on creation of these legal persons in Seychelles as well as the forms required to be lodged with the FSA for creation, where applicable.

231. Similarly in the case of International Trusts, information on their creation/formation can be found in the International Trust Act, which can be easily accessed physically at the FSA's head office and also online on the website of the FSA and SEYLII.

232. Information on creation of domestic companies is also physically available to the public at the ROC's Offices for a small fee and freely available to competent authorities. The information is also available online on the SEYLII Website¹⁸.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

233. The authorities in Seychelles have an understanding of the risk posed by legal persons and legal arrangements for commission of ML/TF, though no specific case examples were provided to substantiate their understanding. Seychelles included risk assessment of legal persons and legal arrangements in the NRA which considered ML/TF risks associated with the types of legal persons and arrangements incorporated at the Companies Registry and the FSA. The understanding is largely based on the findings of the NRA for most competent authorities whilst the FSA (regulator) and the FIU (AML/CFT supervisor) demonstrated superior appreciation of the risks. The NRA has concluded that the ICSPs and ITSPs posed a higher ML risk due to the exposure they face when dealing with IBCs than domestic TCSPs (largely accountants, auditors and legal professionals) which are considered medium low. Whilst the assessors share the view of the authorities in respect of the level of risk for the ICSPs and ITSPs, the assessors do not share the conclusions of the NRA that the domestic TCSPs are medium low. The assessors contend that since these DNFBPs create, administer and manage legal persons and arrangements, there are no reasonable steps taken to verify the true identity of the persons (e.g., UBO) behind the corporate vehicle. In terms of vulnerability, the domestic TCSPs demonstrated a lack of proper implementation of the AML/CFT requirements, in addition to the fact that they have not been well supervised for compliance with the requirements in contrast to foreign TCSPs (e.g., ICSPs). It is the view of the assessors the current level of understanding of ML/TF risks posed by and vulnerability of legal entities and arrangement could be improved to reflect the situation

¹⁸ It should be noted that the Companies Ordinance Act does not require obtaining of BO information during registration of domestic companies, therefore information on requirements relating to BO is not part of the information accessed (note is taken that the reporting entities under the AML Act are required to obtain UBO information as it is not a requirement under the FATF Standards that only registries of companies obtain this information)

in Seychelles. For instance, some ICSPs were acting as nominees and international trustees which, in general, provide a potential for creation of opaque layers of ownership structures. The assessors identified that there is more work that needs to be done by the authorities to establish a true reflection of ML/TF risk implications of these interaction. In addition, it was determined by the NRA that company fraud is one of the highest predicate offence generating proceeds in Seychelles. The assessors were not convinced that the authorities understood the possible implications for ML risks arising from the proceeds of company fraud. Except for the NRA and general outreach activities, there has been no provision of specific guidance or awareness raising on the ML/TF risks posed by certain types of legal entities and legal arrangement (e.g., specific features of types of corporate structures vulnerable for abuse and specific jurisdictions from which legal persons and arrangement are riskier).

Mitigating measures to prevent the misuse of legal persons and arrangements

234. Seychelles appreciates the ML/TF risks associated with the key feature of non-face-to-face of relationships established through TCSPs in its jurisdiction as an international financial centre. Most importantly, Seychelles understands the possibility of not obtaining the required CDD information including UBO as many TCSPs rely on foreign regulated person. TCSPs (both domestic and foreign operations) are reporting entities under the AML Act and are therefore required to implement AML/CFT measures. As discussed under IO.4, domestic TCSPs do not comply with the AML/CFT obligations particularly in relation to verification of information submitted for incorporation which leads to UBO information either not being obtained or, where it may have been obtained, not verified. In general in Seychelles, the availability of CDD and UBO information, could have been significant issue were it not for the 2016 amendments to key pieces of legislations on transparency of legal persons and legal arrangements. For instance, under the amendments of the IBC Act, IBC are required to obtain and maintain a register of UBO information in Seychelles. Discussions with some of the ICSPs met during the on-site visit revealed that, they had reached notable levels of the UBO remediation process as required under the amendments.

235. The practice in Seychelles is that during the incorporation of domestic legal persons, a signed declaration of compliance has to be produced by a barrister, attorney or notary confirming that all requirements have been met. In addition to the declaration, the lawyer (barrister, attorney or notary) is also a reporting entity in terms of AML/CFT obligations under the AML Act. However in practice, the barristers, attorneys and notaries are not yet implementing the full CDD measures when engaged to incorporate legal persons with the Companies Registry, e.g. information on BO of the domestic companies is not obtained by them as reporting entities under the AML Act before

producing the signed declaration of compliance for purposes of incorporating the legal person with the Companies Registry.

236. The ICSPs/ITSPs, on the other hand, obtain and verify information on BO when engaged to incorporate an IBC. The IBC provides a declaration of compliance with beneficial ownership obligations to the FSA when being incorporated which information the IBC has to maintain in a register at its registered office in the Seychelles.

237. Seychelles has implemented some preventative measures designed to prevent the misuse of legal persons and legal arrangements for ML and TF. ICSPs and ITSPs are subject to AML/CFT legislations which require them to perform CDD when establishing business relationships including establishing the true nature and purpose of the business, beneficial ownership information which has to be kept up-to-date and accurate.

238. In the Seychelles, non-face to face business is common in the international financial centre sector and the majority of the ICSPs have most of their business coming from foreign regulated persons. The feedback received indicated that there are varying standards of compliance by ICSPs. Majority of the ICSPs indicated that they do not meet the clients at initial stage, however, reliance is placed on the foreign regulated entities for carrying out the CDD. The foreign regulated persons provide the CDD information to ICSPs and there is the risk that foreign regulated persons might have incomplete or false information and as such cannot make an assessment of the nature of the customer's business, ownership and control structure. As discussed above, the risk has been largely mitigated following the 2016 amendments to the legislations (e.g., IBC Act) relating to transparency of legal persons and arrangements. In any event, the vast majority of information collected and verified on beneficial ownership of legal persons and arrangements in the international business operations is held by the ICSPs and ITSPs, which in terms of the law are supposed to comply with all CDD requirements on BO information (also see analysis under IO 4).

239. The information on beneficial ownership held by IBCs in their registers, due to subsequent amendments to the relevant laws has seen the definition of beneficial owner being expanded to include the person who directly or indirectly holds more than 25% of the voting rights in a company.

240. Under international trusts, where a trustee, beneficiary or settlor is a corporate body, only information relating to the name, address and place of incorporation of the corporate body is maintained. The authorities did not demonstrate that in practice they

go beyond this information and obtain details of the ultimate natural persons in or behind the corporate trustee, beneficiary or settlor¹⁹.

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

241. Competent authorities which include the FIU, AG, SRC, ACCS and Courts can easily access basic information on domestic legal persons through physical verification at the office of the ROC and this information is shared with the authorities free of charge. Where there is need for the ROC to provide the basic information requested, it provides it in one or two days to a week depending on the complexity of the information required. Competent authorities when making the request are required to specify the nature of the request, under which category and why the information is needed. The LEAs indicated that they were able to access or obtain this information and has not encountered any problems with regards to any request from the ROC. The ROC also confirmed during the on-site visit that it has been receiving good feedback on the information provided to competent authorities. The Office of the Registrar of Companies in addition to providing the basic information on domestic legal persons, at times is also called to court to testify on information retained by the Office. During the period from February 2015 to June 2017, the Registrar of Companies testified in seven (7) cases. However, the information available to competent authorities from the ROC does not include information on beneficial ownership as the ROC does not obtain this kind of information when domestic companies are registered. Competent authorities can obtain beneficial ownership information on domestic companies from reporting entities as they have an obligation to obtain and maintain this information when forming a business relationship with a legal person or legal arrangement under the AML Act. However, not all DNFBPs met during the on-site visit could demonstrate that they are in practice obtaining and verifying the information as required under the AML Act (see the analysis under IO 4). At the time of the on-site visit, there was a requirement for IBC under the IBC Act to maintain a BO Register. The ICSPs/ITSPs met during the on-site visit indicated that they were still at different levels of collecting such information. At the time of the on-site visit, the FSA had not yet commenced inspections with a view to enforce but had reviewed 2000 IBCs to determine compliance by the IBCs with the requirements to obtain and maintain up to date and accurate information in their BO Registers. The use of corporate shareholders

¹⁹ A trustee is required to keep or cause to be kept at the trustee's principal place of business in Seychelles, an up to date International Trust Register, containing information on the full name, address, nationality **or place of incorporation of each trustee**, beneficiary or settlor; the date on which a **person** is appointed or otherwise becomes a trustee, beneficiary or settlor; the date the person seizes to be a trustee, beneficiary or settlor. In terms of the Interpretation and General Provisions Act (S. 22), the term *person* applies to both natural and legal persons in Seychelles.

and nominees for IBCs which can use opaque layers of ownership structure poses a risk to the authorities in determining and making a proper assessment of the natural ultimate person involved.

242. All basic information held by the FSA as the Registrar of IBCs on an electronic database is accessible to competent authorities upon request. In the case of exchange of information upon request on basic information, the FSA and the FIU undertake daily information exchanges as opposed to information exchange with other competent authorities (such as CBS, AG and SRC) where the volume of requests is less. It should be noted that in general there is reliance on the FIU to make enquiries on behalf of the competent authorities and it was unclear to the assessors the reasons for this.

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

243. The ROC indicated that information on legal arrangements is not kept at their level as domestic trusts are not regulated by a set legal framework. With respect to international trusts registered under the FSA as legal arrangements, information on the beneficial ownership of a trust established under IT Act is required to be held in the Seychelles at the office of the ITSP.

244. Trustees (ITSPs) licensed under the ICSP Act have the obligation under the AML Act (as reporting entities) to collect beneficial ownership information and so competent authorities in Seychelles are able to obtain such information on BO through a court order, with the exception of the FIU and the FSA. The process of obtaining such a court order is rather expeditious and the Office of the Attorney General informed that the process takes less than 48 hours to get the order. However, there are limitations in terms of the scope of offences as not all predicate offences are covered under the specific provision allowing for such court orders (only provides for traffic of narcotics and dangerous drugs, arms trafficking or money laundering). Also see above (under core issue relating to implementation of mitigating measures) analysis on requirements for trustees to maintain International Trust Registers.

Effectiveness, proportionality and dissuasiveness of sanctions

245. The FSA has the power to administer administrative sanctions independently and it has used these powers to impose sanctions for various violations. However, of the statistics provided by the FSA there was no information provided relating to violations of BO provisions. The FSA also relies on the FIU for effective administration of sanctions on ICSPs/ITSPs relating to violations of their obligations in terms of the AML Act.

246. The assessors were provided with statistics of sanctions which the FSA indicated it had imposed for non-compliance with maintaining registers of shares and directors by IBCs. As for the ICSPs/ITSPs, those met by the assessors indicated that although the IBC Act came in force in 2016, the ICSPs had been provided a transition period, until May 2018 to comply with the requirement to maintain a register of beneficial owners. The ICSPs interviewed, further indicated that although they had started with the collection of those information, the remediation had been achieved to a notable level of the corpus of the population. It was therefore the understanding of the assessors that no sanctions or strict monitoring and enforcement in terms of the applicable laws had yet been done by the FSA for non-compliance with BO requirements by ICSPs/ITSPs.

247. The sanctions which had been imposed by both the ROC and the FSA until the time of the on-site visit seemed drastic enough. For instance, the Registrar of IBCs (FSA) struck off six hundred and eighty nine (689) IBCs for failure to hold information on directors and shareholder, thirty five (35) IBCs for failure to provide information requested by the SRC and after the abolishment of bearer shares, the FSA had struck off two hundred and twenty nine (229) IBCs. As indicated above, none of these actions involve ICSPs or ITSPs. The ROC also took drastic steps on companies violating the Companies Ordinance Act. During the period from 2013 – 2017, it struck off the register five hundred and fifty three (553) companies for failure to submit annual returns.

Seychelles has achieved a Low level of effectiveness for IO.5

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- Seychelles has a legal framework and a number of bilateral and multilateral arrangements and agreements in place to facilitate international cooperation. However, the legal provisions have limitation for rendering MLA and extradition on ML/TF matters
- Whilst Seychelles has sought international cooperation to pursue investigation and prosecution of predicate offences, there has been no similar action in respect of ML and TF cases.
- Seychelles does not have an adequately resourced division within the central agency (AG's Office) to properly handle MLA and extradition requests as the current setting in which all lawyers in the AG's Office deal with such requests had made it difficult to maintain appropriate statistics to demonstrate effectiveness.
- There is no set timeframes by agencies executing requests to allow rapid provision of MLA and extradition. In addition, the turnaround time of executing requests appears to be long.
- The effectiveness of the international cooperation framework in Seychelles is constrained by a general lack of a coherent system for managing and tracking international cooperation requests. There is no proper coordination between the MoFAIC and the AG's Office for seeking and rendering MLA and extradition matters. There is no sufficient information or data available in respect of handling of requests for MLA and extradition to enable determination of the effectiveness of the process. As such, there is no urgency, proper handling or record to show how these matters are prioritized. The lack of specialized unit also contributes to the lack of statistics on MLA and extradition.
- Seychelles provides basic information on beneficial ownership in international cooperation.

Recommended Actions

Seychelles should:

- Amend and harmonize its existing laws to put in place proper mechanisms and processes of providing international cooperation relating to ML/TF.
- Promote and better utilise international cooperation in ML/TF by providing training to LEAs as part of their efforts to increase investigations and prosecutions of these offences (see IO.7). In addition, the authorities need to put in place a better mechanism to monitor movement of requests on both MLA and extradition between the MoFA and the AG to ensure that the statistics of the requests shared are consistent and reconcilable.
- Set up clear processes and procedures and keep comprehensive statistics on MLA and extradition requests. Furthermore, as the authorities should develop and implement proper processes, procedures and case management system in relation to MLA, extradition and other forms of international cooperation necessary to review the effectiveness of the measures relating to provision of international cooperation and exchange of information on predicate offences, ML, and TF matters.
- Establish a well-resourced dedicated division within the AG's Office to handle incoming and outgoing requests and responses on predicate offences, ML, and TF cases.

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

Immediate Outcome 2 (International Cooperation)

248. Seychelles has a legal basis that allows its competent authorities to provide both formal and informal international cooperation on the principle of reciprocity. The Mutual Legal Assistance in Criminal Matters Act (MACRMA) has enabling provisions for Seychelles to render MLA in criminal matters and asset forfeiture. There are, however, some limitations in the Act which prevent the Seychelles from providing MLA for ML and TF which negatively impact on the scope of international cooperation provided. In order to respond to requests for extradition, the Extradition Act also allows a person acquiesce to the request or to surrender voluntarily, thus reducing response times. In addition to the existing domestic legal frameworks, Seychelles has also ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention), United Nations Convention against Transnational Organized Crime (Palermo Convention)), 2000, UN Convention for the Suppression of the Financing of Terrorism, 1999 and the UN Convention against Corruption (Merida Convention), 2005. In addition, Seychelles has signed various

memoranda or agreements, either with their counterparts or international organizations to facilitate provision of international cooperation.

Providing constructive and timely MLA and extradition

249. The Attorney-General is the central authority for receipt and processing of mutual legal assistance and extradition requests and responses in Seychelles. In some instances, the AG's Office has received such requests and has responded by advising the requesting jurisdiction to route the same through the Department of Foreign Affairs. The AG's Office does not have a designated unit for managing the requests for and the provision of mutual legal assistance and extradition requests. In addition, there are capacity constraints particularly in respect of human resources which has negatively affected the AG's Office's timeliness to process the requests once received from the Department Foreign Affairs. For instance, the Office of the AG has fifteen attorneys and the AG. The staffing challenges has made it difficult to dedicate staff to handle MLA, extradition and other forms of cooperation matters. To ensure that all the requirements are met for provision of MLA and extradition, the AG's Office assesses the information received, either from the Department of Foreign Affairs or directly from the requesting jurisdiction, and decides on whether or not such a request will be granted and where clarifications are required, the AG's Office transmits the file back to the Department of Foreign Affairs to communicate with the requesting jurisdiction.²⁰

250. There are two ways of handling MLA and extradition requests by the AG's Office: (1) It is directly sent to law enforcement or any competent authority or, (2) It is taken to court. Where the request is sent to a law enforcement agency, the request is processed within two weeks. Where the request involves court processes, the the request may take a bit longer but as soon as the court processes are done it is transmitted to the requesting authority. In both channels, the nature and complexity of the request, in general, determine the length it takes to complete processing and provision of the required assistance.

251. The information provided by the Department of Foreign Affairs shows that it takes much longer (between 1 month to 3 years) than the time-frame provided by the AG's Office to execute the request. This means that there are significant delays from the time of receipt by the Department of Foreign Affairs to execution by the AG's Office. The absence of well-kept records confirming the process followed in handling MLA and

²⁰ During the time of the assessment, assessors were informed that the Department of Foreign Affairs and the Office of the Attorney General have agreed in writing that once a request has been sent to the AG's Office by a requesting jurisdiction, clarifications will be handled directly by the AG from the requesting country.

extradition requests in the AG's Office made it difficult to determine the time-frame it takes to execute on average MLA and extradition requests. Moreover, there is no information in relation to feedback or any acknowledgement of the information provided to the requesting and requested country. With the exception of instances where the request is received from the requesting jurisdiction by the AG's Office, there is no evidence confirming receipt or any form of notification to the jurisdiction. The delays in processing the requests is further exacerbated by the absence of a case management system at the AG's Office to process and track progress on execution of the request.

252. As a matter of policy, Seychelles prioritises MLA and extradition requests from the United Kingdom and the Commonwealth nations. In addition, Seychelles generally applies the principle of reciprocity to determine the level of urgency attached to a request.

253. In cases where none of the above arrangements are in place, Seychelles prefers to enter into a formal arrangement before a request can be provided. Similarly, Seychelles enters into a formal arrangement where it does not have any of the mechanism explained above before making a request to the jurisdiction. Where the other party is not willing, Seychelles has taken an approach of also not executing the request. The authorities cited cases in which assistance was refused on the basis that the requesting jurisdiction had failed to enter into a formal arrangement before assistance could be granted. There are no statistics or case example to demonstrate the extent to which the authorities have applied the different arrangements to provide MLA and extradition.

254. The AG Office has a manual record system where all information on MLA and extradition requests is captured. The record is not only for MLA and extradition, but also for any other communication that is sent to the AG. The information that is kept in the record includes country of origin making the request, date when the request was received, Counsel assigned to the request, and the date of the request or response was dispatched to the Department of Foreign Affairs. Once the AG has allocated the file to Counsel, it is the duty of the officer to do quality check of the information. It was unclear to the assessors whether or not the information recorded indicate the nature of the request, evidence gathering, exhibit request, and enforcement of a foreign judgement, etc).

255. During the period (2013-2017), Seychelles received five (5) extradition requests, all relating to predicate offences such as drug trafficking, piracy, fraud and embezzlement. During the period under review, the information provided indicate that: one (1) extradition request had been finalised; one (1) resulted in deportation; one (1) was dismissed by the Court; and two (2) of the requests were still pending. Although there

are no reliable statistics to demonstrate the average time-frames it takes to execute extradition requests, the AG's Office indicated that the average turnaround period is six months subject to the nature and complexity of the case. The lack of a proper case management system has made it difficult for the authorities to provide reliable statistics necessary for the assessors to determine effectiveness.

256. The problem of retaining proper statistics in MLA requests received is evident in the discrepancy of the numbers of the MLA requests received by the AG's Office and those received by the Department of Foreign Affairs and forwarded to the AG's Office. During the period from January 2013 to November 2017, the AG Office indicated that Seychelles received four (4) MLA requests. As at the time of the on-site visit, three (3) requests had been finalised and only one (1) was still pending. However, statistics provided by Department of Foreign Affairs show that during the period from January 2013 to November 2017, a total number of one hundred and seventy four (174) MLA requests were received and a total of seventy one (71) requests were concluded. The mismatch in the MLA and extradition statistics between the AG's Office and the Department of Foreign Affairs is further proof of poor management of information necessary to demonstrate effectiveness of the international cooperation framework in Seychelles.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

257. Seychelles seeks MLA mainly to pursue prosecution of predicate offences, especially drug trafficking. Except for citing extradition requests made to the United States of America and United Arab Emirates, there are no records available to demonstrate the extent to which Seychelles sought MLA to pursue domestic ML, associated predicate offences and TF cases with transnational elements.

Providing and seeking other forms of international cooperation for AML/CTF purposes

258. The FIU performs a dual function of providing financial intelligence and being an AML/CFT supervisor of all reporting entities in Seychelles. The Director of the FIU used to be also the Enforcement Authority for the purposes of asset recovery under the POCA before July 2017. The FIU demonstrated that it was able to provide assistance informally and formally directly to other jurisdictions through the EGMONT Group Secure Web system. The nature of the cooperation relates mainly to the provision of information and identification, tracing and freezing of assets.

259. The FIU has entered into MoUs with other FIUs which it uses as the basis for exchange of information. In addition to the MoUs, it also has other reciprocal

arrangements with other FIUs which it has successfully used to exchange information. The FIU has used these arrangements to make three hundred and eighty one (381) requests to other FIUs. All of the requests were responded to. The FIU received seven hundred and seventy four (774) requests from counterpart during the period under review, and has responded to all of them. The following Table illustrates informal legal assistance which has been provided and sought by the FIU:

TABLE : INTERNATIONAL REQUESTS TO SEYCHELLES FIU

Year	2012	2013	2014	2015	2016
Number of requests received from other FIU	110	157	147	251	189
Number of requests granted	110	157	147	251	189
Number of requests refused	Nil	Nil	Nil	Nil	Nil
Average time required to respond to a request	4 to 6 weeks	4 to 6 weeks	4 to 6 weeks	4 to 6 weeks	4 to 6 weeks

260. LEAs such as the Seychelles Police and SRC sought and provided other forms of international cooperation to their foreign counterparts on a number of issues. Seychelles Police, as a member of Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) agreement, cooperates and provides mutual assistance and exchange of information in the field of combating crime in general and carries out joint investigations with foreign counterparts in relation to cross-border and related crimes under this arrangement. Further, the Police also works with the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) on criminal matters. However, no information was provided to show how many cases have been conducted under regional arrangements, Interpol and Asset Recovery Inter-Agency Network for Southern Africa (ARINSA).

261. The Department that deals with piracy under the Ministry of Home Affairs provides international cooperation. Under the piracy unit, there has been one hundred and forty seven (147) cases that have been tried, one hundred and forty three (143)

convictions secured, four (4) acquittals and five (5) successful appeals against conviction. The convictions were Somali nationals and most of them have been repatriated to Somalia under the repatriation programme funded by European Union. At the time of the on-site visit, only fifteen (15) convicted persons were being held in Seychelles and the assessors were informed that they would be repatriated by December 2017.²¹

262. The Police also uses the Interpol network to exchange information and conducts joint investigations under the Interpol general framework. The cooperation arrangement through Interpol network is also used by other law enforcement agencies in Seychelles. The Police also indicated that they have provided MLA to USA. In May 2016, they received a request from United States to assist in locating internet servers in Seychelles. The servers were allegedly being used to intercept and store data from people's banks cards during transactions in several countries. The case was still under investigation at the time of the on-site mission. In addition, the Police indicated that in 2014 they requested MLA from Hong Kong, Dubai and South Africa. Only South Africa responded and the investigation was concluded and the file is waiting prosecution at the AG's Office.

263. The ACCS is in the process of building operational capacity since inception a year ago. Therefore, there has not been any cooperation carried out with foreign counterparts.

264. SRC cooperates through memoranda of understanding (MoU) with foreign counterparts such as Inland Revenue Board of Malaysia in 2014, Mauritius Revenue Authority in 2014, and Swaziland Revenue Authority (SRA) in 2014. Copies of the Memoranda of Understanding between the SRC and the four (4) counterparts were provided to assessors and it was determined that except in the case of the MoU with Mauritius, the areas of cooperation with other counterparts does not cover information exchange and other parts of cooperation in relation to criminal matters including AML/CFT. The SRC has additional agreements on Double Taxation Agreements (DTA). There are twenty eight (28) DTAs in force. There are eleven (11) agreements on Tax Information exchange entered into on different dates and years between 2012 and 2015. The SRC is also a party to Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Seychelles signed in August 2015 and the Convention came into force in October 2015. There are hundred and three (103) members to the convention and the SRC does exchange information with all the members upon request and the authorities indicated that they are using the Convention to automatically exchange information with

²¹ While the assessors were onsite, 6 Somali pirates were arrested when they attempted to attack a Seychelles ship at Sea and they were caught by Italian Coast Guard. They were remanded and were waiting trial.

forty nine (49) jurisdictions. No specific information was provided to assess effectiveness of the arrangement to address criminal matters. Between 2014 and 2017, the SRC processed and granted thirty three (33) requests for assistance have been received; however, there is no information on the nature of the requests. On average, the SRC takes about three (3) months to process and execute a request..

265. The requests made to and responses from the supervisory bodies (i.e., the FSA and the CBS) is about information relating to due diligence on prospective licensees (i.e., market entry information) and not AML/CFT matters. Further, there was no evidence of any feedback from the requesting country or by the FSA where it had itself made requests.

Table: INTERNATIONAL REQUEST FOR THE FIDUCIARY SUPERVISION SECTION

2013		2014		2015		2016		2017	
Received	Sent	Received	Sent	Received	Sent	Received	Sent	Received	Sent
3	0	7	0	13	9	17	10	3	12

International exchange of basic and beneficial ownership information of legal persons and arrangements

266. The FIU and the financial sector regulators have provided information to counterparts on basic and UBOs. There is no evidence on similar matters provided by other competent authorities.

Seychelles has achieved a Low level of effectiveness for IO 2.

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008. This report is available from www.esaamlg.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

This is a new Recommendation which came into force after completion of the First Round of Mutual Evaluations and therefore it was not part of the 2008 assessment of Seychelles's AML/CFT regime.

Criterion 1.1-(Met). Seychelles has just completed the process of assessing its ML/TF risks. The results of the risk assessment are yet to be released, pending completion of formal processes with stakeholders within the AML/CFT National Committee.

Criterion 1.2-(Met). The FIU as the Secretariat of the AML/CFT National Committee is the designated authority for coordination of ML/TF risk assessment in Seychelles.

Criterion 1.3-(Met). The ML/TF risk assessment has just been completed and, therefore, it is considered to be up-to-date.

Criterion 1.4-(Not Met). The ML/TF risk assessment had just been completed. The release of the NRA report to relevant stakeholders is pending finalisation of formalities by the AML/CFT National Committee. At the time of the on-site visit, the Committee expected adoption and release of the NRA by Cabinet in March 2018 for dissemination to stakeholders.

Criterion 1.5-(Not Met). Seychelles is yet to design, adopt and apply a risk-based approach to ensure that resources are allocated to mitigate the areas posing high ML/TF risks.

Criterion 1.6-(N/A). Seychelles has not applied any exemption from its AML/CFT framework with respect to activities conducted by FIs or DNFBPs as defined under the FATF Standards.

Criterion 1.7-(Met). Seychelles has identified high risk customers to which FIs and DNFBPs are required to apply enhanced due diligence measures to manage and mitigate the identified risks.

Criterion 1.8-(Partly Met). Regulation 11 of the AML/CFT Regulations provides for application of simplified CDD measures by FIs and DNFBPs in relation to certain circumstances such as transactions (e.g., payments from source) and business relationships (licensed banks, public bodies and listed companies). However, this was not informed by ML/TF risk assessment.

Criterion 1.9-(Partially Met). FIs and DNFBPs are subject to AML/CFT supervision and monitoring by the FIU to ensure compliance with AML/CFT requirements. However, compliance monitoring is not based on identified risks.

Obligations and Decisions for FIs and DNFBPs

Risk Assessment

Criterion 1.10-(Not Met). There is no specific requirement in Seychelles for FIs and DNFBPs to carry out institutional ML/TF risk assessment to identify, assess and understand risks that apply to them including on circumstances under (a) to (d) of the criterion.

Criterion 1.11-(Mostly Met). Section 15 of the AML Act read with Regulation 8 of the AML/CFT Regulations require FIs and DNFBPs to apply EDD and enhanced on-going monitoring measures on a risk-sensitive basis depending on the type of customer, business relationship, transaction or product. Further, the same provisions require FIs and DNFBPs to ensure that the mitigating controls are adhered to, depending on the risk identified. There is, however, no obligations for FIs and DNFBPs to have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified.

Criterion 1.12-(Partly Met). Regulation 11 of the AML/CFT Regulations provides for the nature of transactions and business relationships in which simplified CDD measures may be applied, namely, carrying out a single transaction, establishing a business relationship and wire transfer transactions equal or more than USD1000. In compliance with the FATF Standards, Seychelles does not permit application of simplified CDD where there is suspicion that a transaction involves funds from criminal proceeds, ML and TF. There is

no obligation to base SDD on identified lower risks. Seychelles does partially meets criterion 9 under R.1

Weighting and Conclusion

Seychelles has just completed an ML/TF risk assessment at a national level, though the findings are yet to be implemented. Overall, Seychelles AML/CFT framework provides for general requirements to implement mitigating controls on a risk-sensitive basis. The major gaps relate to: (i) failure to release the results of the ML/TF risk assessment conducted to relevant private and public institutions, (ii) absence of specific obligations for FIs and DNFBPs to conduct institutional assessments to determine ML/TF risks and (iii) lack of risk-based strategy by Seychelles or its relevant public institutions which will enable prioritisation of resource allocation for mitigation of higher ML/TF risks. These are significant deficiencies for implementation of the AML/CFT measures on a risk-sensitive basis at country and institutional levels.

Seychelles is rated Partially Compliant with Recommendation 1.

Recommendation 2 - National Cooperation and Coordination

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with this Recommendation (formerly R 31). The main deficiencies were that there was no evidence to determine the functionality of the AML/CFT Task Force as at the date of the mutual evaluation and lack of regular engagement by the FIU with other domestic authorities by entering into any agreement or arrangement for exchange of information.

Criterion 2.1 - (Not Met). The National Strategy on AML/CFT of Seychelles (2015 -18) is not informed by findings of a risk assessment. At the time of the on-site visit, Seychelles had just completed its national risk assessment (NRA), from which the authorities advised that they would be developing policies and strategies to mitigate the identified risks.

Criterion 2.2 - (Met). Seychelles has established a National Committee for AML and CFT which is led by the FIU. It comprises competent authorities responsible for implementation of AML/CFT framework in Seychelles including law enforcement, regulatory and supervisory bodies, government departments/agencies. The functions of

the AML Committee include co-ordination of the delivery of the national AML/CFT policy/strategy, monitor and review the implementation thereof.

Criterion 2.3 - (Met). The AML Committee is the body responsible for national coordination and development and implementation of AML/CFT programmes and activities in Seychelles. Further, the AML Committee was charged with the responsibility to coordinate the NRA process and implementation of future policies and activities aimed at addressing the findings of the NRA.

Criterion 2.4 - (Not Met.) Seychelles does not have a mechanism to facilitate cooperation coordination of amongst competent authorities to combat the financing of proliferation of weapons of mass destruction.

Weighting and Conclusion

Whilst Seychelles has established a National Committee for AML/CFT responsible for AML/CFT policies, the current national AML/CFT Strategy is not informed by risk assessment of ML/TF. In addition, there is no mechanisms to facilitate coordination to combat the financing of proliferation of weapons of mass destruction.

Seychelles is rated Partially Compliant with R. 2.

Recommendation 3 - Money laundering offence

In the MER under the First Round of MEs, Seychelles was rated Partially Compliant (formerly R.1) and Largely Compliant (formerly R.2). The main technical deficiencies were that: although the offence of ML extends to all types of property regardless of value, it could not be ascertained that when proving that property is the proceeds of crime it would not be necessary that a person be convicted of a predicate offence; and there has been no money laundering conviction under the new law and therefore the effectiveness of the legislation could not be assessed.

Criterion 3.1-(Met). Seychelles has criminalised the offence of ML under s.3 of the AML Act 2006 (as amended) which is generally consistent with Article 3(1) (b) and (c) of the Vienna Convention, 1988 and Article 6(1) of the Palermo Convention. Under s.3 (1) of the Act, any person who converts or transfers property which is derived from a criminal conduct commits an offence. The same subsection covers concealing and disguising, acquisition, use or possession. Subsection (3) covers participation in, association with or conspiracy to commit, attempt, aiding, abetting, facilitating and counselling the commission of an offence.

Criterion 3.2 - (Partly Met). Seychelles has defined “criminal conduct” in s.3 (9) of the AML Act. It has also defined “serious crime” under the same Act. One common feature in all these two definitions is that the law provides for a sentence of imprisonment exceeding 3 years, and/or by a fine exceeding R50,000 as a punishment for criminal conduct, or a serious crime. This means that in Seychelles any offence punishable with a term of imprisonment exceeding three years or a fine exceeding R50, 000 is a criminal conduct, which is an element of s.3 (1) of the AML Act. Seychelles therefore uses the threshold approach to determine predicate offences for ML. There is a deficiency however, in that not all the designated categories of offences are criminalised in Seychelles. Based on the table of designated categories of offences (see Annex at the end of the report) provided to the assessors during the on-site visit, the following offences are not categorised as predicate offences: illicit arms trafficking, Illicit trafficking in stolen and other goods; Smuggling (including in relation to customs and excise duties and taxes).

Criterion 3.3 - (Met). Seychelles apply a threshold approach and s. 3(9) of the AML Act defines criminal conduct as any act or omission against any law of the Republic punishable by a term of imprisonment exceeding 3 years and/or by a fine exceeding R50,000.

Criterion 3.4 - (Met). Property has been defined in s.2 of the AML Act and it extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

Criterion 3.5 - (Met). s.3 (11) (b) of AML Act provides that when proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence. See **Rep vs Hubert Terrence Alponse Criminal Side: CO/15/2016 [2016] SCSC 346**

Criterion 3.6 - (Partly Met). Predicate offences for ML extends to conduct that occurred in another country, which constitutes an offense in that country and which would have constituted a predicate offence had it occurred in Seychelles. This has been provided for in s.3(9) (b) and (c) of AML Act. However, it is restricted to offences that are punishable in that other country with a minimum of three years imprisonment or by a fine exceeding monetary equivalent of R50, 000. It means that where a foreign jurisdiction making a request for assistance on a predicate offence which complies with criterion 3.3, Seychelles will not be able to take the necessary action on the basis that in that other country the predicate offence is punishable by less than three years imprisonment which would not qualify as a predicate offence in Seychelles. Another issue of note is that the AG’s Office has been given power to decide in some cases whether to pursue some offences or not according to s. 3(9) (c). This power waters down the intended purpose of Rec 3.6. There is no objective test or criteria provided for in the law to be applied when the AG decides to exercise such powers.

Criterion 3.7 - (Met). S. 3 of AML Act is wide enough to cover self laundering as ss.3 (1) and (8) of the AML Act do not exclude self-laundering.

Criterion 3.8 - (Met). S 3 of the AML Act provides for the possibility for the intent and knowledge required to prove ML offence to be inferred from objective factual circumstances.

Criterion 3.9 - (Met). A natural person would be sentenced to a maximum of 15 years or a fine of R5, 000, 000, or both. The sanctions are considered proportionate and dissuasive.

Criterion 3.10 - (Met). A legal person can be charged with the offence of ML under s. 3 of AML Act. The law provides a sanction under s.3(4) (b) of AML Act and it states that, “a person other than a natural person guilty of money laundering is liable on conviction to a fine not exceeding R10,000,000”. The prescribed sanction provided for the offence of ML would be both proportionate and dissuasive.

Criterion 3.11- (Met). S3. (3) of AML Act covers ancillary offences to the ML offence, including: participation in; association with or conspiracy to commit; attempt; aiding and abetting; facilitating; and counselling the commission of an offence.

Weighting and Conclusion

Seychelles meets all criteria except for partly met in respect of criteria 3.2 and 3.6. The criminalization of some of predicate offences to ML still remains with deficiencies, as not all predicate offences as per the FATF Glossary are criminalised. Furthermore, the threshold of a serious offence provided for foreign offences of a similar conduct in Seychelles creates difficulties when it comes to consider predicate offences in other countries that may not meet the threshold in Seychelles.

Seychelles is rated Largely Compliant with R. 3.

Recommendation 4 - Confiscation and provisional measures

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R.3). The main technical deficiencies were that: the AML Act and the PTA do not expressly provide powers to law enforcement agencies for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime; the AML Act is silent on the issue of whether an application for seizure may be made ex parte; and the application of the law has not been tested therefore the effectiveness of the regime cannot be assessed which is not part of technical compliance under the 2013 FATF Methodology.

Criterion 4.1- (Partly Met). Though s.33 of the AML Act provides for conviction based confiscation in relation to instrumentalities and s.5 of the POCA for civil forfeiture in relation to laundered properties there are no enabling mechanisms and/or provisions or

case laws for confiscation of proceeds of the laundered properties relating to bank accounts and properties of corresponding value. Moreover, the restraining order for civil asset forfeiture under Section 5 of the POCCA is applicable on properties whose values not less than SCR 50,000. S153 of the Criminal Procedure Code (Cap. 54) also provides a mechanism for the forfeiture to the State of property which was used or intended to be used in the commission of any offence (which would cover all the predicate offences). S.37 of the PTA deals with civil based confiscation in relation to 'property owned or controlled by, or on behalf of, a terrorist group; or property that has been, is being or will be used, in whole or in part, to commit, or facilitate the commission of, a terrorist act'. As regards property that is the proceeds of a TF offence, s.153B of the Criminal Procedure Code (Cap 54, Act 15 of 1995) provides for forfeiture of proceeds of crimes in general.

Criterion 4.2 - (Partly Met). S.26(1) of AML Act and s.36 of PTA make provisions for the restraining or seizing of property that may be subject to a forfeiture order. Applications under both acts may be made *ex-parte*. Parts 3 and 5 of the AML Act provide the FIU with the necessary powers to, (a) collect, analyse, disseminate, and share information with all other LEAs with a view to identifying and tracing property subject to confiscation or which is suspected of being proceeds of crime, and (b) where necessary, trace that property through the Courts with a view to obtaining a pecuniary penalty order to the value of all "realisable" property of an offender. However, this does not include 'bank accounts' due to the limited definition of property as defined under s.2 of the POCA (as amended). S. 3 of the POCA provides for interim orders which can be issued where there is suspicion that a person is in possession of information which might assist in tracking, identifying the proceeds of the offence, or determining the value of the proceeds under the possession or control of any person.

The POCA does not expressly provide powers for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime. However, s. 35(1) of the PTA does provide for any one who has got in his or her possession any property owned by terrorist group to inform the Commissioner of Police about the fact. Furthermore, pursuant to the provision of Section 35(2) of the PTA Financial Institutions must provide a quarterly report to the FIU as to whether or not, they have in their possession or control any property belonging to terrorist groups and if so, financial institutions must provide particulars thereof. Moreover, a financial institution also has an obligation to inform the Commissioner of Police and the Central Bank of any transaction that takes place in the course of its business activity which it suspects to be related to the commission of a terrorist act. Hence, whilst Section 35 imposes a duty to report it does not expressly grant the Police powers to request for such information at their own initiative. However, under Section 95 of the Criminal Procedure Code (Cap 54) contains a general power which allows the Police to request for a search warrant where amongst other things " anything which is necessary to the conduct of an investigation is found in any building, ship carriage..". Hence, Law enforcement agencies have the necessary powers to identify and trace property suspected of being the proceeds of crime. Moreover, the Police can use such powers if they want to trace any property as regards an offence under the PTA.

In terms of s. 34 of the AMLA, a custom, immigration or police officer, can seize currency or BNI considered to be a proceed or instrument of crime for purposes of an administrative forfeiture. The same provision empowers the officers to carry out searches without a warrant. Section 4 of the POCA and S27 and 32(3) of the AMLA empower Courts to make interlocutory or restraint orders respectively to take steps that will prevent or void actions that prejudice the officers ability to freeze of property the total value of which is less than R50,000. Section 32 of the AML Act provides that the Court, may before making a forfeiture order, set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence. There are no other appropriate investigative measures provided for under Seychelles law.

Criterion 4.3 (Met) The AMLA, POCA and the PTA protect the interests that any third party may have in a property that is subject to a forfeiture order. See S 32 of the AMLA, Ss 4 and 28 of POCA, and Ss 29 and 37(6), 37(7), 37 (8) of the PTA.

Criterion 4.4 (Partly Met) S.29 of AMLA provides for appointment of a receiver by a court as a mechanism for managing and disposing of property subjected to pecuniary penalty or restraint orders. There are no mechanisms for managing or disposing of properties subjected to confiscation order.

Weighting and Conclusion

Seychelles partly meets criteria 4.1, 4.2 and 4.4 and meets criterion 4.3. There are no enabling mechanisms or legal authorities to confiscate property of correspondent value. The scope of property subject to provisional and confiscation measures under the POCA excludes bank accounts. Moreover, the restraining order for civil asset forfeiture under Section 5 of the POCCA is applicable on properties whose values not less than SCR 50,000. There are no other appropriate investigative measures provided for under Seychelles law and there are no mechanisms for managing or disposing of properties subjected to confiscation order.

Seychelles is rated *Partially Compliant* with R. 4.

Recommendation 5 - Terrorist financing offence

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly SR II). The main technical deficiencies were that: the TF offence did not cover funding of individual terrorists and terrorist organisations; not all the relevant TF Conventions had been ratified and implemented; the PTA does not provide for the definition of the term “fund” as set out in the TF Convention which may undermine the offence of TF under section 5 of the PTA; the PTA does not expressly provide that the TF offence to apply regardless of whether the person alleged to have committed the offence(s), is in the same country or a different country

from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur; the PTA does not expressly provide that the intentional element of the offence of TF may be inferred from objective factual circumstances; effectiveness cannot be assessed which is not part of technical compliance under the 2013 FATF Methodology.

Criterion 5.1 (Met) Seychelles has criminalized TF on the basis of the TF Convention in terms of s.6 of the PT Act, 2004.

Criterion 5.2 (Partly Met) Ss.5 and 6 of PTA extends the offence of TF to any person who wilfully provides or collects funds or other assets by any means with the unlawful intention that they should be used in full or in part to carry out a terrorist act and to be used by a terrorist group. However, the Sections do not criminalise the financing of terrorist individuals. Section 5 uses the term fund and S. 6 uses the term property. The term property as applied in S.6 is wide enough to cover both movable or immovable property. The Civil Code of Seychelles has defined what property includes and the definition is so descriptive to cover the whole scope as defined under the FAFT Recommendations glossary.

5.2^{Bis} The PTA has not criminalised financing of individuals who travel to a state other than their state of residence or nationality for purposes of the perpetration, planning or preparation of, or participation in, terrorist acts.

Criterion 5.3 (Met) Ss. 5 and 6 can cover any funds or other assets whether from a legitimate or illegitimate source.

Criterion 5.4 (Met) Ss. 5 and 6(b) of the PTA do not require that the funds be actually used to carry out or attempt a terrorist act.

Criterion 5.5-(Met) S.5 of the PTA provide the for the possibility for the intent and knowledge to be inferred from objective factual circumstances. Part of the Section reads, “or having reasonable grounds to believe that the funds...”

Criterion 5.6 (Met) In terms of Ss. 5 and 6 of the PTA, the sentences for TF offences in relation to natural persons under the PTA range from a minimum of 7 years to a maximum of 30 years.

Criterion 5.7 (Not Met) The PTA from Sections 5 to 20 does not provide for criminal sanctions for legal persons. It is also not clear whether parallel criminal, civil or administrative proceedings would not be precluded.

Criterion 5.8 (Met) S. 20 of the PTA covers the requirements of this criteria. It is an offence to attempt to commit a TF offence. It is an offence to participate as an accomplice

(aid, or abets) in a TF or attempted offence. It is an offence to organize or direct others to commit or attempt a TF offence. It is an offence to contribute to the commission of one or more TF offences.

Criterion 5.9 (Met) TF offences are designated as ML predicate offences. All the sentences to TF range from a minimum of 7 years imprisonment as TF is a criminal conduct as a predicate offense to ML in terms of s 3(9) of the AMLA.

Criterion 5.10-(Partly Met) The TF offences, using s.17 of the PTA would apply, regardless of whether the person is in the Republic or a different country from the one in which the terrorist is located or the act occurred. In short, TF offenses have extra territorial jurisdiction and S. 27 of the PTA gives the Supreme Court jurisdiction to deal with such offences. However, s.27 (3) contains circumstances that would give the Supreme Court jurisdiction. The court's jurisdiction does not seem to cover a person who is a non Seychellois or a resident of Seychelles and is participating in the offence while outside Seychelles. This is the limitation of the Supreme Court jurisdiction.

Weighting and Conclusion

Whilst the majority of the requirements under R. 5 are provided there are deficiencies with some of the criteria. The financing of terrorist individual is not criminalised. Financing of individuals who travel to a state other than their state of residence or nationality for purposes of the perpetration, planning or preparation of, or participation in, terrorist acts is also not criminalised. The punishment for legal persons are not provided in the law and no case law has been provided to give an indication on how Courts have handled legal persons in criminal matters. The extra territorial jurisdiction is limited to conspiracies and, the Supreme Court has no jurisdiction over individuals who participates in the commission of the FT offences while outside Seychelles, and they are neither Seychelles citizens nor ordinarily residents.

Seychelles is rated *Partially-Compliant* with R. 5

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly SR III). The main technical deficiencies were that: procedures in place could not effectively facilitate freezing without delay funds and other assets of persons designated under UNSCR 1267 and 1373; no effective procedures to give effect to freezing actions initiated by other jurisdictions; no provisions

or procedures for considering requests for unfreezing and delisting; nor provisions or procedures to ensure protection of rights of *bonafide* third parties.

Criterion 6.1(Partly Met) Seychelles promulgated the Prevention of Terrorism Regulations (PTR) which were gazetted in 2015 in accordance with s. 42 (2) of the PTA. Reg 4(1) of the PTR has established the National Countering Financing of Terrorism Committee mandated to implement Resolutions 1267/1989, 1373, 1718 and 1988. In terms of Regs 5 and 6 of the PTR, the competent authority responsible for proposing persons and entities for designation is the Committee itself. Although the Regulations do not provide for the mechanism for identifying targets for designation, based on the designation criteria set out in the relevant UNSCR it would appear that such is covered under Reg 5 (1) (a) of the PTR as the Committee is mandated to implement the Resolutions. No evidentiary standard of proof of reasonable grounds is provided for in the law. The law does not provide for procedures and standard forms for listing as adopted by the relevant committee. There is no provision for providing as much relevant information as possible on the proposed name.

Criterion 6.2 (Partly Met) In relation to UNSCR 1373, the National Countering Financing of Terrorism Committee is responsible for making its recommendations of entities that meet the specific criteria for designations. The recommendations are made to the Attorney General who then supports the designation recommendation to the Minister in accordance with Reg 10 of PTR. The Minister then proceeds to gazette an Order designating the recommended person as a designated entity. This is in accordance with s. 3 of the PTA. However, this is restricted to a group since the scheme of PTA does not cover financing of a terrorist individual. Regs 8 and 9 of the PTR provide for a mechanism for identifying targets for designation based on the criteria set out in 1373. Under Reg 10 (1) of the PTR, the Committee, which is the competent authority, may make a prompt determination of whether they are satisfied that a request is supported by reasonable grounds to suspect or believe that the proposed designee meets the criteria. However, the issue of promptness is not covered under Reg 10(4) of PTR and the law has not set a time limit for the Attorney General to submit the list to the Minister responsible. The Committee applies evidentiary standard of reasonable grounds when deciding whether to make a proposal for designation [Reg 10(1) of PTR]. There is no provision for providing as much relevant information as possible on the proposed name.

Criterion 6.3 (Not Met) There is no legal basis for the competent authority to collect or solicit information, to identify persons and entities that meet the criteria for designation. There is no legal provision that the competent authority can operate *ex parte* against a person or entity who has been identified and whose designation is under consideration. S. 3 of the PTA does not seem to give the Minister of the Committee any power to operate *ex parte*.

Criterion 6.4 (Mostly Met) Reg 14(2) of PTR requires any person or entity who identifies property in his possession belonging to a listed entity to, immediately and without notice, within 24 hours, to the listed entity to take necessary measures to freeze such property until further notice . However, the issues concerning the identification of individual terrorists and the deficiencies listed in c6.5 below would have a cascading effect on this criterion.

Criterion 6.5 (Partly Met) Reg 14(2) allows any person or entity who identifies property in his possession belonging to a listed entity to immediately and without notice to the listed entity to take necessary measures to freeze such property until further notice. Reg 14 (2) allows freezing of any property that has been identified belonging to a listed person. The obligation does not appear to extend to all funds or other assets that are owned or controlled by the designated person. Also it does not appear to extend to jointly owned property. The requirement to prohibit Seychelles nationals or any persons and entities within the jurisdiction from making any funds or other assets, economic resources or financial or other related services available for the benefit of designated persons has not been met. Regulation 8 (4) & (5) (a)-(c) of PTR provide for mechanisms for communicating to financial sector and DNFBPs. Reg 14 (1) & (2) of PTR provides that guidance shall be given by the FIU on how the funds or assets shall be handled. Reg 14 (2) (b) and (4) of PTR obliges Financial Institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements within 24 hours. Reg 16 (1) of PTR protects bona fide third parties acting in good faith when implementing the obligations under Rec 6. However, it appears the application of this Reg is restricted to 1373 in accordance with Reg 16 (5) of PTR. In addition, another limitation is in the definition of the term Entity. Both the Reg 2 of PTR and s.2 of the PTA have defined entity. The definition, although it includes a person, does not appear to include an individual. The Interpretation and the General Provisions Act defines an individual as natural person. The definition of entity would therefore have included the word individual instead of a person, if it were meant to include a natural person. Therefore, it can be said that Reg 16 does not cover individuals.

Criterion 6.6 (Met) Regulation 12 of the PTR and the First Schedule contain procedures to submit de-listing requests to the relevant UN sanctions Committee in the case of persons and entities designated. The grounds for a request for delisting are contained in Reg 12(6) of PTR. Seychelles allows that requests for review of a designation be made to the AG who shall recommend to the Minister for a revocation. Also S. 3 (3) & (5) of the PTA allows a designated entity to apply to the Attorney General to request the Attorney General to recommend to the Minister for revocation. Reg 12(10) (b) of PTR specifically allow designations pursuant to UNSCR 1988 to be submitted to the Focal Point for de-listing. Reg 12 (10) (a) of PTR provide for a procedure that a request made by a

designated entity under Resolutions 1267/1989 shall be submitted to the ombudsperson. Reg 12 (6) and 16 of PTR provides for unfreezing mechanisms on grounds of mistaken identity or any other circumstance, which would show that the basis for designation no longer exists. Reg 12 (7) provides for publication of the deletion or revocation.

Criterion 6.7 (Met) Regulation 17 of the PTR allows a designated entity access to frozen funds in special circumstances like where the property is necessary to cover the basic and necessary expenses or where the entity has applied and obtained authorization in accordance with the Regulations.

Weighting and Conclusion

Seychelles does not meet Criterion 6. 3, partly meets Criteria 6.1, 6.2 and 6.5, mostly meets Criterion 6.4 and meets Criteria 6.6. and 6.7. Although Seychelles has a legal framework which enables implementation of targeted financial sanctions related to terrorism and TF, there are deficiencies that exist in the law. The authorities should endeavour that the Regulations should cover all UNSC Resolutions. Should provide evidentiary standard of proof of reasonable grounds in respect of 1267. Should provide for procedures and standard forms for listing as adopted by the relevant committee. There is no provision for providing as much relevant information as possible on the proposed name. There is no legal basis for the competent authority to collect or solicit information, to identify persons and entities that meet the criteria for designation. There is no legal provision that the competent authority can operate ex parte against a person or entity who has been identified and whose designation is under consideration.

Seychelles is rated Partially Compliant with R. 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

These obligations were added during the revision of the FATF Recommendations in 2012 and were thus not considered in the framework of the evaluation of Seychelles in 2008 under the First Round of MEs.

Criterion 7.1-7.5 (Not Met) Seychelles does not have measures in place to implement requirements relating to prevention of proliferation financing.²²

²² Seychelles promulgated the PTA Regulations in 2015. The Regulations purports to cover requirements of Recommendation 7 on Targeted Financial Sanctions Related to Proliferation with respect to UNSCR 1718.. However, the principal Act, the PTA, does not have enabling provision to allow the Minister responsible to promulgate Regulations on proliferation. The Minister's power to promulgate regulations is provided for in S.42 (2) of the PTA. The representative from the Attorney General when consulted on the matter also confirmed that the Regulations, as far as they provide for proliferation, are ultra vires, and therefore invalid.

Weighting and Conclusion

Seychelles does not meet the criteria under this Recommendation.

Seychelles is rated Non-Compliant with R.7.

Recommendation 8 – Non-profit organisations

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly SR VIII). The main technical deficiencies were that: no review of adequacy of laws to ensure that NPOs are not being misused for terrorist financing; no outreach had been conducted to NPOs; no sanctions applied to NPOs for failure to comply with provisions of the relevant laws; no record keeping requirement applicable to NPOs and no gateways for sharing non-public information with domestic ministries and authorities. The new Recommendation has been amended to require countries implement the obligations on the basis of risk.

Taking a risk-based approach

Criterion 8.1 (Not Met) Seychelles mainly registers and governs NPOs through the Registration of Associations Act, 1959, which defines an association as “two or more persons who have agreed to contribute by their knowledge, energy, fortune or other lawful means or by a combination of any of such means towards the attainment of a common object (s2). The other NPOs, particularly, charitable foundations and international charitable trusts are also established in terms of s 7 of the Foundations Act (2009) and s13 of the International Trusts Act (1994). Though Seychelles conducted a review of the NPO sector a few weeks before the on-site visit within the framework of the NRA, the country has not adequately reviewed its NPO sector, including a mapping of its size, features and activities with a view to identify features and types of NPOs which by virtue of their activities or characteristics, are likely to be at the risk of terrorist financing abuse. In addition, the authorities have not identified any threats of NPO abuse emanating from terrorist entities or the manner in which such abuse is done.

Seychelles has not carried out any review to determine adequacy of measures, including laws and regulations targeting a subset of NPOs that may be abused for terrorist financing to guide application of appropriate risk-based measures. Although, Ss 2, 5(2) and 15 of the Registrar of Associations Act, s7(2) and 15 of the Foundations Act and s20(1) of the International Trust Act, provide for the objective of association shall not be

contrary to law, morality and public policy, there is no evidence that these provisions are being used on a risk basis by the authorities to determine which organisations are likely to be exposed to such activities especially in relation to TF.

Furthermore, the country does not have any framework in place or capacity to obtain timely information on the activities of the NPOs, their size and other relevant features which would help in identifying characteristics which would potentially make them vulnerable to TF risks.

Sustained outreach concerning terrorist financing issues

Criterion 8.2 (Partly Met) Ss 5-20 of the Registration of Associations Act, S25 *et. seq.* of the Foundations Act and Part V of the International Trusts Act prescribe duties and requirements as well as procedures in relation to use of funds, preparation and retention of financial records, audit and filing of annual returns by NPOs. To some extent, these promote accountability and integrity in the management and administration of NPOs. However, apart from these legal provisions, Seychelles does not have specific policies to promote transparency, integrity, and public confidence in the administration and management of NPOs, let alone for terrorist financing purposes. In addition, no measures are in place to implement sustained outreach and educational programmes concerning terrorist financing issues and there has not been any engagement of the NPO sector and donors with a view to (a) develop best practices to address TF risk and vulnerabilities or (b) encourage them to conduct transactions through regulated financial institutions. *Targeted risk-based supervision of monitoring of NPOs*

Criterion 8.3 (Not Met) Since Seychelles has not adequately assessed risks and vulnerabilities facing the NPO sector, it has not developed any risk-based measures for supervision and monitoring the NPOs which may be at risk of being abused for terrorist financing purposes.

Criterion 8.4 (Not Met) The Registration of Associations Act establishes the Registrar of Associations as a regulator of the associations and domestic charitable foundations. The FSA Act mandates FSA for licensing and regulating CSPs which are holding international charitable foundations and trusts. Thus, the FSA does not have a direct role in regulating the international charitable foundations and trusts though it can take enforcement actions against the CSPs in terms of Ss 5 and 27 of the FSA Act. However, the Registrar of Associations is directly responsible for supervising compliance of associations and domestic charitable foundations with prudential regulations, which, as

already mentioned, should still develop a RBA. The Registrar of Associations may apply the sanctions through approval of the Minister as provided under Section 15 *et. seq.* of the Act. However, the law does not define as to who the 'Minister' is and these sanctions lack a proportional and dissuasive effect for CFT purposes.

Effective information gathering and investigations

Criterion 8.5 (Not Met) Seychelles does not have in place measures to ensure effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs. Apart from existence of the legal provisions for associations and charitable foundations and trusts to keep records, Seychelles authorities did not appear to have specific investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations. Seychelles does not have appropriate mechanisms to ensure that information is promptly shared with competent authorities, in order to take preventive or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is involved in terrorist financing abuse and/or is a front for fundraising by a terrorist organisation; is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations.

Criterion 8.6 (Not Met) Seychelles does not have points of contact and procedures to facilitate prompt sharing of information with competent authorities in order to take preventive or investigative action regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.

Weighting and Conclusion

Seychelles partly meets Criterion 8.2 and does not meet the remaining criteria under this Recommendation. Although the Registration of Associations and Foundations Acts have licensing/ registration requirements and the Registrar of Associations and Foundations has powers to ask for a wide range of information from the NPOs when necessary, all the measures regulating the activities of NPOs in Seychelles under the Acts are not for purposes of dealing with the possible exposure of the NPO sector to abuse for TF activities. Authorities have not undertaken a comprehensive review of the NPO sector to appropriately understand TF risks, and have not taken steps to promote targeted risk-

based supervision or monitoring of NPOs. The NPO sector has not been engaged to raise awareness about potential vulnerabilities to TF abuse and risks.

Seychelles is rated Non-Compliant with R 8.

Recommendation 9 – Financial institution secrecy laws

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R 4). The new R. 9 has not modified FATF requirements and the detailed analysis set out in paragraphs 434456 still apply.

Criterion 9.1 (Met) FIs in Seychelles are subject to non-disclosure provisions which are widely recognised as necessary mechanism to maintain trust between financial services providers and their customers, while ensuring that impediments on lawful requests for information are removed. Seychelles has in place legal provisions or mechanisms that allow for access to and sharing of information or data for purposes of complying with laws and regulations.

Access to information held by reporting entities

Section 58 of the AML Act overrides any secrecy or confidentiality provision of any law regarding information held by reporting entities in Seychelles which may inhibit effective implementation of the FATF Standards.

Access to information held by competent authorities for use by local and foreign agencies

Under sections 15, 16, 18 and 21 of the Financial Services Authority Act, 2013 the FSA has adequate powers to request and obtain information held by its licensees or any related entity engaged in financial services to fulfil its functions, and may make such information available to any competent authority in Seychelles and abroad.

Section 11 of the Central Bank of Seychelles Act prohibits disclosure of information of the Central Bank or any bank or other financial institution or other person acquired during in the performance of duties under this Act or any other law, except for the purpose of the performance of the duties of the CBS or the financial institution or when required by law or ordered by a court to do so. This provision allows for the CBS to provide information to other competent authorities in relation to its own affairs and the operations of its licensees in the exercise of their lawful functions.

Weighting and Conclusion

Seychelles meets criteria 9.1.

Seychelles is Compliant with R. 9.

Recommendation 10 – Customer due diligence

In the First Round of MEs, Seychelles was rated Partially Compliant with the requirements of this Recommendation (formerly R.5). The main technical deficiencies noted were: (i) not all financial institutions were obligated to carry out the full range of customer due diligence measures; (ii) no prohibition on financial institutions maintaining accounts in fictitious names; and (iii) no requirement for FIs and DNFBPs to carry out enhanced CDD measures on customers posing a higher ML/TF risk.

The general principle that reporting entities must conduct customer due diligence measures on customers, business relationships and transactions is provided for section 4 of the AML Act. The specific CDD requirements are set out in the AML Act regulations (AML Regulation, 2012) and guidelines (AML Guidelines, 2015), which makes it a necessity to have regard to the Act, regulations and guidelines when applying CDD measures in the financial sector of Seychelles.

Criterion 10.1 (Met) Section 7 of the AML Act prohibits FIs from opening or maintaining anonymous accounts or accounts in fictitious names.

When CDD is required

Criterion 10.2 (Mostly Met) Regulation 8 read with 5 of the AML Regulation requires FIs to undertake CDD measures when:

- (a) establishing a business relationship;
- (b) conducting a single or once-off transaction above USD 10.000.00, whether it is carried out in a single operation or several operations which appear to be linked;
- (c) there is doubt about the veracity of the information, data or information for purposes of identification and verification; and
- (d) there are reasonable grounds to suspect ML/TF or any criminal conduct.

There is no specific requirement for FIs to apply CDD measures on wire transfers as set out in c.10(2)(c).

Required CDD measures for all customers

Criterion 10.3 (Met) Section 3 of the AML Act as read with Regulation 3 of the AML Regulations obliges FIs to verify the identity of a customer using documents, data or

information obtained from a reliable and independent sources or from any other sources that the FI can reasonably rely upon to identify and verify the identity of the customer.

Criterion 10.4 (Met) Regulation 3(2) of the AML Regulation requires FIs to verify that any person who purports to act on behalf of the customer is so authorised, and identify and verify the identity of that person.

Criterion 10.5 (Met) Regulation 8 of the AML as read with Regulation (3) and (4) gives an obligation on reporting entities to identify and verify beneficial owner of legal persons and arrangement on basis of documents, data or information obtained from a reliable and independent source or any other sources that the reporting entity has reasonable ground to believe can be relied upon.

Criterion 10.6-(Met) Regulation 3(1) read with Regulation 8(1) of the AML Regulations require FIs to understand and obtain information on the purpose and intended nature of the business relationship.

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.7 (Met) Regulation 9 of the AML Regulations requires FIs to conduct ongoing due diligence on a business relationship, including scrutinising transactions undertaken throughout the course of that relationship, and ensuring that documents, data or information collected under the CDD process is kept up-to-date.

Criterion 10.8 (Met) Regulation 8 (1) read with Regulation 4 (1) AML Regulations obliges FIs to understand the nature of the customers' business and ownership and control structure of legal persons and legal arrangements.

Criterion 10.9 (Not Met) There is no specific legal provision for FIs to comply with the FATF standards as set out under criterion 10.9.

Criterion 10.10-(Met) Regulation 8 of the AML Regulations requires reporting entities to apply CDD measures which include identifying the beneficial owner and taking reasonable measures, on a risk sensitive basis to verify the identity of the beneficial owner and to take measures to understand the ownership and control structure of the legal entity.

Criterion 10.11-(Met) Regulation 8 of the AML Regulations requires FIs to apply due diligence measures in the case of a foundation or trust or and class of beneficiaries having not less than 10 percent interest in the foundation or trust.

CDD for Beneficiaries of Life Insurance Policies

Criterion 10.12 - 13 (Not Met) There is no specific requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Timing for verification

Criterion 10.14 (Mostly Met) Regulation 8 of the AML Regulations requires FIs to conduct CDD measures on customers when entering into a business relationship or carry out a single transaction. The Regulation does provide for an option to the FIs to complete, at a later stage, CDD process if this is not to interrupt normal business activities and that there is proven low risks of ML and TF but that the pending CDD measures are completed as soon as practicable following the establishment of the relationship. However, there is no specific obligation for FIs to ensure that ML/TF risks are effectively managed.

Criterion 10.15 (Not Met) There is no specific obligation for FIs to adopt risk management procedures concerning the conditions under which a customer may utilise a business relationship or carry out a transaction prior to verification of their identity.

Existing customers

Criterion 10.16 (Met) Regulation 8 (2) requires FIs to apply CDD requirements to existing customers on the basis of materiality and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Risk Based Approach

Criterion 10.17 (Met) Regulation 15(1) of the AML Regulations 2012 require FIs to apply enhanced customer due diligence measures and enhanced ongoing monitoring on a risk-sensitive basis in any other situation which by its nature can present a higher risk of money laundering, financing of terrorism or other criminal conduct.

Criterion 10.18 (Met) Regulation 11 (1) of the AML Regulation 2012 require FIs to apply simplified due diligence where there is proven low risk, or any circumstance.

Failure to satisfactorily complete CDD

Criterion 10.19 (Met) Section 5(3) of the AML Act 2006 requires FIs to not open, commence or perform any transaction when CDD measures could not be completed and must file an STR to the FIU.

Criterion 10.20 (Not Met) There is no specific obligation for FIs which are unable to complete CDD process not to pursue it if it deems it fears tipping-off the customer but file an STR to the FIU.

Weighting and Conclusion

Seychelles meets criteria 10.1, 10.3, 10.4, 10.5, 10.6-8, 10.10, 10.11, 10.16-19, mostly meets 10.2 and 10.14, partly meets 10.5 and does not meet 10.9, 10.12-13, 10.15, and 10.20.

Seychelles is rated Largely Compliant with R. 10.

Recommendation 11 – Record-keeping

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R. 10). The main technical deficiencies were that: no requirement for the transaction records to be maintained to also include the customer's and beneficiary's name and address; no requirement under the AML Act to keep records of account files and business correspondence; and there was no provision which would enable a competent authority to require records to be kept for a longer period in specific cases.

Criterion 11.1 (Met) Section 6(1) of the AML Act requires FIs to maintain records on any transactions for a minimum period of 7 years following completion of the transaction.

Criterion 11.2 (Met) Section 6(2) of the AML Act requires FIs to maintain records obtained through customer identification and transactions conducted including account files and business correspondence and results of any analysis undertaken for at least 7 years after closure of an account or a business relationship from the date of termination.

Criterion 11.3-(Met) Section 6 (3) (b) of the AML Act requires FIs to maintain all transactions records in a manner that would sufficiently enable the transaction to be readily reconstructed at any time, if necessary, for evidence in the prosecution of criminal activity.

Criterion 11.4 (Met) S.6 (4) of the AML Act requires FIs to maintain all CDD information and transaction records for use by domestic competent authorities upon request.

Weighting and Conclusion

Seychelles meets all criteria of this Recommendation

Seychelles is rated Compliant with R. 11.

Recommendation 12 – Politically exposed persons

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R 6). The main technical deficiencies were that: no requirement under the AML Act for financial institutions to obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP; no requirement to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

Criterion 12.1 (Met) Regulation 13 of the AML Regulations requires FIs to apply measures in respect of foreign PEPs by adopting risk management procedures, obtaining management approval, verifying the source of income/wealth and conducting on-going due diligence.

Criterion 12.2 (Met) Regulation 13 of the AML Regulation requires FIs to take reasonable steps determine if a customer or beneficial owner is a PEP or a person entrusted with a prominent function in an international organisation. It further requires FIs to obtain senior management approval, establish the true identity of source of income/wealth and conduct enhanced on-going monitoring once it determines that such a business relationship poses higher risks.

Criterion 12.3 (Met) Regulation 13 as read with Regulation 6 of the AML Regulation requires FIs to apply the mitigating controls analysed in criteria 12.1 and 12.2 in respect of family members and close associates of a customer or beneficial owner who has been determined as a PEP..

Criterion 12.4 (Not Met) There are no specific requirements for FIs to determine whether beneficiaries of life insurance policies and their beneficial owners, are PEPs.

Weighting and Conclusion

The deficiency on beneficiaries of life insurance policies is minor in the Seychelles particularly when regard is paid to the overall low risks in the insurance sector.

Seychelles is rated Largely Compliant with R. 12.

Recommendation 13 – Correspondent banking

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R.7). The main technical deficiencies

were that: the requirement under Section 4(5)(a) of the AML Act does not include the financial institution to “fully understand” the nature of the respondent’s business; and no specific requirement on the financial institution to determine whether the respondent has been subject to a money laundering or terrorist financing investigation or regulatory action.

Criterion 13.1-(Met) Regulation 14 of the AML Regulation requires FIs to comply with the following when engaging in cross-border correspondent relationships and other similar relationships:

(a) - Regulation 14 (a) provides for FIs to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business, and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subjected to an ML/TF investigation or regulatory action;

(b) - Regulation 14 (c) provides for FIs to assess the respondent institution’s AML/CFT controls;

(c) - Regulation 14 (d) provides for FIs to obtain approval from senior management before establishing new correspondent relationships; and

(d) - Regulation 14 (e) provides for FIs to document the respective AML/CFT responsibilities of each institution.

Criterion 13.2- (Met) Regulation 14 (f) of the AML Regulations requires FIs to perform CDD measures on their customers that have direct access to the accounts of the correspondent bank (payable-through accounts) and provide relevant CDD information upon request to the correspondent bank.

Criterion 13.3- (Met) Regulation 17 of the AML Regulation prohibits a bank from entering into or continuing a correspondent banking relationship with a shell bank and requires banks to take reasonable measures to satisfy themselves that respondent banks do not permit their accounts to be used by shell banks.

Weighting and Conclusion

Seychelles meets all criteria of R.13.

Seychelles is rated Compliant with R. 13.

Recommendation 14 – Money or value transfer services

In the First Round of MEs, Seychelles was rated Non-Compliant with the requirements of this Recommendation (formerly SR.VI). The main deficiencies noted were that there

was no requirement for MVT operators to be licensed or registered in Seychelles as well as lack of awareness of AML/CFT obligations on MVTS.

Criterion 14.1 (Met) Section 3 of the Financial Institutions Act, 2004 (FI Act) and Section 8 of the National Payment Systems Act, 2014 (NPS Act) provide for licensing and registration of MVTS.

Criterion 14.2 (Met) Section 63(1)(c) of the FI Act and Section 22 of the NPS Act provide for sanctions to any person acting or providing MVTS services without a license.

Criterion 14.3 (Met) Section 16(3) (a) of the AML Act designates the FIU to monitor MVTS for AML/CFT compliance as a reporting entity under Second Schedule to the Act.

Criterion 14.4 (Met) Section 13 (2) of the NPS Act designates the Central Bank of Seychelles (CBS) to keep a register for listing the agents, which shall be available to the public. The CBS maintains such a list.

Criterion 14.5 (Met) Section 13 (1) of the NPS Act requires that MVTS who uses agents should communicate to the CBS a description of the internal control mechanisms that will be used by the agents in order to comply with the obligations in relation to the AML/CFT requirements.

Weighting and Conclusion

Seychelles meets all the criteria of R.14.

Seychelles is rated Compliant with R. 14.

Recommendation 15 – New technologies

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R 8). The main technical deficiencies were that: no requirements under the AML Act for financial institutions to have policies or take appropriate measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes; and no requirement for FIs to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence.

Criterion 15.1 (Not Met) FIs in Seychelles have not identified and assessed ML/TF risks that may arise from the use of technology when providing financial services.

Criterion 15.2 (Not Met) There is no requirement to undertake the risk assessments prior to the launch or use of such products, practices and technologies and take appropriate measures to manage and mitigate the risks.

Weighting and Conclusion

Seychelles does not meet criteria of R. 15.

Seychelles is rated Non-Compliant with R. 15.

Recommendation 16 – Wire transfers

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly SR VII). The main technical deficiencies were that: no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross border wire transfer from being transmitted with a related domestic wire transfer.

Ordering financial institutions

Criterion 16.1 (Met) Section 8 (1) of the AML Act requires FIs to include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

Criterion 16.2 (Not Met) There are no specific obligations for ordering FIs to include full beneficiary information in cross-border batch files.

Criterion 16.3 (Not applicable).

Criterion 16.4 (Met) Regulation 8 (1) of the AML Regulations requires FIs to apply CDD measures when there is reasonable suspicion of ML/TF or other criminal conduct.

Criterion 16.5 (Met) Section 8 (1) of the AML Act requires FIs to obtain information on the originator which must include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer

Criterion 16.6 (Not Met) There is no specific requirement for ordering FIs to be required to include the account number or a unique transaction reference number, provided that

this number or identifier will permit the transaction to be traced back to the originator or the beneficiary.

Criterion 16.7 (Met) Section 6 (1) & (2) of the AML Act requires FIs to maintain records on CDD and transactions information obtained when carrying out any transaction for at least seven years after termination of the transaction.

Criterion 16.8 (Met) Section 5 of the AML Act may not conduct any transaction without fulfilling the applicable CDD requirements.

Intermediary Financial Institutions

Criterion 16.9-12 (Not Met) There is no specific obligation for intermediary FIs to comply with cross-border wire transfers obligations set out in the criteria.

Beneficiary Financial Institutions

Criterion 16.13 (Not Met) There is no specific requirement for FIs to take reasonable measures which include post-event monitoring or real-time monitoring to identify cross-border wire transfers that lack complete originator information or required beneficiary information.

Criterion 16.14 (Partly Met) There is no specific obligation for FIs carrying out cross-border wire transfers of US \$ 1,000, or more to verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with R.11. The general requirements for verification of customers (Regulation 8 of the AML Regulation) and record keeping (section 6 of the AML Act) as discussed under R.10 and R.11 respectively, apply.

Criterion 16.15 (Not Met) There is no specific requirement for beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and have an appropriate follow-up action.

Money or value transfer service operators

Criterion 16.16 (Not Met) Section 8 of the AML Act as read with Guideline 5.8 of the AML/CFT Guidelines provides for requirements in relation to money transmission and electronic transfers by FIs or money transmission service provider.

Criterion 16.17 (Not Met) Whilst there is a general requirement for reporting entities to file suspicious transactions, there is no specific obligation for MVTs providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU.

Implementation of Targeted Financial Sanctions

Criterion 16.18 (Met) S.13 (1) of the Prevention of Terrorism Regulations 2015 requires FIs to take freezing measures pursuant to UNSCR 1267/1999 and UNSCR 1373/2001 as described under R.6.

Weighting and Conclusion

There are major deficiencies identified in the legal framework for requirements to FIs relating to cross-border wire transfers. Seychelles meets criterion 16.1, 16.4, 16.5 16.7, 16.8, 16.18 and partially meets 16.14, does not meet 16.2 -3, 16.6, 16.9-12, 16.13, 16.15, 16.16 and 16.17.

Seychelles is rated Partially Compliant with R. 16.

Recommendation 17 – Reliance on third parties

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R 9). The main technical deficiencies were that: the AML Act does not expressly specify that the third party or intermediary must be regulated and supervised for AML/CFT purposes as required under Recommendations 23 and 24 nor does it indicate that the supervisors should have adequate regulatory and supervisory powers as required under Recommendation 29; no requirement for the financial institution to satisfy itself that the intermediary or third party has measures in place to comply with the CDD requirements as set out in the old Recommendation 5; no determination by competent authorities in the Seychelles on which countries the third parties that meet the conditions must be based; the AML Act was not clear whether the ultimate responsibility of ensuring customer identification and verification remains with the FIs.

Criterion 17.1 (Met) Regulation 12 of the AML Regulations permits FIs to rely on third party or introduced business with the understanding that the ultimate responsibility for applying CDD measures remains with the FI provided that the third party:

- (a) – obtains immediately the necessary information concerning elements (a) – (c) of the CDD measures set out in R.10;
- (b) – will, without delay, on request by the financial institution produce original or certified copies of the CDD records (b)(iv); and
- (c) – satisfy itself that the third party upon whom reliance is placed, is regulated and supervised for compliance with CDD and record keeping obligations (1)b) & Regulation 7(c).

Criterion 17.2 (Met) Regulation 12 of the AML Regulations requires FIs relying on third parties or introduced businesses to have regard to country's ML/TF risk level to satisfy themselves that the introducing entity is from a jurisdiction which applies AML/CFT measures consistent with the FATF Standards.

Criterion 17.3 (Not Met) There are no obligations for FIs relying on third parties or introduced business which is part of the same financial group in the circumstances set out in (a) to (c) of the criterion.

Weighting and Conclusion

Seychelles meets criteria 17.1 and 17.2, and does not meet criterion 17.3. There are no obligations for FIs relying on third parties or introduced business.

Seychelles is rated Largely Compliant with R. 17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R 15) and Non-Applicable with former R 22. The main technical deficiencies were that: no requirement to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information; no effective implementation for the requirement of the audit function to test their AML/CFT systems and procedures; and the FIs do not have an in house AML/CFT training programme to ensure that all their relevant employees are trained on an ongoing basis.

Criterion 18.1 (Met) Section 15(1) of the AML Act requires FIs to have in place internal procedures, policies and controls, including (a) the appointment of a compliance officer, (b) screening procedures for hiring employees; (c) ongoing training of employees and (d) having in place an audit function.

Criterion 18.2-18.3 (N/A)- Seychelles does not have FIs which have branches/subsidiaries outside of its territory

Weighting and Conclusion

Seychelles meets criterion 18.1. Criteria 18.2-18.3 are not applicable.

Seychelles is rated Compliant with R. 18.

Recommendation 19 – Higher-risk countries

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R21). The main technical deficiencies were that: no measures taken to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries; no requirement to make these records available to auditors; and AML/CFT framework does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

Criterion 19.1 (Met) Regulation 15(2) of the AML Regulation requires FIs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons from jurisdictions for which this is called for by the FATF.

Criterion 19.2 (Not Met) There is no specific obligation for FIs to apply counter-measures, both at the instance of the FATF as well as on the country's own initiative.

Criterion 19.3-(Not Met) Seychelles does not have mechanisms in place to advise FIs of concerns about weaknesses in the AML/CFT systems of other jurisdictions.

Weighting and Conclusion

Seychelles meets criterion 19.1, and does not meet criteria 19.2 and 19.3.

Seychelles is rated Partially Compliant with R. 19.

Recommendation 20 – Reporting of suspicious transaction

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R13 and SRIV). The main technical deficiencies were that: no requirements to make a report upon suspicion that funds are the proceeds of a criminal activity and report suspicious transactions that involve tax matters.

Criterion 20.1 (Met) Section 10(1) of the AML Act requires FIs to make a suspicious transaction report to the FIU within two working days where it has knowledge or

reasonable grounds to suspect that any service, or transaction may be related to the commission of criminal conduct including an offence of money laundering or of financing of terrorism.

Criterion 20.2 (Met) Section 10 (1) & (12) of the AML Act requires FIs to report all suspicious transactions, including proposed transactions to the FIU.

Weighting and Conclusion

Seychelles meets all criteria of R.20.

Seychelles is rated Compliant with R. 20.

Recommendation 21 – Tipping-off and confidentiality

In its MER under the First Round of MEs, Seychelles was rated Compliant with requirements of this Recommendation (formerly R14). The new R. 21 has not modified FATF requirements and the detailed analysis set out in paragraphs 504-510 still apply.

Criterion 21.1 (Met) Section 14(1) of the AML law provides protection to personnel of financial institutions who file STRs in good faith.

Criterion 21.2 (Met) Section 12(1) of the AML Act prohibits tipping-off. The prohibition covers, not only personnel of reporting entities, but also extends to other third parties.

Weighting and Conclusion

Seychelles meets all criteria of R.21.

Seychelles is rated Compliant with R. 21.

Recommendation 22 – DNFBPs: Customer due diligence

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R12).

Criterion 22.1-(Mostly Met) Section 4 of the AML Act as read with Part 2 of the 2nd Schedule to the Act requires all DNFBPs to comply with CDD requirements set out in R.10. (See R.10 for analysis of the deficiencies identified). While there is no specific requirement for casinos to conduct CDD measures for transactions exceeding a threshold of USD/EUR 3,000.00 as required by the FATF Standard, the general CDD measures required in Regulation 8 of the AML Regulations equally apply to all transactions regardless of value.

Criterion 22.2 (Met) See R.11 (Record keeping) for a full analysis, as the provisions of the AML Act on record keeping equally applies to DNFBPs.

Criterion 22.3 (Met) See R.12 (PEPs) for a full analysis of Regulation 6 the AML Regulations in respect of PEPs obligations which also extend to DNFBPs.

Criterion 22.4 (Not Met) Seychelles does not have legal requirements in respect of new technologies as required under R.15.

Criterion 22.5 (Met) See R.17 (Reliance on Third Parties) for full analysis as the requirements in the AML Act equally also extend to DNFBPs.

Weighting and Conclusion

Seychelles meets criteria 22.2, 22.3, and 22.5, mostly meets criterion 22.1 and does not meet criterion 22.4. The deficiencies identified in respect of CDD measures, the absence of specific requirements on ML/TF risks assessment and mitigating controls against new technologies, are significant.

Seychelles is rated Largely Compliant with R. 22.

Recommendation 23 – DNFBPs: Other measures

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R16). The main technical deficiencies in the AML Act relating to Rec. 13, 15 and 21 that applied to financial institutions also applied to DNFBPs and no requirements concerning the implementation of internal controls by reporting entity who is an individual and who in the course of carrying on his or her business, does not employ or act in association with any other person.

Criterion 23.1 (Met) The requirements to file suspicious transactions reports set out in R.20 are also applicable to all DNFBPs.

Criterion 23.2 (Met) The requirements of R.18 in respect of FIs equally apply to DNFBPs. See R.18 (*internal controls*).

Criterion 23.3 (Partly Met) Although AML Regulation 15(2) provides for DNFBPs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF, there are no specific provisions in the Seychelles law or other enforceable means placing an obligation on the country to apply counter measures, both at the instance of the FATF as well as on the country's own initiative. Seychelles does not have

mechanisms in place to advise reporting entities of concerns about weaknesses in the AML/CFT systems of other countries. See analysis under R.19.

Criterion 23.4 (Met) DNFBPs are required to comply with the tipping-off and confidentiality requirements set out in the AML Act. See analysis under R.21 (tipping off and confidentiality).

Weighting and Conclusion

Seychelles meets criteria 23.1, 23.2 and 23.4, and does not meet criterion 23.3.

Seychelles is rated Largely Compliant with R. 23.

Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R. 33). The main technical deficiency was that: no access in a timely fashion to adequate, accurate and current beneficial ownership and control information for all companies; no central registry system that keeps records of ownership and control details for IBCs; due to deficiencies in the implementation of the old Recommendation 5 information on beneficial ownership and control information is not always available; the secrecy provision relating to the shareholder information under the CSL Act undermines timely access to beneficial ownership and control information with respect to CSL as a court order is required; and no controls in place to ensure that bearer shares are not misused for ML purposes and that information on the identity of bearer shareholders is available.

Criterion 24.1 (Mostly Met) Seychelles has two Registrar of Companies, the Registrar of Companies (RC) under the Companies Ordinance 1972 and the Chief Executive Officer (CEO) of the Financial Services Authority (FSA) under the International Business Companies Act 2016 (IBCA). Information regarding ownership with respect to domestic entities (companies incorporated under the Companies Ordinance 1972 or Partnership set up under the Civil Code 1976) is available under the RC. Information regarding international business companies is available under the CEO of the FSA who is the Registrar of such companies.

The Companies Ordinance 1972, the Commercial Code (article 47), the International Business Companies Act and various statutes provide for the formation of companies in the Seychelles. The Companies Ordinance Act provides for creation of limited liability companies and proprietary companies (S. 4.1 of the Companies Ordinance). The

International Business Companies Act 2016 provides for the creation of International Business Companies (IBCs) (which can be a company limited by shares, or by guarantee, or by both shares and guarantee) and protected cell companies, whilst the Limited Partnership Act provides for the creation of Limited Partnerships and Companies Ordinance Act provides for the creation of International Corporate Service Providers (ICSPs). Further, there are companies created under the Companies Ordinance Act but to practice certain activities have to get special licences which are issued under the Companies (Special Licences) Act 2003 (CSLs) but regulated by the FSA.

The information on creation of companies and the types of companies created and the requirements on basic information for companies created under the Companies Ordinance Act and beneficial ownership for companies created under International Business Companies Act 2016, is both available on the websites of the Registrar of Companies and FSA, respectively. The information can also be obtained from the offices of the Registrar of Companies and the FSA.

Criterion 24.2 (Partly Met)

The Seychelles has adopted provisions in their legislations (enactment of the IBC Act 2016 whereby IBC are required to maintain at their registered office a register of beneficial owner, the definition of which was expanded to include the person who directly or indirectly holds more than 25% of the voting rights in a company

The creation of legal persons and the recording and obtaining of basic information is also set out in the International Business Companies Act 2016, , the Foundations Act 2009 and the Limited Partnership Act 2003. Under the AML Acts, a corporate service/trustee provider (CSP/TSP) is a reporting entity and has to apply CDD measures to all customers and obtain information on beneficial owners in accordance with the ICSP Act and the AMLA.

The Seychelles has carried out a national risk assessment which started in June 2016 and ended in 2017, the availability and access to beneficial ownership information was considered and was assigned a rating of medium to the input variable.

The NRA is not comprehensive enough as the report does not consider the risk posed by all forms of legal persons created in the Seychelles (local, private, public, foreign, LLPs). Given that the Seychelles has an international financial services sector with the use of corporate shareholders for entities operating under the FSA which at times may use

opaque layers of ownership structure, the Seychelles has not considered in depth the risks posed by these forms of legal persons.

Criterion 24.3 (Met) In terms of s. 4 of the Companies Ordinance Act (COA), when creating a company, information on the company name, the registered office address of the company, objects of the company is required as part of the Memorandum of Association and companies incorporated under the same Act are required to be registered with the ROC. S. 10(1) of the same Act provides that the Memorandum of Association and Articles have to be brought to the Registrar's Office who will have to verify that the documents meet the requirements of the law and that the objects of the company are lawful. After the verification the Registrar will then retain copies. In terms of s. 11(1) of the COA, the Registrar upon satisfaction is required to register the memorandum of company and certify that the company has been incorporated with the date of registration and thereafter, issue a certificate of incorporation which serves as proof of registration. From the date of incorporation mentioned in the certificate, the company can exercise all functions of corporate body and have all the rights and liabilities consistent with an incorporated company. Further, the application for incorporation has to be supported by a signed declaration by a barrister, attorney or notary indicating that all the requirements have been complied with (s.13 (2) of the COA). Basic information obtained by the Registrar at the time of registration of the domestic companies is available on line and at the Registrar's Office to both competent authorities for free and to members of the public at a small fee.

With regards to IBCs incorporated under the International Business Companies Act, they are incorporated with the Registrar of International Companies through registered agents which are licensed international corporate service providers under the ICSP Act. Sub Part II of the IBCA outlines the basic type of information that an IBC has to maintain including the requirement that it should at all times have a registered office and a registered agent in the Seychelles (s. 164 of the IBCA). The registered agent has to be indicated in the Memorandum of Association as the first registered agent of the company (s. 9(3) of the IBCA). The memorandum and articles of association provided for in s. 9 of the IBCA have to be filed with the Registrar (s. 10 of the IBCA), who upon satisfying himself that the requirements of the IBCA have been met will register the documents, allot a unique registration number to the company and issue a certificate of incorporation in the approved form. The certificate of incorporation has to be signed by the Registrar and sealed with an official seal (s. 10(2) of the IBCA). The certificate of incorporation once issued serves as proof that the company has been incorporated and that the registration has complied with the requirements of the IBCA (s. 11(1) of the IBCA).

Criterion 24.4 (Met) Domestic companies are required to maintain company records which include information on the names and addresses of current directors, accounting records and share registers at their registered office. S. 102 of the Companies Ordinance provides that every company should keep a register of its members detailing the names and addresses of the members and a statement of the shares held by each member. This register should be kept at the registered office address of the company in Seychelles.

IBCs are required under s. 104 of the IBCA to keep a register of members at its registered office in the Seychelles with the name and address of: the shareholders; the member of each class and series of classes held; guarantee member of the company and the date of any changes in the register. This information has to be kept accurate and up to date and in the format as approved by the Board of Directors.

Criterion 24.5 (Met) Companies are required to inform the Registrar of any change in the particulars, change in directorship, company secretary or any other particulars contained in its register within 15 days (s.22(1) of the Companies Ordinance). For companies under the International Business Companies Act, section 104(2) provides that the company shall ensure that the information with respect to its register of members is kept up to date and accurate. The responsibility for checking the accuracy of basic information rests on the IBC and also the ICSPs that are regulated and supervised by the FSA. The effect of this requirement is to ensure that adequate, accurate and current basic information is available on a timely basis.

Criterion 24.6 (Mostly Met)-The Companies Ordinance Act does not have requirements for information on beneficial ownership to be obtained during the registration of a domestic company. However requirements of c.26.6(c) are applicable based on the provisions of the AML Regulations. In terms of the AML Regulations, S.I. 18 of 2012 issued in terms of s. 63 of the AML Act 2006, under Regulations 8(1) and 10(1), a reporting entity is required to carry out customer due diligence before/when establishing a business relationship. The definition of customer due diligence under Regulation 3(1)(b) includes where the customer is not the beneficial owner (BO), identifying the BO and taking such reasonable measures on a risk sensitive basis to verify the identity of the BO, including in the case of a legal entity taking measures to understand the ownership and control structure of the legal entity. Regulation 4, provides the definition of a BO to include in the case of a legal entity, any individual who exercises control over the management of the legal entity, and in respect of a legal entity other than a legal entity whose securities are listed on a recognised stock exchange, owns or controls directly or indirectly more than 25% of the shares or voting rights in the body corporate or legal entity; and in the event of a partnership, an individual who ultimately is entitled to or controls, directly or indirectly more than 25% the capital or profits of the partnership or

more than 25% of the voting rights in the partnerships or otherwise exercises control over the management of the partnership. Therefore competent authorities, based on these requirements, are able to access and determine such information in a timely manner. These legal requirements under the AML Regulations apply to all reporting entities which include FIs and DNFBPs.

Although ICSPs are required under the AML Regulations to obtain information on BO when engaged as an agent to incorporate an IBC, the Seychelles AML/CFT regime does not require obtaining of BO information on ICSPs themselves when they register. In terms of s. 3(2)(a) of the ICSP Act, ICSPs are required to be incorporated with the Registrar of Companies before they apply for a licence to the FSA to operate as an ICSP. The Companies Ordinance Act has got no requirements for obtaining of BO information and the ICSP Act does not also require information on BO of the ICSP itself to be obtained before it is licensed by the FSA. Therefore, the only option for BO information to be obtained on ICSPs is through c. 24.6(c), when they carry out a business transaction through a reporting entity (e.g. a bank) as set out in the above paragraph or through a barrister, attorney or notary who will have been involved in registering them as in terms of the AML Act they are reporting entities and are supposed to obtain BO information on the ICSPs when they engage them to facilitate their registration.

When incorporating IBCs, the mechanism to ensure that BO information is collected and maintained rests on the IBC and ICSPs as reporting entities. ICSPs are required to perform CDD, which in terms of the AML Regulations as set out above, requires identifying and verifying the identities of the beneficial owners of their customers. However, although ICSPs are required to collect beneficial ownership information at the time of being engaged to incorporate an IBC, where a foreign national does not act as a director or a shareholder and appoints a nominee, BO information is not recorded (s. 356(4) of the IBC Act).

IBCs are required to keep at their registered office (registered ICSP offices) in Seychelles a register of BOs with full information on each BO of the company (s. 356(1) of the IBC Act). Companies are further required to identify each BO of the company (s. 359(2) of the IBC Act).

Criterion 24.7 (Mostly Met) IBCs are required to keep information on BO provided in their registers of BOs, accurate and up-to-date (s. 356(2) of the IBC Act). S. 360 creates an obligation on a person who has become a BO in an IBC to notify the IBC within 30 days and also BOs (under the same section) are obligated to notify the IBC, where they are BOs of any changes in their status. Under the AML Act and Regulations, reporting entities are required to maintain information on BOs, accurate and up-to-date.

Criterion 24.8 (Met) Section 162(1) of the Companies Ordinance provides that every company shall have at least two directors in the Seychelles. While the requirement in relation to IBC companies is different since the obligation on the company is to have at least one director, section 130(1) of the IBCA, who can also act as a representative to provide required information. The obligation to keep basic information and information related to the beneficial owner is on both the IBC and the ICSPs as reporting entities in terms of the AML Act. Also such information is kept at the registered office of the IBC in the Seychelles (s. 356 of the IBC Act). The following information is kept on the register of BO: (a) the name, residential address, date of birth and nationality of each beneficial owner of the company; (b) particulars of each beneficial owner's beneficial interest and how it is held; (c) the date on which a person became a beneficial owner of the company; and (d) the date on which a person ceased to be a beneficial owner of the company. All of the above information is required to be kept updated and accurate.

Criterion 24.9 (Met) Domestic companies are required to keep information for six years after its dissolution (s. 7A of the Insolvency Act 2013). While companies have to maintain information required under the IBC Act for as long as they are active, the Act does not require that the information must be kept for a minimum of five years after a company is dissolved, winds up or ceases to exist. Under the International Business Companies Act, there are extensive provisions for the maintenance of accounting and other records and registers during the lifetime of a company for a period of seven years but that is limited to the accounting records of the company (s. 175(4) of the IBC Act). The Financial Institutions Act provides that every financial institution shall maintain records in the Seychelles for a period of at least 7 years which state clearly and correctly the state of its business affairs.

S.175 (4) of the IBCA provides that accounting records shall be kept by the company for a least 7 years from the date of the completion of the transactions or operations to which they each relate. Further, s. 356 (5) of the IBCA requires information on BO to be maintained for 7 years from the date the person ceased to be a BO.

ICSPs, advocates, barristers and notaries as reporting entities under the AMLA are required to maintain information for a minimum of 7 years from the date on which the business relationship ceased. .

Criterion 24.10 (Mostly Met) The FIU, under the powers designated to it in terms of s. 16 of the AML Act, it can obtain any information from all reporting entities (including ICSPs, ITSPs, DNFBPs and FIs), any supervisory authority and from other law enforcement agencies. Although, s. 378 of the IBCA provides for non-disclosure of information in the custodian of IBCs, s.378 (2) of the same Act provides that the non-disclosure shall not apply to any disclosure permitted or required under the IBCA, or under any other written law of Seychelles, pursuant to a court order (which according to the authorities takes 24 to 48 hours to obtain) and where prior consent of the company has been obtained or where the information is disclosed for statistical purposes without the disclosure of the identity of the company. Moreover, s. 173 of the IBCA clearly grants the FIU, SRC and the Registrar under the IBCA with the full power to request for an IBC to furnish it with relevant records stated in that section (s. 173 (1) a - h), including information on BO.

Criterion 24.11 (Met) Under the Seychelles laws the issuance of bearer shares or bearer share warrants is not allowed, (s. 90 of the Companies Ordinance and s. 48 of the IBC Act).

Criterion 24.12(Mostly Met) The domestic regime does not allow for nominee shares or directors, whilst for the IBCs (offshore sector whose information is kept at the ICSPs offices in Seychelles), the Seychelles has adopted mechanisms under c. 24.12(c). In terms of s. 356(1)b of the IBC Act for an ICSP acting as a nominee shareholder, in addition to the particulars of the BO entered in the Register of BO, its name shall be entered in the Register of BO (by the company), to show how the beneficial interest of the BO is being held; and for a nominee director(i.e. the person executing control over the company or its management on behalf of another individual), its name shall be entered in the Register of BO (by the company), to show how the beneficial interest of the BO is being held. However, the current legislation does not require the registering or licensing of such ICSPs as 'nominees'.

Criterion 24.13 (Mostly Met) The Companies Ordinance Act provides the Registrar of Companies with powers to impose dissuasive and proportionate sanctions on domestic companies that do not comply with the Act, with the most serious sanction being striking off of the domestic company from the companies' registry.

The IBC Act has provisions creating sanctions for different violations of this particular Act. The sanctions apply to both IBCs and the directors. Although there are sanctions for

breaches of keeping appropriate records with respect to beneficial ownership for the IBCs and their directors (s. 356(7) of the IBC Act), given the nature of the business in the offshore sector, the sanctions applied (USD 500 and an additional penalty fee of USD 50 for each day the contravention continues for both the IBCs and their directors) would not be seen as dissuasive or proportionate.

The IBC Act provides for disclosure of BO information to the IBC by a new BO and also information on any other changes on the BO within 30 days of such changes. A person failing to comply with these requirements can be subject upon conviction to fine not exceeding US\$50,000 and may also face other administrative punitive measures such as voting and distribution rights attached to the relevant shares or guarantee membership being suspended until such time there has been full compliance with the contravened provisions, and right to transfer or redeem the relevant shares or guarantee membership being suspended pending full compliance with the contravened provisions. These sanctions are relatively dissuasive and proportionate.

Criterion 24.14 (Mostly Met) In Seychelles, basic information is available at the ROC and is accessible by competent authorities who are allowed to share same with foreign counterparts. The FIU, in terms of s. 16A can obtain any information (which can include BO information) from reporting entities for purposes of sharing it foreign counterparts. As for the international business sector, the FSA in terms of ss. 17-18 of the FSA Act, is empowered to cooperate with foreign regulatory authorities and persons, in or outside Seychelles, who have functions in relation to the prevention or detection of financial crime, including money laundering, financing of terrorism, misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty.

Criterion 24.15 (Partly Met) The FSA, to facilitate the monitoring of the quality of information it receives from other jurisdictions on both basic and BO, it has entered into MoUs with other regulatory authorities. The FSA has further created a dedicated section to ensure consistency, appropriateness and accuracy of information received. In all cases it has requested information on BO, the information received has been overall of good quality as it has been appropriate and accurate. However, the same cannot be said with the Registrar of Companies which has not assessed the quality of such information, particularly for companies it incorporates and are later licensed by the FSA as ICSPs.

Weighting and conclusion

Seychelles meets criterion 24.3, 24.4, 24.5, 24.8, 24.9 & 24.11, mostly meet criterion 24.1, 24.6, 24.7, 24.10, 24.12, 24.13 & 24.14 and partly meets criteria 24.2, 24.15. Though Seychelles has completed its first NRA, the risks identified due to legal persons were not sufficiently covered. In the domestic sector information on beneficial ownership is not kept at the level of the registrar of companies given that this is not provided under the current legislation.

Seychelles is rated Largely Compliant with R. 24

Recommendation 25 – Transparency and Beneficial Ownership of Legal Arrangements

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R 34). The main technical deficiencies were that: no adequate mechanism to ensure that there is adequate transparency concerning beneficial ownership and control information on trusts; only a declaration of trust, which does not disclose information on the settlor and beneficiary of an international trust, must be filed with the SIBA; deficiencies in the implementation of the old Recommendation 5 undermine the availability of adequate, accurate and current information on international trusts from TSPs; competent authorities (other than the FIU) were not able to obtain or have access to adequate, accurate and current information on the beneficial ownership and control of trusts.

Criterion 25.1 (Partly Met) It is noted that in the Seychelles the different types of legal arrangements (trusts,) which can be established by law in the offshore sector, cannot be created under the Seychelles' civil law regime.

Obligations of trustees under domestic trusts, particularly express trusts could not be established as their existence is not recognised in Seychelles and further, at the time of the on-site visit there were no decided cases that could have assisted the assessors to determine the obligations of trustees. Foreign trusts can be registered under the International Trusts Act as international trusts. An international trust may be created in the Seychelles under section 15 of the International Trust Act 1994 (ITA) by oral declaration or by instrument in writing, a will or codicil and is not enforceable unless there is in relation to it a registered declaration of trust.

In terms of s. 17(1) of the ITA, the beneficiary of an international trust has to be identifiable by name or ascertainable by reference to a class or a relationship to another

person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined. According to s. 17(3) of the ITA a settlor or a trustee of a trust can also be a beneficiary, but cannot, subject to ss. 21, 55(3) and 57 of the ITA at any time be the sole beneficiary of the trust.

Under s. 29A(1) of the ITA, a trustee is required to keep or cause to be kept at the trustee's principal place of business in Seychelles, an up to date register known as the International Trust Register, containing information on the full name, address, nationality or place of incorporation of each trustee, beneficiary or settlor; the date on which a person is appointed or otherwise becomes a trustee, beneficiary or settlor; the date the person ceases to be a trustee, beneficiary or settlor. Although in terms of s. 4 of the ITA, one of the trustees at any given time has to be a company licenced under the ICSP Act to provide international trust services in Seychelles, under s. 3(2) of the ICSP Act, such a company in order to be licenced as an international trust service provider (in terms of s. 3(5) of the same Act), it has to be incorporated with the Registrar of Companies under the Companies Ordinance Act and this Act does not require the Registrar of Companies to obtain information on BO when incorporating companies. It means BO information on ITSPs themselves is not obtained before being licenced and it is also not obtained for the purposes of the International Trust Register as the place of incorporation is the only information obtained for the register, if the trustee is a corporate body. The same applies where the beneficiary is a corporate body.

The trustees(ITSPs) are required to keep accounting records at the trustee's principal place of business in Seychelles or such other place as the trustee thinks fit and such accounting records have to be retained for seven years, from the date of completion of the transactions to which they relate (s. 29(3), (5) of the ITA). Also international trustees service provider (ITSP), as reporting entities under the AML Act are required to comply with the record keeping requirements of the same Act.

Criterion 25.2 (Mostly met) Under s. 29A(1) of the ITA, a trustee is required to keep or cause to be kept at the trustee's principal place of business in Seychelles, an up to date register known as the International Trust Register, containing information on the full name, address, nationality or place of incorporation of each trustee, beneficiary or settlor; the date on which a person is appointed or otherwise becomes a trustee, beneficiary or settlor; the date the person ceases to be a trustee, beneficiary or settlor. However, where a corporate trustee, beneficiary or settlor is used other than requesting the full name,

address and place of incorporation, there is no requirement to obtain and up-to-date details of the ultimate natural persons in or behind the corporate trustee, beneficiary or settlor.

Criterion 25.3 (Not Met) There is no requirement for trustees themselves to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.

Criterion 25.4 (Partly Met) Trustees are not prevented from sharing information with competent authorities but in terms of s. 8 of the ITA, they can only do so in the event of court order being made for disclosure of such information. In terms of s. 8(1) of the ITA a trustee or any other person shall not disclose to any person not legally entitled to it or be required to produce or divulge to any court, tribunal, committee of enquiry or other authority in Seychelles or elsewhere, any information or document relating to the trust. Therefore, in the absence of a court order, the trustee is not able to release or share any information pertaining to the trust with a competent authority or DNFBP with the exception of the FIU (in terms of the AML Act) and FSA (in terms of the FSA Act).

Criterion 25.5 (Mostly Met) Competent authorities, in particular law enforcement authorities are able to obtain access to information held by trustees only through a court order and only for the purpose of an inquiry or trial relating to the traffic of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney-General subject to the satisfaction of the court that the information or document is bona fide so required (s. 8(3) of the ITA). Information on beneficial ownership is easily accessed through a court order which takes on average 24-48 hours to obtain on application by the Attorney General on proof to the satisfaction of the court that the information or document is so bona fide required.

The FIU, under Part 3 of the AML Act, has powers to obtain information from all reporting entities. Therefore, the FIU can access all information retained by trustees as reporting entities and from any other reporting entities doing business with the trustees on behalf of the trust.

Ss. 15 and 16 of the FSA Act provides general powers to the FSA to request specified information or documents from its supervised entities and these would include trustees (ITSPs).

Further, s. 8(4) of the ITA provides that where disclosure is required for civil proceedings, an application by a person interested has to be made to the court and

subject to the court being satisfied that such disclosure is made to a bona fide person it may impose restrictions for the purpose of protection of the information from abuse.

Criterion 25.6 (Partly Met) Information on BO can be exchanged based on Recs. 37 and 40. Refer to the explanation given for Recs.10, 22 and 24. In addition, the FIU has powers under s. 16A of the AMLA to exchange information with its foreign counterparts under international cooperation, including information obtained from trustees as reporting entities. The FSA, in terms of ss. 17 and 18 of the FSA Act, is empowered to cooperate with foreign regulatory authorities and persons, in or outside Seychelles, who have functions in relation to the prevention or detection of financial crime, including money laundering, financing of terrorism, misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty. Most of the LEAs, like the Anti-Corruption Commission and Anti-Narcotic Drugs Unit, although they have powers to access information from financial institutions for expediency (and anonymity), they preferred to go through the FIU to obtain the information.

Criterion 25.7 (Mostly Met) Section 43 of the ITA provides for the liabilities of trustees who commits a breach of trust under the performance of its duties which includes any loss or depreciation in value of the trust property including any profit which could have accrued to the trust if the breach had not accrued. Where trustees are liable these liabilities are jointly and severally shared.

Where a trustee is subject to the money laundering and terrorist financing, failure to comply will result in sanctions under Section 3 of the AMLA for the offence of money laundering. There are also dissuasive sanctions under Section 14 of the ICSP Act for failing to carry out business in a manner which is detrimental to the public interest or to the interests of its clients. The sanctions under section 14 of the ICSP are proportionate and dissuasive given that the authority either require the licensee to take such remedial measures or to either suspend the licence for such period as it may determine or revoke the licence, section 15 of the ICSP act. In addition s. 27(2) of the FSA Act provides the FSA with a wide range of powers to impose sanctions, which include: revoking or suspending the licensee's licence; issuing of a direction; taking administrative actions as prescribed under the Act or any other financial legislative legislation.

Criterion 25.8 (Partly Met) There is no specific provision in the laws to grant timely access to competent authorities to information regarding the trust. However, under s. 3 of the AMLA, the director of the FIU may be granted immediate access to records of a reporting entity in a case of immediate emergency. The FIU shall be given all reasonable assistance in carrying out their responsibilities and the reporting entity or the person in charge shall furnish the FIU with any information that is reasonably required for the

administration of the AMLA. The FIU may issue a directive to any reporting entity that has failed to comply with its obligations to implement an action plan. Where the reporting entity has failed to comply with a direction under section 16D(2) of the AMLA, the FIU may refer the matter to Court for a court order. Failure to comply with the court order results in a fine not exceeding R1,000,000 for an individual and R5,000,000 in the case of a reporting entity .

Weighting and conclusion

Seychelles mostly meets criteria 25.2, 25.5 & 25.7, partly meets criteria 25.1, 25.4, 25.6 & 25.8 and does not meet criterion 25.3. Given the structure of the financial sector which is driven by the offshore sector, trustees for an International Trust are under no obligation to obtain and retain information on the natural persons exercising the ultimate control over the ITSPs themselves. Where a corporate trustee, beneficiary or settlor is used other than requesting the full name, address and place of incorporation, there is no requirement to obtain and keep up-to- date details of the ultimate natural persons in or behind the corporate trustee, beneficiary or settlor. There are no measures to ensure that trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above a required threshold.

Seychelles is rated Partially Compliant with R. 25

Recommendation 26 – Regulation and supervision of financial institutions

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R23). The main technical deficiencies were that: insurers and insurance intermediaries were not subject to the IAIS Core principles; the criteria to be satisfied for the fit and proper test for insurers and insurance intermediaries are not defined; and no requirement for money or value transfer operators to be licensed or registered under the laws in Seychelles.

Criterion 26.1 (Met) Section 16(3) of the AML Act designates the FIU as the AML/CFT supervisor for all FIs.

Market Entry

Criterion 26.2 – (Met) All FIs subject to core principles are required under different statutes to obtain license from the responsible regulatory body before operating in Seychelles. Sections 3 & 5 of the FI Act require banks, bureau de change and credit finance institutions to obtain license from the Central Bank of Seychelles (CBS). The Securities Act provides for licensing of various types activities. The Securities Exchanges

are licensed in terms of section 9 of the Securities Act while Clearing Agencies and Securities Facilities are licensed under sections 25 and 43 respectively. Section 46 provides for licensing of Securities Dealers while section 49 provides for the licensing of Investment Advisors. Securities Dealer Representatives and Investment Advisor Representatives are licensed under s.52 of the Securities Act. Similarly, the Mutual Fund and Hedge Fund Act, 2008 provides for licensing Funds under section 3 and Fund Administrators under section 11. Section 6 of the Insurance Act, 2008 requires insurance entities to obtain license from the FSA before carrying out any business operation. Section 24 of the Securities Act provides for the licensing of Clearing Agencies while securities facilities are licensed under Section 41 of the Securities Act for securities facilities. In addition, securities dealers are licensed under Section 46 of the Securities Act and Section 7 of the National Payment Systems Act which requires money value transfer services (MVTs) to obtain a license from the CBS before they can operate. Further, the assessors were provided with a number of licensing and registration guidelines, fit and proper guidelines and application forms under the different statutes which are used by the regulatory bodies when licensing or registering reporting entities under their purview. All financial institution laws expressly prohibit carrying out of a financial activity without obtaining authority from the relevant licensing authority and provide for sanctions for non-compliance. It is the view of the assessors that the licensing requirements in place are rigorous enough not to allow licensing or operation of shell banks. At the time of the on-site visit, there were no shell banks that were licensed or operating in Seychelles.

Criterion 26.3(Met) — Competent authorities or financial sector supervisors are required by law to perform fit and proper assessments for substantial shareholders, directors and senior managers of regulated entities to determine their suitability for the roles they are proposed to hold in terms of section 6 of the Financial Institutions Act 2004, sections 46 and 49 of the Securities Act 2008, and Section 36 of the Insurance Act 2008. The laws also provide for competent authorities or supervisors to preclude such persons from performing any such functions in a regulated entity where they fail to satisfy the fit and proper requirements. The power also allows for the disqualification of a shareholder, director or senior manager who no longer meets the fit and proper test.

Risk-based approach to supervision and monitoring

Criterion 26.4 (Not Met) The FIU is responsible for AML/CFT supervision of *Core Principles* FIs, but not on a risk-sensitive basis to supervise and monitor compliance with AML/CFT obligations.

Criterion 26.5 (Not Met) The frequency and intensity of supervision and monitoring of FIs for compliance with AML/CFT obligations is not informed by any ML/TF risks. The FIU is in the early stages of developing a risk-based supervision approach.

Criterion 26.6 – (Not Met) The FIU is yet to develop ML/TF risk assessment framework to inform supervision of FIs including review of their risk profile.

Weighting and Conclusion

Seychelles meets criteria 26.1- 26.3. Criteria 26.4-6 were not met. Seychelles has most of the elements necessary for the supervision of financial institutions, but the absence of risk-based approach to supervision and monitoring represents a major deficiency.

Seychelles is Partially Compliant with R.26.

Recommendation 27 – Powers of supervisors

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R29). The main technical deficiencies were that: the powers of the FIU have not been sufficiently tested as these powers have not been used extensively; the FIU had conducted only one on-site inspection at the time of the mutual evaluation; the FIU is under staffed to sustain its statutory duties and functions; the staff members (other than the Director) have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function; not all Financial Institutions have implemented the requirements of the AML Act.

Criterion 27.1 (Met) Section 16(3) of the AML Act empowers the FIU to monitor and enforce compliance with with AML/CFT requirements by FIs.

Criterion 27.2 (Met) Section 16C (1) of the AML Act gives the FIU power to examine records of the reporting entities for purposes of carrying out an inspection to monitor compliance with AML/CFT requirements by FIs.

Criterion 27.3 (Met) S. 16C (2) of the AML Act gives the FIU the power to compel FIs to provide any information required by the FIU for purposes of determining compliance with AML/CFT obligations by that entity.

Criterion 27.4 (Partially Met) Section 16D gives power to the FIU to impose sanctions for failure to comply with the AML/CFT requirements. The Act provides that where non-compliance has been identified, the FIU has power to direct the concerned financial institution to implement an action plan to ensure compliance. In the event that the

financial institution fails to comply with the action plan the FIU may make an application to court for an order against the entity to enforce compliance. Where the financial institution fails to comply with the order, such financial institution and/or its officers shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding R1million in case of the officer and R5million in the case of the financial institution as the Court may determine. The assessors are of the view that the sanctions under the AML Act are not wide enough as they do not include civil, administrative monetary penalties, as required under R.35. The FSA has the power to impose sanctions on its regulated entities for failure to comply with AML/CFT obligations. Section 27 of the FSA Act provides for a wide range of sanctions which include civil, administrative and criminal actions.

Weighting and Conclusion

Seychelles meets criteria 27.1- 27.3. Criterion 27.4 is partially met. Seychelles has minor deficiencies under R.27.

Seychelles is rated Largely Compliant with R.27.

Recommendation 28 – Regulation and supervision of DNFBPs

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R24). The main technical deficiencies were that: no effective implementation of this recommendation in the DNFBP Sector; no actual supervision of the DNFBP sector in practice; same deficiencies relating to Rec. 17, 29 and 30 with respect to the FIU that apply to financial institutions also apply to DNFBPs.

Criterion 28.1 (Met) Casinos in Seychelles are licensed by the FSA in terms of Section (3) – (6) of the Gambling Act 2014. The license covers casinos, slotting machines and interactive gaming. The FSA conducts probity and fitness assessments prior to the issuance of a license to operate a casino in Seychelles in order to prevent criminals or their associates from holding interest or being beneficial owners as well as from holding relevant positions or having controlling interests in casinos. Section 31 of the Gambling Act prohibits casino license holders from employing persons in the business of gambling unless such persons hold a mandatory certificate of approval issued by the FSA. Section 34 further provides the probity and fitness checklist for employees of a casino. While casinos are under the supervisory purview of the FSA, the FIU is responsible for monitoring compliance with AML/CFT requirements by casinos in the Seychelles.

DNFBPs other than casinos

Criterion 28.2 (Met) Section 16(3) of the AML Act designates the FIU as the AML/CFT supervisor for compliance with AML/CFT obligations by DNFBPs.

Criterion 28.3 (Met) Section 16C (2) subjects DNFBPs to AML/CFT monitoring by the FIU.

Criterion 28.4 (Partially Met) Section 16(3) of the AML Act empowers the FIU to monitor reporting entities for compliance with AML/CFT requirements while Section 16C of the same Act gives power to the FIU to examine records of the reporting entities for purposes of monitoring compliance with AML/CFT requirements. DNFBPs licensed by the FSA are subject to fit and proper assessments. The measures in place are adequate for preventing criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFPB. The Bar Association conducts fit and proper assessments in respect of lawyers and the Estate Agents Board for Real Estate Agents. With respect to Accountants and Auditors, a Bill is under preparation to set out the legal framework for fit and proper requirements. It has been noted that the Seychelles Licensing Authority merely issues a license and does not conduct the vetting process for purposes of determining fitness and probity of market entrants. Once granted a license, they are subject to monitoring for compliance with AML/CFT requirements by the FIU. Section 16D gives power to the FIU to impose sanctions for failure to comply with the AML/CFT requirements. The analysis and finding made under c.27.4 applies

Criterion 28.5 (Not Met) The FIU is empowered to monitor DNFBPs for AML/CFT compliance. However, there is no monitoring on a risk-based approach.

Weighting and Conclusion

Seychelles meets criteria 28.1 - 28.3, partially meets criterion 28.4 and does not meet criterion 28.5. The authorities have not carried out a risk assessment of the DNFBP sector to inform development and implementation of AML/CFT risk-based supervision. In addition, the sanctions do not comply with R.35. The deficiencies are significant and pose vulnerability to the DNFBP sector.

Seychelles is Partially Compliant with R.28.

Recommendation 29 - Financial intelligence units

In the 1st round Mutual Evaluation, Seychelles was rated partially compliant with the old Recommendation 26 which is now the new recommendation 29. The same rating is maintained, however for different reasons. Whereas under the 1st assessment the rating

was due to the fact that the FIU was at that time newly established and had therefore not had opportunity to apply and test its mandate and powers, this time round it is for the material fact that information exchange with its foreign counterparts is hampered by the need for prior approval from the Attorney General.

Criterion 29.1 (Met) The Seychelles FIU is established under Section 16 of the AML Act as a national centre charged with the responsibility for receipt and analysis of STRs and other relevant information to ML, associated predicate offences and TF; and for the dissemination of the results of the analysis. It has been operational since 2008.

Criterion 29.2 (Met) The FIU is the central agency for the receipt of STRs from FIs and DNFBPs made under Sections 10 as set out in Table (Powers and duties of the FIU regarding reporting entities) under Section 16. In addition, the Section 11 requires supervisory bodies (i.e., CBS and FSA) and auditors disclose to the FIU when they have reasonable grounds to suspect that information it may have concerning any transaction or attempted transaction maybe be related to a criminal activity.

Criterion 29.3 (Met) Section 16(12)(c) &(j) of the AML Act gives the FIU authority to request information from reporting entities on parties or transaction to any report. Further, paragraph (b) of the same Section gives authority to the FIU to access any publicly available databases, including commercially-owned, necessary for performance of operations of the FIU.

Criterion 29.4 (Mostly Met) The FIU conducts operational analysis based on the information it receives from reporting entities and other sources of information including from publicly available sources to pursue proceeds of crime and TF. Pursuant to Section 16(12)(m) the FIU may conduct strategic analysis by conducting research into trends and developments in the area of ML and TF. At the time of the on-site visit, no strategic analysis had been conducted by the FIU, mainly due to lack of resources.

Criterion 29.5 (Met) Section 16(12)(f) permits the FIU to disseminate financial intelligence and other relevant information to law enforcement agencies for investigation purposes when it has reasonable grounds to suspect unlawful activities. In general, financial intelligence reports are mostly by hand delivered and signed for by dedicated staff and no challenges were identified particularly given the (small) size of the country, and all competent entities are within a few kilometres of the premises of the FIU. Furthermore, a few matters are exchanged via dedicated email platforms.

Criterion 29.6 (Met) The FIU has sufficient safeguards to protect information held by it. The FIU Staff Handbook contains governing the security and confidentiality of information, including procedures for handling, storage, dissemination, and protection

of, and access to, information; ensuring that FIU staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information; and ensuring that there is limited access to its facilities and information, including information technology systems.

Criterion 29.7 (Partly Met) The Seychelles FIU exists as an independent legal entity. Section 16 (f) from the table as amended in 2008 applies domestically only. Section 16A makes international information exchange contingent on the prior approval of the Attorney General, which takes away the operational independence required by this sub-criterion. The crux of the matter is that section 16A(1) of the AML Act is still on the law books, and provides thus: “ *The FIU may, with the approval of the Attorney General, disclose any report or information as set out under paragraph (o) of the Table to section 16 to an institution or agency of a foreign country or to an international organization or institution or agency established by the governments of foreign countries that has powers and duties similar to those of the FIU —*”. This provision was introduced by the amendment of the AMLA in 2008. However, the provision was not repealed by the amendment of the AMLA in 2011. Instead, the amendment in 2011 introduced an additional sub section i.e 16A(2) which reads thus; (a) *The FIU may, for intelligence purposes only, disclose any report or information as set out in paragraph (o) of the Table to section 16 or any other information in its possession to the FIU of a foreign country, international organisation or institution or agency established by governments of foreign countries having similar powers and duties as the FIU.* (b) *For the purpose of subsection (2) (a), the FIU may enter into a Memorandum of understanding with the FIU of a foreign country, international organisation, institution or agency established by the government of foreign countries.* This is a material deficiency that affects the operational independence of the FIU.

Criterion 29.8 (Met) The Seychelles FIU has been a full member of the Egmont Group since June 2013.

Conclusion and Weighting

Seychelles partly meets c.29.7, mostly meets c.29.4 and meets all the remaining criterions under this recommendation. Section 16A(1) of the AMLA as amended in 2008 makes international information exchange by the FIU contingent on the prior approval of the Attorney General, which takes away the operational independence and autonomy required for an FIU. This is a material deficiency that affects the overall rating not only of this particular criterion, but also the entire recommendation 29 given the importance of international information exchange in AML/CFT matters.

Seychelles is rated Partially Compliant with R.29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R27). The main technical deficiency were that: although the Police were statutorily mandated to investigate ML and TF cases, the Financial Fraud Squad which was recently established has limited capacities, skills and equipment to successfully investigate ML and TF offences; and no measures in place to allow police officers to postpone or waive the seizure of money for the purpose of identifying persons involved in ML activities or for evidence gathering.

Criterion 30.1 (Met) The law enforcement agencies with the responsibility to investigate ML/TF are the Police and the FIU. Section 16 (3) (d) of the AML Act 2006 gives the FIU the powers to investigate any criminal cases including ML and TF and associated predicate offences. The Police are empowered to investigate all offences in terms of section 6 of the Police Force Act which gives them the general powers for the preservation of peace, the prevention and detection of crime, and the apprehension of offenders and further to that the Anti-Narcotics Bureau which is a department in the Police is mandated to investigate drug related offences. The Anti-Corruption Commission Act establishes the Anti-Corruption Commission which has the responsibility to investigate all offences related to corrupt practices in terms of Section 5(1) and in practice, where the case is related to ML/TF they refer it to the Police or the FIU.

Criterion 30.2 (Met). The institutional arrangement for LEAs in Seychelles is such that while the Police is the designated authority for investigation of all ML and TF cases, the other LEAs are authorised only to investigate predicate crimes and must refer potential ML or TF cases to the Police or the FIU for further investigation. The FIU, based on their mandate to investigate all offences, also have the mandate to pursue investigation of any ML/TF offences during a parallel financial investigation. The Proceeds of Crime (Civil Confiscation) Act 2008 provides for the deprivation of proceeds of crime by means of forfeiture, restraint and pecuniary penalty orders. The ACC which investigates corrupt practises can refer cases to the FIU or Police in relation to circumstances where the proceeds from such practices are eventually laundered or used for TF.

Criterion 30.3(Met) All LEAs authorized to conduct ML, TF and associated predicate offence investigations (described in criterion 30.2 above) have the authority to identify, trace, and initiate freezing and seizing of property (and other financial benefits) that may

have derived from criminal activities. Under Part 3 of the AML Act section 16 (3) (b) and (c), the Police and the FIU have the responsibility to identify, trace and initiate processes for seizure and freezing of suspected proceeds of crime or property that is subject to confiscation. The Misuse of Drugs Act 2016 further provides for the Search and seizure of controlled drugs without a warrant by Police Officers under Section 25. (1) (a), (b), (c). The Proceeds of Crime (Civil Confiscation) Act 2008 as amended in 2017 enables the Police to search and seize over and above their ordinary Police duties which provides them with a wide scope to identify and trace property subject to confiscation. The POCA provides for interim, interlocutory and disposal orders. The only limitation is that Bank accounts are now exempted from the definition of property following the amendment of the POCA. However, civil forfeiture is currently not provided for under POCA, all what it provides for are interim measures (see R. 4.1 for more details).

Criterion 30.4(Met) Although, the authorities advised that Recommendation 30.4 is not applicable in Seychelles, the AMLA provides the definition of “law enforcement agency” as meaning, “the government department under the Commissioner of Police or the Director General of Immigration and includes the Seychelles Revenue Commission”. The AMLA does not define a competent authority, nor is the term used under the AML/CFT regime of the Seychelles. However, if reliance is made on the above definition of a law enforcement agency, it means the FIU which has responsibility to investigate both predicate offences and ML under the AMLA, and Anti-Corruption Commission which has responsibility to investigate corrupt practices under the Anti-Corruption Act are not law enforcement authorities but have responsibility to investigate financial predicate offences. To that extent they are carrying out functions outlined under R. 30. Further, the authorities during the on-site indicated that in practice the FIU is regarded as a law enforcement agency, whilst the AMLA preceded the enactment of the Anti-Corruption Act.

Criterion 30.5 (Met) In terms of the Anti-Corruption Act, 2016 the Anti-Corruption Commission was established to investigate and prevent corrupt practices as provided by Section 5(1). The ACC can identify and trace property for freezing and seizure proceedings as per Section 58 (1) of the ACA .Where in the course of an investigation into an offence under this Act, the Chief Executive Officer or an officer of the Commission has reasonable grounds to suspect that any movable or immovable property is derived or acquired from corrupt practices, is the subject matter of an offence or is evidence relating to an offence, the officer shall, with a warrant, seize the property. Since the ACC has no legal mandate to investigate ML cases, it refers ML cases from

proceeds of corruption to the Police for investigation, and to the Attorney-General's Office where provisional measures in relation to such cases have to be taken.

Weighting and Conclusion

Seychelles meets all criteria of R.30.

Seychelles is rated Compliant with R.30.

Recommendation 31 - Powers of law enforcement and investigative authorities

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R 28). The main technical deficiencies were that: a low level of AML/CFT awareness amongst law enforcement agencies and lack of trained personnel and supporting equipment however undermine the quality of investigations.

Criterion 31.1-(Met) The Competent authorities conducting investigations for ML, associated predicate offences and TF include the FIU, Police and the ACC. The FIU has powers to access documents and information as provided for under Part 3 (sections 16 C (2) and (3) of the AML Act 2006. Section 16C (2) gives the FIU the powers to be furnished with any information that they may reasonably require with respect to the administration of the provisions of the Act or regulations made thereunder. The Anti-Corruption Commission Act gives the CEO the power to require the head or any public body to produce or furnish within such time as the Chief Executive Officer may specify, any document or a certified true copy of any document which is in that person's possession or under that person's control and which the Chief Executive Officer considers necessary for the conduct of investigations into an alleged or suspected offence under this Act, Section 22 (2) (b). The Misuse of Drugs Act of 2016 provides the Police with powers to apply to court for a warrant enabling them to have access to all records held by financial Institutions and other reporting entities under the AMLA 2006 that may reasonably concern transactions related to the offence and Section 22(2) (c) further provides for access to the premises and operations of any licensee under the Postal Sector Act. The Criminal Procedure Act also empowers Judicial Officers to issue search warrants on persons and premises.

- The AMLA provides the Police with powers to search with a search warrant under section 22 (1). Section 54(1) of the ACC allows an officer of the Commission to enter premises and search, seize and remove records, return, book, document or article where the officer reasonably suspects that an offence is being, has been or is about to be committed under this Act, without a warrant. The Misuse of Drugs Act (MODA) empowers Police Officers under section 25 (1) (a) to stop and search any person whom

the officer reasonably suspects of having in his or her possession a controlled drug or an article liable to seizure. An officer of customs is also empowered to search without a warrant in terms of Section 25(2) of the MODA.

- The power to take witness statements is undertaken in terms of the administrative powers the law enforcement agencies have under common law and in addition, s. 16C (2) and (3) of the AML Act 2006 gives the FIU wide powers including a requirement to provide all reasonable assistance to enable the FIU to carry out its responsibilities and further, the FIU to provide this information to an appropriate law enforcement agency where it has reasonable grounds to suspect that the information is relevant to an investigation for a criminal conduct, a ML or TF offence.
- The Police can collect/obtain evidence in legitimate ways and in terms of applicable legislations and stipulated means for example Warrants, Court order or summonses (refer to ss.71, 72, 73, 95 and 96 of the Criminal Procedure Code). Misuse of Drugs Act 2016 empowers the Police to Search and seize evidence in accordance with Section 26 (b) and (c). In accordance with 26(b) of the same Act, the police or customs officer may seize and detain a controlled drug whilst under 26(2) (b) both the Police and the customs officer may seize and detain any article liable to seizure found on the arrested person. Section 58(1) of the ACA empowers officers of the ACC to seize property related to an offence.

Criterion 31.2 (Met) The Police, the FIU and the ACC in Seychelles have powers to employ a wide range of investigative techniques, including –

- (a) Ability to conduct undercover operations which is provided for in terms of the Misuse of Drugs Act 2016, (section 32);

Intercepting communications in terms of the Prevention of Terrorism Act which under s. 25. (1) Provides for the powers of a police officer, for the purpose of obtaining evidence of the commission of an offence under this Act, to apply, *ex-parte*, to a judge of the Supreme Court for an interception of communications order. A police officer may make an application under subsection (1) only with the prior written consent of the Attorney-General. (c) Accessing computer systems is provided for as per Section 16C (1) (b) of the AML Act 2006 as amended in 2008 and in addition, s. 33(1)(b) of the Misuse of Drugs Act 2016, through a court order, allows accessing and placing under surveillance of computer systems of any person suspected to be participating in the commission of an offence.

- (d) Controlled delivery can be conducted in terms Section 34 of the Misuse of Drugs Act 2016. A controlled delivery may be authorised in writing by the Commissioner of Police, or any person authorised for that purpose by the Commissioner of Police. A controlled delivery may be authorised unconditionally or subject to conditions.

Criterion 31.3 (Met) The AMLA in terms of Section 16C (1) of the AML Act 2006, as amended in 2008 provides for sufficient mechanisms for identification, in a timely manner, whether natural or legal persons hold or control accounts and further to that authorities through production orders to be applied for *ex parte* have a process which enables them to identify assets without prior notification to the owner. In addition, s. 33(1)(c) – (d) of the Misuse of Drugs Act provides, through a court order, monitoring of accounts²³ and access to all records held by FIs and reporting entities

Criterion 31.4 (Met) LEAs in Seychelles are able to request and receive information from the FIU as evidenced in the number of requests for information made by LEAs in the course of their own duties.

Weighting and Conclusion

Seychelles meets all the criteria under R.31.

Seychelles is rated Compliant with R.31

Recommendation 32 – Cash Couriers

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly SR IX). The main technical deficiencies were that: no disclosure or declaration requirement in place in the Seychelles due to which international cooperation was difficult to be implemented; a reporting system to the FIU on suspicious cross border transportation of cash or other negotiable instruments was not put into place; no explicit requirement to report unusual cross border movement of gold or diamonds to competent authorities of other countries.

Criterion 32.1 (Met) Seychelles has a declaration system, Section 34 A (1) and (2) of the AML Act requires any person entering or leaving Seychelles, who has cash in his or her possession in excess of the prescribed amount to declare the particulars of the currency in the manner and form prescribed by regulations. Section 34(8) of the AMLA defines cash as inclusive of notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bank drafts, bearer bonds and bearer shares.

Criterion 32.2 (Met) Seychelles provides for a written declaration of cross boarder transportation of cash. The criterion is adequately covered under section 34A (1) and (2) of the AML Act 2006(1) which requires any person entering or leaving the Republic who has cash in his or her possession in excess of the prescribed (and the prescribed amount

²³ Also see paragraph 404, page 166 of the Isle-of-Man MER

in this case is USD 10 000) sum to declare the particulars of the currency in the manner and form prescribed by regulations. Any person who fails to make a declaration in accordance with this section; or knowingly makes a declaration which is false or misleading, commits an offence and is to be liable on conviction to a fine.

Criterion 32.3 (N/A) Section 34(1) and (2) of the AML Act 2006 provides for a declaration system as opposed to a disclosure system. This criterion is, therefore, not applicable to Seychelles.

Criterion 32.4 (Met) Designated competent authorities have the authority to request and obtain further information from the carrier with regard to the origin of the currency or BNIs and their intended use upon discovery of a false declaration of currency or BNIs or a failure to declare them (Sections 34(1) (b) as read with Section 34(2) (b)). The authorities indicated that whenever there is a false or a non- declaration of cash, the Customs/ Police/ Immigration Officer calls the FIU, as the competent authority for ML/ TF, to ascertain the origin of the funds and if they cannot then the funds are seized and the forfeiture process is set in motion under Section 35 of the AML Act 2006, as amended in 2008

Criterion 32.5 (Met) The offence and penalty for failure to declare or false-declaration of cross-border transportation of cash is set out in section 34A (2) of the AML Act. The penalty is a fine not exceeding double the amount of cash found in his or her possession in excess of the prescribed sum and the cash in his or her possession shall be liable to forfeiture. The penalty provided is proportionate and dissuasive as it also provides in addition to the fine, forfeiture of the funds involving the commission of the offence.

Criterion 32.6 (Met) There is a process that is followed by the Customs officers at the ports of entry and exit whereby they call the Director of the FIU or another designated person when they have a cash declaration in above the threshold. The standard practice according to the authorities is that the FIU receives the notification from the Customs, Police and Immigration Officers relating only to declarations above the threshold when the FIU is informed of all such cases and it carries further enquiries on the purpose of the cash.

Criterion 32.7 (Met) To coordinate border controls there is an Airport Security Community which is chaired by the Airport Civil Aviation. The committee comprises of the FIU, Civil Aviation, Anti-Narcotics Bureau, Immigration and Defence Forces. Joint meetings are done quarterly. Immigration, Customs and the Police are all members of

the National AML/ CFT Committee, as such there is a high level of coordination between the domestic agencies.

Criterion 32.8 (Met) The AMLA makes provision for empowering authorities to stop or restrain currency or BNIs for a reasonable time to enable further investigations in cases where there is suspicion of ML or TF or in the case of false declaration or non-declaration. Sections 34 (2), 34A (1) of the AML Act 2006, as amended in 2011 as read with Section 35 (1), (3) and (4) of the AML Act 2006.

Criterion 32.9 (Not Met) The declaration system in Seychelles does not provide adequate framework for international cooperation and assistance in accordance with Recommendations 36 to 40.

Criterion 32.10 (Met) The declaration system does not restrict trade payments between countries for goods and services or the freedom of capital movements. There are no restrictions on the amount of money that can be imported into or exported from Seychelles; however, once the amount has reached or exceeded the threshold, it must be reported. **Criterion 32.11 (Met)** Section 34A (2) of the AML Act 2006 adequately covers the criterion.

Weighting and Conclusion

Seychelles meets criteria 32.1, 32.2, 32.4, 32.5, 32.6, 32.7, 32.8, 32.10 and 32.11, and partly meets Criterion 32.9. The declaration system in Seychelles does not provide adequate framework for international cooperation and assistance in accordance with Recommendations 36 to 40.

Seychelles is rated Largely Compliant with Recommendation 32.

Recommendation 33 – Statistics

In its MER under the First Round of MEs, Seychelles was rated Non-Compliant with requirements of this Recommendation (formerly R 32). The main technical deficiency was that comprehensive statistics are not maintained by all competent authorities.

Criterion 33.1 (Partly Met) Pursuant to Section 16(12)(h) the FIU has powers to compile statistical information in relation to its functions under the AML Act. Seychelles maintains reasonable statistics on STRs received and financial intelligence disseminated by competent authorities since the inception of the FIU. The information enabled the assessors to determine the nature and extent of reports filed by the reporting entities and the results of analysis disseminated. The FIU, FSA and the CBS keep comprehensive statistics on the number of prudential and AML/CFT inspections conducted, the

violation identified and sanctions issued which enabled the assessors to determine the extent to which supervision and monitoring is being carried out in Seychelles. The Authorities maintain statistics relating to the process of crimes and freezing, seizing and confiscation of criminal property related to ML and predicated crimes. Further, the Authorities keep statistics relating to ML investigations and prosecutions which enabled the assessors to determine the extent to which ML cases are identified and pursued. There has been no TF cases conducted and therefore there can be no statistics in this regard. Statistics from the police, ANB and office of the AG were however not provided and no statistics available in relation to ML/TF investigations, prosecutions and convictions. Seychelles through the MOF and AGO provided and requested some MLA and dealt with extradition cases. There is however inadequate statistical information kept in respect of international cooperation and exchange of information with counterparts except for the FIU, the FSA and the CBS. The difficulty of obtaining comprehensive statistics has negatively impacted on the ability of the assessors to determine the level of effectiveness in respect of IO.2. for instance, the information provided was insufficient to determine the nature of crimes as well as how many requests were made to or received from foreign competent authorities.

Weighting and Conclusion

Seychelles maintains statistics on STRs. However, there were discrepancies in statistics between the FIU and LEAs in relation to intelligence reports. In addition, the information on MLAs provided does not indicate the nature of the crimes and as to which foreign authorities were the MLAs provided to or requested from.

Seychelles is rated Partially Compliant with R. 33.

Recommendation 34 – Guidance and feedback

In its MER under the First Round of MEs, Seychelles was rated Non- Compliant with requirements of this Recommendation (formerly R. 25). The main technical deficiencies were that no guidance was issued to DNFBPs to implement and comply with their respective AML/CFT requirements.

Criterion 34.1 (Partly Met) Pursuant to Section 16(12)(i) the FIU, in collaboration with other supervisory bodies, has the responsibility to issue guidelines and prescribe the form and manner of suspicious transactions reports to the reporting entities in respect of the obligations under the Act in general and reporting obligations in particular. The FIU

issued AML/CFT Guidelines to reporting entities to assist them to comply with the requirements of the AML Act. In addition, in 2015 the FIU issued Operational Guidelines on AML/CFT procedures including a number of indicators to assist reporting entities in identifying suspicious transactions. The FIU also issued advisory notices to reporting entities which identified specific ML/TF risks and provide the details of countries perceived to be high risk. However, there is inadequate provision of feedback and patterns and trends of ML/TF to the reporting entities which are essential to improving the understanding and implementation of AML/CFT obligations. The FIU has issued STR reporting template and redflags relating to identification and filing of suspicious transactions. Furthermore, the FIU has issued advisories to enable reporting entities to better implement its obligations under the AML Act including Advisory 2/2015 relating to ML/TF risks arising from new technologies..

Weighting and Conclusion

Seychelles partly meets criterion 34.1. There is inadequate provision of feedback and patterns and trends of ML/TF to the reporting entities which are essential to improving the understanding and implementation of AML/CFT obligations.

Seychelles is rated Partially Compliant with R.34.

Recommendation 35 – Sanctions

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R17). The main technical deficiency was that while there were criminal sanctions that apply, the supervisory authorities were not empowered to take effective, proportionate and dissuasive regulatory action against the FIS and their officers or employees that fail to comply with AML/CFT requirements.

Criterion 35.1 (Mostly Met)- Section 46 to 56 of Part VI of the AML Act and sections 27 and 44 of the FSA Act set out the specific offences and penalties for failing to comply with the AML/ CFT requirements which contain a broad range of sanctions which appear proportionate, dissuasive and effective, but only in relation to reporting entities under the FSA Reporting entities under the CBS (banks, credit union and money business services) are subject only to remedial actions and consequently criminal sanctions for non-compliance with AML/CFT obligations.

Criterion 35.2 (Partly Met) – Section 26(1)(b) gives powers to the FSA to remove senior management, director and employees of reporting entities under its purview for contravention of AML/CFT obligations. There are no similar powers against directors, senior management and employees available to the FIU under the AML Act.

Weighting and Conclusion

Seychelles mostly meets c.35.1 and partly meets c.35.2 under this recommendation. The absence of civil and administrative sanctions in general and specifically in respect of directors, senior management and employee under the AML Act is a significant weakness.

Seychelles is rated Partially Compliant with R. 35.

Recommendation 36 – International instruments

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R35 and SR I). The main technical deficiencies were that the relevant provisions of the Vienna, Palermo and the Terrorist Financing Conventions had not been fully implemented. The deficiency concerning implementation of targeted financial sanctions is no longer assessed under this Recommendation but is now covered in R. 6.

Criterion 36.1 (Met) Seychelles has acceded to the Vienna Convention in 1992 although the date of ratification has not been provided. It has also acceded to Palermo Convention and ratified it in 2003. It also ratified the Merida Convention in 2006 and ratified the Terrorist Financing Convention in 2004

Criterion 36.2 (Met) Seychelles has fully implemented the Conventions in 36.1 above. Seychelles has domesticated the mandatory conventions.

Weighting and Conclusion

Seychelles meets all Criteria under this recommendation.

Seychelles is rated Compliant with R.36.

Recommendation 37 - Mutual legal assistance

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R36 & SR V). The main technical deficiencies were that: the assessment team was not in a position to make an assessment of the timeliness and efficiency of processing AML/CFT requests given that no statistics of such requests were made available; confidentiality provisions under the offshore legislation may hinder disclosure of information by SIBA; the MACM Act does not specifically make provision for avoiding conflicts of jurisdiction when determining the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country; and there are no arrangements in place in Seychelles for coordinating seizure and confiscation actions with other countries.

Criterion 37.1 (Not Met) Seychelles has the Mutual Assistance in Criminal Matters (MACM) Act that provides a legal basis that allows it to provide the widest possible range of mutual legal assistance. However, Section 2 of the MACM Act has defined criminal matter to include, (a) A criminal matter relating to revenue (including taxation and customs duties or trades tax); (b) A criminal matter relating to foreign exchange control; (c) A matter relating to the forfeiture or confiscation of property in respect of an offence; (d) A matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and (e) A matter relating to the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed, in respect of an offence. The Section also has defined “criminal investigation” to mean an investigation into an offence (whether the offence is believed to have been committed or not). However, the law is limited in a sense that rendering MLA with respect to ML offence is only linked to proceeds of drug related offences and laundering of the same (Section 30). Moreover, though rendering MLA in relation to counter terrorism offence is covered in terms of S.32 of the PTA, there is no the same legal coverage for TF. The effect of the two definitions is that as far as ML and TF is concerned, the two offences are not covered as criminal matters. Furthermore, only the investigation part is what is covered under criminal investigation but not the prosecution part.

Criterion 37.2 (Partly Met) Under S. 5 (1) & (2) of MACM Act, the Attorney General is the Central Authority for mutual legal assistance. S. 6 (3) provides that, Seychelles shall endeavour to grant the mutual assistance requested as expeditiously as practicable. S. 6 (4) (d) provides that Seychelles should communicate to the requesting authority if circumstances are that there will be undue delay. Seychelles does not have clear processes for the timely prioritisation and execution of mutual legal assistance requests. There is no a case management system maintained to monitor progress on requests.

Criterion 37.3 (Met) S.7 (1) & (2) of the MACM Act provide for grounds upon which a request for MLA may be refused. The grounds of refusal are not unreasonable or unduly restrictive as they are consistent with the norms observed under international law.

Criterion 37.4 (Met) Fiscal matters are not a sole ground for refusal for mutual legal assistance. The definition of criminal matter that has been provided above includes offenses related to revenue. Also, the AMLA (Amendment) Act of July 2017 that has repealed S.3 (10) (c) and replaced it with a new paragraph (c), the replacing paragraph provides that, “paragraph (b) of Section 3 (9) shall not be applicable to tax evasion, tax non-compliance or other tax related offences except if a request has been received by the Central Authority under Division 2 of Part VI of the MACM Act”. The refusal based on privileged information which may be relied on by the Central Authority is consistent

with the exception based on legal professional privilege or, legal professional secrecy provided under this criterion.

Criterion 37.5 (Met) S.6 (1) (e) provides that a requesting country should set out a statement setting its wishes concerning the confidentiality of the request and the reasons for these wishes. In addition, S. 8 of MACM Act restricts the usage of information obtained in response to a request for MLA. Seychelles cannot use such information for any other purpose unless with the consent of the requesting authority

Criterion 37.6 (Met) Seychelles has not made dual criminality a condition for mutual legal assistance where the MLA do not involve coercive actions.

Criterion 37.7 (Met) Seychelles provided MLA if the circumstances of the case relating to the request are such that if such conduct had happened in Seychelles it would be regarded as an offence regardless of whether the conduct would be in the same category of offences in both Seychelles and the requesting jurisdiction (Sections 4 and 7, MACRMA).

Criterion 37.8 (Met) The MACM Act provides for specific powers that are available to law enforcers under Rec 31 relating to production of documents and taking of evidence before a Magistrate for purposes of mutual legal assistance. Seychelles competent authorities have broad range of other powers and investigative techniques that would also be available in MLA under Parts II – IV of the MACM Act (see also analysis relating to R. 31)

Weighting and Conclusion

Seychelles does not meet Criterion 37.1, partly meets 37.2 and meets the rest Criteria under this recommendation. There are no enabling provisions for rendering MLA with respect to ML and TF offences. Moreover, the scope of MLA under the MACM Act is very limited in a sense that it only covers cooperation in relation to investigation.

Seychelles is rated Partially Compliant with R.37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R. 38). The main technical deficiency were that: no provision under the MACM Act regarding requests relating to property of corresponding value; no arrangements for coordinating seizure and confiscation actions with other countries as at the date of the onsite visit; Seychelles had not established an asset forfeiture fund to deposit the confiscated property no provisions in the law regarding the sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions.

Criterion 38.1 (Partly Met) S. 2 of the MACM Act defines criminal matters. The definition includes, "... (c) A matter relating to the forfeiture or confiscation of property in respect of an

offence; (d) A matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and (e) A matter relating to the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed, in respect of an offence". This allows Seychelles to provide MLA in relation to the forfeiture or confiscation of property in respect of an offence. However, the scope of confiscation under the domestic laws including AMLA, POCA and Criminal Procedures Act is limited (see the analysis made on R4). Moreover, there is no provision on MLA with respect to confiscation of property of corresponding value.

Criterion 38.2 (Not Met) The standard requires a country to provide assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings and related provisional measures. Under S.35 of AMLA, non-conviction based forfeiture is only limited to cash. Moreover, the non-conviction based forfeiture under the POCA excludes bank accounts and is limited to property of value with more than SCR 50, 000.

Criterion 38.3 (Partly Met) Seychelles has limited arrangements for coordinating seizure and confiscation actions with other countries under Section 16B (3) of AMLA. S.29 of AMLA provides for appointment of a receiver by a court as a mechanism for managing and disposing of property subjected to pecuniary penalty or restraint orders. There are no mechanisms for managing or disposing of properties subjected to confiscation order.

Criterion 38.4 (Not Met) There are no provisions providing for sharing of confiscated property with other countries.

Weighting and Conclusion

Seychelles does not meet Criteria 38.2 and 38.4 and partly meets 38.1 and 38.3. The scope of confiscation under the domestic laws including AMLA, POCA and Criminal Procedures Act is limited. Moreover, there are no provisions for MLA relating to confiscation of property of corresponding value and sharing of confiscated property with other countries.

Seychelles is rated Non-Compliant with R.38.

Recommendation 39 – Extradition

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R. 39). The main technical deficiency was that there was no evidence to support the measures and procedures adopted allow extradition requests and proceedings relating to ML to be handled without undue delay.

Criterion 39.1 (Partly Met) The offence of ML is extraditable under S.62 of the AMLA. The offence of TF has not been provided as an Extraditable offence. However, the

wording of Section 31 of the PTA suggests that extradition can be achieved under that section either where there is an extradition agreement or where there is no extradition agreement, by Order published in the Gazette, treat the Counter Terrorism Convention as a treaty within the meaning of the Extradition Act. The authorities however, have not provided any order published in the Gazette for this purpose. The Extradition Act contains provisions S.16 and 17 that provide the timelines to make sure that the extradition is done expeditiously. There are clear processes that have been set out in the law. There is also a proper case management system. Section 6 of the Extradition Act provides for circumstances where an extradition request can be refused. The grounds provided in the law appears to be reasonable and not unduly restrictive conditions on the execution of requests.

Criterion 39.2 (Met) Seychelles can extradite its nationals as Ss. 5, 6 and 16 of the Extradition Act provides no restrictions based on nationality.

Criterion 39.3 (Met) The requirement for dual criminality is deemed to have been satisfied regardless of whether both countries place the offence within the same category of offence. The terminology in the Schedule 1 to the Extradition Act is broad.

Criterion 39.4 (Met) Seychelles has simplified extradition in place. In terms of s10 of the Extradition Act, where a person has been arrested under a warrant and the Attorney-General has issued an authority to proceed in his respect, the person may at any time consent to the magistrate before whom he is brought making an order of committal to await his extradition.

Weighting and Conclusion

Seychelles partly meets Criterion 39.1 and meets the rest of the Criteria under this recommendation. TF is not extraditable offence under the law.

Seychelles is rated Partially Compliant with R.39.

Recommendation 40 – Other forms of international cooperation

In its MER under the First Round of MEs, Seychelles was rated Partially Compliant with requirements of this Recommendation (formerly R. 40). The main technical deficiencies were that: SIBA has no gateways for exchange of information with foreign counterparts; the FIU had no express powers to conduct inquiries on behalf of foreign counterparts; the CBS and SIBA were not permitted under domestic law to conduct investigations on behalf of foreign counterparts; there were no controls or safeguards in place to ensure

that information received by all competent authorities is used only in an authorized manner.

Criterion 40.1- (Met) Legislation allows for a wide range of information to be exchanged with foreign authorities in relation to ML, associated predicate offences and TF. Section 3(1) of the MACRMA provides that nothing in the Act prevents informal assistance and continued informal assistance between and any other State or organisation. The Police, the FIU, Anti-corruption Commission and prudential supervisory bodies (including CBS and FSA), the Tax and Customs Department and the Attorney-General have powers to provide the widest range of international assistance and exchange of information to foreign counterparts and, where relevant, to other international organisations.

Criterion 40.2- (Mostly Met) The various competent authorities have different lawful bases for providing co-operation. The FIU can provide information based on s.16 of the AMLA and on memoranda of understanding with various entities. The AG's office normally responds to all requests emanating from Commonwealth countries. Several such requests not related to ML have been received from non-Commonwealth countries, mainly from Eastern Europe and these were denied as they were criminal in nature and emanated from the AG's office in that country. Pursuant to its powers under section 51 of the Financial Institutions Act, the CBS may on a reciprocal basis, exchange information on supervisory matters (including matters relating to ML/TF), whether based on a Memorandum of Understanding or not, with supervisory authorities in other countries. The FSA has also gateway for exchange of information with other authorities in Seychelles or elsewhere (s. 4(1)(o) of the FSA Act). At a Regional level, Seychelles Police share information with member states from the EARPCCO and SARPCCO while at the international level information is shared through INTERPOL via the Nairobi Sub Regional Bureau. The Police have arrangements on information exchange on suspected drug traffickers with their counterparts in countries such as Mauritius, India, Kenya and Tanzania. The Tax and Customs Department liaise with the World Customs Organization and through Double Taxation Agreements (DTAs) in relation to tax matters, which may be predicate offences to ML and TF. The Anti-corruption Commission is empowered to consult, co-operate and exchange information with appropriate bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices in terms of s.5(1)(l) of the Anti-corruption Act. The information sharing available to the various competent authorities in Seychelles is both formal and informal when provided under the MACRMA and other statutes, which allow for direct interaction. The use of the Egmont, ARINSA/CARIN and Interpol systems ensures that assistance is provided as quickly and as efficiently as possible. The competent authorities have an extensive legal basis for providing cooperation. All

authorities use clear and secure gateways, mechanism or channels, e.g. use of the Egmont Secure Web by the FIU and the FIU also uses encrypted emails to share information efficiently with non-Egmont FIU and Interpol network by LEAs. The FIU has in place internal procedures and instructions in relation to the handling and prioritisation of requests. However, no clear guidelines or procedures and practices are existed for other authorities to give priority to requests for restraint of criminal assets (or suspected criminal assets). The FIU stores specific information, such as information received from foreign FIUs, on the secure computer (see also c.29.6). Physical access to the FIU information is restricted to authorised staff. Information received under the MACRMA is privileged and is not permitted to be disclosed. The other competent authorities though their various laws and procedures manuals have requirements for confidentiality of information.

Criterion 40.3- (Mostly Met) Seychelles has demonstrated the ability to negotiate and sign, in a timely way, and with the widest range of foreign counterparts. Under Section 16(B) of the AML Act, the FIU may with the approval of the President, enter into an agreement or arrangement in writing with an institution or agency of a foreign state or an international organisation established by the government of foreign states that has powers and duties similar to those of the FIU. Under Section 16(A) of the AML Act, the FIU may, with the approval of the Attorney General, enter into an agreement or arrangement in writing, with an institution or agency of a foreign State or an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU and a foreign law enforcement or supervisory authority regarding the exchange of information. As the date of the assessment, the FIU had entered into a number of agreements or arrangements for the exchange of information with both Egmont and Non-Egmont FIUs. It had also exchanged information with authorities from 51 countries. In addition, the FIU can exchange information without bilateral agreements. Other competent authorities do not also need an MOU to provide assistance, though they have established bi-lateral and signed up to multilateral MOUs when appropriate. However, In respect of timeliness when such arrangements were entered into, authorities indicated that there were no set time-frames.

Criterion 40.4- (Partly Met) upon request, the FIU can provide feedback on the use and usefulness of the information obtained to any competent authority from which it had received assistance. While no specific mechanisms were available to the LEAs, the FIU (as the mandated AML/CFT supervisor for dealing with foreign requests) advised that feedback requests on AML/CFT supervision information provided would follow a similar process.

Criterion 40.5- (Met) The competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance, and do not refuse requests for assistance on any of the four grounds listed in this criterion. In particular, competent authorities do not refuse a request for assistance on the grounds that the request is also considered to involve fiscal matters or that laws require financial institutions or DNFBPs to maintain secrecy or confidentiality, except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies or there is an inquiry, investigation or proceeding underway in the requested country, unless the assistance would impede that inquiry, investigation or proceeding. Seychelles does not prohibit exchange of information or place restrictive conditions on it because the nature or status of the requesting counterpart authority is different from that of its foreign counterpart.

Criterion 40.6- (Met) Seychelles has in place controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. For instance, any information obtained by the FIU is subject to section 16 of AMLA and accordingly privileged. The Seychellois authorities indicated that Information obtained by the other authorities is subject to the same conditions as the FIU.

Criterion 40.7- (Met) The Seychellois authorities indicated that conditions for restrictions on the use of information by a foreign counterpart are generally laid out in arrangements such as MoU, requires that any deviation must be authorised by the competent authority in Seychelles. The authorities further indicated that when the information is provided on arrangement of a case-by-case basis, the restriction on the use of the information is stated on the response letter to the foreign counterpart concerned. Moreover, the Competent Authorities are all subject to the State Security Act, 1978 (as amended) and that all information is received is subject the confidentiality requirements under the appropriate laws.

Criterion 40.8- (Met) The Seychellois authorities are able to conduct inquiries on behalf of foreign counterparts, and exchange with their foreign counterparts all information that would be obtainable by them if such inquiries were being carried out domestically. The FIU may seek and obtain information in Seychelles following a request received from a foreign counterpart. The Police may trace assets following a request received from ARINSA/CARIN where the foreign counterpart has supplied sufficient evidence

that the property to be traced is proceeds of crime. The Police Force is able to carry out an investigation on behalf of a counterpart if a request for information is made by a foreign counterpart. The CBS and FSA may exchange information relating to its regulated entities with foreign counterparts and the law does not prohibit these agencies to conduct also enquiries on counterparts' behalf. The Anti-Corruption Commission is able to conduct enquiries on behalf of its foreign counterparts.

Exchange of Information between FIUs

Criterion 40(9)- (Met) Section 16A of the AMLA 2006, as amended in 2008, allows the FIU to share information with other FIU's for intelligence purposes only.(See analysis of criterion 29(7) for more details).

Criterion 40(10) - (Met). Section 16A of the AMLA 2006, as amended in 2008, covers this criterion. The Seychelles FIU is able to provide feedback to their foreign counterparts, upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided. However, the FIU can only do this with prior approval of the Attorney General.

Criterion 40(11) - (Met). Section 16A (2) (a) of the AML Act 2006 (as amended in 2011) states that: the FIU may, for intelligence purposes only, disclose any report or information as set out in paragraph (o) of the Table to section 16 or any other information in its possession to the FIU of a foreign country, international organisation or institution or agency established by governments of foreign countries having similar powers and duties as the FIU.

Exchange of information between financial supervisors

Criterion 40.12- (Mostly Met) - S. 51 of the FI Act gives power for CBS to exchange information on a reciprocal basis on supervisory matters, whether based on an MoU or not with foreign authorities, foreign or local public sector agencies or law enforcement agencies. Further, section 17 of the FSA Act provides for duty of cooperation to the FSA to exchange information with foreign counterparts and domestic agencies. The scope of the provisions both in the FI Act and the FSA Act are broad enough and cover information relating to AML/CFT. In addition, the FIU has legal powers to exchange information under S. 16B of the AML Act although in doing so the FIU is required to seek prior approval from the President or the Attorney General.

Criterion 40.13- (Met) - CBS, FSA and the FIU have entered into MoUs with some of their foreign counterparts to enable exchange of information to the extent provided under the different laws they administer.

Criterion 40.14- (Met)- Both the FI Act and the FSA Act provide for exchange of information with foreign counterparts including regulatory information, prudential information, fit and properness and AML/CFT information. Further, S. 42(2) of the FI Act and S. 24(6) of the FSA Act provide for the respective financial supervisors to conduct joint inspections with foreign supervisors. The AML Act provides for exchange of information but does not have legal provisions on conducting joint inspections.

Criterion 40.15- (Met) The financial supervisors conduct enquiries on behalf of foreign counterparts or facilitate effective group supervision on the basis of MoUs signed with foreign counterparts in terms of relevant provisions in the FI Act (S. 51), FSA Act (S.17) and the AML Act (S. 16B).

Criterion 40.16- (Met) S. 16B (4) of the AML Act provides for prior agreement in writing for any dissemination of exchanged, or use of the information for supervisory and non-supervisory purposes. It further provides that the information be treated in a confidential manner and not be further disclosed without the express consent of the FIU.

Exchange of information between LEAs

Criterion 40.17- (Met). Law enforcement authorities can exchange domestically available information with foreign counterparts on the basis of a bilateral or a multilateral framework for intelligence or investigative purposes in respect of ML, TF and predicate crimes including identification and tracing of assets and instrumentalities of crime. In terms of Section 16A (2) (a) of the AML Act 2006 amended in 2011 states the FIU may, for intelligence purposes only, disclose any report or information as set out in paragraph (o) of the Table to section 16 or any other information in its possession to the FIU of a foreign country, international organisation or institution or agency established by governments of foreign countries having similar powers and duties as the FIU. The FIU is also a member of the Egmont Group of FIUs which membership facilitates exchange of information amongst FIUs. The Police is a member of INTERPOL, EARPCCO and SARPCCO which enables provision and exchange of information with its counterparts in a secure manner.

Criterion 40.18. (Met) Through legal powers and arrangements explained earlier, law enforcement agencies in Seychelles can use their respective powers, including investigative techniques available within national laws, to carry out inquiries and gather

information on behalf of foreign counterparts. For instance, the Police uses the Regional Centre for Operational Coordination, SARPCCO and EAPCCO to initiate investigation and obtain information on behalf of foreign counterparts.

Criterion 40.19. (Met) Law enforcement agencies in Seychelles rely on legal powers and other mechanism such as bilateral and multilateral arrangements to enter into and participate in joint investigative teams with foreign counterparts in relation to ML, TF and predicate crimes. The Seychelles Police are a member of the Regional Anti-Piracy and Intelligence Coordination Centre, SARPCCO, EAPCCO and other forums which cooperate in the investigation of Piracy, ML, TF and other predicate offences.

Exchange of information between non-counterparts

Criterion 40.20- (Met) Seychelles has a legal or regulatory basis which gives authority to the FIU, supervisors and the LEAs to exchange information indirectly with other foreign counterparts. For the FIU, broadest parameters of information exchange are permissible under Section 16A of the AMLA. The AG, ACCS, Police and SRC all have the power to exchange information directly with non-counterparts. A request from non-counterpart is considered and information provided on the same basis that FSA and CBS have no concerns about recipients of information or concerns about use of information.

Weighting and Conclusion

Seychelles meets criteria 40.1, 40.5-11, 40.20 and 40.13-19, mostly meets criteria 40.2, 40.3, and 40.12 and partly meets criterion 40.4. Competent authorities in Seychelles apply the requirements of other forms of cooperation through laws and other arrangements at a bilateral and multilateral level to provide assistance to foreign counterparts. While Seychelles meets the majority of the criteria under R.40, there are deficiencies which weigh less on the overall compliance with the requirements. These include lack of feedback on usefulness of information by competent authorities other than the FIU, generalised timelines to respond to a request, and inadequate requirement for authorities other than the FIU to seek prior authorisation on the use of information received.

Seychelles is rated Largely Compliant with R.40.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	- Results of the NRA are yet to be released to public and private sectors. - No risk-based approach for efficient allocation of resources is in place to mitigate the identified risks. - No AML/CFT activities informed by the identified higher ML/TF risks are in place, and FIs and DNFBPs are not required to incorporate the risks identified into institutional ML/TF risk assessments. - Simplified CDD measures in place not informed by identified risks. - Risk-based supervision in place less developed. - No specific obligations for FIs and DNFBPs to have institutional ML/TF risks.
2. National cooperation and coordination	PC	- AML/CFT strategy and policies not informed by identified risks. - No PF domestic cooperation and coordination mechanism in place.
3. Money laundering offence	LC	- Illicit arms trafficking, illicit trafficking in stolen and other goods; smuggling (including in relation to customs and excise duties and taxes) are not predicate offences for ML. - The law is restricted to foreign offences that are punishable in another country with a minimum of three years imprisonment or by a fine exceeding monetary equivalent of R50, 000.
4. Confiscation and provisional measures	PC	No enabling mechanisms and/or provisions or case laws for confiscation of properties laundered from bank accounts, proceeds of the laundered properties from bank accounts and

		properties of correspondent value. • The restraining order for civil asset forfeiture under Section 5 of the POCCA is applicable on properties whose values not less than SCR 50,000. • No mechanisms for managing or disposing of properties subjected to confiscation order.
5. Terrorist financing offence	PC	• The financing of terrorist individual is not criminalised. • Financing of individuals who travel to a state other than their state of residence or nationality for purposes of the perpetration, planning or preparation of, or participation in, terrorist acts is also not criminalised. • The punishment for legal persons are not provided in the law and no case law has been provided to give an indication on how Courts have handled legal persons in criminal matters. • The extra territorial jurisdiction is limited to conspiracies and, the Supreme Court has no jurisdiction over individuals who participates in the commission of the TF offences while outside Seychelles, and they are neither Seychelles citizens nor ordinarily residents.
6. Targeted financial sanctions related to terrorism & TF	PC	• No evidentiary standard of proof of reasonable grounds is provided for in the law. • The law does not provide for procedures and standard forms for listing as adopted by the relevant committee. • No legal basis for providing as much relevant information as possible on the proposed name for designation. • No legal basis for the competent authority to collect or solicit information, to identify persons and entities that meet the criteria for designation. No legal provision that the competent authority can operate <i>ex parte</i> against a person or entity who has been identified and whose designation is under consideration.

		• The obligation to freeze without delay does not extend to all funds or other assets that are owned or controlled by the designated person and individual terrorists. Also it does not extend to jointly owned property.
7. Targeted financial sanctions related to proliferation	NC	• No measures for implementation of targeted financial sanctions relating to the prevention suppression and disruption of proliferation of mass weapons of mass destruction and its financing.
8. Non-profit organisations	NC	• No outreach activities and review of legal and regulatory framework. • No risk assessment conducted to identify high risk NPO for monitoring purposes. • Absence of measures to ensure effective cooperation, coordination and information sharing among authorities.No requirement to obtain and make publicly available beneficiaries.
9. Financial institution secrecy laws	C	This recommendation is fully met.
10. Customer due diligence	LC	• No specific obligation for FIs to apply CDD measures on cross-border wire transfers equal or above USD 1000. • No specific requirement for FIs to identify and verify legal arrangements in a manner set out in c.10.9. • No specific requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria. • No specific obligations for FIs to ensure that ML/TF risks emanating from where a relationship is opened without full CDD documentation are effectively managed. • No specific obligation for FIs to adopt

		risk management regarding use of business relationship by customer prior to verification. No specific obligation for FIs which are unable to complete CDD process not to pursue if reasonably believe doing so would result in tipping off the customer.
11. Record keeping	C	The Recommendation is fully met.
12. Politically exposed persons	LC	No specific requirement for FIs to determine whether beneficiaries of life insurance policies and their beneficial owners are PEPs.
13. Correspondent banking	C	The Recommendation is fully met.
14. Money or value transfer services	C	The Recommendation is fully met.
15. New technologies	NC	No requirements to comply with obligations relating to ML/TF risk posed by new technologies.
16. Wire transfers	PC	- No specific requirement for ordering FIs to be required to include the account number or a unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary. - No specific requirement for FIs to take reasonable measures which include post-event monitoring or real-time monitoring to identify cross-border wire transfers that lack complete originator information or required beneficiary information. - No specific requirement for beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and appropriate follow-up action. - There are no a specific requirement for

		MVTS providers to comply with the requirements of R.16 in all countries where they operate directly or through agents. No specific obligation for MVTS providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed, file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU.
17. Reliance on third parties	LC	There are no obligations for FIs relying on third parties or introduced business.
18. Internal controls and foreign branches and subsidiaries	C	This Recommendation is fully met.
19. Higher-risk countries	PC	- No specific obligation for FIs to apply counter-measures, both at the instance of the FATF as well as on the country's own initiative - No mechanism in place to advise FIs of concern about weaknesses in the AML/CFT systems of other jurisdictions.
20. Reporting of suspicious transaction	C	This Recommendation is fully met.
21. Tipping-off and confidentiality	C	This Recommendation is fully met.
22. DNFBPs: Customer due diligence	LC	- Deficiencies identified under R.10 significantly apply. - No requirements to deal with ML/TF risks posed by new technologies when introducing products or services.
23. DNFBPs: Other measures	LC	Deficiencies identified in R.19 apply.
24. Transparency and beneficial ownership	LC	ML/TF risks posed by domestic and international business companies have not been

of legal persons		fully identified to enable adequate measures to be taken to protect the companies from exposure to such risks.
25. Transparency and beneficial ownership of legal arrangements	PC	• Trustees for an International Trust are under no obligation to obtain and retain information on the natural persons exercising the ultimate control over the ITSPs themselves. • Where a corporate trustee, beneficiary or settlor is used other than requesting the full name, address and place of incorporation, there is no requirement to obtain and keep up-to-date details of the ultimate natural persons in or behind the corporate trustee, beneficiary or settlor. • There are no measures to ensure that trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above a required threshold
26. Regulation and supervision of financial institutions	PC	• No risk-based approach to supervising and monitoring compliance with AML/CFT obligations by reporting entities. • The frequency and intensity of supervision and monitoring not informed by risk identified • In the absence of ML/TF risk assessments of the regulated sector, no reviews can be made.
27. Powers of supervisors	LC	• Only criminal sanctions can be applied for non-compliance (i.e., no civil and administrative sanctions, and therefore not good enough).
28. Regulation and supervision of DNFBPs	PC	• No risk-based supervision and monitoring to inform frequency and intensity of supervision activities. • No fit and proper requirements performed on lawyers, accountants and real estate agents.

29. Financial intelligence units	PC	• No strategic analysis is performed • Inadequate legal and regulatory means to safeguard autonomy and operational independence of the FIU.
30. Responsibilities of law enforcement and investigative authorities	C	• This Recommendation is fully met.
31. Powers of law enforcement and investigative authorities	C	• This Recommendation is fully met.
32. Cash couriers	LC	• Limited measures in place for providing international cooperation as anticipated in criteria 32.9. •
33. Statistics	PC	• No adequate statistics kept necessary to review and assess the effectiveness of the AML/CFT system.
34. Guidance and feedback	PC	• No adequate feedback and ML/TF patterns and trends to the reporting entities
35. Sanctions	PC	• No administrative and civil sanctions for non-compliance with requirements. • Sanctions not proportionate and dissuasive.
36. International instruments	C	• This recommendation is fully met.
37. Mutual legal assistance	PC	• No enabling provisions for rendering MLA with respect to ML and TF offences. • The scope of MLA under the MACM Act is very limited in a sense that it only covers cooperation in relation to investigation.
38. Mutual legal assistance: freezing and confiscation	NC	• No mechanisms for managing or disposing of properties subjected to confiscation order.

		• No legal basis for sharing of confiscated property with other countries. • No legal basis for rendering MLA with respect to confiscation of property of corresponding value. • Non-conviction based forfeiture is only limited to cash and does not include properties in bank accounts. It is also only limited to properties of value not less than SCR 50, 000. • The scope of confiscation under the domestic laws including AMLA, POCA and Criminal Procedures Act is limited.
39. Extradition	PC	• TF is not an Extraditable offence. • No proper case management system for handling extradition cases.
40. Other forms of international cooperation	LC	• No feedback upon request on usefulness of information by competent authorities other than the FIU, • No specific timelines to respond to a request, , and • inadequate requirement for authorities other than the FIU to seek prior authorisation on the use of information received.

Annex 2

List of Offenses for determining Criminal Conduct as predicate offenses in Seychelles

No.	Offence	Act Section continued	Sentence provided
1	Participation in an organised criminal group and racketeering: Conspiracy to commit felony	Section 381 of the Penal Code	Imprisonment term not exceeding 7 years
2	Terrorism	Section 4 of the Prevention of Terrorism Act, 2004	- Life imprisonment for a terrorist act that cause death - Imprisonment term of between 7 to 30 years for any other terrorist acts
	Terrorism Financing	Sections 5 and 6 of Prevention of Terrorism Act, 2004	Imprisonment term of between 7 to 10 years
3	Trafficking in human beings including migrant smuggling	Section 3 of the Prohibition of Trafficking in Persons Act, 2014	Imprisonment term of not exceeding 14 years or such imprisonment and a fine not exceeding SCR 50, 000
4	Sexual exploitation	Section 6 of the Prohibition of Trafficking in Persons Act, 2014	Imprisonment term of not exceeding 25 years or such imprisonment and a fine not exceeding SCR 800, 000
5	Illicit trafficking in narcotic drugs and psychotropic substances	Section 5 of Misuse of Drugs Act, 2015	- Imprisonment of between 8 to 30 years; or - A fine of SCR 500 000.00
6	Illicit arms trafficking	Section 12 of the Fire Arms Act, 1973	liable to imprisonment for a term not exceeding six months or to a fine not exceeding Rs. 2,000 or to both such imprisonment and fine
7	Illicit trafficking in stolen and other goods	Not covered	
8	Corruption and bribery	Part II of Anti-Corruption Act	- Imprisonment term not exceeding 7 years; or - A fine of SCR 300 000.00
9	Fraud	Section 315-317 of the	Imprisonment term ranging

No.	Offence	Act Section continued	Sentence provided
		Penal Code	between 3 and 10 years of imprisonment
10	Counterfeiting currency	Section 351 of Penal Code	Life imprisonment
11	Counterfeiting and piracy of products	Section 31 of the Copy Rights Act, 2014	Imprisonment for a term not exceeding five years or with a fine not exceeding SCR50,000 or with both such imprisonment and fine.
12	Environmental crimes	Section 29 and Section 30 of Environment Protection Act	- Imprisonment of 6 years and a fine of SCR 250 000.00 - Imprisonment for 1 year and a fine of SCR 50 000.00
13	Murder, grievous bodily injury	Chapter XIX of the Penal Code	Life imprisonment
14	Kidnapping, illegal restraint and hostage-taking	Section 240 of Penal Code	Imprisonment term of ranges between 10 and 18 years
15	Robbery	Section 280 of the Penal Code	Imprisonment term of 18 years
	General Theft	Section 260 of the Penal Code	Imprisonment term of between 7
16	Smuggling (including in relation to customs and excise duties and taxes)	Section 90 of the Penal Code	- A fine not exceeding SCR 1000.00; or - A prison term of six months
17	Tax crimes	Sections 50 and 51 of the Revenue Administration Act, 2010	No less than R 50,000, or to imprisonment for not more than three months, or to both a fine and imprisonment.
18	Extortion	Section 92 of the Penal Code	A prison term of seven years if extortion is committed by a public official
		Section 284 and Section 285 of the Penal Code	A prison term of 3 to 18 years depending on the nature of extortion 20that has been committed
19	General Forgery including forgery of any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of	Section 333 and of Penal Code	Imprisonment term of 3 years

No.	Offence	Act Section continued	Sentence provided
	exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker		
20	Piracy	Section 65(1) of Penal Code	• A prison term of 30 years; or • A fine of SCR 1 million
21	Insider trading and market manipulation	Section 95(1) of Securities Act	• Imprisonment term of 4 years or a fine of USD 200 000.00 or both
	Market manipulation	Section 98 of Securities Act	• Natural person: imprisonment term of 3 years or a fine of USD 100 000.00 or both • Legal Person: A fine of USD 200 000.00.