



Anti-money laundering  
and counter-terrorist  
financing measures

# Republic of Haiti

Mutual Evaluation Report

July 2019



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## EXECUTIVE SUMMARY

1. This report provides a summary of the Anti-Money Laundering and Counter- Financing of Terrorism (AML/CFT) measures in place in the Republic of Haiti (hereinafter referred to as “Haiti”) as at the date of the on-site visit from June 25, 2018 to July 6, 2018. It analyses the level of compliance with the FATF 40 Recommendations, the level of effectiveness of the AML/CFT system and provides recommendations on how the system could be strengthened.

### *Key Findings*

- i. Haiti has not conducted any ML/TF risk assessment that is geared towards identifying and understanding its ML/TF risks. As a result of the absence of any ML/TF risk assessment, the jurisdiction’s authorities have not taken any measures to mitigate its ML/TF risks. Nevertheless, some competent authorities, primarily Law Enforcement Authorities (LEAs) and some private sector officials (mainly large Financial Institutions (FIs), primarily banks with an international nexus) based on their operations and local knowledge have some level of awareness of the threats and vulnerabilities that affect the country. The authorities communicated their intention to conduct a National Risk Assessment (NRA) in the future with assistance from the World Bank to assess its ML/TF risk. However, no timeframe for actual commencement and conclusion of the exercise was provided.
- ii. Haiti’s anti- money laundering committee (CNLBA) was established by law in 2001 and is responsible for cooperation and coordination at the policy level. However, there is no evidence of any output of considerable impact from the CNLBA since its inception, beyond discussions taken in response to Haiti’s 3<sup>rd</sup> Round DAR, CFATF follow-up process. No documented policies or measures have been developed and implemented as a result of the work of the CNLBA. Moreover, several key competent authorities, such as, LEAs and the Government Commissioners also known as the Public Prosecutors Office (PPO) are not a part of this committee, which represents a gap in the knowledge and expertise that these competent authorities can bring to the CNLBA. There is no committee that is responsible for cooperation and coordination at the operational level, nevertheless there are good examples of operational cooperation and coordination in some instances between some law enforcement agencies and those responsible for confiscation and management of assets
- iii. Competent authorities are unaware of the value and importance of international cooperation to conduct their functions and are therefore not requesting or spontaneously sharing information from/with their foreign counterparts on issues relative to the AML/CFT framework, including, but not limited to investigations into ML/TF and the identification, tracing and recovering of the proceeds of crime. Some authorities interviewed also have very limited knowledge of issues of extradition and the process.
- iv. There is no provision mandating that BO information be kept. However, some basic and BO information are kept with the company registry at the Ministry of Commerce and Industry

(MCI) and are publicly available, although not always accessible in timely manner on most occasions. Moreover, basic and BO information are not verified and are not updated in a timely manner. Therefore, the possibility exists that basic and BO information held by the MCI are not accurate.

- v. The Central Financial Intelligence Unit (UCREF) has demonstrated it is conducting its functions, albeit to a limited extent and not consistent with the risk profile of Haiti. Although UCREF has access to several databases to conduct its core functions (based on the provision in law), in practice key databases such as LEAs, intelligence agencies and DNFBDs that contain vital information are not being accessed. The absence of information from these databases due to the lack of access represents a shortcoming in UCREF's operational analysis and the completeness of the dossiers it disseminates to the PPO. UCREF also lacks the necessary resources (human and IT) and its current staff lacks the necessary training to effectively conduct their functions. The lack of resources and trainings have also negatively impacted UCREF's operational and strategic analysis capabilities.
- vi. The Bureau of Economic Affairs (BAFE), Anti-corruption Unit (ULCC) and UCREF have demonstrated that they are accessing and utilising financial intelligence to conduct their functions. However, this is being done to a negligible extent and is not commensurate with the perceived ML/TF risk profile of the country, especially in the case of the ULCC who is tasked with the investigation of corruption offences which is deemed as one of highest risk of ML. Further, competent authorities, including the LEAs and Prosecutors have received very limited to no training relative to the use of financial intelligence and the application of same to their functions.
- vii. Haiti has not recorded any successful prosecutions and convictions for ML offences for the past five years (2014-2018). Further, ML cases are not properly identified, investigated and prosecuted in a manner that is commensurate with the perceived ML risk profile of the Haiti, as LEAs and investigative authorities have developed a reactive (awaiting a complaint) rather than a proactive (intelligence- driven approach) or a combination of both to identify and investigate potential ML activities. Moreover, deficiencies, such as weaknesses in legislation, (including lack of investigative tools (see R.31), an outdated criminal procedure code (CPC)), lack of resources and training have all negatively impacted law enforcement, investigative, prosecutorial and judicial authorities' efforts to properly investigate, prosecute and preside over ML cases to generate acceptable levels of outcomes.
- viii. The jurisdiction does not have a confiscation policy outside of the legislation that is in place. Therefore, confiscation is not pursued as a policy objective. Nevertheless, some competent authorities, particularly BAFE, Bureau of Special Funds Administration Office (BAFOS), Control of Narcotics Crime Brigade (BLTS) and the PPO have demonstrated a significant level of awareness of the need to trace, identify and confiscate the proceeds of crime, specifically those resulting from drug trafficking offences. Confiscation results thus far are largely based on Haitian nationals convicted in the USA and had assets in Haiti. The confiscation results obtained thus far is not commensurate with the high level associated

predicate offences that have the propensity to generate a significant amount of criminal proceeds such as corruption.

- ix. The jurisdiction has not conducted any assessment of terrorist financing (TF). Further, there is no TF strategy, neither are there any TF disruption measures in place. Moreover, TF does not appear to be the focus of competent authorities despite the absence of any assessment of this activity. The knowledge of some competent authorities (including those that have critical functions under the Executive Order) and private sector officials regarding the implementation of the measures in the Executive Order is lacking. Further, there is no evidence that competent authorities are disseminating the UN Sanctions lists to FIs and DNFBPs and ensuring that these agencies are cross-checking their databases to identify terrorist assets and applying freezing mechanism without delay, if identified.
- x. Haiti has large Non-profit Organisation (NPO) sector consisting of Non- Government Organisations (NGOs) and associations some of which meets the criteria of the FATF definition of NPOs based on their activities. However, Haiti has not identified the number of NPOs that falls within this category. Haiti has implemented some good measures to address the governance NPOs including to address issues of accountability and transparency of NPOs. However, there are very limited measures to ensure that NPOs are not subject to abuse by terrorist, terrorist financiers and terrorist organisations and no guidance and outreach provided. Further, the jurisdiction has not conducted any risk assessment of the sub-set of NPOs with the intention of identifying those that are vulnerable.
- xi. The Banque Republic of Haiti (BRH) which is the Central Bank of Haiti and is responsible for supervision, primarily focuses on conducting prudential supervision of some FIs, particularly for banks and savings and loans (CECs) with AML/CFT supervision and inspection appearing to be secondary or focused. AML/CFT supervision is not risk-based.
- xii. Not all FIs understand their ML risk or have implemented risk mitigation measures. However, larger banks, specifically those that are part of financial groups with international operations have developed an understanding of ML risk at an institutional level and have implemented some measures to assess, identify and mitigate those risks. Banks in general have established compliance departments while smaller FI have compliance officers as part of their internal processes and procedures that are responsible for addressing AML/CFT measures, however, this does not apply to the entire financial sector, specifically those that are not supervised. The TF risk among FIs on other hand is unknown.
- xiii. The DNFBPs sector, by virtue of a lack of regulation and supervision does not have in place the requisite preventive measures (see R.22/R.23) that would enable them to prevent and detect ML/TF. Further, DNFBPs only have a rudimentary understanding of their ML/TF risks and have not applied any measures to mitigate such risks. There is no AML/CFT supervision of the DNFBP sector.
- xiv. Although there is a legal obligation to file STR/ Currency Transactions Reports (CTRs), only a small percentage of FIs namely banks and funds transfer companies have complied with the

obligation. Taking into consideration the absence of any risk mitigation measures, the perceived risks of ML/TF to the jurisdiction and materiality, the amount of reports filed by banks and FIs in general is minimal. Moreover, the quality of reports from the institutions filing STRs/CTRs is poor in many instances and lack critical information such as reason for suspicion. The DNFBPs sector has not reported any STRs/CTRs to the UCREF.

### ***Risks and General Situation***

2. Haiti is located in the Caribbean Sea and shares the island of Hispaniola with the Dominican Republic. Haiti is considered to be one of the most impoverished nations within the Americas. The country's GDP as at 2017 stood at approximately US\$8.408 billion and grew by around one percent from that of 2016. Despite the growth in GDP, government forecast as at 2018, shows a significant fiscal deficit. Haiti relies significantly on foreign aid and remittances for contribution to its economy, with the World Bank estimating that approximately 29.4 % of the country's GDP as of 2016 derived from foreign remittances.
3. The country's geographical location, low capacity to effectively tackle crimes along with the impact of natural disasters makes it a prime destination for criminals including drug traffickers, human traffickers and money launderers. Haiti is not considered to be a financial centre and most of the products offered by FIs are domestically based. However, due to the country's proximity to the United States of America (USA), direct flights to Europe and the USA, porous borders and limited resources, criminals, including through the use of Haitian gangs have capitalised on using the country for their illicit operations including as a transshipment point for narcotics trafficking and other criminal activities including the smuggling of illicit cash.
4. Human traffickers and migrant smugglers have also exploited the vulnerability of the Haitian people for financial gains, thereby, making this a lucrative criminal enterprise in Haiti and a risk for ML. Haiti continues to be hampered by the effects of corruption, despite the efforts being made by the authorities to address this issue. Competent authorities, including the government have realised that corruption in Haiti has the propensity to generate a significant amount of criminal proceeds, and are taking measures, including the establishment of an anti-corruption agency (ULCC) which has resulted in Haiti moving up the Corruption Perception Index (CPI).
5. Insurance Companies and microfinance institutions are unsupervised for AML/CFT compliance and the DNFBPs sector remains completely devoid of supervision and regulations, thereby making them susceptible for ML/TF. Sectors such as real estate and casinos are considered by the authorities to be vulnerable to ML and TF.
6. Although Haiti has not conducted any assessment of TF within the country, factors such as; unregulated and unsupervised FIs and DNFBPs, corruption, civil uprising and lack of resources to fight and disrupt criminal activities including TF can all contribute to terrorists, terrorist sympathisers and terrorist organisations utilising the jurisdiction to finance terrorism.

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

7. Haiti has enacted and amended several of its AML/CFT laws and measures aimed at remedying the deficiencies that were identified in the 3<sup>rd</sup> Round Mutual Evaluation process. Despite the progress, significant deficiencies identified in the 3<sup>rd</sup> round mutual evaluation process remain outstanding and were considered during this report. The jurisdiction's AML/CFT framework remains inadequate and requires much work to bring it to a level of compliance that is acceptable with the global standards despite the efforts made the authorities.
8. As a result of the deficiencies identified in technical compliance, coupled with factors such as lack of resources, legislative weakness, and lack of training, competent authorities are not sufficiently achieving the high-level objectives; whereby the financial system and the broader economy are protected from the threats of ML/TF. Further, the lack of identification and assessment of ML/TF risks has a cascading effect on the AML/CFT system and the level at which acceptable levels of outcomes are achieved. Further, LEAs and prosecutorial authorities are not conducting investigations and prosecuting ML/TF cases that are commensurate with the perceived ML/TF risks, neither are confiscation results commensurate with perceived ML/TF risks. Moreover, there is no risk-based supervision of FIs and DNFBBs. The lack of effectiveness in the regime has seen Haiti achieving a low level of effectiveness in all eleven (11) Immediate Outcomes (IOs).

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

9. Haiti has not conducted any form of ML/TF risk assessment. However, the authorities communicated and expressed their commitment to the assessment team their intention of conducting an NRA under the authority of the Ministry of Justice and Public Security (MJPS), to be coordinated by the CNLBA, with the assistance of the World Bank. The authorities have provided no timelines with respect to the commencement and completion of the NRA. Nevertheless, the assessment team was informed that correspondence has been sent to relevant public and private sector officials to be members of the different working groups of the NRA team. However, no evidence of such was provided by the jurisdiction. Despite the absence of a formalised ML/TF risk assessment, some competent authorities, primarily LEAs and some private sector officials, particularly larger banks with an international nexus are aware of some of the threats and vulnerabilities affecting the jurisdiction, based on their experience and knowledge gained from their work operations. In the absence of any ML/TF risk assessment, no policies or risk mitigating measures have been implemented by the authorities. Nevertheless, some of FIs, specifically the larger banks, including those that are a part of a financial group have implemented some measures based on their knowledge to mitigate risk. Based on the perceived ML/TF some FIs are engaged in the practice of de-risking, whereby customers that are considered to be vulnerable to ML/TF (for example, casinos, petrol service stations and other cash intensive businesses) are seeing their relationships with FIs being terminated or they are not being onboarded as customers. The institutions that are engaged in this practice view de-risking as a measure of curbing the ML/TF risk to their respective institution.

10. The CNLBA was created in 2001 and is responsible for cooperation and coordination at the policy level. However, some key competent authorities such as LEAs and the PPO are not members of this committee despite the critical roles they play in the AML/CFT system and their basic understanding of the ML/TF risks. The work of the CNLBA thus far based on the minutes of the meetings reviewed by the assessment team has primarily focused on discussions on Haiti's 3<sup>rd</sup> DAR follow-up report and formulating measures to address same. Though some coordination on this front seems to have influenced policy development to address some deficiencies from the DAR, the committee did not demonstrate a cooperative and coordinated approach to developing national AML/CFT policies and activities to combat ML/TF. For example, little to no work has been conducted by the CNLBA to identify ML/TF risks, beyond a one-line summary in a record of decisions, pointing to the fact that the CNLBA would consider working towards an NRA in its 2017/18 work plan. On the operational level, the assessment team was informed of a taskforce comprising mainly of LEAs. However, the authorities did not provide any evidence of the taskforce's existence or its operational output thus far. In the absence of any ML/TF risk assessment, the jurisdiction does not have any formal policies that incorporate ML/TF.

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

11. UCREF, the Haitian FIU has demonstrated that it is receiving and conducting analysis of STRs received from FIs and has disseminated the results of its operational analysis and investigations in the form of dossiers to the PPO when it obtained clues/information of ML, albeit this is not commensurate with the perceived ML/TF risk profile of the jurisdiction. UCREF has a close working relationship with other competent authorities, specifically those that are involved in the judicial investigations process for ML to obtain evidence such as Bureau of Economic and Financial Crimes (BAFE). This relationship has resulted in them placing significant reliance on UCREF to access financial intelligence and other relevant information on their behalf from FIs, primarily banks. Although UCREF by virtue of provisions within the law has access to a variety of databases, several of these databases, for example DNFBBPs, are not being accessed by the Unit to conduct its functions. Therefore, the analytical product disseminated by the Unit in some instances is incomplete or inadequate with information that can assist LEAs, investigative and prosecutorial authorities missing. The reasons for not accessing these databases are unknown, however the assessment team believes that this is due to lack of supervision and regulation of some sectors, therefore resulting in no safeguards and measures in place to comply with AML/CFT requirements. In the absence of any demonstrable outcomes, there is no indication that the information disseminated by UCREF supports the operational needs of competent authorities. Only BAFE, the Anti-Corruption Unit (ULCC) and UCREF have demonstrated that they are accessing and utilising financial intelligence and relevant information to conduct their functions. However, this being done to a negligible extent and is not commensurate with the ML risk that is associated with the scope of their work, for example corruption that is rated high risk. Several challenges continue to impact UCREF's operations, including, budgetary constraints, lack of resources (human and IT), lack of training for staff, lack of STRs filing by some reporting entities (especially those that are unsupervised) and lack of quality STRs/CTRs.

12. Several LEAs, investigative authorities and prosecutorial authorities, such as, the BAFE, Public Prosecutors Office (PPO) and investigating magistrates are charged with the responsibility of ensuring that ML is properly identified, investigated and prosecuted. However, there is no indication that ML is prioritised by competent authorities, including by criminal justice officials. Further, weaknesses in legislation (see R.31), including lack of investigative powers of LEAs and investigative authorities have a negative effect on the manner in which LEAs and investigative authorities conduct their functions. At the completion of the on-site visit, competent authorities had not recorded any successful prosecutions or convictions for ML offences for the past four years (2014-2018), despite the perceived ML risks in the jurisdiction and there is no evidence of other criminal justice measures being employed when convictions cannot be obtained. Additionally, challenges such as lack of resources, lack of training, legislative weakness and an outdated criminal procedure code<sup>1</sup> continue to affect the performance of competent authorities to achieve desired outcomes.
13. The jurisdiction does not have a confiscation policy to guide confiscation and reliance is only place on the legal mechanism. Nevertheless, some of the competent authorities have demonstrated a significant level of awareness of the need to identify, trace and confiscate the proceeds of crime. Confiscation results are largely based on convictions of Haitian nationals in the USA for predicate offences, mainly drug trafficking who owned properties in Haiti. The number of confiscations, specifically cross-border currency and bearers negotiable instruments (BNIs) are not reflective of the country's perceived ML/TF risk profile. Although the jurisdiction has a robust asset management system in place that is being done through the Bureau for the Administration of Special Funds (BAFOS), this entity does not manage all assets. Assets that are not under the management of BAFOS are subject to severe depreciation. as they are not properly managed to preserve their values. Moreover, challenges continue to affect BAFOS in its ability to dispose of assets that were recovered due to obstacles in the realisation process. This applies primarily to fixed assets such as real estate.

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

14. From the legislative standpoint, Haiti has demonstrated that it is committed to the fight against TF, although some weakness exists within the law. Haiti has not conducted any TF assessment. There were no investigations of TF activities at the end of the on-site visit. However, the assessment team is cognisant of the fact that this does not mean TF activities do not exist within the jurisdiction. Despite some aspect of the legislative framework being in place, throughout the evaluation, the assessment team observed that the focus of competent authorities at the operational level does not entail TF. The lack of focus is seemingly due to the lack of training received by competent authorities and reporting entities in the identification of TF offences or identification of TF through STRs. Haiti and its nationals are not immune to TF activities, as evident in 2009 when a Haitian

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<sup>1</sup> The criminal procedure code dates to around the 18<sup>th</sup> century and does not classify all offences, neither does it provide a clear roadmap or guidance to deal with cases such as ML/TF.

national and five (5) American nationals who were convicted in the USA for rendering support to Al-Qaeda and subsequently deported to Haiti in 2014<sup>2</sup>. There is no specialised department within Haiti that is mandated to investigate TF, neither is there any counter-terrorism strategy or mechanism.

15. The Executive Branch of the Haitian Government adopted the Executive Order of August 22<sup>nd</sup>, 2016 to address TFS-TF. This is a testimony of its desire to freeze and restraint the assets of terrorist and terrorist organisation. Nevertheless, several deficiencies exist within the said Executive Order and have a negative impact on implementation and the effectiveness of the system (*See R.6*). The assessment team found that some competent authorities have little to no knowledge regarding the implementation of the TFS-TF as is required by the Executive Order based on their inability to provide information about the implementation measures that are contained in the Executive Order. Although some competent authorities indicated that the UN sanctions lists were disseminated to all FIs, no evidence was presented to this effect and therefore the information cannot be verified. Nevertheless, some FIs, specifically larger banks have access to the UN sanctions list through commercial databases that they have acquired and have indicated that they cross-checked the list with the customer database to identify whether they are holding any terrorist property. However, no such property has been found. Supervisors and other competent authorities are not conducting checks during their inspections to ensure that FIs are conducting their functions in cross checking the list against their database and reporting to competent authorities whether or not they have terrorist property in their possession. Although, the requirements in the Executive Order make provisions for implementation of TFS-TF without delay, the implemented system or lack thereof, does not allow implementation and freezing without delay.
16. Haiti has a vast network of NPOs that are engaged in different aspects in the development of Haiti, some of which meets the criteria of the FATF definition of NPOs based on their activities. However, the authorities have not identified the number of NPOs that fall within the definition specified by the FATF, which are likely to be abused for TF purposes (*see paragraph 1- Interpretive Note to Recommendation 8- FATF Recommendations- International Standards on combating ML, TF and PF*). Competent authorities have also not conducted any assessment to identify the threats posed by terrorists and terrorist organisations to NPOs. In the absence of any risk assessment, no mitigating measures have been implemented to prevent terrorists, terrorist organisations and terrorist financiers from raising money and using funds and from abusing NPOs.

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

17. FIs, specifically larger banks with some international nexus, such as being a member of a financial group have a basic understanding of ML risk at the institutional level, though the same cannot be stated for TF. These larger FIs have implemented some processes and procedures to identify, assess and document the risks associated with their customers, products, services and geographical location. However, the same cannot be said for all institutions classified as FIs and the DNFBPs.

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<sup>2</sup> The Miami Herald- Retrieved from: <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article2235644.html>

Some FIs have categorised their customers, based on perceived risk (low, medium and high) and have applied some CDD measures that are commensurate with those ML risk. However, CDD measures are generally hampered by lack of identification and the proof of address of some of their clients. Despite the identification of certain ML risk, not all FIs are implementing mitigating measures that are commensurate with those risks.

18. Some FIs, particularly banks and funds transfer companies are reporting STRs to UCREF though minimal and not in keeping with the perceived M/TF risks. This minimal reporting can be attributed to the lack of feedback and guidance provided by UCREF and the supervisors. Some FIs have implemented some preventive measures. For example, larger banks that have an international nexus have implemented some internal controls and procedures that are approved by their respective board of directors. Some FIs, specifically banks have also implemented compliance units and in some cases the smaller FIs a single compliance officer that are tasked with specific AML/CFT responsibilities and have demonstrated some willingness to comply with AML/CFT measures.
19. The DNFBPs sector by virtue of being unsupervised and unregulated have implemented little to no preventive measures.

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

20. The BRH is the only operational AML/CFT supervisory body within the jurisdiction. The BRH is responsible for the licensing and supervision of FIs, except for insurance, microfinance companies and pension funds. The BRH in its licensing of FIs conduct fit and proper assessments which includes criminal checks on the shareholders and owners of the FIs. Competent authorities have indicated that a supervisory authority was established in 2012 within the Ministry of Finance with the intention of supervising the insurance sector. However, this unit is not operational, and the insurance sector still remains unsupervised.
21. The BRH has not conducted any ML/TF risk assessment of the sectors under its supervision. Further, its understanding of risk by FIs is seemingly limited to businesses that transact business with cash intensive customers. Based on the absence of any risk assessment, supervisors are not conducting any type of risk-based supervision. Primary focus is given to prudential supervision, with AML/CFT being secondary in nature. The BRH recognised the need for a risk-based approach to AML/CFT supervision and is considering requesting technical assistance from the IMF in an effort to strengthen its capacity, with a view to moving in this direction.
22. The BRH is equipped with the sanctioning powers but has not applied any sanctions to the breaches identified following inspection. Further, little is done to follow up on the AML/CFT deficiencies beyond recommending action plans as part of the examination report. The BRH as a supervisor has also issued guidance and circulars to some of the entities it supervises as part of its mandate and has provided some training, though limited to some of the entities it supervises. The BRH lacks the relevant training and resources for it to properly conduct its functions.
23. The DNFBPs sector is not supervised for AML/CFT purposes by a bona fide competent authority for AML/CFT purposes and technical deficiencies have a negative impact on the effectiveness of

the supervision of this sector, as several preventive and supervisory measures are missing and therefore cannot be implemented (*see R.28*).

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

24. The law governing banks and other FIs makes provision for FIs to act as fiduciary companies and manage assets, and therefore allows for the creation of trusts. The BRH is responsible for the granting of licenses for Trust to operate in the jurisdiction. However, the agency had not granted no such license as of the conclusion of the on-site visit. The assessment team based on their findings during the on-site is nevertheless concerned with some of the activities and arrangements that are being undertaken by some lawyers in the jurisdiction including the management of assets on behalf of their clients, which appear to be trust-like arrangements. As a result of lawyers being unsupervised and unregulated for AML/CFT purposes, the extent of these activities is unknown but concerns regarding these types of activities were also expressed by some banks, especially in cases where CDD is required. Haiti enacted legislation, two months prior to the on-site visit to address some aspects of the requirements of legal persons. Nevertheless, significant deficiencies still exist within the legal framework and have a negative impact on the effectiveness of the system. Further, the measures contained within the enacted legislation have not been implemented due to resource constraint and the novelty of the legislation. There is no provision for the maintenance of BO information. However, some BO information is maintained by the MCI which is obtained when companies are registered. Basic and BO information are available to the public, upon request to the MCI. Nevertheless, the information is not always available in a timely manner, as the database of the MCI is not computerised, therefore records not kept electronically. The information held at the MCI is largely kept in paper format and requires time to physically retrieve in some instances. Further, as a result of the earthquake in 2010, some basic and BO information were lost or destroyed and were never replaced. Basic and BO information in some instances may not be accurate as MCI officials are placing significant reliance on company formation agents, such as lawyers and notaries to conduct the necessary checks, including verifications on the directors, shareholders and owners of companies prior to submission of the documents. However, this is not being done by these agents. Legal persons also are not given any specific timelines to notify the MCI about any changes to their ownership, directors and shareholders, therefore, some basic and BO information in the custody of the MCI are not up-to-date. Bearer shares and the use of nominee directors and nominee shareholders are permitted in Haiti. Bearer shares are predominantly used by companies in Haiti to raise share capital. However, there are no measures in place to ensure that they are not misused for ML/TF.

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

25. Haiti has some aspects of a legal framework to facilitate the sharing of information. However, several weaknesses exist within the laws and measures that represents the underpinning of an effective system (*see R. 36- 40*) and have a negative impact on the effectiveness of the system. The jurisdiction has demonstrated that a system exists for the processing of MLAs and the transfer of persons to be prosecuted for various crimes including ML. Haitian authorities, specifically LEAs have demonstrated that there exist a good international cooperation relationship with the USA which has resulted in the transferring of several nationals of Haiti to the USA for prosecution,

primarily for drug trafficking offences. Although, Haitian authorities are not permitted to extradite their own nationals, competent authorities at the request of the foreign State can prosecute its own nationals upon the submission of the information. There is no case management system for MLAs and extradition, neither are there any mechanisms in place to ensure the maintenance of confidentiality when information is exchanged between the competent authorities and other countries. However, the assessment team found that there is no urgency for a case management system due to the limited requests that are processed by Haiti. Despite the perceived ML/TF risks including the cross-border movement of cash, Haitian officials have not requested assistance from their foreign counterparts to assist in their functions, including, conduct investigations and prosecutions into ML/TF or to identify, trace and confiscate the proceeds of crime. The jurisdiction has received very limited MLA and extradition requests, some of which were processed with most still outstanding. UCREF has signed MOUs with St. Maarten and Dominican Republic to facilitate the sharing of information. The agency should also be commended for being a member of the Asset Recovery Inter-Agency Network of the Caribbean (ARIN-CARIB). However, neither UCREF or any of the other competent authorities are using other forms of international cooperation and networks including Interpol and ARIN-CARIB to share information relative to ML/TF with the foreign counterparts.

### ***Priority Actions***

- i. Haitian authorities should make a consolidated effort to urgently conduct their ML/TF risks assessment exercise, with the specific intention of identifying, assessing, understanding their ML/TF risks, whilst ensuring that measures are implemented to mitigate such risks. Further, the authorities should ensure that any ML/TF risks assessment conducted should involve both private and public sector officials and that the ensuing policies and strategies that are developed, prioritised and implemented are based on the findings of the ML/TF risks assessment. Having completed the ML/TF risk assessment, Haitian officials should also ensure that the findings of the risk assessment are communicated and measures including the allocation of resources are taken to mitigate the identified ML/TF risks.
- ii. The CNLBA should meet regularly and ensure that its work contributes to clear national AML/CFT policies and coordination, so as to identify and combat ML/TF risks holistically throughout the regime. Further, the authorities should establish a body to facilitate cooperation and coordination at the operational level. Both entities should ensure that they are generating tangible outcomes that are beneficial to the country's AML/CFT framework.
- iii. UCREF in an effort to provide competent authorities, primarily the PPO with detailed dossiers that incorporate more broad-based and detailed levels of financial intelligence and relevant information to support their operational needs should access all the relevant databases, including, LEAs, DNFBPs, other FIs (besides banks) and intelligence databases that contained information that are useful to its functions. The goal of its analysis should be, to be as thorough as possible. Further, UCREF should be provided with the necessary resources, including human and IT and staff should have the requisite training to properly conduct their functions.

- iv. Competent authorities should make a more consolidated effort to utilise and incorporate the use of financial intelligence in their operations including the investigation of associated predicate offences, primarily corruption related offences and others that are perceived to be high risk for ML. Further, training should be provided to competent authorities on the importance of financial intelligence and how to effectively use financial intelligence in their functions.
- v. The Haitian authorities should review relevant laws and measures that impede LEAs', investigative authorities' and the judiciary's abilities to effectively conduct ML investigations, prosecutions and to obtain possible convictions in a timely manner. This includes addressing the deficiencies identified in the powers given to LEAs and investigative authorities, criminalising all aspects of ML, once same is not in contravention with the Haitian Constitution and remedying the deficiencies identified in the criminal procedure code (See R.3,30 and 31).
- vi. LEAs and investigative authorities should adopt a more proactive approach to fighting ML, including utilising a more intelligence driven approach in ensuring that potential ML cases are properly identified and investigated in a manner which is commensurate with the ML risk profile of the jurisdiction. Further, LEAs, investigative authorities, the PPO and the judiciary should be provided with adequate resources and training to conduct their functions including ensuring that ML cases are prioritised.
- vii. The different competent authorities such as LEAs, PPO, UCREF and BAFOS that are engaged in the recovery of criminal proceeds should develop a confiscation policy that should be communicated to the relevant agencies involved in the process in an effort to make them aware of the importance of confiscation. Over time such policy will lead to a culture of confiscation in the jurisdiction. Competent authorities should also ensure that confiscation results are commensurate with the risk profile of the country by targeting those offences that are classified as high risk for ML. Further, the competent authorities should be provided with the necessary resources and training in an effort to ensure that they are effectively identifying, tracing and confiscating the proceeds of crime. The allocation of resources, including financial should also be extended to BAFOS to ensure that this agency is properly equipped to conduct its functions that include the management and disposal of assets seized and confiscated.
- viii. Competent authorities should take urgent steps to ensure that the UN Sanctions Lists are disseminated to all natural and legal persons. They should also ensure that they are applying the relevant measures that are called for by the UNSC, the FATF Standards and the Executive Order. This includes ensuring that the requirement for these entities to cross-check their databases against the relevant sanctions list is being done; and where assets are identified, that freezing is done without delay.
- ix. Haitian authorities should first identify the sub-set of NPOs that meets the definition as outlined by the FATF and conduct an assessment of same to ascertain the vulnerabilities that are associated with these NPOs with the intention of conducting a risk-based supervision. Further, the authorities should provide guidance, outreach and deepen awareness among the NPOs about the potential for TF abuse.
- x. Haitian authorities should ensure that the deficiencies identified in R. 9-23 are addressed as a matter of priority, to eliminate the technical compliance and regulatory gaps that directly

impeded the jurisdiction’s efforts in attaining effectiveness in the implementation of AML/CFT preventive measures across all reporting sectors.

- xi. FIs and DNFBPs should ensure that they assess and identify their ML/TF risks and apply the appropriate risk mitigation measures. Further, competent authorities/supervisors should ensure that all FIs have the relevant internal controls and procedures to ensure compliance with AML/CFT requirements and to mitigate risk of ML/TF.
- xii. Competent authorities including UCREF, BRH and other supervisors should provide guidance and feedback on a continuous basis to FIs and DNFBPs on the identification and reporting of STRs. Competent authorities, specifically the supervisors should ensure that continuous training is provided internally by the FIs and DNFBPs to their staff, especially front-line staff relative to the identification of suspicious transactions. The feedback provided by UCREF along with the guidance provided are intended to increase and improve the amount and quality of STRs/CTRs filed by reporting entities.
- xiii. Supervisors should be provided with the necessary resources and training to conduct their AML/CFT supervisory functions. Further, AML/CFT supervision should be more prioritised rather than being secondary and should be done using a risk-based approach.
- xiv. Competent authorities should ensure that there are measures in place to ensure that basic and BO information obtained are accurate. The jurisdiction should also put measures in place to ensure that maintenance of BO information is mandatory. The necessary measures should also be put in place to ensure that bearer shares, nominee shareholders and directors are not misused for ML.

### ***Effectiveness & Technical Compliance Ratings***

*Effectiveness Ratings (High, Substantial, Moderate, Low)*

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

*Technical Compliance Ratings (C- Compliant, LC- Largely Compliant, PC- Partially Compliant, NC- Non-Compliant)*

AML/CFT Policies and coordination

<b>R.1</b>	<b>R.2</b>
NC	PC

Money laundering and confiscation

<b>R.3</b>	<b>R.4</b>
PC	PC

Terrorist financing and financing of proliferation

<b>R.5</b>	<b>R.6</b>	<b>R.7</b>	<b>R.8</b>
PC	NC	NC	NC

Preventive measures

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

Transparency and beneficial ownership of legal persons and arrangements

<b>R.24</b>	<b>R.25</b>
NC	NC

Powers and responsibilities of competent authorities and other institutional measures

<b>R.26</b>	<b>R.27</b>	<b>R.28</b>	<b>R.29</b>	<b>R.30</b>	<b>R.31</b>
NC	PC	NC	PC	PC	NC
<b>R.32</b>	<b>R.33</b>	<b>R.34</b>	<b>R.35</b>		
NC	NC	PC	PC		

International cooperation

<b>R.36</b>	<b>R.37</b>	<b>R.38</b>	<b>R.39</b>	<b>R.40</b>
LC	PC	PC	PC	NC

## MUTUAL EVALUATION REPORT

### *Preface*

1. This report summarises the AML/CFT measures in place in the Republic of Haiti (hereinafter referred to as “Haiti”) as at the date of the assessment team’s on-site visit from June 25, 2018 to July 6, 2018. It analyses the 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.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site assessment from June 25, 2018 to July 6, 2018.
3. The evaluation was conducted by an assessment team consisting of:
  - Mr. Romain Ouattara, Legal Expert (Republic of Côte d'Ivoire),
  - Mr. Marc Richard, Financial Expert (Canada);
  - Mr. Rafael Guisasola, Financial Expert (Venezuela);
  - Mr. Christophe Vidal, Law Enforcement Expert (France);
  - Mr. Pedro Harry, Law Enforcement Advisor, Mission Leader (CFATF Secretariat); and
  - Mr. Roger Hernandez, Financial Advisor, Co-Mission Leader (CFATF Secretariat); and
  - The report was reviewed by Mrs. Nathalie Dusuazay, St. Lucia (Financial Expert), Mrs. Fadila Poese, Curacao (Legal Expert) with support from the FATF Secretariat.

4. Haiti previously underwent a FATF Mutual Evaluation in 2008, conducted by the World Bank in accordance with the 2004 FATF Methodology. The 2008 evaluation and follow-up reports to 2017 have been published and are available at [www.cfatf-gafic.org](http://www.cfatf-gafic.org).
5. That Mutual Evaluation concluded that the country was compliant with 1 Recommendation; largely compliant with 6; partially compliant with 11; non-compliant with 30 and; 1 recommendation was rated as not-applicable. Haiti was rated largely compliant with 2 of the 16 core and key Recommendations.
6. Haiti exited the follow-up process in November 2017 at the CFATF Plenary on the basis that the outstanding recommended actions would be addressed during the 4th Round Mutual Evaluation in the second half of 2018. As such, in accordance with procedures, Haiti's outstanding issues of the 3rd round follow-up process were incorporated in the 4th Round Mutual Evaluation report. Key recommendations 35, R.40 and SR.1 were not considered equivalent to rating of LC during the follow up process.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

7. Haiti is located on the island of Hispaniola, in the Caribbean Sea and shares a land border with the Dominican Republic. Haiti covers 27,750 sq. kms, making it the 149<sup>th</sup> largest nation in the world<sup>3</sup>. As of 2018, Haiti's population was approximately 11.12 million people<sup>4</sup>. The official languages are French and Creole, and the official currency is the Haitian Gourde (US\$1 equivalent to G67.87 (as of August 6, 2018/ fluctuates daily)<sup>5</sup>.
8. Haiti is the second country to gain its independence in the Western Hemisphere and has a constitutional democratic system of governance. Haiti attained adult suffrage in 1950, nevertheless, previous elections were marred by irregularity and violence, thereby creating some level of instability in the country's political landscape and governance. The three branches of government are: (i) the Executive, (ii) the Legislature and (iii) the Judiciary. The President and the Prime Minister are the heads of the Executive branch, with the latter being the head of the Cabinet of Ministers. The President is elected on a five-year term, via direct vote from nationals within Haiti. The President appoints the Prime Minister from among the members of the majority party. Haiti has a bi-cameral parliamentary system that consists of a Senate and Chamber of Deputies. The Senate and the Chamber of Deputies elected on six year and four-year terms respectively, are primarily responsible for enacting legislation.
9. Haiti continues to face ongoing challenges to generate growth and remains one of the most impoverished countries in the Americas region. As of April 2018, the government's forecast shows a significant fiscal deficit for the year, with economic growth slowing to one percent<sup>6</sup>. The table below represents Haiti's GDP during the period 2014-2017.

*Table 1- Haiti GDP- Per Capita*

Year	United States dollars
2014	830.114
2015	814.546
2016	734.803
2017	765.684

*Source: World Bank<sup>7</sup>*

<sup>3</sup> World Atlas: Retrieved from: [www.worldatlas.com/na/ht/where-is-haiti.html](http://www.worldatlas.com/na/ht/where-is-haiti.html)

<sup>4</sup> World Population: Retrieved from: <http://worldpopulationreview.com/countries/haiti-population/>

<sup>5</sup> The Central Bank of Haiti: Retrieved from: <http://www.brh.net/>

<sup>6</sup> The World Bank: Retrieved from: <http://www.worldbank.org/en/country/haiti/overview>

<sup>7</sup> The World Bank: Retrieved from: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=HT>

10. Haiti relies considerably on remittances from abroad to contribute to its GDP. As of 2016, the World Bank estimated that approximately 29.4 percent of the country's GDP was derived from foreign remittances. Although Haiti has experienced minimal growth over the years, the country's vulnerability to natural disasters had significant implications on its development and has created tremendous setbacks. In October 2016, whilst undergoing recovery from a massive earthquake that occurred in 2010, the country was devastated by hurricane Matthew which caused damages equivalent to thirty-two percent of the country's GDP<sup>8</sup>. Haiti is ranked 128<sup>th</sup> out of 137 countries on the Global Competitiveness Index based on the World Economic Forum report, 2017-2018 edition. Factors such as, access to financing, government instability and corruption have all contributed to such low ratings.
11. As of 2017, Haiti's most important sectors were: (a) Services (57.3%), Industry (37.8%) and Agriculture (21.9%)<sup>9</sup>. The United States of America (USA) remains one of Haiti's principal trading partners, with approximately 70 % of its goods destined for that market. Other major trading partners include: China, Canada and the European Union (EU).
12. Haiti's legal system is based on the civil law system influenced by the French Napoleonic Code. The Haitian court system is based on dualism, which is a two-tier jurisdictional system outlined as follows: (i) an administrative system- comprising of the High Court of Auditors and Dispute Tribunal (CSC/CA) and, (ii) a judicial system- comprising of courts and tribunals. The independence of the latter is guaranteed by the High Council of Judicial Powers (SCPJ). The judiciary consists of the following (from highest to lowest): (i) Court of Cassation, (ii) Court of Appeal, (iii) Lower Court, (iv) Peace Court and (v) Specialised Court. Judges of the Court of Cassation and Appeal are appointed for a period of 10 years, with the latter appointed by the President from a list prepared by the Senate whilst the Appeal Court and lower court judges are appointed by county councils. Lower Court Judges are appointed for a period of 7 years. The functioning courts and tribunals are governed by the Decree of August 22<sup>nd</sup>, 1995.
13. Haiti is a member of several key regional and international reputable organisations. These include, inter-alia, the Caribbean Community (CARICOM), Organisation of American States (OAS), IMF, World Trade Organisation (WTO) and the United Nations (UN). Haiti occupied the chairmanship of CARICOM in 2018 and enjoys the rights and privileges of being a member of the organisation.

### ***ML/TF Risks and Scoping of Higher-Risk Issues***

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

14. Haitian authorities have not conducted any ML/TF risk assessment to identify, assess, understand and take appropriate measures to mitigate those risks. Nevertheless, competent authorities have communicated their intention of conducting an NRA exercise utilising the World Bank tool. Although the initial approvals and preliminary preparations have taken place, the dates for

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<sup>8</sup> The World Bank: Retrieved from: <http://www.worldbank.org/en/country/haiti>

<sup>9</sup> The CIA Factbook: Retrieved from: <https://www.cia.gov/library/publications/the-world-factbook/fields/2012.html#84>

commencement and completion of this exercise are yet to be determined by the Ministry of Justice and Public Security (MJPS) who has responsibility for the supervision of the exercise and has delegated the responsibility of coordination of the exercise to the CNLBA. Statistics on the reported number of complaints, relative to high-risk crime and associated predicate offences that were reported to LEAs and other investigative agencies for the period 2014 -2018 were requested by the assessment team to have an idea as the type of high-risk predicate offences that were occurring in the jurisdiction and are threat to ML. However, this information was not provided. The assessment team recognised the weakness in competent authorities' ability to keep data and statistics relative to crime and demonstrating effectiveness. The assessment team was informed that the MJPS is seeking to remedy this deficiency, and has embarked on a statistical gathering exercise, whereby, the Public Prosecutors Offices (PPO), located in nineteen jurisdictions of Haiti are required to submit data relative to crimes in the jurisdiction to the MJPS. The authorities informed the assessment team that submissions were received from two jurisdictions in July 2018. The inability of the authorities to keep proper data and statistics to demonstrate an effective system is contained throughout the report and have negative implications on the system.

15. Despite the absence of any type of formal assessment of ML/TF risks, some competent authorities, primarily LEAs based on daily operations communicated several threats and vulnerabilities to the assessment team. However, there is no formal documentation of such threats and vulnerabilities. Nevertheless, some competent authorities are of the belief and have indicated that the jurisdiction's geographic location and porous borders makes Haiti an inherent risk for transshipment of drugs and other illicit goods. These illicit goods include, trafficking of weapons by local gangs operating on the behalf of narcotics traffickers from Jamaica and Colombia. Drug trafficking and corruption were identified as the two most predominant threats to the jurisdiction and risk to ML. Other threats identified by the authorities included kidnapping, human trafficking and smuggling of contraband goods.
16. There is little to no focus on the threat of TF by the Haitian authorities. However, this lack of focus is not based on the findings of any risk assessment but maybe due to the lack of knowledge and expertise in this area by the authorities. The assessment team discovered a case through open sources involving a Haitian national who was convicted in the USA for rendering support to the terrorist group Al Qaeda in 2009 and was subsequently deported to Haiti in 2014<sup>10</sup> (*see IO.9 for more details*). Although this case occurred outside the time-period that the assessment team is required to consider, the assessment team nevertheless considered it necessary to reference same in the report to demonstrate that the jurisdiction and its nationals are not be immune from this type of activity and more focus should be given to this area by the Haitian authorities.

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

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<sup>10</sup> "The assessment team only considers this issue from a historical perspective and no weighting was given to this in the report as the incident occurred outside the period under consideration for this report.

17. The country has not conducted any type of risk assessment that incorporates ML/TF. In deciding the issues to be prioritised during the on-site visit, the assessment team reviewed materials that were provided by the country and obtained information by conducting research using credible sources of information, such as, reports from international organisations/agencies. In considering the information cited, the assessment team in collaboration with the competent authorities developed a scoping note, highlighting potential areas of threats and vulnerabilities that should be focused on during the on-site visit. These issues are stated below.

### *Scoping of Higher Risk Issues*

#### *Threats*

- **Corruption:** Haiti is ranked 157/180 on the Corruption Perception Index (CPI) as of 2017, with the ranking of 180 attributed to the most corrupt countries. The jurisdiction also received a score of 22/100, with the ranking of 100 attributed to countries that are completely clean<sup>11</sup>. The issue of corruption has also impacted the independence of the judiciary which received a score of 126/135<sup>12</sup> with 135 attributed to the country whose judiciary is least independent. Despite being considered as a threat and major proceed generating crime, there has been only one successful prosecution for corruption<sup>13</sup>.
- **Narcotics Trafficking:** The country's geographical location and inadequate resources for LEAs and other competent authorities create an opportunity for narcotics traffickers, specifically, those from Colombia and Jamaica to tranship drugs to the USA and other markets. The minimal interdiction by LEAs further creates a favourable environment for traffickers to operate. The fight against narcotics trafficking is further hampered by corruption, with reports of misconduct and participation in the drug trade by public officials<sup>14 15</sup>. Although publicly available data shows that as of 2017 there were no prosecutions for narcotics trafficking in the jurisdiction<sup>16</sup>, the information provided by the jurisdiction shows that there are prosecutions for drug trafficking, albeit minimal and does not reflect the perceived high-level risk of drug trafficking in the jurisdiction.

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<sup>11</sup>Transparency International. Retrieved from [www.transparency.org/country/HTI](http://www.transparency.org/country/HTI)

<sup>12</sup> World Economic Forum, the Global Competitive Index 2017-2018 edition, page 2. Retrieved from [http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF\\_GCI\\_2017\\_2018\\_Profile\\_Haiti.pdf](http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF_GCI_2017_2018_Profile_Haiti.pdf)

<sup>13</sup> US Department of State, International Narcotics Control Strategy Report (2017), Vol I, Page178. Retrieved from <https://www.state.gov/documents/organization/268025.pdf>

<sup>14</sup> U.S Department of State, International Narcotics Control Strategy Report (2017), Vol I, pages 176-177. Retrieved from <https://www.state.gov/documents/organization/268025.pdf>

<sup>15</sup> The United States Department of Justice, Office of Public Affairs- Retrieved from: <https://www.justice.gov/opa/pr/haitian-national-pleads-guilty-conspiring-launders-money-derived-drug-trafficking>

<sup>16</sup> U.S Department of State, International Narcotics Control Strategy Report (2017), Vol I, page 178. Retrieved from <https://www.state.gov/documents/organization/268025.pdf>

- **Human Trafficking<sup>17</sup>**: Haiti is listed as a Tier 2<sup>18</sup> country for human trafficking, as it does not comply with the minimum standards for the elimination of human trafficking. The jurisdiction is a source and destination country for persons, including children, trafficked for sexual exploitation and forced labour. Due to the crisis created by natural disasters such as hurricane Matthew that occurred in 2016 and the earthquake of 2010, displaced Haitian children are at risk of being trafficked as sex slaves and forced to work in construction, agriculture, fisheries, domestic work and street vending in Haiti and the Dominican Republic.

### *Vulnerabilities*

- **Designated Non- Financial Business and Professions (DNFBPs) Sector**: The DNFBPs sector remains vulnerable to ML/TF since it is largely unsupervised and unregulated with little to no guidance and administrative measures to assist in the prevention and detection of ML/TF. The sector has not been subject to any type of ML/TF risk assessment by the authorities with the intention of identifying and taking measures to mitigate ML/TF risks. For example, as of 2017, according to open sources, Haiti had approximately 157 casinos that were licensed (*the jurisdiction provided numbers that are much lower- see table 6 below*). However, there are also many unlicensed casinos operating in the jurisdiction<sup>19</sup>. Casinos are considered to be cash intensive, competitive in growth and vulnerable to criminal exploitation<sup>20</sup>. Considering, Haiti is a cash-based society, with significant amount of cross- border movement of cash and BNI coupled with lack of oversight and regulation, this specific sector is considered as being vulnerable for ML/TF activities. In addition to casinos, the assessment team in Haiti's 2008 Detailed Assessment Report (DAR) highlighted in their findings that proceeds from narcotics trafficking were laundered through the real estate sector which is also considered to be vulnerable<sup>21</sup>. The assessment team reviewed Haiti's Follow Up Reports (FUR) including its 12<sup>th</sup> FUR to determine whether the deficiencies identified in the DAR relative to DNFBPs, including casinos and real estates were addressed and found no evidence of them being addressed to an acceptable standard.
- **Financial Institutions**: Some aspects of the AML/CFT regulatory and supervisory framework including the laws and regulations governing the establishment and management of FIs appear to be inadequate. These include, the requirements for preventing criminals and their associates from

<sup>17</sup> U.S Department of State, Diplomacy in Action: Retrieved from <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271200.htm>

<sup>18</sup> A tier 2 country is said to be a country which is making efforts to comply although as stated by the assessment team, does not fully comply with the minimum standards for eliminating trafficking. As a comparison, countries on the next tier or level (Tier 2 Watch list), have a significant number of victims in addition to not being fully compliant with required standards.

<sup>19</sup> U.S Department of State, International Narcotics Control Strategy Report (2017), Vol II, page 97. Retrieved from <https://www.state.gov/documents/organization/268024.pdf>

<sup>20</sup> FATF/APG Vulnerabilities of Casinos and Gaming Sector Paragraph 239, Page 63. Retrieved from <http://www.fatf-gafi.org/media/fatf/documents/reports/Vulnerabilities%20of%20Casinos%20and%20Gaming%20Sector.pdf>

<sup>21</sup> Haiti 3rd round mutual evaluation report, pages 18-19, paragraph 60, 2008

holding controlling interest. Further, FIs such as microfinance companies, insurance companies and pension funds are not subject to any AML/CFT supervisory measures within any laws or other enforceable measures. Moreover, there are weaknesses and a lack of laws and other measures to address issues relevant to the implementation of preventive measures. Neither competent authorities nor the respective FIs have conducted any type of ML/TF risk assessment of the sector, hence no measures have been taken to mitigate the ML/TF risks<sup>22</sup>.

- ***Beneficial ownership (BO) of corporate structures and the misuse of legal persons:*** There are no requirements for legal persons to maintain BO information and to ensure that information is accurate, up-to-date and is available on a timely basis to LEAs. The competent authorities have not conducted any assessment to determine whether legal persons are vulnerable to being utilised for ML/TF. There is limited information to suggest that measures are in place to ensure that ML/TF are not occurring within this sector (legal persons). Finally, the legislative framework governing the establishment of legal persons does not take into consideration ML/TF.
- ***Criminal Justice System:*** An effective ML/TF regime requires strong and stable structural elements to be implemented, including an independent and efficient judicial system that is trained and experienced in applying the relevant laws and procedures, primarily those that have a nexus to ML/TF. Although, Haiti has enacted legislation and has some mechanisms in place which enable LEAs and other competent authorities to investigate and prosecute offenders for suspected breaches to ML/TF provisions, there has been no successful prosecution at the time of the on-site for ML/TF breaches. Reports available via credible open sources attribute Haiti's inability to successfully prosecute offenders for ML and associated predicate offences to the lack of knowledge by the judiciary and prosecutorial services of recently adopted legislative amendments in the Haitian judicial system<sup>23</sup>.
- ***Cross border movement of cash and BNI:*** Although Haiti is not considered a financial centre, nevertheless, narcotics traffickers have taken advantage of the country's limited resources and porous borders to transport and launder their proceeds of crime, including through the use of cash couriers. Most of Haiti's ML schemes involve significant amounts of United States currency, with the illicit proceeds generated from predicate offences such as drug trafficking and corruption. Haiti<sup>24</sup>.

### ***Other Areas of Increased Focus***

18. Although, not classified as higher risk issues, the assessment team considered the following areas for increased focus during the on-site visit, considering the absence of any ML/TF risk assessment

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<sup>22</sup> Response provided by Haitian authorities in the Technical Compliance Questionnaire (R.1 and R.10)

<sup>23</sup> U.S Department of State, International Narcotics Control Strategy Report, 2016. Retrieved from <https://www.state.gov/j/inl/rls/nrcrpt/2016/vol2/253403.htm>

<sup>24</sup> U.S Department of State, International Narcotics Control Strategy Report (2017), Vol II, pages 96-97. Retrieved from [www.state.gov/documents/organization/268024.pdf](http://www.state.gov/documents/organization/268024.pdf)

undertaken by Haiti. The assessment team believes these areas may pose some risk to the jurisdiction's AML/CFT regime.

- ***Understanding of TF Risk:*** The authorities have not conducted any type of TF risk assessment. Further, little or no information was submitted by the authorities relative to TF in the jurisdiction. Therefore, the level of risk associated with TF is unknown.
- ***Free Trade Zones (FTZs):*** These are inherently high risk, particularly for trade-based ML. The jurisdiction has 10 operational FTZs<sup>25</sup>. The assessment team is uncertain as to the nature of activities occurring within these areas, the level of oversight and supervision and whether AML/CFT/PF measures are applied to these FTZs.
- ***Financial Inclusion:*** Nineteen percent of the Haitian population ages fifteen and above had access to bank accounts in 2014, in comparison to fifty one percent of the same demographic across Latin America and the Caribbean.<sup>26</sup> The foregoing shows that a significant amount of Haiti's population is not using the regulated financial sector to conduct their business. Therefore, these individuals' business activities cannot be monitored by the AML/CFT regime. The assessment team believes this can hamper the competent authorities' ability to trace transactions, detect ML/TF, take measures to mitigate risk and the reporting of STRs<sup>27</sup>. Haiti has nevertheless made significant strides to address the issue of financial inclusion, with the recent publication (2018) of the 2017 Global Findex report showing that thirty-three percent of the Haitian population had access to accounts at financial institutions (*This report was published subsequent to the preparation of the scoping note*).

19. Through the scoping note exercise, one area was identified for lesser focus:

- ***Legal Arrangements:*** Prior to the on-site visit, there was no evidence of any legal arrangements or any of their elements, such as trusts operating or registered in the jurisdiction as there was no publicly available data to support or contradict the information provided by the country. However, based on discussions held during on-site visit, there are some Trust like activities that are occurring in the jurisdiction, whereby some lawyers are managing assets on the behalf of their clients. The extent to which this type activity is occurring is unknown. Further, it was discovered the law governing banks and FIs also makes provision for fiduciary companies to organise themselves as a legal entity under the stock corporation legislation. This provision therefore allows for the operations of trusts in Haiti and to operate under the definition of FIs. Although, the probability of ML/TF occurring within this sector is low as the BRH who is responsible for granting licenses and

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<sup>25</sup> Based on the U.S Department of State International Narcotics Control Strategy Report (2017), Vol II, page 97 there are seven FTZs. Retrieved from <https://www.state.gov/documents/organization/268024.pdf>

<sup>26</sup> The World Bank, Financial Inclusion Data/ Global Findex; Retrieved from: <http://datatopics.worldbank.org/financialinclusion/country/haiti>

<sup>27</sup> FATF Guidance, AML & TF measures and Financial Inclusion 2017, page 3, Retrieved from: <http://www.fatf-gafi.org/media/fatf/content/images/Updated-2017-FATF-2013-Guidance.pdf>

approvals to these types of FIs indicated that they have not granted any such license, the assessment team did give some attention to this area, albeit minimal.

### Materiality

20. Haiti is not a financial centre. The scale of the financial services in the jurisdiction remains modest, with the banking sector well capitalised and profitable<sup>28</sup>. The financial sector is of most importance when compare to the DNFBPs sector in Haiti and seemingly represent a greater risk for ML/TF on the basis of asset size and products offered (with a significant amount of the ML/TF risks seemingly associated with cross-border transactions taking in the context of the MVTS sector and the volume of cash that flows through that sector). Nevertheless, this is not to say that the DNFBP sector is not at risk. The financial sector is dominated predominantly by banks which makes up ninety percent of the financial sector market share. The total asset size of banks is estimated at US\$4.86 billion dollars, of which thirty percent represents credit portfolios. There are eight banks operating within the jurisdiction offering products and services that are mainly domestically based. One of the eight banks operating within the jurisdiction, one is a branch of a foreign bank, one is a member of a financial group that includes an insurance company and two are State owned. As a result of the country being a primarily cash- based society, banks believe that they are susceptible to ML, due to the large volume of cash being handled daily.
21. Some banks have engaged in the practice of de-risking and levying fees on cash transactions to address the problem. Further, unregulated and unsupervised DNFBPs such as lawyers, notaries, real estate agents and casinos are considered high risk clients by some banks and other FIs. Banks represent one of the most important sectors within the jurisdiction.
22. The table below represents the activities conducted by the three largest banks in Haiti and their percentage of market share as of December 2017.

*Table 2: Activities of three largest Haitian banks*

As of December, 2017				
Name of FIs	Amount (Gourde)	Approximate Amount (US\$ “000”)	Activity % Market Share	Range
Bank A	116,337,663.30	1,714,124.99	37.55	1
Bank B	75,560,631.80	1,113,314.15	24.39	2
Bank C	62,796,574.00	925,247.89	20.7	3
<b>Total</b>	<b>254,694,869.10</b>	<b>3,752,687.03</b>	<b>82.64</b>	

Source: BRH

23. CECs have amassed substantial assets and are utilised by a significant percentage of the Haitian population, particularly those in the rural communities, to conduct financial transactions. CECs are

<sup>28</sup> U.S Department of State- 2017 Investment Climate Report- Executive Summary: Retrieved from: [www.state.gov/e/eb/rls/othr/ics/2017/wha/270076.htm](http://www.state.gov/e/eb/rls/othr/ics/2017/wha/270076.htm)

people driven, community centred, with their members being the owners. At the time of the on-site visit the authorities indicated that there were eighty-five CECs operating in Haiti with an asset size of US\$123 million. CECs are not authorised to conduct external transactions such as wire transfers and most of their transactions are domestic. Most of the CECs operating within the jurisdiction are small in nature, with the largest having approximately 60,000 to 70,000 members and asset size of US\$17.2 million in assets. CECs are utilised to a large degree by the population of Haiti and are viewed as being more “*people friendly*” when compared to banks and other FIs due to the ease of doing business with these entities. They represent one of the most important sectors in the financial sector.

24. Microfinance companies are considered to be substantial in asset size, taking into consideration the nature of the jurisdiction. As of September 2016, the estimated asset size of this sector stood at approximately US\$156 million dollars based on those who submit their financial statements to the BRH. The total number of microfinance companies operating within the jurisdiction is unknown to the authorities. This sector remains unsupervised and unregulated<sup>29</sup>, and therefore is vulnerable to ML/TF in the absence of any risk assessment.
25. There are seven registered and licensed MVTS operating in the jurisdiction, two of which have an international nexus, partnering with three banks and a domestic money transfer company. The MVTS sector is significant due to the increasing amount of funds being transferred across borders as indicated in the table below. The materiality of the funds involved and the absence of any sectoral risk assessment raise concerns about the vulnerability of the sector to ML/TF risks. More than US\$6 billion were transferred into Haiti during the period 2014-2017 with the figures consistently increasing annually, with more than US\$941 million in outgoing transactions. A breakdown of these transactions is represented in the table below. The source and intended countries for most of these transactions were not provided to the assessment team.

*Table 3: Incoming and outgoing money transfer activities via MVTS*

<b>Year</b>	<b>Incoming (US\$ Billion)</b>	<b>Outgoing (US\$ Million)</b>
<b>2014</b>	1,443.23	222.55
<b>2015</b>	1,605.13	222.06
<b>2016</b>	1,719.23	234.51
<b>2017</b>	1,985.88	261.90
<b>Total</b>	<b>6,753.47</b>	<b>941.02</b>

*Source: BRH*

26. The size of the DNFBPs sector and its market share are relatively unknown, since minimal or no data in some instances were provided by the competent authorities. The sector is made up

<sup>29</sup> The Haitian authorities have advised that a bill is currently before the Haitian Parliament to address the governance, operation and supervision microfinance institutions. The bill proposed in making the BRH the supervisory authority for microfinance institutions. The authorities did not provide a timeframe as to when this bill would be passed and become law.

predominantly of lawyers, notaries, accountants and casinos/borlettes that are susceptible to misuse by criminals including money launderers as highlighted in the scoping note which identified real estate agencies as one sector that is utilised by drug traffickers to launder money. Although being perceived as less at risk for ML/TF than FIs, due to the fact that this sector is virtually unregulated and unsupervised, size unknown, offering some products such as gambling that is considered to be an inherent risk for ML/TF, the assessment team considered the impact of ML/TF with this sector in detail as is outlined in Chapters 5 and 6 of the report.

### **Structural Elements**

27. There are some elements of an effective AML/CFT structure present in Haiti, Nevertheless, the country has suffered from a chronically unstable political environment which continues to affect it socially. Haiti was without an elected President during the period February 2016- February 2017 after the government failed to complete a cycle of elections. On February 7, 2017 a President was elected marking a return to constitutional order. Although conditions have improved with the election of a new government in 2017 through free and fair general elections, the political environment remains fragile, with instances of political instability, civil unrest and protest actions, as was experienced first-hand by the assessment team during the on-site visit.
28. Nevertheless, the government has signalled its commitment to developing a robust AML/CFT regime through the enactment and implementation of laws. However, the government depends on parliamentary support to enact legislation, which continues to prove challenging, as some legislators, are reluctant to support the enactment and passage of the necessary new laws and amendments to existing legislation. An outdated criminal procedure code (CPC) which dates to around the 18<sup>th</sup> century continues to present challenges to the competent authorities (including the judiciary) involved in the prosecution of ML, associated predicate offences and TF.
29. There are some levels of institutional stability, transparency and the rule of law. However, issues surrounding the independence and autonomy of the judiciary remain. Haiti’s judiciary was ranked 126/135 in 2017, with 135 attributed to countries whose judiciary is least independent as of 2017 with reported instances of alleged corruption. (*see scoping for higher issues*).

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

30. Haiti is predominantly a cash-based society. The data provided by the authorities and reflected in the table below illustrates the extent to which the economy is cash-based, with percentages that continue to rise steadily.

*Table 4: Money in Circulation/ Indicator of cash-based economy.*

<b>Year</b>	<b>Money in circulation (Percentage)</b>
2014	26.83
2015	27.98

2016	31.19
2017	32.19

Source: BRH

31. Additionally, a significant amount of the Haitian population remains without access to the formal banking mechanism. Based on data obtained from the World Bank, Global Findex database, thirty-three percent of Haitians have access to bank accounts. The authorities have started to bring some level of financial inclusion to the population through the use of technology solutions (for e.g. mobile money accounts). Indeed, Haiti has seen a rise in mobile money users from four percent in 2014 to fourteen percent in 2017; however, the amount of money in circulation continues to rise. The authorities did not provide any information to show the rationale for such circumstances.
32. The importance of financial inclusion is recognised, and a dedicated team within the BRH has been tasked to undertake work in this area in conjunction with the Alliance for Financial Inclusion<sup>30</sup> (AFI) and the World Bank. The goal of the team is to continue working towards developing new technology and products, in an effort to bring more persons into the formal banking system.
33. Perceived high levels of corruption continue to have an impact on the AML/CFT framework. The government has signalled its intention to tackle issues of corruption and has made strides to do so, with measures such as the ratification of the UNCAC, enactment of anti-corruption legislation and the establishment of an anti-corruption agency that is responsible for the investigation of corruption among government and public sector officials. Despite those measures and improvement on the corruption perception index, corruption continues to affect the jurisdiction.

### **Overview of AML/CFT strategy**

34. The government does not have a documented AML/CFT strategy, except for the legal framework and the competent authorities that are present in Haiti. Nevertheless, senior officials within the government highlighted the commitment to fight ML, associated predicate offences (especially corruption) and TF. This commitment has been expressed through speeches by the President to Parliament and the international forums. The government recognised the importance of developing an AML/CFT strategy and is committed to consolidating and developing the present AML/CFT structure, including bringing together the relevant stakeholders with the intention of developing greater collaboration to fight ML, associated predicate offences and TF. There is no timeline as to when competent authorities intend to develop a formal AML/CFT Strategy. However, it is widely expected that once the NRA is completed, the strategy will be formulated.

<sup>30</sup> The world leading organisation on financial inclusion policy and regulation aimed at improving lives of the poor through the power of financial inclusion- taken from: [www.afi-global.org](http://www.afi-global.org).

## *Overview of the legal & institutional framework*

35. Haiti has criminalised ML/TF in accordance with the Vienna and Palermo Conventions. The relevant laws and measures in place that address AML/CFT issues include:

### **Major laws that are AML/CFT Framework**

<b>Title</b>	<b>Applicability</b>
<b>LSMLTF, 2016</b>	This law amends the existing primary ML legislation, namely LSMLTF, 2013 and also addressed terrorist financing offences which were not covered in the existing legislation
<b>LSMLTF, 2013</b>	The primarily legislation that criminalised ML in Haiti and request that FIs submit STRs to UCREF
<b>Law of February, 2001</b>	Criminalised laundering of assets that were obtained from serious crimes
<b>Executive Order 2016</b>	Establishing procedures governing the implementation of freezing measures against funds and other assets connected with FT in accordance with the UNSCRs 1267 and 1373.
<b>Law of May 8, 2017</b>	This law otherwise referred to as the Organic Law of UCREF creates UCREF, which is the FIU of Haiti. The law sets out the mandates and functions of UCREF. The organic law of UCREF also creates the CNLBA and the Board of UCREF.
<b>Law of May 11, 2014</b>	This law otherwise referred to as the law governing banks and other FIs governs the organisation and functioning of FIs operating in Haiti, with the exception of insurance companies, pension funds, CECs and microfinance institutions. The law also allows for the creation of fiduciary companies organised as a legal entity according to the law governing stock corporation.
<b>Act of July 10, 2002</b>	The Savings and Cooperatives Act, July 10, 2002, governs the constitution, organisation, control and supervision of CECs, commonly known as Caisses Populaires and the federations of CECs.
<b>Law of December 4, 1912</b>	This legislation commonly called the extradition law governs the extradition proceedings in Haiti
<b>Law of August 3, 1995</b>	Governs the formation and functioning of stock corporations in Haiti.
<b>Law of August 30, 1982</b>	Governs the formation and functions of financial development companies
<b>Law of August 7, 2001</b>	Addressed issues relevant to illicit drug trafficking.
<b>Law of May 21, 2018</b>	The law bearing on the reform of the status of merchants and commercial activities and the organising of the company registry.

36. The following are the main ministries and authorities that are responsible for formulating and implementing the jurisdiction's AML/CFT/PF policies:

**AML/CFT Ministries and Co-ordinating Bodies**

<b>Ministry/Agency</b>	<b>Role(s)</b>
<b>Ministry of Justice and Public Security (MJPS)</b>	Responsible for issues relative to national security in Haiti. It is the umbrella body for the Haiti National Police (HNP) and the Public Prosecutors Office (PPO). The MJPS is the primary AML/CFT body. The MJPS is deemed to be the competent authority responsible for TFS-TF and is responsible for conducting the national risk assessment (NRA). The MJPS acts as the central authority and receives MLA and extradition requests that are transmitted through the Ministry of Foreign Affairs and transmits them to the PPO.
<b>Anti- Money Laundering Committee</b>	The Anti- Money Laundering Committee (CNLBA) is a creature of statute and consists of representatives from the public and private sector. The CNLBA is responsible for promoting the fight against, recommending preventive measures against and for detecting and suppressing ML and TF. The CNLBA also acts as a collaborating mechanism among the actors in the fight against ML/TF at the policy level.
<b>Ministry of Foreign Affairs</b>	The Ministry of Foreign Affairs is the official channel for the receipt of the UN sanctions list, and MLA and extradition requests to the MJPS.
<b>Ministry of Finance</b>	The Ministry of Finance is the agency that will be tasked with the oversight and supervision of insurance companies. However, the supervision for AML/CFT of insurance companies is still in its infancy and has not earnestly begun.
<b>Ministry of Commerce and Industry</b>	The Ministry of Commerce and Industry is responsible for oversight and the registration of legal persons in Haiti.
<b>Banque Republic Haiti (BRH)</b>	The Central Bank of Haiti (BRH) is responsible for the supervision of all FIs except for insurance companies, CECs, pension funds and microfinance companies. The BRH is the only operational AML/CFT supervisory regime present in the jurisdiction.
<b>Central Financial Intelligence Unit (UCREF)</b>	UCREF is a creature of statute which falls under the purview of the MJPS. UCREF responsibilities includes the receipt, analysis of STRs and CTRs it receives from FIs and DNFBPs. UCREF is also responsible for the receipt of cash declarations from the General Administration of Customs (AGD). The Unit is mandated to disclose to the Public Prosecutors Office (PPO) ML/TF cases, upon discovery of serious clues following its administrative investigations into the reports it receives.
<b>Anti-Corruption Unit (ULCC)</b>	ULCC is a statutory body that falls under the Ministry of Finance. The Unit is tasked to investigate all levels of corruption including those involving political

	and public officials. The Unit is also mandated to investigate ML, if same is discovered upon the investigations of the predicate of corruption.
<b>The Haitian National Police (NHP)</b>	The HNP is responsible for the investigations of reports of all crimes within Haiti. Situated within the HNP is the Department of the Judicial Police (DCPJ) which comprises several units including the Bureau of Economic Crime (BAFE). The DCPJ is the investigative arm of the HNP.
<b>Bureau of Economic Crime (BAFE)</b>	BAFE is a department within the DCPJ that tasked with the responsibility of combatting economic crimes including ML. BAFE is staffed by police officers and civilians
<b>Public Prosecutors Office (PPO)</b>	The PPO falls under the purview of the MJPS and is responsible for initiating and handling criminal cases. The PPO also conducts some judicial investigations before referring cases to the Chief Judge for dissemination to an Investigating magistrate
<b>Investigating Magistrate</b>	The investigating magistrate is responsible for criminal investigations and issuing formal charges. The investigating magistrate's functions also include the hearing of evidence and making decisions, based on the adequacy of evidence relative to ML/TF and associated predicate offences to pursue prosecution or dismissing the case.
<b>Bureau for the Administration of Special Funds (BAFOS)</b>	A statutory entity that is responsible for the management of immoveable seized assets and cash. BAFOS is also the agency responsible for the disposal of confiscated assets.
<b>General Administration of Customs</b>	General Administration of Customs (AGD): The General Administration of Customs (AGD) is responsible for the detection of illicit transport of cash and BNI within the borders of Haiti. The AGD is responsible for reporting all currency declarations to the UCREF. As part of its mission, the AGD works with several other authorities to detect violations of customs laws, criminal laws and provisions relating to the law of 11 November 2013 on ML and TF. In the event of a flagrant offense, the AGD may identify a person or persons responsible, but in general, the repression of offenses is entrusted to the judicial authorities.
<b>National Council of Cooperatives (CNC)</b>	In consultation with the BRH responsible for granting approval for CECs to operate and function in Haiti.

### *Overview of the financial sector and DNFbps*

37. The Haitian financial sector is not complex in nature. Banks represent the largest sector in the financial system. There are several entities within Haiti that offer products and services that can be

categorised as FIs and DNFBPs. Most of the products offered are targeted towards nationals of Haiti. The table below represents a breakdown of the FIs and DNFBPs respectively.

*Table 5: Types and estimated numbers and asset size of financial sector*

<b>Types of Financial Institutions</b>	<b>Numbers</b>	<b>Asset Size (US\$)</b>
Banks	8	4.86 billion
Development FIs	2	171.3 million
Savings and Loans Cooperatives	85	123 million
Investment Promotion	1	2.64 million
Financial Leasing Company	1	2.35 million
Money Transfer Company <sup>31</sup>	7	48.93 million
Foreign Exchange Agents	18	Unavailable
Insurance Companies	13	Unavailable
Microfinance Institutions	Unavailable	156 million (as of September 2016)

*Table 6: Types, estimated numbers and asset size of DNFBPs sector*

<b>Types</b>	<b>Numbers</b>	<b>Asset Sizes (US\$)</b>
Casinos	24 (only 2 registered) <sup>32</sup>	Unavailable
Borlettes	600+ Operators 20,232 Points of Sale	Unavailable
Lawyers <sup>33</sup>	2300 +	Unavailable
Notaries	337	Unavailable
Accountants	384	Unavailable
Real Estate Brokers	Unknown	Unavailable

<sup>31</sup> Two of which are operated by banks.

<sup>32</sup> Though the assessment team is using the LEH's data on casinos in this table, it should be noted that the jurisdiction reported 39 domestic casinos in its initial submission to the assessment team. Moreover, using creditable open sourced information, the assessment team had noted that there was a total of 157 casinos in Haiti. This further highlights the urgency in better defining, identifying and regulating casinos in the jurisdiction.

<sup>33</sup> In Haiti, lawyers along with notaries act as company formation agents- see Chapter 7.

Motor Vehicle Dealers	Unknown	Unavailable
Dealers in precious metals and stones	Unknown	Unavailable
Trust and Company Service Providers		Haiti has no registered and licensed Trust that are operating in the jurisdiction.

### ***Overview of preventive measures***

38. All FIs are subject to the provisions of the LSMLTF 2013, as amended. Some FIs with the exception of microfinance, insurance companies, pension funds and CECs are subject to the provisions of the Law Governing Banks and other FIs, 2012. Nevertheless, the law of July 2002, *does* authorise the BRH through the General Inspection Directorate (DIGCP) for Caisses Populaire to supervise CECs. However, there are no legal provisions for the BRH to conduct AML/CFT inspections and this task is handed to the Federation to which the CECs is a member. Other preventative measures that apply to FIs are: Circular No. 99-2 (banks) repealed and replaced 99-1, Circular 100-2 (banks) repealed and replaced 100-1 Circular No. 107 (funds transfer companies), Guidelines for CECs and the Guidelines for foreign exchange agents. The BRH has the mandate of ensuring implementation and compliance with the measures contained in the laws, circulars and guidelines. The laws, circular and guidelines contain measures relative to CDD, record-keeping, transaction monitoring among other preventive mechanisms (*see relevant Recommendations in the TC Annex*).
39. The DNFbps sector is not required to comply with ML/TF preventive measures, except for some record keeping provisions that are applicable to casinos, which remain inadequate, as well as the requirement to report STRs and CTRs to UCREF that are contained in the LSMLTF, 2013 and its amendment. Recommendations 23 and 28 highlights the lack measures in place to address AML/CFT supervision and regulations of DNFbps.

### ***Overview of legal persons and arrangements***

40. The Ministry of Commerce and Industry (MCI) is mandated to keep records relative to the creation, registration and supervision of legal persons. There is no direct evidence of legal arrangements operating in Haiti. Nevertheless, there are some trust like activities that are taking place among the lawyers. There is provision within the law governing banks and other FIs that allows for the creation of legal arrangements. However, the authorities did indicate that no legal arrangements are operating within the jurisdiction. The jurisdiction has recently begun the process of computerising its records, with a significant amount of records still in paper format. Legal persons are mandated to be gazetted in the “Le Moniteur” or published in the newspaper, depending on the type and

nature of the legal person upon their creation. Most legal persons are created using lawyers or notaries. The authorities indicated that an overall total of approximately 359,124 (sole ownership, LLCs, partnership and other form of trade companies) legal persons are registered within the jurisdiction as of 2018.

41. The information represented in the table highlights the number and types of new companies that were registered to operate within the country from 2016-2018. No data was provided for the previous year.

**Table 7: Legal persons registered between 2016-2018<sup>34</sup>**

Date	Type of Companies	Amount
October 2016- September, 2017	Limited	267
October 2017- end of on-site visit	Public Limited	251
October 2016- October 2017	Societe Anonyme	518
October 2016- end of the on-site visit	Modification of Statues	81
2016-2018	Partnership	1,320
2016-2018	Limited Partnership	18

*Source: Ministry of Commerce and Industry.*

42. Haiti has a large number of NPOs registered and operating within the jurisdiction. However, the jurisdiction has not identified those NPOs that meet the FATF definition. NPOs are divided into Non- Governmental Organisation (NGOs) and associations (social organisations) and monitored by the Ministry of Planning and External Cooperation (MPEC). The LSMLTF, 2013 places some CFT obligations on the governance and operation of NPOs. Nevertheless, NPOs lacked detailed CFT measures to ensure that they are not subject to TF abuse. (*see R.8 and IO.10*). Some of the main areas of work for NPOs in Haiti are: education, health, agriculture and the environment.

**Table 8: Estimated amount of NPOs operating in Haiti**

Types of NPOs	Amounts
Association	More than 25,000 <sup>35</sup>
Active NGOs	391

### **Overview of supervisory arrangements**

<sup>34</sup> The full number of legal persons registered in Haiti was not provided to the assessment team, although requested by the assessment team. Due to the impact of natural disasters including hurricane and earthquake, data held by the MCI was damaged or destroyed.

<sup>35</sup> Not all Associations are classified as NPOs, as some operate for profit. However, Haiti did not provide any data as the sub-sets of associations that falls within the FATF definition of NPOs.

43. The BRH is responsible for granting licenses to banks, investment companies, credit card companies, factoring companies, fiduciary companies, development finance companies, funds transfer companies and foreign exchange brokers. The BRH is also the AML/CFT supervisor for some FIs, except for insurance companies, pension funds, and microfinance companies, which are not supervised for AML/CFT purposes by law. Competent authorities have indicated that there are plans for the Ministry of Finance to supervise the insurance sector. However, no timeline was provided as to when this would begin. The Ministry of Finance is currently seeking training assistance from regional and international organisations such as the Caribbean Regional Training Assistance Centre (CARTAC) to render assistance in this regard. As currently obtained at the completion of the on-site, the BRH is the only competent authority that conducts some level of AML/CFT supervision within the jurisdiction. DNFBPs are not supervised for AML/CFT purposes. However, notaries, lawyers and accountants are supervised by the Union of Notaries of the Court of Haiti (SNJH), Federation of Bars in Haiti (FBH) and the Order of Chartered Professional Accountants (OCPAH) respectively but not for AML/CFT purposes. Further, not all the foregoing individuals who conduct legal, accounting and notary practices are supervised by their respective agencies, as supervision is only for practitioners who are members.

### ***International Cooperation***

44. Haiti has signed and ratified several international conventions and is also a party to an extradition treaty with the USA. Formal requests for assistance are received through diplomatic channels and are generally executed by the MJPS through the PPOs. The LSMLTF, 2013 makes ML/TF extraditable offences. However, other laws such as the constitution of Haiti do not make provision for Haiti to extradite its own nationals. Some competent authorities such as the BRH require MOUs to share information. UCREF is permitted to share information in accordance with the LSMLTF and has signed two MOUs with its foreign counterparts namely Dominican Republic and St. Maarten to facilitate the exchange of information. Further, UCREF is also part of the Asset Recovery Inter-Agency Network of the Caribbean (ARIN-CARIB), an informal regional network that facilitates the sharing of information among LEAs, prosecutors and other practitioners to identify, trace and recover criminal assets through criminal and civil measures. The HNP can facilitate the sharing of information through the use of Interpol and the AGD who is a part of the World Customs Organisation can exchange information via this organisation. Despite some measures being in place, there are weaknesses that still exist within the Haitian system relative to international cooperation and very few MOUs and MLATs have been signed by the competent authorities (*see R.37-40 and IO2*).

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

Haiti has achieved a low level of effectiveness for IO.1.

- i. The jurisdiction has not conducted any type of risk assessment that incorporates the identification of its ML/TF risks and therefore does not have a holistic understanding its ML/TF risks. Nevertheless, despite the absence of any ML/TF risk assessment, some competent authorities, particularly LEAs based on their operations, have some knowledge of the level of ML/TF risks that affect the jurisdiction and have considered such risks in the prioritisation of their operations.
- ii. Due to the absence of any assessment that identifies ML/TF risks, there are no national policies in place to address ML/TF risks.
- iii. Competent authorities including LEAs have not been allocated with the necessary resources to effectively address the threats that have been identified in their respective remits.
- iv. The CNLBA is responsible for policy cooperation and coordination at the national level. However, there have been very sporadic meetings of the CNLBA, with no set timelines and its operations have done very little to advance policy development beyond responding to the CFATF follow-up process and has not provided any strategies for domestic cooperation in the Jurisdiction's AML/CFT regime. Moreover, the CNLBA does not consist of several key competent authorities such as prosecutors and LEAs which represents a crucial gap in the coordination and cooperation mechanism. This may impact its future operations. The assessment team was also informed of a taskforce implemented by UCREF to foster cooperation at the operational level. However, there are no indications that this taskforce has been fully established and is operational.
- v. Some private sector representatives are aware of the ML/TF risks that affect their sectors, specifically the larger FIs (large banks). However, this is not based on any formal ML/TF risk assessment and is merely based on local knowledge that exists within the country.
- vi. There is an overall weakness in all competent authorities' abilities to maintain comprehensive statistics, including qualitative and quantitative data, on matters that are relevant to Haiti's AML/CFT regime; which could be used to identify the ML/TF risks to the jurisdiction. The assessment team believes that it is very possible that this deficiency can have a negative impact on the proposed NRA, as this type of information is crucial to the process. Moreover, the lack of qualitative and quantitative data and statistics has a negative impact throughout the entire report, given that competent authorities are unable to demonstrate effectiveness, based on the perceived risks and vulnerabilities.

#### ***Recommended Actions***

- i. Haiti should make a concerted effort and set relevant timelines to commence its ML/TF risk assessment. The process of assessing the jurisdiction's ML/TF risks should include the active

participation of private and public sector officials, with the intention of holistically identifying, understanding and taking measures to mitigate the risk.

- ii. Following the completion of its ML/TF risk assessment, the country should develop and implement a national policy that incorporates the findings of the risk assessment with the aim of implementing measures to mitigate the risk. Such measures should include a clear strategy, supported at the highest political levels, to foster national cooperation and the allocation of adequate resources throughout the regime to meet its goals.
- iii. Once completed, competent authorities should ensure that the findings of the NRA are communicated to both private and public sector officials, in an effort to make them aware of the ML/TF risks that affect the jurisdiction at a national level and properly educate all stakeholders about the measures that should be undertaken to effectively combat ML, associated predicate offences and TF
- iv. The CNLBA should be reconstituted to include all key competent authorities who play an important role in the fight against ML, associated predicate offences and TF and who can contribute to the operation of the committee. Additionally, the authorities should ensure that the CNLBA convenes meetings regularly with clear agendas and objectives geared towards achieving its functions. Moreover, measures to encourage and ensure cooperation and coordination at the national level in the fight against ML/TF should be implemented.
- v. Competent authorities should ensure that comprehensive and reliable statistics (qualitative and quantitative) on all matters relevant to the effectiveness and efficiency of their AML/CFT system are maintained which will be of importance to conducting a proper ML/TF risk assessment.

45. 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***

46. Haiti has expressed its commitment towards conducting its ML/TF risk assessment in the form of an NRA. This exercise will be done with assistance from the World Bank tool. Initial meetings were held during the period of October- November 2017 with the aim of setting up working groups and sub-working group as per the World Bank methodology. Despite this preliminary work, the jurisdiction has not conducted any type of ML/TF risks assessment to identify and assess its ML/TF risks at any level (including, but not limited to sectoral or thematic risk assessment). Further, the authorities have not set any timelines for the commencement and conclusion of its NRA. Nevertheless, based on discussions held with competent authorities and private sector officials, narcotics trafficking, and corruption were identified as two of the greatest ML threats in Haiti. In

the scoping for the on-site visit, the assessment team in collaboration with the country's officials and in consideration of research findings from credible open sources of information also identified those crimes, along with human trafficking as being high risk.

47. Some competent authorities, specifically LEAs have demonstrated a general understanding of the ML/TF risks that are specific to their areas of expertise. This general understanding comes from information gathered in the course of the authorities' operational activities. In addition to the high risk crimes mentioned above, other criminal activities that were deemed to be of high risk by LEAs, and some other competent authorities, (in some cases, some competent authorities thought they superseded all other risks) include: tax evasion, contraband, arms trafficking, illegal fishing and other environmental crimes, such as trafficking in endangered wildlife (e.g. the harvesting and trafficking of protected turtles).
48. Some competent authorities also raised concerns that individuals, with suspected links to international organised crime, have been observed frequenting casinos in Haiti. Although competent authorities were unable to provide any specific information as to the exact reasons why these individuals have frequented Haitian casinos, it was clear that competent authorities found the situation warranted some monitoring of such activities.
49. There has not been any assessment of TF risk by the authorities in the jurisdiction. Some competent authorities have argued that there has not been any terrorist activity in the territory and therefore the risk is considered minimal. Apart from the fact that the argument put forward is not based on any documented analyses: local authorities seem to draw the conclusion that the TF problem is absent from the national territory because the country has never been the victim of violent activity by a terrorist organisation. However, the assessment team believes that given the jurisdiction's numerous porous borders, largely unregulated sectors (*see IO 3 and IO 4*), levels of political instability and other deficiencies/factors that are highlighted in the different chapters of this report, as well as information received from competent authorities during interviews conducted during the onsite visit, such as risks associated with-its considerable informal economy, and the physical transportation of contraband, cash, gold and other valuables via smuggling routes that go through Haiti, competent authorities should consider the risk of TF and an assessment should be conducted to ascertain its level. Moreover, an assessment of the TF risk is important to the country as one of its nationals was convicted in the United States of America in 2009 for rendering support to the terrorist group Al Qaeda. This individual was subsequently deported back to Haiti in 2014 (*see Chapter 3, IO.9.*). Concerns related to Haiti's possible exposure to terrorism were echoed by a competent authority who was privy to a recent case concerning a transient individual, who had raised some suspicion of being a sympathiser of terrorism in the jurisdiction— though the specifics of the case had been inconclusive.
50. Based on discussions held during the on-site visit, the assessment team also observed that in addition to some competent authorities, some private sector officials from large banks, with an international nexus or are a part of a financial group, as well as some DNFBPs representatives, for

example, lawyers and notaries are aware that their sectors are exposed to certain vulnerabilities. As indicated previously, this knowledge is based on their operations. However, private sector officials did not demonstrate any in-depth awareness of how such vulnerabilities are linked to the jurisdiction's overall AML/CFT risks. The most common vulnerabilities that were identified by the competent authorities and private sector officials are linked to the economy being predominantly cash-based (and especially as it relates to cash intensive businesses, such as gas stations) and to the purported abuses of casinos and real estate sectors by money launderers. In such instances, some FIs specifically larger banks, claimed that they simply do not accept – or attempt to limit - business with entities or persons with links to such sectors, while acknowledging that less diligent competitors are likely to take these businesses on board

51. Although the authorities communicated their intention to conduct an NRA, the assessment team observed that the authorities' maintenance and ability to keep proper data and statistics (qualitative and quantitative) is lacking and may likely have an impact on their ability on the NRA, should proper data record keeping measures not be implemented prior to the commencement of the NRA. Moreover, the lack of qualitative and quantitative data has a severe impact on competent authorities' ability to demonstrate effectiveness for the relevant Immediate Outcomes throughout the entire report.

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

52. The CNLBA is the competent authority dedicated to policy development and national AML/CFT coordination. The minutes reviewed by the assessment team shows that the CNLBA does not meet on a regular basis and the focus of its discussions was on the deficiencies identified in the 3<sup>rd</sup> round DAR and follow-up report. Although the assessment team commends the authorities for discussing and seeking to address these deficiencies, the CNLBA has not produced or published any AML/CFT policies, strategies or guidance materials and there is no discussion of AML/CFT risk in Haiti. At the time of the on-site, the CNLBA's influence and engagement with senior governmental officials and the jurisdiction's political levels remained limited and cursory. The CNLBA reported some engagement with the private sector regarding consultations towards AML/CFT policy development, as well as recent but unspecified proposed AML/CFT bills that it was in the process of helping to guide through Haiti's parliamentary system. Despite these claims, other competent authorities and private sector officials interviewed indicated that they had never received documentation from the CNLBA, nor did they recall having participated in meetings or consultations with the CNLBA. The assessment team also noted that, other than the UCREF, LEAs and other investigative bodies along with the PPO are not members of the CNLBA. Considering the facts that these missing competent authorities demonstrated the most creditable understanding (in comparison to other competent authorities) of some of the ML/TF risks, their lack of representation on the CNLBA represents a gap in the relevant expertise that can be utilised to inform this committee.

53. Despite the absence of a strong national strategy, competent authorities, FIs and DNFBPs reported having had some discussions with UCREF during the review period, including on their AML/CFT

obligations and some guidance on methods and trends. Though specific agendas and records of such meetings were not presented, UCREF's seems to have provided a basic awareness campaign on ML/TF risks to FIs and DNFBPs, this was acknowledged and confirmed by the officials from these sectors who were interviewed during the on-site visit. For example, some of the DNFBPs interviewed attributed their rudimentary knowledge about the vulnerability of their business being used in the placement stage of ML, and the need to report suspicious transactions to recent meetings that they have had with the UCREF. The assessment team was also advised that some consultations, had taken place in the development of the 2013 amendments to the LSMLTF which had been led by the BRH at the time.

54. Despite the lack of national coordination in the development of national policies to identify and address ML/TF risks, some competent authorities demonstrated a clear and fact-based understanding of the threats and vulnerabilities (as stated before) facing the country in their areas of expertise. For example, the ULCC has produced a risk analysis of corruption in the jurisdiction as a result of the threat posed by corruption.
55. The jurisdiction has not made any progress in understanding TF risk, nor has it considered any measures or strategies to combat TF.

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

56. No specified exemptions, simplified or enhanced measures have been considered by the jurisdiction, based on an assessment of risks. However, a significant number of AML/CFT preventive measures, as required by the FATF Recommendations are not imposed on DNFBPs and some FIs, such as pension funds, microfinance and insurance companies due to inadequate legislation and measures, and not as a result of any type of ML/TF risks assessment which would exempt them from such. The authorities nevertheless indicated that the pensions funds that are present in Haiti are operated by the Government, therefore the risk of ML/TF will be inherently low risk as they are based on employee's contribution based on their salary. However, the authorities have not conducted any survey or investigations to verify whether private pension funds are operational, neither has any ML/TF risk assessment conducted on those that are present in Haiti to arrive at the conclusion that they are inherently low risk.
57. There are some informal practices that allow for special CDD measures, taking into consideration the issues that exist in the jurisdiction's address listings, whereby, many residential and rural areas have not been properly demarked/identified due to the physical displacement caused by natural disasters. This is especially the case in the jurisdiction's microfinance sector, as part of Haiti's efforts at increasing financial inclusion among its less affluent populations. Other FIs and DNFBPs also reported taking more simplified measures when clients were not able to produce a bona fide address for their place of residence due to the logistical issues that prevent officials from properly identifying physical addresses as mentioned above, especially for persons who were displaced by natural disasters. Though beyond the scope of this evaluation, this administrative deficiency

presents a severe challenge in adequately completing CDD, which can conceivably be leveraged by criminals wishing to obfuscate their identities when establishing relationships with FIs and DNFBPs (see IO.3)

### ***Objectives and activities of competent authorities***

58. Despite the lack of an assessment of ML/TF risks, and strategies to combat ML/TF activities and their associated predicate offences, some competent authorities have undertaken advanced measures to bring some level of effectiveness in addressing risks that are inherent in their areas of expertise. The DCPJ (and more specifically, the BLTS and BAFE), for example, demonstrated a clear understanding of the threats for which they are mandated to combat, and have implemented empirically influenced strategies to maximise the use of their scarce resources (for example, in the prioritisation of investigations based on the larger threats to the jurisdiction's safety and security). Additionally, the ULCC has conducted a basic study of corruption in Haiti and has set some general and specific objectives, thought outside the period under consideration for this report. For example, the ULCC has identified corruption as being strongly linked to tax evasion and contraband. However, despite corruption being perceived as high risk, the ULCC lacks the necessary trained human resources to properly investigate corruption offences and has been utilising human resources from other departments within the ULCC to conduct investigations, albeit these individuals are not trained in this area. This strategy based on the study has resulted in short, medium- and long-term resolutions that have been planned over time.
59. Despite some LEAs' efforts to maximise the effective use of their resources, the absence of a comprehensive understanding of ML/TF risks at national level, and a lack of coordination in addressing such risks strategically, at a national level, has resulted in a minimal impact on identifying, mitigating and combating the crimes that represent the greater risk to the jurisdiction.
60. The BRH, being the only active AML/CFT supervisory authority, has not conducted any fact based, strategic analysis of ML/TF risks, and does not utilise a risk-based approach in its AML/CFT compliance supervision program. Moreover, the number and scope of inspections it has carried out are reflective of their role as a prudential supervisor, with an ancillary regard to AML/CFT. The latter finding is in large part exacerbated by very limited resources that have been assigned to the BRH's AML/CFT compliance supervisory program

### ***National coordination and cooperation***

61. The CNLBA, the agency that is responsible for national coordination at the policy level had not achieved its mandate (as further described in R.2) as of the conclusion of the onsite visit, due to the lack of outcomes and sporadic meetings. Furthermore, domestic operational co-operation to combat ML/TF is conducted on an ad hoc basis and is not supported by a national strategy or objective. The assessment team was informed that at the operational level, UCREF has taken the initiative of instituting a task force comprising of several LEAs and other competent authorities to foster cooperation between the relevant agencies. However, this task force is in its infancy and has not

begun operations. Therefore, there are no measures for cooperation and coordination at the operational level.

62. Despite some good intentions and willingness of practitioners at the operational level to conduct their functions, the assessment team discerned a critical lack of resources throughout the jurisdiction's competent authorities to adequately combat ML/TF and related offences. This situation is further compounded by the existing protracted legislative process, which has resulted in draft legislation that is considered crucial towards enhancing several elements of the AML/CFT regime not being considered in a timely manner.

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

63. In the absence of any type of risk assessment that involves ML/TF, the private sector is not aware of the risk posed by the jurisdiction. However, as indicated previously some private sector entities, especially the larger FIs (large banks) due to their local knowledge and operations are aware of some of the threats and vulnerabilities. Some FIs, particularly, the larger banks with foreign branches have taken the route of de-risking, including refusing clients such as casinos (due to the absence of a supervisory framework and their inherently high-risk nature) and cash intensive businesses such as petrol stations as customers.
64. Further, little guidance on AML/CFT risks has been provided to FIs by the competent authorities. Despite the fact that the BRH provided two training sessions during 2014 and 2015, some FIs described the training as insufficient and the team is unsure that these are risk-based guidance.
65. DNFBBs are not supervised for AML/CFT compliance, nevertheless, UCREF has recently provided a series of awareness sessions to each sector on their AML/CFT obligations. These sessions were said to include some guidance on ML methods, trends and risks. Though specific agendas and records of such meetings were not presented, the UCREF's efforts have helped elucidate some of the ML/TF risks to which DNFBBs are exposed, at a grassroots level. However, DNFBBs have not demonstrated any concerted efforts to adequately identify the vulnerabilities that exist in the products and services that they offer, nor did they demonstrate much concern for risks that their clients pose (*See IO 3 and 4 for further information*).
66. FIs and DNFBBs that do demonstrate stronger AML/CFT compliance measures and, de facto, have a better understanding of ML/TF risks, are those that wish to self-comply, so as to attract international business that demand rigorous AML/CFT measures be in place, as well as those that are otherwise closely linked to the international financial system or are foreign branches of another FI (primarily banks), or offer services on behalf of businesses from multinational institutions. (*See IO 3 and 4 for further information*). Overall Conclusion
67. Haiti has not conducted any formal assessment of its ML/TF risks. However, some competent authorities and private sector officials are aware of the threats and vulnerabilities that confront the country based on their operational knowledge. As a result of the lack of coordinated identification,

assessment and understanding of ML/TF risks, the jurisdiction has not developed any policies/strategies based on the risks identified, neither are measures taken to mitigate those risks. Although, some competent authorities have some basic knowledge of the risks that confront their respective sectors, based on their operational experience, competent authorities lack the necessary resources to mitigate these risks. The jurisdiction does not have any explicitly stated exemptions or simplified measures in place based on a risk assessment. However, not all FATF standards are applied to FIs and DNFBPs due to the deficiencies in legislation. The cooperation and coordination mechanism that exist at the policy and operational level are in their rudimentary stage and have not demonstrated any tangible outcomes.

**68. Haiti is rated as having a low level of effectiveness for IO.1.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

#### ***Use of Financial Intelligence and other relevant information (IO6)***

Haiti has achieved a low level of effectiveness for IO.6.

- i. Haiti has a functional FIU (UCREF) that has demonstrated that it is conducting its core functions including the dissemination of potential ML cases to the PPO, albeit to a negligible extent and not in keeping with the perceived ML risk. UCREF is mandated to disseminate reports only in circumstances where serious clues of ML/TF are found, thereby limiting the type of intelligence products and relevant information that the agency can disseminate (i.e. no mandate to disseminate information relative to an associated predicate offence). Moreover, although UCREF is authorised to receive cash-declarations from the General Administration of Customs (AGD), this had not occurred at the time of the completion of the on-site visit.
- ii. BAFE, ULCC and UCREF have demonstrated that they are utilising financial intelligence in support of their functions, albeit to a negligible extent and not consistent with perceived ML/TF risk profile of the country and the crimes they investigate (*see IO 1- Chapter 2*). There is no evidence to demonstrate that other competent authorities are requesting and utilising financial intelligence and other relevant information to conduct their functions. Moreover, competent authorities, including LEAs do not have the requisite training relative to the use of financial intelligence.
- iii. UCREF has indirect access to a variety of public, financial and government databases to conduct its functions. Nevertheless, UCREF is not accessing and utilising data from some of these databases, including key databases such as AGD, intelligence agencies, some FIs and DNFBPs to conduct its functions. Although UCREF has indicated that it does informally request information from LEAs in the conduct of its functions, the agency does not keep record of such, therefore the assessment team cannot verify the information. The lack of access and use of information that can be obtained from these databases represents a material gap in the unit's analytical products disseminated as pertinent information is not being accessed and inputted into the dossiers it disseminates.
- iv. UCREF has experienced significant delays in receiving information on several occasions when requested as a result of its indirect access to some databases. This has gravely impacted the work of UCREF and other competent authorities, specifically LEAs to conduct ML and associated predicate offences investigations in a timely manner and has negatively impacted the core issues and effectiveness of IO. 6 and IO.7
- v. Despite the limited guidance and absence of feedback to FIs and DNFBPs, UCREF saw an increase in the amount of STRs received (2014-2018). Nevertheless, only nine percent of the

STRs received were analysed, with a significant proportion (91 %) awaiting analysis. Further, only approximately 0.77 % of the STRs analysed have been disseminated to the PPO with no demonstrable outcomes thus far. This, therefore, suggests that the STRs received by UCREF and subsequent reports disseminated lacked quality.

- vi. Factors such as the lack of IT analytical software to support/compliment the analytical staff, lack of formal and continuous training for staff (inclusive of training relative to operational and strategic analysis), lack of human resources and the lack of quality STRs received, have a negative impact on UCREF's ability to conduct proper operational analysis, which is one of its core functions.
- vii. Despite the perceived significant ML risk that is attributed to some reporting entities, such as the real estate and casinos sectors (*see Chapter 2- IO.1.*), there is no reporting of STRs/CTRs from DNFBBs, as well as minimal reporting from FIs. The foregoing is attributed to the lack of guidance and feedback to the FIs and DNFBBs by the competent authorities including UCREF, regarding the identification and reporting of STRs (*see IO.3*).
- viii. UCREF has not conducted or disseminated any strategic analysis product, which would be useful for developing knowledge that could be used to identify current and future needs for the AML/CFT regime, inform policy makers and guide the future work relative to identifying trends, typologies, behavioural patterns relative to ML/TF risks. Strategic analysis is of high importance to Haiti especially in the absence of any risk assessment.
- ix. UCREF's operational analysis does not seemingly support the operational needs of competent authorities, based on the absence of any demonstrable outcomes. Further, competent authorities do not provide feedback to UCREF on the usefulness of information it disseminated/provided.

#### ***ML investigation (IO7)***

Haiti has achieved a low level of effectiveness for IO.7.

- i. There are dedicated LEAs and investigative authorities present in Haiti that are tasked with the responsibility of investigations (both administrative and judicial) and prosecutions of ML offences. However, there have been no successful prosecutions or convictions for ML offences from 2014 to 2018. As a result of the absence of any ML convictions, no sanctions have been applied, therefore effectiveness and proportionality cannot be measured.
- ii. LEAs and investigative authorities are not prioritising and pursuing the different types of ML activities in a manner that is consistent with the country's perceived threat and risk profile or any AML/CFT policies. Further, LEAs and other investigative and prosecutorial authorities are not classifying and keeping records of the different types of potential ML cases (foreign predicate, third-party etc) that were targeted and investigated. Therefore, the assessment team is unsure as to the different type of ML activities that are targeted by the relevant competent authorities.

- iii. Technical measures which represent fundamental pillars and underpinnings to a sound framework for investigating and prosecuting ML offences are deficient in several instances and have a negative impact on the manner in which investigations and prosecutions are conducted, and desired outcomes, such as proper investigations, timely prosecutions and convictions for ML offences are achieved. Some of the deficiencies identified in the laws, includes, the lack of criminalisation of all types of ML activities including standalone ML and self-laundering and lack of investigative tools (*see R.3, R.30 & R.31*).
- iv. LEAs and investigative authorities are placing heavy reliance on the UCREF to assist in obtaining information from the FIs and DNFBPs due to lack of investigative measures that are available to conduct investigations into ML and associated predicate offences. The lack of direct access and absence of timelines for the provision of information from FIs and DNFBPs along with government agencies have resulted in significant delays, thereby impacting the timeliness of ML investigations.
- v. LEAs, investigative authorities, prosecutorial and the judiciary continue to experience challenges in the investigations and prosecutions of ML cases. Such challenges include, lack of training and resources and an archaic criminal procedure code that dates back to the eighteenth century, which has created a significant deficiency to the Haitian criminal justice system.
- vi. There are some good examples of cooperation among some of the competent authorities involved in the investigations and in the overall fight against ML, specifically between BAFE and UCREF. Nevertheless, the level of cooperation that exists does not encompass all the LEAs, investigative and prosecutorial authorities that are critical to the process of investigating and prosecuting ML and associated predicate offences. This is demonstrated by the lack of cooperation by the PPO to provide guidance to LEAs during the early stage of an investigation.
- vii. There are some good examples of parallel investigations between the BAFE and the BLTS, especially in circumstances where cash suspected to represent the proceeds of drug trafficking are seized during drug operations. Nevertheless, holistically LEAs and investigative authorities, are not conducting parallel financial investigations to identify potential ML cases. Moreover, there is no established and implemented mechanisms for the different competent authorities to share information and work jointly on ML cases.
- viii. Measures such as civil recovery are available for taking actions when ML cases are not possible. However, no such measures have been applied by the Haitian criminal justice system, taking into consideration, the absence of prosecutions and convictions for ML offences.
- ix. The identification and investigations of potential ML cases by LEAs and investigative authorities are largely reactive in nature and not proactive, as investigations are largely triggered by complaints or a STR reports. Further, there is no evidence to demonstrate that LEAs and investigative authorities are identifying potential ML cases through parallel financial investigations, including through joint investigations or taskforces.

***Confiscation (IO8)***

Haiti has achieved a low level of effectiveness for IO.8.

- i. The jurisdiction does not have any confiscation policy in place to guide competent authorities and to ensure that confiscation results are based on policy objectives. However, most of the competent authorities met with are aware of the importance of confiscation, although this is not manifested at all levels based on the results obtained thus far.
- ii. Haitian authorities have demonstrated that they are seizing and confiscating the proceeds of crimes, especially those that may be connected to drug trafficking offences. Nevertheless, confiscation results obtained by Haitian authorities are minimal and largely based on Haitian nationals convicted abroad. Further, the confiscation results are not commensurate with the perceived ML/TF risk profile of the country (*see IO.1*).
- iii. Technical deficiencies (see R.4 and R.32) that exist with the laws and measures that represents the fundamental pillars of a sound confiscation and provisional measures regime and are available to identify, trace and recover the proceeds of crime and cross-border movement of cash and BNI have a negative impact on competent authorities' ability to effectively seize, freeze and recover the proceeds of crime.
- iv. Competent authorities have recovered of criminal proceeds of Haitian criminals who were convicted and owned assets abroad, specifically those with a nexus to drug trafficking to some extent and should be commended for their work in this area. However, competent authorities are not aggressively identifying, tracing and recovering criminal proceeds of those individuals that are prosecuted for other predicate offences, including locally.
- v. The Bureau of Special Funds Administration (BAFOS) which is tasked with the management and disposal of assets under its purview is doing an excellent job in this regard and should be commended for their efforts despite the inadequate resources, budgetary constraints along with impediments within the Haitian system (such as the BAFOS inability to dispose of real estate seized) that have impacted the work of this institution.
- vi. Assets seized by competent authorities that do not fall under the management of BAFOS are not properly managed by any asset management regime and are therefore allowed to rapidly depreciate thus impacting their realisable values.
- vii. Competent authorities, including LEAs, the AGD and the judiciary lacked the necessary training relative to the confiscation and provisional measures proceedings. Further, these authorities lacked the necessary resources to properly undertake their functions relative to confiscation and other provisional measures.

***Recommended Actions***

***IO 6***

- i. UCREF should ensure that it accesses the widest possible range of databases (including law enforcement and intelligence agencies and commercial database) and utilises the information contained therein to conduct its functions including operational analysis. This would greatly assist in the quality, completeness and usefulness of the dossiers generated and disseminated to the PPO. Further, UCREF should implement a system to address the backlog of STRs and to

prioritise its STRs based on the level of risk (such as giving priority to STRs related to corruption which is deemed high risk) to the jurisdiction.

- ii. There is a need for more focused and continuous training among all competent authorities including UCREF to further develop their skill-set in STRs/CTRs analyses, and to better understand the importance and how to effectively use financial intelligence and relevant information to effectively combat ML, associated predicate offences and TF.
- iii. Competent authorities should provide written or oral feedback to UCREF (i.e. through meetings) on the quality and usefulness of the disseminated reports/dossiers. The provision of such feedback would assist UCREF in remedying any deficiencies identified and strengthen its analyses. The foregoing would also contribute immensely to UCREF's analytical products supporting the operational needs of LEAs and other investigative authorities.
- iv. There is an overall need for a broader range of competent authorities to incorporate the use of financial intelligence in their functions, including, pertinent information that are held by UCREF. The use of financial intelligence and relevant information should be commensurate with the jurisdiction's threats and vulnerabilities' profile and weaknesses identified in the AML/CFT system.
- v. UCREF should be provided with the necessary resources including information technology and human resources with proper skillset that would enable the Unit to properly conduct its functions.
- vi. UCREF should conduct strategic analysis in keeping with its mandate and ensure that this product should be made available to all competent authorities and reporting entities. This will ensure that some measures are being put in place to address any risks that are highlighted in those strategy analysis products.
- vii. The authorities should review the powers vested onto the UCREF's board in accordance with Art.8 of the Organic Law of UCREF to ensure once installed it would not have undue influence or control on UCREF's independence and autonomy, especially as it relates to UCREF's analysis and dissemination functions, along with its ability to obtain and deploy its resources to carry out its functions or its ability to perform all other duties within the scope of its operational remit.

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- i. LEAs, investigative authorities and the judiciary involved in the fight against ML should be strengthened and provided with the necessary resources, including technical, human and financial that would enable them to effectively undertake their functions. Further, these agencies should be provided with more and continuous training relative to the investigations and prosecutions of ML cases.
- ii. Competent authorities should develop and implement measures which enable LEAs and investigative authorities to work more closely with the PPO and vice versa and ensure that there is a system of continuous engagement and feedback throughout the lifecycle of possible ML and associated predicate offences cases. This would ensure that ML cases are properly investigated, and evidence is properly obtained.

- iii. Haitian authorities should undertake a review of the relevant laws and measures that are currently in place which impede LEAs, investigative authorities and the judiciary abilities to effectively conduct ML investigations and prosecutions within the jurisdiction (see R. 31). These include, addressing the lack of investigative tools available to LEAs and investigative authorities, along with remedying the deficiencies identified in the criminal procedure code
- iv. LEAs should adopt a more proactive approach in the way ML cases are identified, investigated and prosecuted. This includes but is not limited to utilising an intelligence- led approach to identify and investigate potential ML cases. Further, LEAs, investigative authorities and prosecutors should ensure that different types of ML cases are identified, investigated and prosecuted in a manner that is consistent with ML/TF risk profile (upon the completion of the NRA or any other such ML/TF risk assessments) and AML/CFT policies.
- v. Competent authorities should develop and implement measures, such as regular meetings between the different agencies that will foster and deepen the relationships between the different LEAs and investigative authorities engaged in the investigations and prosecutions of ML and associated predicate offences with the aim of ensuring that parallel financial investigations are conducted, and potential ML cases are identified, investigated or referred to a relevant agency with the skill-set and expertise.

*IO8*

- i. Haitian authorities should address the weaknesses that are contained in the laws and measures that are applicable to confiscation (*see R.4 and R.32*) that impede competent authorities' efforts to recover the proceeds of crime, including cross-border currency and BNIs.
- ii. Competent authorities should draft and implement policies that incorporate the recovery of criminal proceeds and should further ensure that the agencies that are involved in the recovery of criminal conduct are aware of the objective of such policy, including, the need for identification, tracing and recovery of the proceeds of crime, especially in cases that represent a high risk for ML such as corruption.
- iii. Competent authorities should ensure that efforts geared towards the identification, tracing and recovering of proceeds of crime are targeted towards proceeds from those crimes that are deemed as high risk and results are commensurate with the ML/TF risks.
- iv. Competent authorities including LEAs, investigative authorities, PPO and judiciary should be provided with the relevant training and awareness relative to the identification, tracing and recovery of criminal property.
- v. Competent authorities, including BAFOS should be strengthened and provided with the necessary resources to effectively conduct their functions. Further, impediments that continues to inhibit the process for the disposal of assets, specifically fixed assets such as real estate, should be remedied.
- vi. Measures should be implemented to ensure that assets that are seized and are not under the management of BAFOS are properly managed, to preserve their values.

69. The relevant Immediate Outcomes considered and assessed in this chapter are IOs 6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

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

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

70. Competent authorities primarily UCREF, the AGD, BRH, ULCC, BAFOS, PPO, investigating magistrates, BAFE and Criminal Affairs Bureau (BAC) have some level of direct or indirect access to financial intelligence and other relevant information to conduct their functions, including the investigations of ML, associated predicate offences and the identification, tracing and confiscation of the proceeds of crime. However, the information obtained during the on-site visit shows that financial intelligence and other relevant information are used to a very negligible extent with minimal outcomes, taking into consideration the perceived risk of major proceeds generating crimes, considered to be threats and the vulnerabilities that confront the jurisdiction. The assessment team's conclusion is supported by findings that are detailed in this chapter.

#### ***UCREF***

71. UCREF is an autonomous entity, under the authority of MJPS in accordance with Art.1 of the Organic Law on UCREF. UCREF's responsibilities include the receiving, analyzing and processing of declarations of information (STRs) that are required to be forwarded to UCREF by reporting entities within the jurisdiction's framework against ML and TF. UCREF is also responsible for forwarding cases to the PPO when serious clues/ information of ML/TF are obtained. The other powers of UCREF include, but are not limited to, conducting strategic analysis.
72. UCREF is considered as one of the central pillars within the jurisdiction's AML/CFT framework and has access to a wide range of financial intelligence and relevant information to conduct its analyses into STRs/CTRs and potential investigations of ML/TF cases which may arise from same. UCREF is one of the main repositories for financial intelligence and relevant information, primarily those contained in STRs/CTRs submitted by FIs.
73. UCREF has indirect access to the financial intelligence and relevant information held by reporting entities (i.e. via letters of request) and has demonstrated that it is requesting and accessing such information from FIs to conduct its functions, albeit to negligible extent. UCREF has cultivated a good working relationship with the other competent authorities such as BAFE, ULCC and the PPO which has resulted in these agencies, primarily the BAFE seeking UCREF's assistance to obtain financial intelligence and other relevant information primarily from the FIs on their behalf.
74. UCREF is considered to be the main consumer of financial intelligence in Haiti, as it is at the forefront and the main agency that is responsible for actively conducting operational and strategic

analysis and the initial investigations of potential ML offences. UCREF in exercising its functions and rendering assistance to other competent authorities, including LEAs, has utilised its indirect access to FIs, which is facilitated through the submission of letters of request by the Director General (DG) of UCREF in an effort to obtain key financial intelligence and relevant information.

75. The dossiers/cases generated from UCREF based on its analyses and investigations, using financial intelligence and relevant information are forwarded to the PPO for review and not the traditional LEAs such as BAFE (the Police) for further investigations. There is no indication that the PPO who is tasked with conducting some level of investigation/review is requesting financial intelligence and relevant information or is requesting assistance or referring the cases to the traditional LEAs such as BAFE (*see IO.7*) for assistance. Moreover, there is no requirement for UCREF to disseminate cases when evidence of an associated predicate offence is discovered (*see IO.7*).

### ***Access to databases/ Request for Financial intelligence and other Information***

76. One of the main sources of information for UCREF is its own database and the reports (STRs/CTRs) contained therein that were submitted by the reporting entities. However, the lack of access to commercial databases represents a shortcoming in the range of information which UCREF can access when conducting one of its key functions, namely analyses. UCREF has demonstrated that it has access to the databases of several government departments to conduct its functions. These include, National Identification Office (NIO); National Tax Authority; Emigration and Immigration Office; Office of Insurance of Vehicles (OVACT), the Ministry of Commerce and the BRH. The information received from these government agencies, include, identification of individuals who are nationals of Haiti, vehicles registration and ownership, information on earnings and tax filings for individuals and businesses, basic and BO information and financial records such as copies of cheques.
77. In conducting its functions including operational analysis, the assessment team was informed that UCREF due to its close relationship with agencies within the DCPJ, such as, BLTS and BAFE utilised the information that are available in the databases of these agencies to conduct its functions. However, there is no data and statistics on the number of requests from UCREF to these agencies as this is being done informally. Nevertheless, the assessment team was unable to verify the information and the cases reviewed by the assessment team did reflect such. Nevertheless, UCREF does not access the widest possible range of databases, including critical databases such as LEAs, General Administration of Customs (AGD) and intelligence agencies. Therefore, critical information that is being held by these agencies is not utilised by UCREF to conduct its analytical and investigative functions. This shortcoming along with others such as lack of access to DNFbPs' database which are stated in more detail in this chapter, represents a fundamental weakness in UCREF's functions and the related products it disseminates. Accessing such information would significantly add value to the products that UCREF disseminates to the PPO, as law enforcement and intelligence agencies databases may contain vital information that is necessary to the

investigations and prosecutions of ML/TF cases, and to identify and trace criminal proceeds that can be confiscated.

78. The financial and other relevant information generally requested from FIs by UCREF on its own behalf or on behalf of competent authorities, includes: account opening documents; correspondence, such as memorandum on the account and records of financial transactions history. The information is deemed to be of a good quality, thereby adding value to UCREF’s and other competent authorities’ functions and is primarily used to determine financial flows and the source of monies. UCREF and other competent authorities are however not accessing financial and relevant information from the DNFBPs sector, although entities, such as real estate brokers and casinos are considered vulnerable to abuse by criminals including money launderers. Further, these sectors were considered as high risk as stated at paragraph 17, chapter 1 in the scoping for higher issues and based on the feedback received from competent authorities. This lack of access by UCREF and other competent authorities to obtain information from this sector can be attributed to the lack of supervisory and regulatory measures for this sector (*See IO.4*). The lack of access to information held by the DNFBPs means that pertinent information is not being utilised by UCREF and other competent authorities to conduct their functions, including investigations/analyses of cases and asset tracing for confiscation, taking into consideration the ML/TF risks to this sector as highlighted in the preceding paragraph.

79. The table below represents the number of requests sent by UCREF to FIs and government agencies (e.g. Tax Department) to assist in the conducting of its functions. The overall numbers appear to be very minimal and do not reflect the perceived risks of ML, associated predicate offences suspected of occurring in the jurisdiction.

*Table 9: Request to FIs and government agencies by UCREF*

<b>Date</b>	<b>Total number of Request</b>	<b>Request to government<sup>36</sup> agencies</b>	<b>Request to FIs</b>
<b>2015</b>	897	22	875
<b>2016</b>	1548	25	1523
<b>2017</b>	964	109	855
<b>2018 as of July 6</b>	405	35	370
<b>Total</b>	<b>3814</b>	<b>191</b>	<b>3623</b>

*Source: UCREF*

80. The figures above show that the majority of requests for information sent to FIs within the last four years (2015-2018). The data presented also shows an increase in requests from 2015 to 2016, with

<sup>36</sup> Does not include LEAs and Intelligence Agencies.

most of the requests sent in 2016. The factors that contributed to the increase in requests were not communicated to the assessment team by the competent authorities. However, their efforts are noted and commended. The assessment team nevertheless believes that this increase in requests for information by UCREF may nevertheless be connected to an increase in STRs. In comparison to the requests sent to FIs, those sent to government agencies were minimal, with 109 requests representing the largest amount in 2017 and a mere eighty- two requests over the remaining three years. Despite, the efforts at accessing and utilising relevant information, the data presented demonstrates that UCREF is not aggressively accessing and utilising the information held by government agencies to conduct its functions. Further, as previously stated, there were no requests for information to the DNFBBs. The lack of requests to government agencies and the complete absence of requests to DNFBBs represents a shortcoming in the information accessed by UCREF to conduct its functions and represents a deficiency that could adversely affect the thoroughness and quality of the dossiers disseminated.

81. Due to UCREF’s indirect access to databases, information received is generally not provided in a timely manner. Some competent authorities indicated that there were instances where information was provided after six months or a year from making the request to some government agencies. Such delays have resulted in constant follow-up via letters and meetings with the agencies involved, to have them provide the information. The delay in submitting the information has impacted the timeliness of the investigations/analyses conducted by UCREF and other competent authorities on whose behalf the information was requested.

***BAFE***

82. BAFE is an agency within the DCPJ, the detective arm of the Haitian National Police (HNP) and was established in 2007. BAFE is the primary LEA tasked with the responsibility of investigating financial crimes including: ML, embezzlement, misappropriation of public funds and other felony offences. Although BAFE has direct access to certain types of financial and relevant information that are held by FIs and DNFBBs through the use of a warrant in certain circumstances (see R.31), it places reliance upon UCREF to request such on its behalf. The rationale for utilising UCREF to access the information on its behalf is to ensure that BAFE benefits from UCREF’s analysis of the information. BAFE can request information indirectly from government agencies such as, the MCI (basic and BO information) and the tax authority via request. BAFE utilised the information it obtained from government databases and FIs to conduct investigations into potential ML offences, associated predicate offences along with the identification and the tracing of assets. The table below represents the number of requests for information by BAFE to banks through UCREF.

*Table 10: Requests for information to Banks by the BAFE via UCREF*

<b>Year</b>	<b>No. of Requests</b>	<b>No. of Responses received</b>	<b>No of request rejected</b>
<b>2015</b>	68	68	0

<b>2016</b>	39	39	0
<b>2017</b>	21	21	0
<b>2018 as of</b>	7	7	0
<b>Total</b>	<b>135</b>	<b>135</b>	<b>0</b>

Source: BAFE

83. The information provided to the assessment team shows that a mere 135 requests were sent by BAFE, one of the premier traditional LEAs indirectly to banks over the four-year period (2015-2018). All requests for information were processed with none rejected. Nevertheless, the data shows that there has been a steady decline in the number of requests made during the period under review. The reason(s) for this decline was not communicated by the authorities. However, taking into consideration, the issues that were scoped as higher risk for ML and the critical roles BAFE plays in conducting financial investigations into ML and associated predicate offences, parallel financial investigations, and supporting the PPO and the investigating magistrate, the number of requests for financial intelligence is not demonstrative of an effective system, whereby, financial intelligence and relevant information are accessed and utilised to investigate and prosecute ML, associated predicate offences or TF; or to trace and identify proceeds of crime. BAFE generally received the information it requested from FIs through UCREF within a one or two-week period on most occasions. However, there were several instances where the information requested from some government entities was received in six months and had a negative impact on the timeliness of investigations.

84. LEAs, specifically BAFE indicated that the information that was provided by the banks was used to supplement evidence in ML or associated predicate offences cases. Financial intelligence received from UCREF was used to follow the money flow and identify information on individuals including address and telephone numbers. Four cases investigated by BAFE and disseminated to the PPO demonstrating the use of financial intelligence and relevant information were reviewed by the assessment team to determine their quality. These cases showed that financial intelligence obtained from the bank, consisting of the financial transactions' history was utilised to supplement other evidence that was previously obtained in the cases. The cases demonstrate the use of financial intelligence by BAFE and appear to be of good quality. However, there were no outcomes from these cases as at the completion of the onsite visit. BAFE should continue to build on the start it has made and continuously utilise financial intelligence in conducting its functions, whilst ensuring that such use of financial intelligence and relevant information are commensurate with the ML/TF risk profile of the country.

***Public Prosecutors' Office (PPO)***

85. The PPO has the responsibility of making the decision to prosecute a criminal offence and is a guarantor of social order. Therefore, the PPO's role is important in the fight against ML, associated

predicate offence and TF. The prosecutor is the one who determines whether to prosecute an offender based on the facts presented by LEAs and UCREF. He also has the prerogative of forwarding a case of ML/TF or associated predicate offences to the investigative magistrate or to dismiss such. The prosecutor can be apprised of a crime through a complaint and through reports received from UCREF, ULCC, BLTS and BAFE. In these cases, it is often financial information with which the prosecutor must work. The PPO receives financial reports from the various LEAs and investigative authorities such as BAFE, UCREF AND ULCC following preliminary investigations into ML, associated predicate offences and TF and the submission of the dossier. The PPO can request additional information including financial intelligence and other relevant information pertaining to these cases from UCREF or a reporting entity. The PPO also plays an important part in the recovery of criminal proceeds. However, there is no indication that the PPO is requesting financial intelligence and relevant information to assist in conducting of its' functions as highlighted in the foregoing.

***Other competent authorities- ULCC, AGD, BRH and Investigating Magistrates***

86. Officials of the ULCC indicated that a good working relation with UCREF exists, which has led to the exchange of financial intelligence and relevant information. Nevertheless, the data provided showing the number of requests that was sent by the ULCC to UCREF is not reflective of a strong working relation with frequent access and use of financial intelligence.

***Table 11: Request from ULCC to UCREF***

<b>Year</b>	<b>Number of Request</b>
<b>2015</b>	2
<b>2016</b>	0
<b>2017</b>	0
<b>July 2018</b>	0
<b>Total</b>	<b>02</b>

87. The information represented on the table above shows that two requests for information were sent to UCREF by ULCC over the past four years. Taking into consideration that corruption was communicated as a perceived high risk for ML (*see Scoping for higher issues- chapter 1, paragraph 17 and IO.1- Chapter 2*), the finding of the assessment team is that the number of requests is not reflective of ULCC accessing and utilising financial intelligence and other relevant information to effectively conduct its functions in a manner that is commensurate with the perceived ML/TF risk. Although the authorities indicated that ULCC can access financial intelligence and relevant information from FIs and other authorities to conduct their functions without relying on UCREF, no data was presented to show that the ULCC is accessing such information. ULCC officials are encouraged to access and make use of the financial intelligence and other relevant information held by UCREF as this information can be highly beneficial to their operations (*see further elaboration on same in IO.7*).

88. The BRH has accessed to financial information from the entities that it supervised to conduct its inspection. Nevertheless, there is no evidence that the BRH and AGD are not accessing and utilising financial intelligence and other relevant information to conduct their functions, including information that is held by UCREF. Taking into consideration the poor quality of STRs/CTRs filed by some FIs, the absence of a risk- based approach to supervision, the BRH role in conducting fitness and propriety, along with the perceived risk of the physical cross-border movement of cash and BNI by money launderers (*see IO.1- Chapter 1, IO.3- Chapter 6 and IO.8- Chapter 3*), there is an expectation that both agencies would be accessing and utilising financial intelligence and other relevant information to undertake their functions.
89. Investigating magistrates also conduct investigations into ML/TF and associated predicate offences and rely on financial intelligence and relevant information to conduct their functions. Although the investigating magistrate can request information directly from reporting entities, reliance is placed on UCREF and the BAFE, due to the limited resources that the investigating magistrates have at their disposal. Although the assessment team was informed that requests for information are normally done by the investigating magistrate, no data or evidence was presented to substantiate the information. Therefore, the assessment team was unable to verify the statement and determine whether this competent authority is utilising financial intelligence and the extent of such usage.

***Case Example 1- Use of financial intelligence***

UCREF opened an investigation into the financial activity of a person managing two companies in Haiti. Financial intelligence was obtained from FIs relative to accounts and an analysis of the accounts showed that the various bank accounts held by the person or his companies were credited with cheques drawn on the accounts of another legal person. The analysis of the financial intelligence, and the investigations conducted established that the financial movements were not typical of the business activity, particularly, the transactions amounts and their regularity. UCREF's analysis based on the financial information concluded that, the individuals were operating shell companies and bank accounts were specifically opened to facilitate financial transactions. UCREF concluded that the case was a typology of ML, which only a judicial investigation can confirm. This case was forwarded to the PPOs and is still pending prosecution.

90. The case presented above represents the good use of and access to financial intelligence by UCREF from FIs. It is also characterised by some good level analysis of banking transactions with the aim of finding the economic justification/source of the funds. The conclusion reached by the UCREF is relevant and highly useful for the purposes of judicial investigations. Nevertheless, the analysis conducted may have been more complete had UCREF accessed other databases to obtain additional useful information, including, law enforcement, intelligence agencies and DNFBPs. The case also demonstrates the use of legal persons (*see I.O.5- Chapter*) to launder the suspected proceeds of crime and the sector's vulnerability to ML in Haiti.

91. Competent authorities have not requested any financial intelligence or relevant information relative to TF. Nevertheless, this does not mean that activities relating to TF are not present. The information obtained during the onsite visit suggests that competent authorities are not giving specific focus to TF and therefore are not requesting information relative to same (*See. IOs. 1 and 9*).

### ***Reports received and requested by competent authorities***

92. UCREF is mandated to receive STRs and CTRs from FIs and DNFBPs relative to proceeds of criminal activities, ML and TF (*Art. 31 of the LSMLTF, 2013*). However, due to the fact that not all the FATF categories of offences are predicates of ML in Haiti, for example tax offences, UCREF is not mandated to receive reports relative to the proceeds that may have been generated from such offences. The foregoing represents a deficiency in UCREF's responsibilities, as the unit is not permitted to receive STRs relating to associated predicate offences, especially in light of the view that some competent authorities consider these offences, particularly tax offences are considered as being high risk to the jurisdiction. The assessment team was unable to verify whether any reports received by UCREF relates to the missing offences as UCREF does not identify suspected predicate offences during their analysis. A further, deficiency includes UCREF not being permitted by law to receive STRs relating to attempted transactions. Notwithstanding the legislative weakness, the assessment team was informed that attempted transactions are filed with UCREF although no evidence was provided to corroborate such. Further, UCREF has demonstrated that it has received STRs relative to suspected associated predicate offences. Although UCREF is authorised to receive cash declarations from the AGD, this was not being done as at the conclusion of the on-site visit. None of the competent authorities, such as the BRH has requested of any of the entities it supervised to submit a STR to UCREF following an inspection. Competent authorities do not have any legal basis to request STRs from UCREF and there is no evidence of them requesting such or information contained in the STR database of UCREF.
93. STRs and CTRs are transmitted in sealed envelopes to UCREF and hand delivered personally to the DG of UCREF. However, in some instances, though limited, the receptionist received same and forwarded them to the DG. The DG has sole knowledge of the entity submitting the STR and makes the determination on which STR is deemed suspicious. STRs that are deemed suspicious by the DG are sanitised through the removal of the names of the institutions submitting the report, and the reasons for suspicion, prior to transmission to the Directors responsible for investigations and analyses. The rationale for sanitisation is based on previous requests for anonymity received from banks, regarding the origin of the STR. The assessment team garnered from the discussions held with competent authorities and private sector officials, that the reason for sanitisation was also motivated by the lack of confidence by some FIs in competent authorities about the security of the information and the risks that could be incurred by the registrant. Although, the sanitisation process still exists at the completion of the on-site, competent authorities believe that such risk no longer exists.

94. Most of the STRs/CTRs received by UCREF were submitted by funds transfer companies, with very limited numbers being submitted by banks. There were no STRs/CTRs submitted by DNFBPs, with sectors such as accountants and lawyers expressing resistance towards submitting reports whilst claiming privileges, such as attorney-client. According to the Haitian authorities, STRs received from banks are considered to be generally of a good quality by competent authorities and include information such as the reasons for the suspicion. Copies of redacted STRs/CTRs filed by the FIs were requested by the assessment team to conduct reviews and make an independent assessment of the quality. However, the request was not granted. Competent authorities indicated that STRs/CTRs from funds transfer companies lacks quality as they merely contain information relative to the name of the subject and transaction amounts. As a result of the lack of quality STRs/CTRs received, minimal or no leads into potential ML, associated predicate and TF investigations or the tracing of assets for confiscation have been generated from their analysis (*see sub-heading: Operational need supported by FIU dissemination for more information*). In most circumstances, these reports are merely closed and stored away. The general lack of quality STRs/CTRs and low-level filings are largely due to the absence of guidance and feedback to the reporting entities by UCREF and the supervisors. (see IO.3).

*Table 12: FIs filing STRs*

<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
<b>Banks</b>	22	37	5	21	<b>85</b>
<b>Funds Transfer Company</b>	10	82	344	227	<b>663</b>
<b>Insurance</b>	0	0	0	0	<b>00</b>
<b>DNFBPs</b>	0	0	0	0	<b>00</b>
<b>Total</b>	<b>32</b>	<b>119</b>	<b>349</b>	<b>248</b>	<b>748</b>

*Source: UCREF*

95. The information presented in the table above shows that UCREF received a total of 748 STRs, with a general increase in reporting annually. This is commendable considering the lack of guidance and feedback by UCREF and supervisors. However, taking into consideration the fact that the banking sector is more advanced than the other sectors in the implementation of AML/CFT measures, represents the largest market share (materiality) and is supervised by the most sophisticated and oldest supervisor (BRH), the level of reporting is low and only represents 11.4 percent of the total number of STRs filed. Further, in the absence of any ML/TF risk assessment undertaken, and detailed risk mitigating measures implemented by this sector, the conclusion of the assessment team is that the number of STRs filed by banks is not commensurate with the level of activities and perceived ML/TF risks in Haiti.

96. To address the lack of reporting from the CECs, UCREF has developed a close working relationship with the CECs Federation (oversight body of CECs). One month prior to the on-site

assessment, the DG of UCREF met with CECs Federation and requested its assistance to have its members submit STRs to the CECs Federation for onward transmission to UCREF. This process has already begun, with the CECs Federation receiving STRs on the behalf of UCREF, nevertheless these reports were not transmitted to UCREF. The rationale behind this agreement is to facilitate the delivery of STRs to UCREF by the CECs, most of which are in rural communities, thus making submission of STRs to UCREF in Port -au- Prince time consuming. Although the proactiveness of UCREF to have CECs submit STRs is commendable, concerns remain regarding the integrity and confidentiality of the STRs and the time taken for delivery as a result of the process utilised.

97. The overall low number of STRs/CTRs filed with UCREF by some sectors is not commensurate with the perceived ML/TF risks that confront the jurisdiction in the absence of any detailed risk mitigation measures implemented by the reporting entities. The DNFBPs sector has not filed any STRs and CTRs with UCREF despite the perceived ML/TF risks which affect that sector. This may be as a result of the following: the sector being largely unsupervised for AML/CFT purposes, lack of legislative or regulatory measures to a large extent and lack of detailed and continuous guidance by competent authorities, including by UCREF (*see IO.3- Chapter 6 and IO.4 – Chapter 5*).
98. The table below shows the number of CTRs received by UCREF during the period 2015-2018 along with the numbers that were analysed and disseminated.

*Table #13: CTRs received, analysed and disseminated*

<b>Year</b>	<b>CTRs Received</b>	<b>Reports disseminated</b>	<b>CTRs analysed and discontinued</b>
<b>2015</b>	111, 524	0	2 038
<b>2016</b>	141, 122	0	68 164
<b>2017</b>	108, 713	0	54 372
<b>as of July, 2018</b>	35, 818	0	39 154
<b>Total</b>	<b>397,177</b>	<b>0</b>	<b>163,728</b>

99. The information in the table above shows that UCREF is consistently receiving significant levels of CTRs annually, predominantly from funds transfer companies and this is indicative of the jurisdiction’s economy being cash-based and heavily dependent on remittances as is reflected in Chapter 1, table 3. CTRs filed with UCREF lacked quality and provided no in-depth information that is actionable by the unit or any of the users of its investigative/intelligence products. This is further compounded by the lack of staff allocated to analyse these reports, and IT software to store and assist in analysing the information. Nevertheless, UCREF has made a consolidated effort to address CTRs within the last three years with approximately fifty percent of the CTRs received being analysed and closed. The rationale for this focused effort within the last three years is

unknown and was not communicated by the authorities. However, it does appear to the assessment team that there is likelihood that no detailed analyses are being given to these reports, based on their lack of quality and the challenges, such as lack of IT software as stated previously.

### ***Currency Declaration***

100. Although mandated by law to receive currency declaration from AGD, this had not begun at the time of the completion of the on-site visit and no timeline was communicated to the assessment team as to when this will likely occur.

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

101. UCREF is only authorised to disseminate the product of its investigation/analysis to the PPO in cases where serious clues of ML/TF are obtained (*Art 35 of the LSMLTF*). Therefore, UCREF is not authorised to disclose information relating to associated predicate offenses including to traditional LEAs such as police officers and there is no evidence of such occurring. Further, information is shared with LEAs, such as BAFE upon request and not spontaneously, thereby reflective of an AML/CFT regime that is reactive and not proactive in nature. Thus far none of UCREF’s disseminations has led to any prosecutions and convictions for ML/TF or associated predicate offences, neither have there been any other actionable outcomes, despite competent authorities stating that the dossiers disseminated by UCREF are of a good quality.

102. The Law bearing on the organisation and functioning of UCREF mandates that UCREF has several departments including an analysis and an investigation department. The analysis department is staffed by between 1-10 persons, the majority of whom are employed as analysts (*for security purposes, the precise number of the staff was not quoted*). The director of the investigative department works closely with the DG, deputy DG and the other directorates of UCREF to ensure that UCREF’s analyses and investigations are conducted in an effective and efficient manner. Analysts employed by UCREF have professional qualifications and experiences in the fields of law, economics and accounting. However, despite having such strong academic backgrounds, staff are not provided with any significant and continuous training relative to operational and strategic analysis and the use of financial intelligence which are key to the unit’s mandate. Nevertheless, some training has been provided to staff including internally, specifically during the initial employment as analysts. The assessment team believes that the insufficient and lack of continuous trainings afforded to UCREF’s analytical staff have adversely impacted the quality of UCREF’s operational analyses and the reports it disseminated to the PPO. The table below represents the training attended by UCREF’s staff during the period 2015-2018.

***Table 14: Training attended by UCREF’s staff***

<b>Year</b>	<b>Name of Training</b>	<b>No. of staff attending</b>	<b>Training Agency</b>
<b>2015</b>	Investigative reporting techniques	More than 5	UCREF
	Laundering and seizure of criminal assets	More than 5	CIFAD

<b>2016</b>	Techniques for detecting money laundering indicators	4	UCREF
	Laundering and seizure of criminal assets	4	CIFAD
	Money laundering, techniques, seizures and alert criteria	2	TRACFIN
	Anti-corruption forum academic criminal justice seminar	1	USA
<b>2017</b>	International financial enforcement	3	USA
	Laundering and seizure of criminal assets	3	DCPJ
	Administrative fraud investigation	2	ITD
	GoAML	2	GoAML conceptors
<b>2018</b>	AML in Haiti	More than 5	UCREF

103. The information presented in the table above shows that the training does not focus on operational and strategic analysis, which are core functions of UCREF. Further, as was stated before, the training is limited and not continuous.

104. UCREF does not have a strategy for addressing STRs, including prioritisation of such based on perceived risk or threat. Further, UCREF does not have access to IT and therefore does not utilise same to assist in its operational analyses. The unit previously utilised an AML software in conjunction with the banks, from 2014, for the receipt of STRs electronically. However, this was unsuitable to conduct analytical functions. Nevertheless, competent authorities recognised the importance of IT to enhance its analytical products and there are plans to acquire and utilise an analytical IT software namely “goAML” by December 2018 to assist UCREF in its analytical functions. This software would be provided with the assistance of the United States Government, Department of Treasury’s Office of Technical Assistance (OTA).

105. In conducting its operational analysis, UCREF primarily relies on the information that is held by FIs and the information held in its database from STRs and CTRs. There is no indication that UCREF is accessing financial intelligence and relevant information that are available in other databases such databases of intelligence agencies, LEAs and DNFbps to add value to the STRs/CTRs it received, and the investigations conducted. Therefore, critical information is not obtained, and the dossiers disseminated by UCREF in some instances are incomplete. Moreover, UCREF is not requesting information from foreign counterparts which may be useful to its analyses relative to STRs that may have cross-border elements (*see IO.2*).

106. The information presented in the table below (*table 15*) shows that UCREF received a significant increase of STRs in 2018 from the previous years (2015-2017), making it a total of 1547 reports received for the period under review. However, only 144 STRs were analysed, representing a total of nine percent of the STRs received, with only twelve disseminations (2015-2018) to the PPO, representing 0.77 percent of the STRs received. The assessment team is unable to state whether all disseminations from UCREF were related to only ML activities or involved some other types of

associated predicate offence, as UCREF does not classify the offences, neither was this done by the PPO. The information provided shows that there is a significant backlog in STRs awaiting analyses. UCREF does not have policies or plans to address this backlog. There is no continuous or significant progress in the number of STRs analysed, disseminated and closed, with the amount declining as of 2016 as seen in table 15. The information presented in the table 15 below reflects the challenges and weaknesses in UCREF’s ability to properly conduct operational analyses. These challenges are articulated in more detail in this chapter.

*Table 15: STRs received, analysed and closed and Dossiers disseminated*

<b>Year</b>	<b>STRs received</b>	<b>Dossiers disseminated based on analyses/investigations</b>	<b>STRs closed based on analyses</b>
<b>2015</b>	119	0	56
<b>2016</b>	349	6	74
<b>2017</b>	248	5	02
<b>2018</b>	831	1	0
<b>Total</b>	<b>1547</b>	<b>12</b>	<b>132</b>

*Source: UCREF*

107. The PPO and investigative magistrates are of the opinion that the dossiers they received from UCREF are generally of a good quality, nevertheless, the lack of outcomes from these disseminations, including, the absence of any prosecutions or convictions for ML/TF and associated predicate offences, the lack of investigative orders such as search warrants obtained and lack of assets traced and confiscated assets are not reflective of what is being stated by the PPO and the investigative magistrates. This is further exacerbated by the fact that the PPO, investigative magistrate and other LEAs lack the requisite training in the use of financial intelligence and may not be positioned to make proper use of UCREF’s analytical products. Although UCREF disseminates information to the BAFE, this is only as a result of requests made on behalf of BAFE. There are no operational analyses of the information obtained on behalf of BAFE.

108. The Assessment team during the on-site visit reviewed three dossiers that were disseminated to the PPO based on UCREF’s analyses of STRs, with the intention of determining the quality of the UCREF’s analyses and the sources of information. The review revealed that good quality work was undertaken by UCREF, including the analyses of banking records. UCREF presented its findings in a detailed report. The review also revealed that heavy reliance is placed on financial intelligence, primarily banking records to build the cases. Nevertheless, the assessment team is of the belief that the analyses and investigation conducted can be strengthened. The dossiers are limited in the depth of analyses conducted and can benefit from further work with the intention of presenting more extensive/detailed reports. Further, the dossiers do not have the benefit of financial intelligence and relevant information that can be obtained from several key databases such as law enforcement

authorities, intelligence agencies, DNFBPs, government and commercial databases and information from foreign counterparts. Moreover, there is no usage of IT analytical software to show among other things linkages between individuals and their activities, which would be highly beneficial to the PPO and the investigating magistrate.

### ***Strategic Analysis***

109. UCREF is mandated to conduct periodic studies of trends and development of ML/TF techniques nationwide. Although, it was stated that UCREF conducts some level of strategic analysis, no evidence was provided to the assessment team to substantiate this statement, therefore, no favourable assessment is possible. Further, there is no indication that staff of UCREF has received relevant training to conduct strategic analysis.

### ***Operational Independence autonomy of UCREF.***

110. The assessment team in conducting this assessment gave special attention to the operational independence and autonomy of UCREF, due to the perceived high risk of corruption within the jurisdiction. The findings are set out below.

111. The decision to conduct an analysis of a STR/CTR and disseminates the result of its analysis rest solely with the DG of UCREF. There are no set appointment criteria to be followed when selecting an individual for the post of DG of UCREF. Therefore, the possibility exists that an individual with lack of knowledge of the job can be appointed to the position and become a political appointee. The DG is appointed by the Council of Ministers (Cabinet of Ministers) via Presidential Decree, based on the recommendation of the Minister responsible for the MJPS. The DG is answerable to the five-member board of directors of UCREF, three of whom are nominated by Cabinet members. However, this board was not installed at completion of the on-site visit. Therefore, in the present system the DG is answerable to the Minister responsible for the MJPS. The DG and his deputy (designated by the Minister of Justice and Public Security) are appointed to a term in office of four consecutive years renewable once, however, this is not automatic as they can be dismissed for serious breaches<sup>37</sup>. The assessment team was informed that there were instances when previous DGs were removed based on allegations of misconduct or the procedures utilised for their appointment were considered flawed.

112. UCREF's board of directors, though not installed at the completion of the on-site visit is designated with specific powers, some of which the assessment team believes can negatively impact the unit's autonomy, should they be installed and given the powers under the current legislation. Principal among the assessment team's concerns are the powers of the board of directors to approve UCREF's plan of action and the designation and removal of staff. Nevertheless, these functions do not seemingly have an impact on the Unit's operational independence, such as the

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<sup>37</sup> Any fraudulent or illegal act, or any act that is opposed to the fundamental objectives, powers and internal regulation of UCREF.

decision of the DG's decision to analyse STRs and disseminate findings. The assessment team was informed that Haitian law (Art. 17 of the Decree of May 2005) entrust the board of directors with the management and control of the entity. The extent to which such management and control of UCREF extends is a cause for concern to the assessment team and the impact on the operational independence and autonomy once the board of directors is installed taking into consideration the wide range of powers of the board under the law. All UCREF contractual staff are recruited unilaterally by the DG, as the board of Directors is yet to be installed. The contracts are then sent to the National Court of Audit and in some cases to the National Human Resource Office Management for approval. Both of these agencies are independent entities. Staff are also subjected to vetting during their recruitment and continuous employment. The vetting process includes polygraphs, although not all staff were polygraphed.

113. UCREF's budget is provided by the public treasury (Central Government). The table represents the budgetary amount requested by UCREF and the amount allocated along with the difference.

*Table 16: UCREF budget from year 2014 to 2018 (USD)*

<b>Year</b>	<b>Budget Requested</b>	<b>Budgetary allocation</b>	<b>Difference</b>
<b>2014</b>	2,030, 318.31	1, 141, 189.53	- 889, 128.79
<b>2015</b>	1, 364, 902.88	970, 976.77	- 393, 926.12
<b>2016</b>	1, 109, 023.32	821, 354.86	- 287, 668.45
<b>2017</b>	1, 348, 229.40	856, 388.95	- 491, 840,44
<b>2018</b>	2, 590 ,697.78	1, 060 ,134.59	- 1 ,530, 563,20

114. The information presented in the table above shows that UCREF has not received the budget requested to conduct its functions during the period under review, with the deficit between what was requested and what was allocated getting larger during the period 2016-2018. The assessment team is cognisant of the fact that Haiti's economic situation and scarcity of financial resources should be taken into consideration in the allocation of its already limited financial resources and the foregoing in no way a condemnation or negative finding on the part of the authorities. The assessment team instead commends the authorities for the increase in budgetary allocation to UCREF since 2016 and is testament of their support of the Unit. Nevertheless, a significant percentage of the UCREF's budget is allocated for salaries and other operating expenditures and has impacted the unit's ability to recruit additional staff and provide training which are very important to Haiti, considering the weakness in ability of staff to conduct operational and strategic analysis which are fundamental to the functions of UCREF.

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

115. There are no established formal mechanisms between the different competent authorities to facilitate the exchange of information, with information shared mostly upon request and not spontaneously. As highlighted previously, there is a good working relationship between some competent authorities, which has resulted in UCREF rendering assistance through the provision of financial intelligence from FIs to some competent authorities, primarily BAFE. Communication between some competent authorities, primarily BAFE and UCREF appears to be relatively easy and is encouraged by the assessment team with the inclusion of other competent authorities such as the PPO. The communication can further be strengthened through the creation of joint investigative teams and operationalising of the taskforce. The communication and cooperation mechanism can also benefit greatly through the establishing of a secure and documented mechanism(s) for cooperation and coordination, such as the signing of MOUs between the relevant agencies. Finally, there is also need for more timely responses from some government agencies and competent authorities that possess critical information, necessary to the operations of competent authorities, primarily UCREF and BAFE as this has significantly impacted the work in conducting investigations and analyses.
116. Legal limitation in the powers of LEAs and other competent authorities, for example, the inability of the judiciary police to directly query banks (in all circumstances involving the proceeds of crime) and obtain warrants for evidence seems to be a cause for cooperation between UCREF and these LEAs. The assessment team believes that this is due to a vague division of competences rather than a strong will to cooperate. This assertion is supported by the evidence gathered during the interviews and feedback received by the assessment team during the on-site visit. Further, although, UCREF's analytical products are disseminated to the PPO, there does not appear to be a close working relationship between UCREF and the PPO. Also, there does not appear to be a close working relationship and coordination and cooperation between the PPO and other LEAs with the PPO providing little or no guidance and feedback to UCREF and LEAs on cases.
117. The finding of the assessment team is that UCREF is more tasked with providing technical assistance to the PPO on their disclosures, rather than being a strategic AML/CFT partner with critical information, including financial intelligence that maybe necessary for the PPO to conduct its functions.
118. The assessment team was informed that UCREF and other competent authorities have created an operational taskforce named "Inter-departmental interaction committee". The taskforce will comprise of several LEAs and investigative authorities, with the aim of fostering relationships between the different agencies and the exchange of information on a real time basis. However, there is no evidence of the existence of this task force in the absence of any supporting documentations including minutes of meetings and outcomes. There is no evidence of any joint investigative task force into ML and other associated predicate offences which would result in the cooperation and exchange of financial intelligence between competent authorities, primarily LEAs and investigative authorities.

119. There are no secure and confidential mechanisms that are utilised to transmit or share information amongst competent authorities. Therefore, confidentiality of the information can be compromised, although no such cases have been reported thus far. Further, there is no guarantee on the part of the agencies receiving financial intelligence and relevant information from UCREF that the integrity of the information would be maintained and safeguarded to prevent unauthorised disclosures.

## **Overall Conclusion**

120. Haiti has established an FIU (UCREF) that has demonstrated that it is conducting its core functions, namely the receipt, analysis and dissemination of reports. Nevertheless, UCREF's functions are severely impacted by several factors, including limited resources (financial, human and information technology). Although UCREF has demonstrated that it is engaged in the dissemination of dossiers to the PPO, it is not utilising several key databases to conduct its analysis, therefore the dossiers lack pertinent information. Although the LEAs indicated that the dossiers and information received from UCREF are generally of a good quality, there are no demonstrable outcomes to corroborate the assertions. This is further compounded by the lack of training received by competent authorities, including the LEAs in utilising financial intelligence to conduct their functions. UCREF and BAFE have demonstrated that they are accessing and utilising financial intelligence and relevant information in the conduct of their functions. However, this is being done to a negligible extent and not in keeping with the perceived ML/TF risks. The quality of the STRs/CTRs filed by FIs is minimal and of low quality in some instances, due to the lack of feedback and guidance provided by UCREF.

121. **Haiti is rated as achieving a low level of effectiveness for IO.6.**

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

122. There are several different LEAs that are responsible for ensuring that ML cases are properly identified, investigated and prosecuted in Haiti. These agencies include:

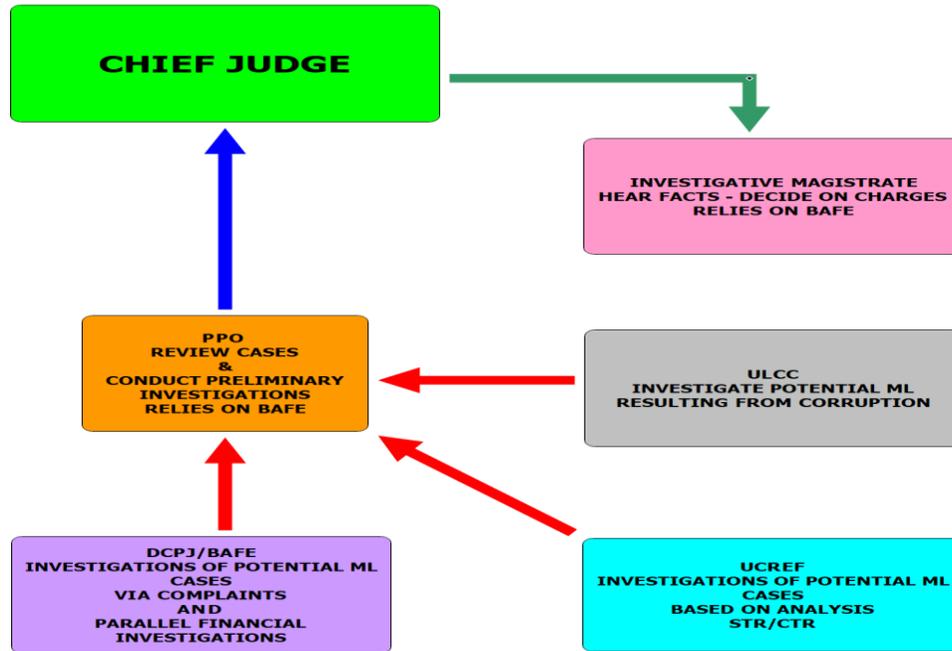
- i. The DCPJ- through the BAFE.
- ii. UCREF<sup>38</sup>
- iii. Prosecutors Office
- iv. Investigative Magistrate
- v. ULCC

123. The diagram below shows the different investigative and prosecutorial agencies within the Haitian system, the investigative process/chain and the different means utilised to identify potential ML/TF cases.

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<sup>38</sup> UCREF only conducts administrative investigations to obtain further clues to strengthen its analysis. Administrative investigations differ from judicial investigations that are conducted by the other LEAs such as BAFE and investigative authorities such as investigating magistrate. Judicial investigation involves the gathering of evidence and not clues.

## HAITI INVESTIGATIVE AND PROSECUTION PROCESS



### *ML identification and investigation*

124. The investigative/prosecutorial agencies highlighted above have different functions throughout the investigative and prosecutorial process, with some having dual roles. However, it is paramount that all these agencies work cohesively, to ensure that targeted objectives/outcomes are achieved, namely the identification, investigations, prosecutions and application of sanctions for ML offences in Haiti are proportionate and dissuasive. The different roles, functions and the challenges encountered by the respective competent authorities are highlighted in this chapter, along with the different ways in which ML activities are identified and investigated along with the types of ML cases investigated and sanctions applied. Overall, the findings of the assessment team show that identification and investigations of ML cases are primarily triggered by a complaint, a parallel financial investigation and an analysis of a STR and is reflective of the civil law system in Haiti which is highly reactive. The investigatory process in Haiti does not appear to be proactive, meaning that intelligence gathering exercises are not being used to initiate investigations. The findings also show that ML and TF are not investigated and prosecuted in a manner that is commensurate with perceived ML/TF risk profile of the country, with no prosecutions for any such offences at the conclusion of the onsite visit, albeit cases were being forwarded to PPO and the investigating magistrate. The reasons for the findings of the assessment team are stated below in this chapter.

*DCPJ:*

125. The DCPJ is the detective service within the HNP that conducts works in eighteen jurisdictions of Haiti. The DCPJ is headed by a Central Director and is comprised of eight departments, each having separate crime fighting functions but support the DCPJ's mandate. The DCPJ is responsible for the repression of crime, whilst ensuring that individuals who commit crimes, including ML are brought before the Court and prosecuted. The DCPJ through its various departments plays an integral role in the fight against ML and associated predicate offences, some of which are considered as high risk, such as economic crimes, kidnapping and drug trafficking. The DCPJ, and the jurisdiction to a larger extent through the enactment of the law of February 2001 bearing on the laundering of assets from serious crimes, first signaled their intention to fight ML. Embedded within the DCPJ are two critical units, namely the BAFE and the BLTS that are directly involved in the investigations of ML and the high-risk predicate offences of drug trafficking. The DCPJ is also the host for the International Police (Interpol) office, which is utilised to send and receive requests from other Interpol members relative to ML and other offences that may have been committed abroad or in Haiti. The DCPJ also works closely with several other international LEAs from countries such as Canada, France and the USA to confront the threats of ML and associated predicate offences in Haiti.

*BAFE*

126. BAFE was created in 2007 and comprised of police and civilian personnel with the intention of strengthening and supporting other national institutions, such as the PPO and the investigating magistrate that are engaged in the fight against financial crimes including ML. It also has the responsibility of conducting parallel financial investigations into the predicate offences that are investigated by other agencies within the DCPJ such as the BLTS. Within BAFE, is a team consisting of five dedicated individuals, specifically tasked with conducting investigations of ML offences.

127. To accomplish its mission of conducting ML investigation, BAFE collaborates with several national authorities such as ULCC, National Identification Office (ONI), UCREF and international agencies such as the DEA and FBI. BAFE collaborates with UCREF mainly because it requires the assistance of UCREF to obtain financial intelligence and other relevant information (e.g. telephone numbers, address etc) on its behalf from banks.

128. BAFE identifies potential ML cases primarily via three means; parallel financial investigations (primarily via cases referred from the BLTS involving drug trafficking), investigations of an associated predicate offence within its remit such as fraud (initiated via complaints) and referrals of complaints or case from the PPO for investigations. All the measures used to identify potential ML cases by the BAFE appear to be reactive and not proactive, as BAFE does not initiate potential stand-alone ML (without the report of a predicate offence) investigations on its own or through intelligence received directly.

*Table No 17: No of cases forwarded to the PPO and Investigating Magistrate- Predicate offences*

<b>Year</b>	<b>Cases forwarded to the PPO</b>	<b>Cases forwarded to Investigative Magistrate</b>
<b>2014</b>	17	01
<b>2015</b>	9	0
<b>2016</b>	9	01
<b>2017</b>	3	01
<b>Total</b>	<b>38</b>	<b>03</b>

*Source: BAFE*

129. The information provided by the competent authorities shows that thirty-eight cases that involved suspected proceeds of crime were forwarded to the PPO by BAFE during the period 2014-2017 based on investigations conducted. The PPO did not provide any information regarding the classification of the offences (for example, fraud and theft) as this is done by the investigating magistrate. Nevertheless, from the cases that were disseminated to the PPO, three were forwarded to the investigating magistrate and their status is unknown to the investigators. The rationale for these low number of cases being forwarded to the PPO and to the investigating magistrate was not stated to the assessment team. Nevertheless, such low number of disseminated cases of suspected proceeds of crime is not commensurate with the perceived high-level risk of ML and other associated predicate offences in the jurisdiction. There was no feedback provided to BAFE by the PPO on the status of the cases it had disseminated, including on their quality. However, none has resulted in any successful prosecution or convictions for ML within the period under review. The assessment team attributes the low level of disseminations by the PPO and the lack of investigation of ML cases to several factors including: lack of detailed and quality investigations, lack of resources of BAFE and the PPO, lack of resources of the investigating magistrate, lack of knowledge and guidance relative to the prosecution of ML cases by PPO and the investigating magistrate due to an outdated criminal procedure code and lack of training.

130. The table below (table #18) shows that during the period 2014-2017 a total of seven potential ML cases were investigated by BAFE. The figures continue to fluctuate yearly and are very miniscule. Based on figures represented in the table, the conclusion arrived at is that potential ML cases are not being identified and investigated commensurate with the perceived ML risk profile of the country. Several factors contributed to such low-level identification and investigations of ML offences, including lack of resources and training (see paragraph 155-157).

131. *Table #18: No.of cases investigated by BAFE.*

<b>Year</b>	<b>ML</b>	<b>Other offences</b>
<b>2014</b>	1	47
<b>2015</b>	2	30

<b>2016</b>	3	26
<b>2017</b>	1	42
<b>Total</b>	<b>07</b>	<b>145</b>

**Case Example 2- Identification and Investigation of potential ML and other associated predicate offences**

As a result of a delegation of power from the PPO relative to the movements of funds recorded on various bank accounts an investigation was commenced. BAFE as a result of the Letter Rogatory received conducted investigations and established that the funds in question were derived from misappropriation of public funds and the person(s) who misappropriated the funds was suspected of benefiting from same. Investigation was conducted utilising traditional LEA measures, such as searches and hearings. Further detailed financial analyses were conducted by BAFE which made it possible for the authorities to consider the possibility of prosecuting and likely convict the defendants for theft, abuse of trust, misappropriation of funds, ML and criminal association. This case is still pending, and the individual(s) has not been subject to prosecution as of the conclusion of the onsite visit.

**UCREF**

132. UCREF is authorised to conduct an initial investigation into potential ML cases. The authorities deemed this as an administrative type investigation to obtain clues or information to assist in the preparation of dossiers to be disseminated to the PPO and differs from a judicial investigation, which is conducted by the BAFE and the investigating magistrates to obtain evidence. An example of the type of administrative investigations conducted by UCREF includes physically verifying the existence of a property when a STR is received that has nexus to that property. The law mandates that an investigative department be established within UCREF to conduct this function. The law requires UCREF to transmit its reports based on facts and its opinion to the Government Commissioner (PPO) as soon as serious clues/ information of ML emerges (*LSMLTF, 2013*). UCREF identifies potential cases of ML through the STRs it received, analysed and investigated. During the period 2015-2018 UCREF identified and disseminated a total of twelve potential cases of ML from the STRs received (*see table 15- IO.6*). The information presented on that table shows that there is a constant decline in the number of potential ML cases disseminated to the PPO by UCREF, with the reason(s) for such unknown. Based on the information presented in the table, the conclusion was made by the assessment team that the identification and investigations of potential ML cases by UCREF cases are not commensurate with the perceived ML risk profile of the country. Neither UCREF or the other LEAs involved in the different identification/ investigatory processes categorised the ML cases as stand-alone, foreign predicate and third-party ML, thereby making it difficult for the assessment team to conclude on whether Haiti is investigating the different types of ML cases. Several factors have contributed to UCREF’s inability to properly identify and

investigate potential ML cases. These factors include, lack of training and resources (*See- IO.6 for other factors affecting UCREF's operations*).

## ULCC

133. Proceeds derived from corruption were given extraordinary scrutiny by the assessment team in this section of the report due to its perceived high risk in Haiti and its ability to generate unexplained wealth. The ULCC is tasked with conducting potential ML investigations, resulting from an investigation into the predicate offence of corruption. Art. 19 of the Law on the Prevention and Punishment of Corruption (LPPC) authorises the use of available measures for conducting investigations of ML offences by agents investigating corruption, although these are inadequate. (see R.30/R.31). The ULCC is a specialised unit created in September 2004 to fight corruption which is considered an endemic and a high risk for ML. The ULCC is an administrative and autonomous statutory body within the Ministry of Finance. The Unit is headed by a DG, who is appointed by presidential decree and can be terminated at any given time as the office holder does not have a term of reference. The fact that the DG can be removed in such fashion is of concern to the assessment team who believes that this can have an impact on the manner in which he conducts his functions. The government of Haiti has recognised that corruption represents one of the greatest threats to the jurisdiction's financial, economic and security stability. In March 2009, the government adopted a national anti-corruption strategy document based on a stock taking exercise, with the aim of implementing measures to combat corruption. There has nevertheless been no revisions or updates to this document, therefore the assessment team did not consider the findings in the report as it falls outside of the period under consideration. The ULCC consists of five departmental directorates and has a staff complement of 147 persons (*see table 19*). The operations department within the ULCC is tasked with the responsibility of investigating corruption and potential ML cases that may result from the predicate.

*Table 19. ULCC workforce and geographical distribution*

Central Office	Departmental directorate of Nippes	Departmental directorate of Artibonite	Departmental directorate of Cap-Haïtien	Departmental directorate of South	Departmental directorate of center
104	7	8	9	10	9

134. Persons engaged in the predicate offences of tax evasion<sup>39</sup>, smuggling of goods and drug trafficking are largely responsible for corrupting public officials in Haiti. The ULCC has focused its scarce resources on identifying offenders by tracking their illicit enrichment schemes. Although, the ULCC is not directly involved in the fight against persons who are directly engaged in predicate offences (drug trafficking etc) who seeks to corrupt-public officials, the Unit works closely with other authorities such as CONALD and BAFE which are directly involved in the investigations of

<sup>39</sup> Tax evasion is not considered to be a predicate offence for ML in Haiti.

the predicate. The assessment team was informed that there is a close relationship between UCREF and ULCC, that has led to the exchange of financial intelligence, as corruption cases involved some aspect of ML. However, the information provided in IO 6, is not reflective of the existence of such strong relationship. Further ULCC officials indicated that cases of corruption involving elements ML are forwarded to UCREF, despite the law authorised the ULCC to conduct such investigation. However, no data was provided to the assessment team to substantiate or verify the statement from the ULCC officials.

135. The ULCC initiates corruption investigations primarily as a result of information they received from reports received from “whistle-blowers”, open source monitoring and police reports. Public officials, including politicians are also required to file declarations at the beginning and at the end of their tenure in office within thirty days. These declarations are required to be filed with the Registry of the competent lower courts The ULCC is tasked with ensuring that these declarations are filed within the stipulated deadlines and for also issuing reminders to individuals who have not filed within the stipulated deadline. However, a significant number of public officials including politicians are delinquent in the filing and are not complying with the requirement. Sanctions are available for persons who are not complying with the requirement. However, based on discussions held with competent authorities, public officials are quite content with being fined, as the penalties are not considered to be effective and dissuasive. ULCC forwards all cases involving allegation of corruption to the PPO for review of the evidence, and to make a determination as to whether transmission of same to an investigative magistrate is warranted. The ULCC is unaware about the status of the cases it has forwarded to the PPO due to the lack of feedback from the PPO’s office. Although ULCC officials believe that the cases transmitted to the PPO are of good quality, feedback from the PPO would greatly assist the ULCC in remedying any deficiencies identified in the investigation process. Since the inception of the ULCC thirty-five potential corruptions cases were forwarded to the PPO. The number of cases subsequently forwarded to the investigating magistrate by the PPO is unknown as no feedback was provided by the PPO to the ULCC. None of these cases has resulted in any investigation and prosecution or conviction for ML offences.

*Table # 20: Statistic relating to ULCC activities (investigations)*

<b>Year</b>	<b>Denunciations and complaints</b>	<b>Asset declarations</b>	<b>Number of Compliance Investigations initiated<sup>40</sup></b>	<b>Completed investigations</b>	<b>Number of investigations in progress</b>
<b>2012-2013</b>	73	-		50	23
<b>2013-2014</b>	39	-		25	14
<b>2014-2015</b>	36	-		27	09

<sup>40</sup> Compliance investigations are investigations initiated by the ULCC based on their own suspicion of a corruption offence and where no denunciation or complaints were received. These are proactive investigations.

<b>2015-2016</b>	19	24	14	14	19
<b>Oct 2016-Mar 2017</b>	12	-		7	05
<b>Apr 2017-Sept 2017</b>	6	86		5	23

136. The information presented in the table above shows that the number of complaints, on-going investigations and completed investigations received and conducted by the ULCC continues to decline, despite corruption being considered a high risk for ML. The information shows that public officials, including politicians are consistently delinquent in filing the relevant asset declarations, with no declaration filed for a significant time period. Nevertheless, it should be noted that the number of declarations filed by public officials from April 2017 to September 2018 has increased three-fold. The rationale for this increase was not provided by the authorities. The data presented in the table shows that twenty-three reports received are awaiting investigations as of 2018, which the ULCC attributes to a lack of resources available for it to conduct its functions. The assessment team observed that there were several outstanding investigations that were in progressed from the previous years are not accounted for in the corresponding year and no information provided to the assessment team as the status of these investigations. The assessment team observed that the information presented on the table does not correlate when calculated, and further demonstrate the weakness in competent authorities' ability to maintain proper and comprehensive statistics. The average time period for the ULCC to complete an investigation is six to nine months. Despite corruption being a higher risk for ML, as indicated by competent authorities and private sector officials (see IO.1-Chapter 2) and in the scoping for higher issues at Chapter 1, there is no indication that potential ML cases arising from parallel financial investigations into corruption cases are identified, investigated and prosecuted commensurate with the perceived risk.

### ***PPOs***

137. The law mandates that one or more substitute government commissioners specialised in financial crimes be appointed by the MJPS at each of the PPO near the lower court. The substitute commissioner maybe summoned by denunciation, by complaint, by request/report of UCREF or by any public or private organisation or any individual or legal entity pursuant to the criminal code. The substitute government commissioner in collaboration with the PPO has jurisdiction over the investigations and prosecutions of all ML cases. The PPO is the most central and important agency in the fight against ML and associated predicate offences. All criminal cases, including ML must be forwarded to the PPO and reviewed for sufficiency of evidence and the information for the PPO to make a decision. The PPO has the discretion to either forward the case to the investigating magistrate based on the evidence or information collected by the relevant agency conducting the enquiry or dismiss same. The PPO also conducts some further investigations into a case or complaint received and relies on the judicial police, including the BAFE in cases of financial crimes including ML.

138. The PPO operates in each of the eighteen jurisdictions of Haiti. The Directorate of Judicial Affairs in the MJPS has oversight of the PPO. Public prosecutors are appointed by the MJPS and are required to act independently of the MJPS. However, there is no term limit for the prosecutors, and they can be dismissed by the Minister at any given time for any serious breaches. These breaches are not contained or stated in any procedure or laws. Given that corruption was identified as high risk in Haiti, and the important role the PPO plays in tackling ML and other associated predicate offences, including corruption, the assessment believes that the manner in which the public prosecutors are appointed and can be dismissed can have a negative implication on the investigative and prosecutorial process. The appointment and removal process can also have an impact on the prosecutor to independently conducting his functions, especially in cases that may involve high-level officials and PEPs. Ninety-nine percent of potential ML cases investigated thus far were conducted by the PPO in Port -Au- Prince with whom the assessment team met. The reason for such limited investigations and prosecutions occurring outside of the capital was not provided by the competent authorities. Nevertheless, the assessment team believes that this may be due to the lack of knowledge of prosecutors relative to the investigation and prosecution of ML that are not located in the Port -Au- Prince jurisdiction and the PPO in general.
139. The PPO is mandated to be apprised of all cases from LEAs and other competent authorities conducting investigations of potential ML and associated predicate offences, however it generally relies on BAFE and UCREF to assist the office in conducting additional investigations/ enquiries into potential ML cases prior to transmitting same to the Chief Judge for assignment to an investigating magistrate. The PPO forwards all cases from UCREF to the investigating magistrate as a strategic decision, given the importance of fighting ML but would normally conduct additional reviews before forwarding the cases submitted by the BAFE, given that they are often not properly assembled and often require additional work. There is no evidence that the PPO is involved during the investigative process of cases by the other LEAs. The finding of the assessment team is that the prosecutor only reviews the cases for evidence with the intention of forwarding them to the investigating magistrate or dismissing same.
140. Domestic co-operation between some of the LEAs and investigative authorities responsible for the identification and investigation of potential ML cases was highlighted and this was evidenced based on the interviews conducted. However, such cooperation is very limited and does not involved the PPO. There is no indication that the PPO enters the investigation process at an early stage to provide guidance and feedback to investigators, which would enable them to properly identify and investigate ML cases, especially those that are complex and high-profile cases. The PPO seemingly becomes involved once the case is forwarded to him and only makes the decision to forward or dismissed.

***Investigating Magistrate:***

141. The investigating magistrate is given jurisdiction to conduct judicial investigations into ML in accordance with the LSMTF, 2013 (Art 73& 75). The law requires that a magistrate specialising in financial crimes be delegated to each of the civil courts. The responsibility of the magistrate is to

conduct the necessary due diligence efforts in obtaining the truth by way of proceeding with an investigation or in a manner specified by the criminal procedure code (CPC). The investigating magistrate specialising in financial crime is required to hear all personal, professional and financial information, required for the case, based on the initial judicial and administrative investigations conducted by UCREF or any other public or private organisation such as the BAFE and the ULCC.

142. Potential cases involving ML are assigned to investigating magistrates who are specially trained in financial crimes by the Chief Judge. Based on the assessment conducted, there are no mechanisms for the investigating magistrate to identify potential ML cases, as cases are merely assigned to him to conduct investigations and obtain the truth, classify the offences and decide on the charges to be brought against the individual. The investigating magistrate generally relies on the DCPJ, particularly BAFE in conducting its investigation as it does not have the resources at its disposal to undertake such investigations. The investigations of potential ML and associated predicate offences conducted by investigative magistrates are usually lengthy, as a result of their reliance of the officers of BAFE who are tasked with conducting other functions and who also has limited resources at their disposal. Competent authorities referenced two cases to demonstrate the investigations conducted by the investigating magistrate. One of these cases involved a Letter Rogatory (formal request from a foreign court for judicial assistance) for which the information have been outstanding for an inordinate time period. The investigating magistrate in investigating ML offences, has the authority to request information directly from banks. However, there is no evidence of financial intelligence and relevant information being requested.

143. The investigating magistrates have only received very few cases that involved potential ML activities as reflected in table 21. There are approximately ten investigating magistrates operating in the jurisdiction that are specifically trained in financial crimes, therefore, cases involving ML activities are assigned to these specially trained magistrates. According to the investigating magistrates interviewed, financial investigations require six months to a year for completion following the receipt of a file from the PPO due to the complex nature of the crimes. The dossiers received and presided over by the investigating magistrate thus far are deemed to be generally of a good quality. However, there has been no demonstrable outcomes, such as indictment/charges or convictions for ML offences based on the dossiers they have received thus far. The statement by the investigating magistrate therefore cannot be substantiated. Factors, such as lack of resources, lack of time allocated to the investigative magistrate to complete his findings as ML cases are complex and the CPC mandates that the investigating magistrate completes his investigation within a specific timeline, security of the investigating magistrate and an outdated CPC have also contributed to the lack of outcomes such as indictments and convictions for ML offences. Cases are also delayed due to a set security of tenure for investigating magistrates as these individuals are employed on a contractual basis. Once this contract has ended; the case is stayed until the contract is renewed or is assigned to a different magistrate.

*Table #21: No of potential ML investigations by the Investigating Magistrate*

<b>Year</b>	<b>Amount</b>
2014	03
2015	01
2016	01
2017	01

144. The information presented to the assessment team shows that a total of six potential ML cases are currently under investigation by the investigating magistrates in Haiti. The information shows that the number of investigations is minimal and is not consistent with the risk and context of the jurisdiction. The information also does not correlate with the statement from competent authorities that a strategic decision has been taken to submit all cases from UCREF to the investigating magistrate and this amount is significantly less than what was disseminated, although the authorities noted that the data does not take into account files redistributed due to promotion of an investigating magistrate or a magistrate demitting office as a result of an expired contract. The assessment team observed that three cases have been outstanding since 2014 and the reason(s) for this delay was not communicated. Nevertheless, the assessment team believes that this delay was largely due to the lack of resources and infrastructure at the disposal of the investigative magistrate. The information provided to the assessment team shows that one case received by the investigating magistrate was concluded in 2017 with not enough evidence to lead to a prosecution and the matter was referred back to the PPO.

145. No evidence was provided to show that LEAs and other investigative agencies responsible for identifying and investigating ML and associated predicate offences are utilising investigative tools that are available to them to conduct their functions, albeit the deficiencies that exist such as the inability of the authorities to request the production of all information and records held by FIs, DNFBPs and other natural or legal persons in all circumstances that is necessary to conduct investigations and prosecution of ML (see R.31). Competent authorities did not provide any data on the number of investigative tools that were obtained for conducting ML and associated predicate offences investigations.

### ***Parallel financial investigations***

146. All LEAs and investigative authorities responsible for the investigations of ML and associated predicate offences gave an indication that they are strongly focusing on conducting parallel financial investigations, specifically on predicate offences such as corruption and drug trafficking, based on the high-level threat to ML. However, the claim by the competent authorities was not supported by the outcomes as for the last four years, as there were no successful prosecutions or convictions for any types of ML offences resulting from a parallel financial investigation. The number of potential ML cases investigated is not reflective of a system that is engaged in the practice of conducting parallel financial investigations. Further, LEAs are not properly resourced to conduct parallel financial investigations based on the information gathered during the assessment.

147. As a result of the absence of data relative to associated predicate offences investigated and prosecuted in Haiti during the period under the review (2015-2018), the assessment team was unable to make a more concise judgement in determining the extent to which LEAs are conducting parallel financial investigations. Nevertheless, the assessment team focused on parallel financial investigations surrounding high risk predicate offences such as corruption, kidnapping, drug trafficking and human trafficking offences to determine whether potential ML cases arising from these cases are identified and investigated.
148. There are no documented policies, standard operating procedures (SOPs) or MOUs between LEAs authorising the conducting of parallel financial investigations, or for the sharing of information to facilitate such. The decision to conduct parallel financial investigations within the DCPJ rests with the Cabinet of the DG of the HNP who makes an assessment of the cases that requires such. The factors that are considered in making such decision were not communicated to the assessment team and the process is seemingly ad hoc. Should the need for parallel financial investigations arise, the matter is dispatched within the services of the DCPJ to the BAFE from the department requesting such investigation. Although the assessment team was informed that BAFE and the BLTS have worked together on several cases, with the BLTS responsible for conducting investigations into drug trafficking offences, no evidence was provided to substantiate the statement. Further, LEAs indicated that cases arising from the seizure of cash and drugs, results in the ML element being given some priority and the investigations to the BAFE. However, no evidence was provided to substantiate this information.
149. The BLTS was established in April 1997 and has a staff of 250 agents that are responsible for investigating drug trafficking across the country. The BLTS is under resourced and inadequately staffed to undertake its functions based on feedback received from competent authorities. The agency has developed close operational cooperation with the USA LEAs, primarily the DEA which has provided much needed logistical and material support. The Bureau International Narcotics and Law Enforcement Affairs (INL) of the U.S. Department of State provides the BLTS with logistical and material support as well as continuing education essential to its mission. The BLTS has offices that are strategically located in Haiti. BLTS also works closely with the Haitian Coast Guards service to fight drug trafficking. Cocaine and cannabis are smuggled into the island via planes and go-fast boats, with cannabis arriving mainly from Jamaica to the south of the island mainly. The same route is also utilised for cocaine which comes from South America, destined primarily to the USA and Canada with a smaller percentage destined for Europe. The authorities indicated that they are aware that drug trafficking involves elements of ML and weapons trafficking and therefore considers all three criminal elements upon the investigation of case. Moreover, the assessment team was informed that in cases involving collection of cash relative to drug trafficking efforts are made to trace the cash to the source crime. Often times, such cases are transferred to the BAFE. Evidence of the BLTS requesting the assistance of BAFE in this regard was provided to the assessment team (*See IO 8, case example 4*).

Table No 22: *Drugs statistics & Persons arrested*

Year	Dossiers Process	Drugs seized -Kilogram (Kg)						No of Persons arrested
		Cocaine	Cannabis	Heroin	Crack Cocaine	Ampheta mine	LSD	
2014	97	4.9923	4321.608		0.001	0.03		145
2015	75	141.871	3566.703	15.7			0.404	148
2016	96	44.693	3925.773		0.248			154
2017	93	48.11	954.5765					149
2018(June)	34	139.553	4.405					61
<b>Total</b>	<b>395</b>	<b>379.2193</b>	<b>12,773.0655</b>	<b>15.7</b>	<b>0.249</b>	<b>0.03</b>	<b>0.404</b>	<b>657</b>

Source: BLTS

150. The information presented on the table shows that cocaine seizures increased more than thirty percent in 2015 before returning to stable levels for the two succeeding years, followed by substantial cocaine seizures in 2018. Meanwhile, cannabis seizures saw a substantial decrease in 2017. While seizures decreased in 2017, the number of dossiers and arrest remained at the same level with minimal changes. The information on the table shows drug trafficking is a ML threat to the jurisdiction, with only small amounts of drugs remaining on the island for local use (this assumption is based on the lack of crack cocaine seizures). This suggest that the jurisdiction is being used as a transshipment point for narcotics. Nevertheless, the data shows that a total of 395 dossiers were prepared, with 657 individuals arrested due to the seizure of 379.2193 kg and 12,773.0655 kg of cocaine and cannabis respectively. Based on the data provided above and the fact that only seven financial investigations were conducted by BAFE (*see table 18*), there is no indication that there is a focus on parallel financial investigations for drug trafficking offences despite the high-level risk.

151. There is no evidence that parallel financial investigations are occurring between BAFE, UCREF and the ULCC along with the other agencies responsible for investigating associated predicate offences. Although officials from the ULCC indicated that they have worked along with the UCREF on cases, with the ULCC investigating the predicate offences and the UCREF conducting the ML investigations, no evidence was presented to demonstrate this. As such parallel financial investigations to identify potential ML activities are not the focus of ULCC officials investigating the predicate offence of corruption, which is considered high risk for ML. Overall, there is no indication that LEAs or investigative authorities are conducting parallel financial investigations and identifying potential ML cases with the intention of investigating these cases or referring them to a relevant agency.

152. Overall, there appears to be a good working relationship and cohesiveness between some of the different LEAs and investigative authorities. However, this has not manifested into the authorities working together to conduct parallel financial investigations. Further, there are no joint ML investigations between the different agencies. Although there is evidence of some LEAs requesting financial intelligence from banks through UCREF, the agencies are not working together to identify and investigate ML cases. The authorities should be applauded for the creation of the task force that would result in the sharing of information and collaboration on potential ML cases including through parallel financial investigations. However, there is no indication as to when such task force will be operational and demonstrable outcomes would be achieved.

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

153. Haiti has not conducted any formal type of risk assessment to identify ML/TF risks. Further, besides the legislative framework, which exhibits several weaknesses and other measures that are in place, there are no established national AML/CFT policies. Nevertheless, taking into consideration the threats that were identified in the scoping note that was developed prior to the on-site visit and identified at paragraph seventeen and the perceived high risk of ML, there is no indication that ML investigations and prosecutions are commensurate with the perceived risks. Although, it was stated that the government of Haiti is dedicated to fighting ML based on speeches by the President of the Haiti and mandating the PPO to aggressively target and prosecute offenders of such crimes, this has not been manifested in any outcomes thus far, based on the lack of investigations and prosecutions.

***Prioritising ML cases:***

154. There is no indication that LEAs are prioritising ML investigations and prosecutions based on the perceived risk this crime poses to the jurisdiction, or that complex ML cases are targeted. UCREF which initiates its ML cases via STRs does not have a STR policy and no measures for prioritisation of STRs based on issues such as risk, complexity of the case and whether such posed a threat to the country's national security. BAFE does not have a prioritisation policy in place. Nevertheless, the assessment team was informed that the entire department will work together on a specific ML case, based on the seriousness of the complaint. Further, cases forwarded to the BAFE for assistance by the investigating magistrate, including Letter Rogatory are also given some level of priority by the staff of the BAFE. BAFE as a result of its limited resources relies on other resources within the DCPJ should it require assistance in conducting complex ML investigations. There is no indication that other competent authorities such as the PPO and the investigating magistrate are prioritising ML cases based on risk. Nevertheless, as stated previously the PPO has taken strategic decision to forward all cases received from UCREF to the investigating magistrate as the fight against ML is viewed as a priority to the jurisdiction. Several factors have contributed to the manner in which competent authorities prioritise cases and conduct investigations and prosecutions of ML cases including lack of resources and outdated legislation and procedures, such as the CPC. The judiciary of which the investigative magistrate is a part, generally gives priority to predicate offences such

as murder ahead of ML cases, due to the fact that the individual charged for the offence has been remanded to prison.

***Resources/ Challenges experienced by competent authorities (LEAs and investigative authorities):***

155. The criminal code which dates to 1835 creates some challenges, primarily for the judiciary. Some of these challenges include; all offences are not captured, specifically some of the modern offences (including ML and some associated predicate offences, including all corruption offences), the procedures for proceeding against some of these offences are unknown, difficulty in classifying and addressing them in a timely manner by the Courts. The assessment team was informed that the authorities have drafted a new criminal code which would remedy the deficiencies identified in the existing criminal code. The draft legislation was submitted to the Parliament in April 2017 for a vote, however, there is no timeframe as to when this code will be adopted and enacted.
156. Training is provided to the judiciary, including the investigating magistrate through the School of Magistracy with the assistance of the Canadian, French and USA governments. The initial training involves ML. However, these training sessions are normally affected by budgetary constraints and are not continuous. Although the assessment team requested information on the number of trainings provided to the judiciary that included ML during the period under review this was not provided. Therefore, the information cannot be verified. Other challenges experienced by the investigating magistrates include: locating defendants and lack of space to operate. Due to the damages and displacement caused by the earthquake in 2010, investigating magistrates are required to share office space and on some occasions work once per week, thereby creating backlogs of cases and affecting the criminal justice system in the hearing and investigation of cases in a timely manner.
157. The challenges experienced by the PPO in conducting ML investigations and prosecutions are similar to those shared by other LEAs including lack of resources and training. BAFE challenges include lack of resources (human and financial) in conducting investigations into ML. BAFE has received training from international counterparts from France and USA along with on the job training. However, officials from BAFE identified the need for more detailed and continuous training for members of staff to better equip them with the skills needed to conduct more quality ML investigations. The challenges to UCREF in conducting investigations of ML highlighted in IO.6 continue to impact the work of that agency negatively. The ULCC is woefully understaffed and relies on the staff from within its other departments who do not have the relevant expertise to conduct investigations. Although ULCC staff received some training in ML investigations, no continuous training is afforded to staff and budgetary constraints, which have an impact of the recruitment of more qualified staff.

***Types of ML cases pursued***

158. Although the offences of self-laundering and stand-alone ML are not criminalised in Haiti (See R.3), the PPO and LEAs met with by the assessment team have indicated that persons can be

prosecuted for ML offences without being convicted of the predicate offence and for laundering their own criminal proceeds. Nevertheless, in light of no conviction for such offences and the absence of any jurisprudence that is applicable to Haiti, the assessment team cannot substantiate the information provided by the Haitian authorities.

159. LEAs, investigating authorities and prosecutorial authorities investigating and prosecuting ML cases, do not classify the type of ML cases pursued (e.g. foreign predicate and third-party or stand-alone) therefore the assessment team is not positioned to evaluate the types of ML cases that are pursued. Nevertheless, based on the information gathered, there is no evidence to show that LEAs and investigating authorities have conducted any ML investigations that involved foreign predicate offenses. This conclusion is based on the absence of data evidencing LEAs and investigative authorities requesting information from their foreign counterparts to assist in the investigations of ML cases that may involve foreign predicate offences (*see IO.2*). Taking into consideration the perceived ML risk profile and geographical location of the country, ML being transnational in nature and the significant amount of cross-border movement of cash, there are some expectations on the part of assessment team that there is a likelihood of ML cases with a nexus foreign predicate offence occurring with the jurisdiction. The assessment team also reviewed samples of potential ML cases investigated by BAFE during the on-site visit to determine the quality of investigation conducted and the complexity of the cases. The cases reviewed do not involve complex ML schemes but are simple financial arrangements for the investment of suspected proceeds of crime through real estate transactions. Nevertheless, the investigation is of some quality. The lack of financial and relevant information from a variety of sources are also reflected in the dossiers. The assessment team concludes based on the review of the cases submitted and information given by competent authorities, that complex ML cases are not targeted and are therefore not pursued for investigations and prosecutions. Although the investigations conducted do demonstrate some good quality work and techniques including the use of financial intelligence, more detailed work is needed and can be enhanced through training to the investigators. There has been no prosecution for any type of ML cases, including, stand-alone, foreign predicate and third party within the jurisdiction during the period under review.

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

160. The sanctions present in the law appear to be proportionate and dissuasive (see R.3). However, in the absence of any conviction for ML offences between the period under review (2015-2018), no sanctions were administered. Therefore, the assessment team cannot measure the sanctions from an application and effectiveness standpoint.

### ***Extent to which other criminal justice measures are applied where conviction for ML is not possible.***

161. The assessment team was advised that in circumstances where the jurisdiction was unable to pursue ML cases, other criminal justice measures, such as charges for the predicate offence may be preferred against the individual. However, no such case and the measures applied were provided to the assessment team by the competent authorities and cannot be verified.

162. There is also provision within the law bearing on the laundering of assets- Law February 2001 that makes some provision for non-conviction-based confiscation to the extent when it is not possible to proceed with a ML prosecution due to lack of evidence. However, there is no indication that competent authorities have applied such measures.

### **Overall Conclusion**

163. Technical issues such as lack of investigative tools to conduct ML investigations continue to affect the manner in which ML investigations are conducted within the jurisdiction. LEAs, investigative agencies, prosecutors and the judiciary continue to face challenges including, but not limited to, both human and financial to adequately conduct their functions. There is no indication that ML is identified, investigated and prosecuted commensurate with the perceived ML risk identified by competent authorities. Further the jurisdiction lacks any policies to address the issue of ML and LEAs have adopted a reactive approach to fighting ML, with no measures for prioritising cases. Although there exists some level of cooperation among the various LEAs investigating ML and associated predicate offences, this is done solely on an ad hoc basis. There is no indication that LEAs and investigating authorities are conducting parallel financial investigation to identify and investigate potential ML offences. There has been no prosecution for ML offences during the period under review, therefore no sanctions were applied, neither were the authorities able to demonstrate that other criminal justice measures are applied when competent authorities were unable to prove ML.

164. **Haiti is rated as having a low level of effectiveness for IO.7.**

### ***Immediate Outcome 8 (Confiscation)***

165. The Competent authorities that are primarily engaged in the identification, tracing, seizing, freezing and confiscation of criminal proceeds linked to ML, associated predicate offences and TF, along with the management and disposal of seized and confiscated assets are;

- i. Judiciary- Investigative Magistrate
- ii. LEAs- DCPG (BAFE/BLTS)
- iii. Prosecutors Office
- iv. UCREF
- v. BAFOS
- vi. General Administration of Customs (AGD)

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

166. The LSMLTF 2013 and the Law of February 2001 provide competent authorities with the mechanisms for identification, seizing, freezing and recovering of criminal proceeds, instrumentalities and property of equivalent value in ML/TF and some associated predicate offences (not all associated predicate offenses- R.3) and TF. However, several weaknesses were identified in legislation that have a negative impact on the manner these competent authorities conduct their functions.
167. Neither the jurisdiction nor any other competent authorities mentioned in the introductory paragraph have any policies or guidance, save and except for the legislative framework to pursue confiscation as an objective. Nevertheless, some competent authorities have demonstrated a keen awareness and knowledge to recover criminal proceeds in order to effectively fight against crime and the assessment team recognised the work undertaken by these competent authorities. Despite the knowledge and willingness of some competent authorities to recover the proceeds of crime, the system would be much more effective and efficient should a national policy be implemented.
168. Several competent authorities, including the PPO indicated that upon the discovery of a predicate offence or ML, or upon the arrest of an individual for a predicate offence or ML, one or more of the agencies mentioned in the introductory paragraph addressing this Immediate Outcome would be involved in the identification, tracing and confiscation of such assets. However, this was not demonstrated in all cases. UCREF continues to serve as a fundamental pillar in the country's AML/CFT framework, including confiscation. UCREF's role includes the identification and tracing of proceeds that are contained in bank accounts. However, no data was provided to show the number of asset tracing orders that were obtained by competent authorities or letters sent to FIs to locate assets by UCREF. Therefore, there is no evidence that competent authorities are aggressively tracing assets.

*Types of assets seized and confiscated.*

169. The information provided to the assessment team shows that a variety of assets have been seized and confiscated by competent authorities, including, cash, motor vehicles, boats and real estate (houses). The time-period it took the authorities to identify the assets, filing of an application and the period taken by the Court to grant a confiscation order for assets seized was not provided by the authorities. Further, the assessment team was not advised of any impediment in the process, as all competent authorities and the judiciary are seemingly au fait with the importance of confiscation, although training on confiscation should be provided to its members.

<b>Case Example 3: Confiscation</b>
Mr. X a national of Haiti was extradited to the United States of America on charges of importing cocaine into that country. Mr. X was subsequently transferred from Haiti to the United States of America and was found guilty of the offence and sentenced to 120 years imprisonment. Following his conviction, property of Mr. X namely real estate was located and seized. The Haitian authorities requested information relative to Mr. X's conviction, including minutes of

conviction and summary of the facts of the case from the United States law enforcement officials to assist in their application for confiscation. The application for a confiscation order to confiscate the property belonging to Mr. X was filed before the Dean of the Court of First Instance by the PPO. The confiscation order for the property located in Haiti was granted and placed in the management of BAFOS. The property has not been subject to a valuation; therefore, the value of the property is unknown. The property has not been disposed of as of the completion of the on-site visit.

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

170. All the confiscation results that were obtained in Haiti as at the completion of the on-site visit, except for the cash forfeitures, resulted primarily from prosecutions of Haitian nationals in the USA for drug trafficking offences. Following the conviction of an individual, BAFOS with the assistance of the other competent authorities such as BAFE and the PPO will request a copy of the judgement and the trial notes from US officials and initiate confiscation proceedings against the properties that are located in Haiti and are liable for confiscation. Confiscation proceedings are initiated by PPO with the assistance of BAFOS through the filing of the relevant documents in the Civil Court followed by a court hearing. Upon the granting of a confiscation order, BAFOS takes custody of the asset. Competent authorities, such as, UCREF, BAFOS, PPO and BAFE have not initiated confiscation proceedings against any criminal property that may be located abroad. This may be due to the fact they are not focusing on properties located abroad, as they are identifying and tracing those properties. This is evidenced from the lack of requests for information sent by the competent authorities to their foreign counterparts (*see IO.2- Chapter 2*).

171. During the period 2015 to July 6, 2018, BAFOS in conjunction with the other competent authorities confiscated the following assets as reflected in the table below:

***Table # 23: Motor vehicle and real estate confiscated.***

<b>Year</b>	<b>Real estate confiscated</b>	<b>Motor vehicles confiscated</b>
<b>2015</b>	0	1
<b>2016</b>	15	5
<b>2017</b>	5	1
<b>2018</b>	7	8
<b>Total</b>	<b>27</b>	<b>15</b>

172. The information presented on the table above shows that most of the confiscation occurred in 2016 (20), following which there has been a fluctuation of in the amount of assets seized. Overall the authorities have confiscated a total of forty-two pieces of assets and should be commended for

their efforts despite the challenges faced including resources. The value of the assets confiscated is unknown to the assessment team as this was not provided by the jurisdiction.

173. The commendable action of the authorities to confiscate the proceeds of crime resulted in the sum of US\$1,120,800.53 being confiscated during the period 2015- 2018 by competent authorities as is reflected in the tables below. All the cash seizures in question were carried out in Haiti, either from offenders who committed criminal acts in Haiti, or abroad (mainly in the USA).

*Table# 24: Cash seized and forfeited*

No.	Currency			Agency Involved	Date of forfeiture
	US DOLLAR	GOURDES	EURO		
1	499, 970.00			BLTS	2015-09-12
2		18,785,268.00		DGI/Tax	2015-11-04
<b>Total 2015</b>	<b>499,970.00</b>	<b>18,785,268.00</b>			
3		141, 660.00		BLTS	2016-04-25
4	12, 902.00	1 ,920, 970.00		BLTS	2016-08-03
<b>Total 2016</b>	<b>12,902.00</b>	<b>2,062,630.00</b>			
5		69, 000.00		BLTS	2017-08-04
6	100.00	83, 000.00		BLTS	2017-09-15
<b>Total 2017</b>	<b>100.00</b>	<b>152,000.00</b>			
7	940.00	10, 000,00		BLTS	2018-01-06
8	25.00	250.00	45 200,00	BLTS	2018-01-19
9	2, 153.00	12, 000.00		BLTS	2018-01-28
10	170, 943.00			AGD	2018-01-30
11	9, 550.00	750.00		NPH	2018-03-08
12	75, 650.00			NPH	2018-03-23
13	12.00	15, 868.00		BLTS	2018-03-23
14	30, 230.00	467, 595.00		BLTS	2018-05-30
<b>Total 2018</b>	<b>289,503.00</b>	<b>506,463.00</b>			
<b>2015-2018</b>	<b>802, 475.00</b>	<b>21, 506, 361.00</b>	<b>45, 200.00</b>		

174. The table below is a summary of the total amount of cash (when converted to US) that was seized by Haitian officials and is a reflection of the table 23 above.

*Table# 24-a: Overall number of cases and amount of cash forfeited*

<b>Year</b>	<b>No. of Cases</b>	<b>Amount (US\$)</b>
<b>2015</b>	2	778,105.44
<b>2016</b>	2	43,441.38
<b>2017</b>	2	2,252.00
<b>2018</b>	8	297,001.71
<b>Total</b>	<b>14</b>	<b>1,120,800.53</b>

175. All of the seizures have resulted in confiscation which is commendable on the part of the Haitian authorities. There were fourteen confiscations cases involving cash between 2015 and 2018, with a minimum of two seizures per year. However, this increased to eight in 2018. The reason for this increase in seizures was not provided to the assessment team. The information shows that the single largest confiscation of cash occurred in 2015 (US\$499,970.00) and represented the most successful year for confiscation of cash by competent authorities. Most of the cash confiscated and represented in table above were from operations conducted by the BLTS and represents the good work of this agency, despite its scarcity of resource and taken into consideration that drug trafficking is perceived as high risk. The seizures by the BLTS and their subsequent confiscation is also attributed to the support the agency received from the DEA. The BLTS would refer the seizure of cash to the BAFE for information and further investigations to determine the source and origin and demonstrate the excellent level of cooperation between both Units.

**Case Example 4:**

**Cash Seizure**

On Tuesday 25 January 2018, officers from the BLTS who were on detachment at the Toussaint Louverture International Airport in Haiti when the subject arrived on a flight from Fort Lauderdale, United States of America on an American Airline flight. The officer of the BLTS conducted a search of the subject and found the sum of US\$75,650.00 which was not declared. The cash was seized and detained by officers of the BLTS. The subject was questioned about the cash and presented several pieces of supporting documents including one showing that he has a company registered with the Ministry of Commerce and Industry. The cash was nevertheless seized from the subject and subsequently forfeited on March 23, 2018 by a Magistrate.

*Management and disposal of seized and confiscated assets*

176. BAFOS was created by resolution of the National Commission Anti-Drug dated January 25, 2009 to administer and manage seized and confiscated assets related to drug trafficking. The security, management and making profitable the seized and confiscated assets are all part of the agency mandate. BAFOS works closely with the PPO, Courts, DCPJ, AGD, UCREF and tax administration to achieve its mandate. Confiscation proceeds are deposited into a special fund and are used to finance the operations of CONALD, BAFOS and the national anti-drug policy. A percentage of the funds is also allocated to the other competent authorities, such as BLTS, BAFE and UCREF that are involved in the fight against ML/TF and drug trafficking. BAFOS' resources and budget have been severely affected as a result of the lack of seizures and confiscations. This has impacted BAFOS ability to manage its administrative and operational affairs.
177. Some moveable assets such as motor vehicles are not managed by BAFOS. However, cash seized and confiscated is placed into an account at the BRH and is managed by BAFOS. All real estate confiscated by the Court are yet to be disposed of and their proceeds recovered, as their sale must be sanctioned by the tax authority. Several correspondences requesting authorisations for the sale of these properties were sent by BAFOS to the tax authority, however, there have been no responses. The lack of approval from the DGI to authorise the sale of these properties, has resulted in significant adverse financial impact on the different agencies' administrative and operational functions.
178. BAFOS has taken the initiative of using the confiscated real estate as rentals to generate cash which is managed by the public accountant. The cash derived from the rental of these real estate is used to finance the administration and operation of the agency. Nevertheless, the cash generated is insufficient to manage the affairs of BAFOS and allocate to the other agencies. Although the initiative is commended, the assessment team is of the opinion, based on best practice (*see FATF Best Practices on Confiscation*), that the goal of confiscation should be to recover the proceeds of crime through the proper disposal of assets to obtain value. Real estate managed by BAFOS is depreciating in value daily and requires significant amounts of financial and human resources for their continuous maintenance. The challenge of being unable to disposed of assets in a timely manner also defeats the effort the purpose of confiscation, which is to recover the proceeds of crime, with the intention of investing same into operations of competent authorities including LEAs and the judiciary to fight against ML, associated predicate offences and TF. Real estate that is not rented is provided to national authorities (mainly the HNP) for occupation.
179. Assets that are not managed by BAFOS are exposed to severe depreciation. The assessment team saw first-hand motor vehicles that were seized by the judiciary for over five years are kept in the custody of the State officials were left exposed to the elements of the weather, without any protection and are not being maintained. The manner in which these assets are kept, and their significant depreciation can have negative future implication for the State. Moreover, should these assets be confiscated, the amount to be recovered would be significantly less than the initial value of the assets and defeats the purpose of confiscation. The current amount/value of those assets that have been seized thus far by the judiciary is unknown to the assessment team.

180. Besides the seizure of cash, the BLTS has also been involved in the seizure of assets primarily boats, motor vehicles and motorcycles as a result of drugs operations. The number of assets seized by the BLTS are presented in the table below. These assets are also not under the management of BAFOS and there is no indication that they are properly managed.

*Table # 25: Assets seized by BLTS.*

<b>Year</b>	<b>Motor vehicles seized</b>	<b>Motorcycles seized</b>	<b>Boat seized</b>	<b>Total</b>
2014	6	1	3	10
2015	5	11	1	17
2016	12	5	0	17
2017	7	10	2	19
2018-July	3	1	4	08
<b>TOTAL</b>	<b>33</b>	<b>28</b>	<b>10</b>	<b>71</b>

181. The information provided by the BLTS and presented on the table above shows that seventy-one pieces of assets, values unknown, were seized by the BLTS between the period 2014-2017. The information shows that the BLTS continues to increase its seizure of assets for the period 2015-2017 and is an indication of the Unit's willingness to recover the proceeds of crimes. Taking into consideration that drug trafficking is considered to be a high-level risk for ML, BLTS should be commended for its work in this area. Nevertheless, the status of the assets seized was not provided to the assessment team by the jurisdiction, and there is no evidence that these assets were confiscated. The reason(s) why these assets have not been subjected to confiscation proceedings was not provided by the authorities. Further, the conditions of these assets are unknown to the assessment team. However, it is highly unlikely that they are properly managed as they are not under the custody of BAFOS.

#### ***Repatriation and sharing of assets***

182. The Haitian and the United States governments signed a treaty on October 17<sup>th</sup>, 1997 and was gazetted on July 25<sup>th</sup>, 2002 concerning drug trafficking. This treaty makes provision for the seizure and forfeiture of goods related to drug trafficking and the repatriation of some of the proceeds from their sale. However, as of the completion of the onsite visit, there were no repatriation of goods or their proceeds from Haiti to the USA or any other jurisdiction.

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

183. Travellers entering Haiti are required to make a declaration of cash as required by law. However, several deficiencies, in the legislation (LSMLTF 2013) exist, one of which includes, the declaration system does not apply to BNIs (*see R.32*). These technical deficiencies can have a negative impact

on the effectiveness of the system and the ability of competent authorities to generate acceptable levels of outcomes should they not be remedy.

184. The AGD is the primary agency that is responsible for the detection of false or undeclared cross-border transactions and BNI. The department has the authority to examine and seize any goods that enter or leave the jurisdiction that are in contravention of the law. The AGD is authorised to collect, record and verify cross-border transaction declarations of currency/BNI with their roles, functions and powers detailed in law that governs its operation. Despite the assessment team requesting a copy of this law to verify such information, this was not provided and therefore this information cannot be verified. The AGD plays a vital role in the prevention and detection of ML/TF. The roles of the AGD involve prevention, detection and repression. Through its prevention mechanism, the AGD conducts awareness programs. However, there is no indication that such programs extend to the physical cross-border transportation of cash and BNI.

185. The AGD has developed a close working relationship with domestic counterparts including the UCREF, BAFOS and Police (BAFE/BLTS), along with its regional counterparts from the Dominican Republic. AGD offices are located at all authorised border crossings within Haiti including at the airports and the officers are aware that the position of the jurisdiction within the Caribbean Sea makes it an ideal destination for smuggling including cash. The assessment team was informed that the AGD has begun the process of mapping the various threats and risks to the jurisdiction. However, the status of this project and the estimated timeline completion were not provided to the assessment team.

186. Despite, the absence of the amount required for declaration missing from the LSMLTF 2013, as amended, the assessment team observed that passengers entering Haiti are required to declare to an officer of the AGD that they are travelling with the amount of US\$10,000.00 or more or its equivalent. The legal unit within the AGD ensures that the relevant information, such as the traveller passport details and the AGD’s officer’s report on the matter is obtained, following which BAFOS, UCREF and the BLTS are informed. All seizures by the AGD thus far have occurred at the various airports in Haiti and involved passengers returning from abroad as is reflected on table # 26 below. The circumstances surrounding the seizures are unknown, as the assessment team was not provided with any information regarding such. Nevertheless, there were a total four seizures, three of which involved United States dollars. The total amount of cash seized by the AGD during the period 2017-2018 amounted to €22,885.00 and US\$285,157.00. There was no data of cash seizures prior to 2017.

*Table#26: Cash seized by the AGD*

<b>Date</b>	<b>Amount USD</b>	<b>Amount Euro</b>	<b>Port</b>	<b>Originating Country</b>
<b>2017-01-22</b>		22, 885.00	Toussaint Louverture Airport	France (Guadeloupe)
<b>2017-12-28</b>	170, 943.00		Toussaint Louverture Airport	Chile

<b>2018-03-04</b>	37, 451.00		Cap-haitien Airport	-
<b>2018-05-10</b>	76, 673.00		Haiti terminal	USA
<b>Total</b>	<b>285,157.00</b>	<b>22,885.00</b>		

187. All cases referenced in the table above involved Haitian nationals. The authorities did not provide information as to whether all the cash seized was successfully confiscated, whether cash was returned and the reason(s) for such. Further the data in the table above does not correlate with the information that was submitted by BAFOS and presented in table 24, which shows that there was one seizure from the AGD. Despite the efforts of AGD’s officials, the seizures do not reflect the perceived ML/TF risks and threats such as the physical cross-border movements of cash. Further, neither the AGD nor any competent authority has any strategy in place to target the movement of cash and BNI that have not been declared or falsely declared.

188. The AGD lacks the resources to conduct its functions, including the detection and seizures of cash and BNI that have not been declared. The department only relies largely on its already scarce human resources to conduct its functions due to lack of technical and other resources, such as K-9 and scanners at its port to complement the department’s human resources. Nevertheless, some assistance is rendered by the BLTS to the AGD including through the sharing of resources such K-9 to conduct their functions as both agencies generally work closely together. Seizures are largely based on random searches and human intuition in the absence of intelligence. AGD’s officials are not targeting travellers who may be involved in structuring of cash to avoid declaration as seizures are only based on false declaration.

189. AGD officials are not considering potential ML/TF offences when cash is seized, and the focus appears to be solely on the recovery of the cash and not identifying other potential actors. Neither AGD’s officials nor any other competent authorities, such as UCREF are contacting their foreign counterparts to obtain information regarding the cash and the individual(s) involved or to bring the seizure to their attention.

**Sanctions**

190. There is no sanctioning regime for false declarations in Haiti. Therefore, apart from the forfeiture that were applied, no sanctions, such as fines have been applied.

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

191. The jurisdiction has not conducted any ML/TF risk assessment, neither are there any formal AML/CFT policies and priorities in place, therefore the assessment team is unable to determine based on the foregoing whether confiscation results are consistent with same. Nevertheless, based on the perceived ML/TF risks that were stated by competent authorities and private sector officials (see IO.1-Chapter1), the finding of the assessment team is that confiscation results are not consistent with those ML/TF risks. However, the efforts made by competent authorities to recover

the proceeds of crime in some cases, particularly drug trafficking should be commended and encouraged, despite the challenges encountered.

### **Overall Conclusion**

192. Competent authorities noted the importance of recovering the proceeds of crime within the jurisdiction. Nevertheless, this is only being achieved to a negligible extent and is not commensurate with the perceived ML/TF risks. Nevertheless, competent authorities should be commended for acting to confiscate the criminal proceeds of Haitian nationals convicted abroad and owning property in Haiti despite the lack of resources and training. There is seemingly not that much emphasis to identify, trace, freeze and confiscate the proceeds of crime of persons arrested and convicted for offences in Haiti or assets that may be located abroad. Further, the number of physical transportation cross-border currency and BNI seizures and confiscation is not commensurate with the perceived ML/TF risk profile of the country and this may be attributed to several factors including: the lack of intelligence/information to AGD and other LEAs, lack of human and technical resources, and lack of training. Although the BAFOS should be commended for how it conducts its affairs (management of assets) despite limited resources, challenges continue to affect the agency, as it is unable to dispose of fixed assets confiscated such as real estate, due to the bureaucracy that exists within the system. Assets that do not fall under the management of BAFOS are not properly managed and can depreciate rapidly. Finally, weakness in the legislative framework continues to have a negative impact on effectiveness of the system and an adverse influence on confiscation outcomes.

193. **Haiti is rated as having a low level of effectiveness for IO.8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### ***Terrorist Financing investigation- IO. 9.***

Haiti has achieved a low level of effectiveness for IO.9.

- i. There are some measures (*see R.31*) in existence to facilitate the investigations and prosecutions of terrorist financing (TF). However, these measures which represents the fundamental pillars and underpinnings for an effective framework have some deficiencies, such as lack of criminalisation of all types of TF activities and lack of investigative measures (*see Rs.5 and 31*) and can have a negative impact on effectiveness of the system and the manner in which potential TF investigations are conducted should such cases arise.
- ii. Haiti has not conducted any TF risk assessment to determine its TF risk. The jurisdiction does not have a national strategy or policy that incorporates TF which can serve as a guide to all competent authorities should such cases arise, neither are there measures in place to minimise disruption in the event of a potential TF case.
- iii. Haiti has not undertaken any investigations and prosecutions of TF activities. The assessment team cannot categorically state that the lack of investigations and prosecutions is commensurate with TF risk as no risk assessment has been conducted. Nevertheless, the assessment team's findings show that there are some threats and vulnerabilities in existence, such as civil uprising than have the potential to give rise to TF and terrorism activities (*See IO.1- Chapter 1*) and LEAs and other investigative authorities are not focusing on TF from an operational standpoint.
- iv. Law enforcement authorities (LEAs), investigative authorities and the Public Prosecutors Office PPO are not adequately trained and resourced to properly identify, investigate and prosecute TF offences.
- v. Outside of the Central Financial Intelligence Unit (UCREF) which is mandated to investigate (administrative) STRs relative to TF and where serious clues/information is obtained, there is no designated LEAs or investigative authorities that are tasked with the responsibility of conducting TF investigations that may not have originated from the filing of a STR.
- vi. Reporting entities are not trained and provided with guidance and potential indicators to identify STRs that may have a nexus to TF. Therefore, the possibility exists that potential movement of terrorism related funds and assets through FIs and DNFBPs are not properly identified and not reported to UCREF.
- vii. Competent authorities have adopted a reactive approach rather than a proactive approach in the identification and investigations of TF offences (i.e. awaiting potential reports and not having an intelligence and a multi-agency coordinated approach which is intelligence- driven for

identification and investigations). Further, there have been no investigations, prosecutions, convictions and application of sanctions for TF offences

***Preventing terrorists from raising, moving and using funds – IO.10.***

Haiti has achieved a low level of effectiveness for IO.10.

*NPOs*

- i. Although some measures including laws (*see R.8*) exist, there are some weaknesses in these technical measures which represents fundamental pillars and underpinning in preventing terrorists and terrorist organisations from raising and using funds through the use of NPOs and have a negative impact on the implementation and effectiveness of the system. Some of these weaknesses, include but are not limited to, taking measures to promote the effective supervision and monitoring of NPOs so they are able to demonstrate that risk-based measures are applied to NPOs at risk.
- ii. The Ministry of Planning and External Cooperation (MPEC) is responsible for the supervision of NPOs. However, supervision appears to mainly focus on the good governance of NPOs (prevention against predicate offences such as fraud), with little or no focus on ensuring that NPOs are not subject to abuse by terrorist and terrorist organisation.
- iii. Haitian authorities have not identified the number of NPOs that are vulnerable to TF abuse, neither has there been any assessment of risk of those NPOs with the intention of considering their vulnerability to TF.
- iv. NPOs have not been provided with any guidance and sustained outreach to raise their awareness of their vulnerability to TF.

*TFS-TF*

- v. Haiti through the passage of an Executive Order has demonstrated to some extent the intention to identify, seized and confiscate the assets of persons and entities that have been designated as terrorist entities and terrorist organisation in accordance with the relevant UNSCRs. However, fundamental deficiencies, such as no mechanism for communicating designations to the reporting entities which is likely to impact the requirement to freeze without delay (*see R.6*) have the possibility of undermining and negatively impacting the effectiveness of the system.
- vi. The Ministry of Justice and Public Security (MJPS) is the designated competent authority that is responsible for identifying targets for designations in accordance to UNSCRs 1373. However, Haiti has not proposed any targets for designations, despite the existence of information that can likely result in possible designation.
- vii. Although the Executive Order calls for the implementation of TFS-TF without delay (UNSCR 1267), the procedure as obtained in the law does not allow for such and represents a fundamental weakness in the regime. This finding is based on the absence of any information regarding time-period required to obtain and publish the UN sanctions list by Ministerial Decree, and the

absence of delivery channels and time-period for communicating the UN sanctions list to natural and legal persons.

- viii. There is no evidence that the UN Sanctions lists are disseminated to all natural and legal persons, including FIs and DNFBPs by UCREF, who is tasked with this responsibility by law or by any other competent authorities.
- ix. Most FIs (with the exception of the large FIs) and DNFBPs are not cross-checking their databases with the UN sanctions list to ensure that persons and entities appearing on same do not hold any assets with their institutions.
- x. Supervisors and other competent authorities are not taking measures to ensure that FIs and DNFBPs are complying with their obligations as required by the Executive Order to implement TFS-TF.

#### ***Proliferation Financing- IO.11.***

Haiti has achieved a low level of effectiveness for IO.11.

- i. Haiti do not have any measures in place to ensure that persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the UNSCRs (see R.7). Based on the foregoing, no actions were instituted by the competent authorities relative to PF.
- ii. Competent authorities have not provided any guidance and training to reporting entities regarding their obligation based on international standard (in the absence of domestic framework) relative to TFS-PF

#### ***Recommended Actions***

##### ***IO.9***

- i. Haiti should ensure that the gaps that are identified in its technical framework including lack of measures relative to FTFs and the criminalising of some TF offences are addressed in a timely manner and do not impede future investigations and prosecutions. This is necessary as the technical issues represents the fundamental pillars and underpinnings for competent authorities to undertake their functions and achieved acceptable levels of outcomes based on the FATF Methodology.
- ii. Upon the completion of its NRA (see IO.1), the authorities should ensure that TF investigations and prosecutions are commensurate with the TF risk associated with the jurisdiction.
- iii. The authorities should develop and implement strategy that incorporates TF. The main focus of this Strategy should be on mechanisms to disrupt TF activities and the identification, investigation and prosecution of TF activities. This strategy should be communicated to key competent authorities.
- iv. Haiti should identify an agency outside of the UCREF that is tasked with the responsibility of conducting investigations of TF that are not derived from the filing of a STR. Further, LEAs

should adopt a more proactive approach/ intelligence driven approach to identify and investigate potential TF activities, including closer coordination between the authorities responsible for counter-terrorism

- v. LEAs, investigative authorities, PPO and the judiciary should be provided with the requisite resources (based on risk assessment outcomes) and training to effectively identify, investigate, prosecute and preside respectively over potential TF activities.
- vi. Competent authorities should develop and implement measures to ensure that TF cases are prioritised (based on the risk assessment outcomes), properly identified, investigated, prosecuted and sanctions (effective, proportionate and dissuasive) are applied to persons who are convicted for TF.

#### *IO.10*

- i. Competent authorities should ensure that the deficiencies such as, timelines for communicating the sanctions lists, identification of mechanisms for communicating sanctions lists, delisting processes and measures for effective supervision to demonstrate that risk based measures are applied that are absent from the technical framework (see Rs.6 and 8) are remedied and implemented to address TFS-TF and NPOs. The addressing of technical deficiencies are fundamental in ensuring that acceptable level outcomes are achieved.
- ii. Competent authorities should identify the number within the sub-set of NPOs that are considered vulnerable to TF and conduct the necessary risk assessment.
- iii. NPOs should be provided with the necessary guidance and outreach, with the aim of sensitising them on the potential of being abused by terrorist financiers and terrorist organisation. Moreover, competent authorities should also focus on monitoring NPOs activities relative to TF risk.
- iv. MPEC should be provided with the necessary resources and training relative to ML/TF to effectively conduct its functions (based on risk assessment and the identification of the number of NPOs that are identified as vulnerable to TF).
- v. Competent authorities should ensure that the UN sanctions lists are disseminated without delay to all FIs and DNFBPs, and measures are in place by these reporting entities that allow for the freezing of assets without delay.
- vi. Competent authorities should ensure that all natural and legal persons including FIs and DNFBPs are complying with their obligations as required by the Executive Order, by cross-checking their customers database with the UN Sanctions list to identify potential terrorist properties and they are aware of their obligations to freeze without delay.

#### *IO.11*

- i. Haitian authorities should make a comprehensive effort to put in place measures, including legislative measures to address PF and ensure that those measures are implemented.
- ii. Identify a competent authority to ensure that TFS-PF is properly implemented without delay and provide the necessary training to the identified competent authority.

- iii. Conduct training and outreach to reporting entities to raise awareness on the implementation of TFS-PF and their responsibilities including freezing of assets without delay.

194. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 4, 5-8, 30, 31 and 39.

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

195. Haiti has signed and ratified the Suppression of the Financing of Terrorism Convention and has incorporated several of the elements of the conventions in domestic legislation (LSMLTF, 2013). However, several of the elements of the conventions (*see R.5*) which represents the pillar and underpinning to an effective system are not incorporated into the domestic law and have the possibility of having a negative impact on achieving a desired level of effectiveness and acceptable outcome should Haiti in the identify, investigate and prosecute any TF cases .

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

196. Haitian authorities have not conducted any formal risk assessment of the country's TF risk-profile (*see Chapter 2- IO.1*) and neither is the risk in this area given any focus. Competent authorities have not identified, investigated and prosecuted any legal or natural persons for potential TF activities. This may be as a result of competent authorities not targeting TF activities, with their focus being on ML and associated predicate offences such as drug trafficking and corruption. This limited focus may be as a result of the lack of knowledge, expertise, training and the belief that TF is not a risk factor to the jurisdiction, despite the absence of any TF risk assessment by the Haitian authorities

197. Nevertheless, the jurisdiction and its nationals should not consider themselves immune from being utilised for TF activities. In the absence of any TF risk assessment or any data to suggest otherwise, the assessment team believes that Haiti can be vulnerable to TF activities based on the following factors: (i) the jurisdiction has vast amounts of open land and sea borders (60-70 border crossings) that are not properly secured, (ii) the perceived risk of the physical cross-border movement of cash and BNIs, (iii) significant portion of the jurisdiction's FIs and its entire DNFBPs are not properly supervised and regulated, (iv) a largely cash-based society and (iv) the jurisdiction many instances of civil uprising. Further, some Haitian authorities primarily those responsible for managing Haiti's land borders are aware that the lack of resources at the borders can result in potential terrorist using these borders to enter Haiti illegally and travel to other destinations. Specific mention was made about the arrest of an individual at the border seeking to enter Haiti from a destination that is heavily linked to terrorism and TF activities.

198. To demonstrate that Haiti and its nationals are not immune from TF activities, the assessment team through creditable open sources found that there was one reported instance (albeit outside the

period of this report-2015-2018) where a national of Haiti was convicted in 2009 for TF activities in the USA and subsequently deported to Haiti in 2014. Through this open source, the assessment team learnt that in 2009, a Haitian national was arrested and charged in Miami, USA in a terrorism plot. The group which was dubbed “*Liberty City Seven*” was convicted in a federal court of “*conspiring to provide material support to the global terrorist organisation of Al- Qaeda*”. The suspected individual was deported back to Haiti in 2014<sup>41</sup>. The assessment team was also informed that an individual who was deported to Haiti on terrorism related charges is monitored by the authorities and is required to report to the authorities, which has been taking place. The assessment team did not question the authorities to a great extent about the level of monitoring that is applied to the individual, due to the sensitivity that is generally associated with matters of this nature and the report being a public document. Nevertheless, the team was informed that the practice of having persons deported to Haiti reporting to the DCPJ was discontinued in 2013 due to this being considered as human right violation. Whether these two cases are the same, the assessment team is unsure, as no information was provided of such. Despite the prosecution and conviction of this individual in the USA for terrorism related offences, there is no indication that Haitian law enforcement authorities have conducted any financial investigation with the intention of identifying, freezing and confiscation of assets.

### ***TF identification and investigation***

199. There is no specialised department within the jurisdiction that is responsible for conducting TF investigations. Nevertheless, UCREF as soon as it has serious clues/information of TF, must disclose same to the PPO. The PPO is then mandated to disclose same to an investigative magistrate who shall give rise to the facts and circumstances. However, there has been no such disclosure to the PPO by UCREF as the Unit has not received STRs relative to TF. However, this does not mean that TF activities do not exist in Haiti but may be due to UCREF’s staff lack of training and expertise to properly identify STRs that may have a TF nexus. Further, the identification of STRs that may have a TF nexus, requires FIs and DNFBPs to be provided with the requisite training and guidance by the relevant competent authorities including UCREF and supervisors and this has not been done.

200. LEAs and investigative authorities, including UCREF and the PPO do not have in place any mechanism to identify and prioritise TF cases. The agencies do not have any strategy or internal SOPs concerning the handling of TF investigations should such cases arise. The lack of measures in place is predicated on the belief by some competent authorities, including LEAs and investigative authorities that Haiti is not threatened by terrorist activities of any kind. However, this belief is skewed, as an absence of terrorism activities does not mean that TF activities are not occurring in the jurisdiction.

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<sup>41</sup> The Miami Herald- Retrieved from : [www.miamiherald.com/news/nation-world/world/americas/haiti/article2235644.html](http://www.miamiherald.com/news/nation-world/world/americas/haiti/article2235644.html)

201. The LSMLTF 2013 as amended, makes provisions for investigative measures to tackle TF activities. However, these measures are significantly deficient and represent a serious shortcoming for LEAs conducting TF investigations (*See R. 31*). The identification and investigations of TF are similar to that of ML, as LEAs and investigative authorities take a reactive approach rather than a proactive approach or a combination of both. Potential TF offences are primarily identified through STRs that are submitted to UCREF. LEAs and other investigative agencies are not utilising intelligence and information gathering outside of the remit of STRs to identify potential TF cases, therefore the process is not intelligence driven. The reactive process coupled with the lack of guidance to reporting entities on the identification of TF related transactions lead the assessment team to believe that potential TF activities are not properly identified and investigated. Moreover, the jurisdiction has made no use of international cooperation to identify and investigate TF cases, as competent authorities did not request from its international and regional counterparts' information on TF. (*See. Chapter 8- IO.2*)
202. Apart from the lack of training to LEAs, PPO and UCREF that was highlighted previously, the judiciary, including the investigative magistrates do not have the requisite training or knowledge concerning TF and are therefore not adequately qualified with the relevant expertise to effectively preside over such cases should they arise.

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

203. TF investigation is not integrated with and supportive of any national strategy in Haiti. In the absence of any TF risk assessment, Haiti has not developed any national CFT strategy. Despite the CNLBA being the coordinating and cooperation committee at the policy level, (*See chapter 8- IO.2*), it has not undertaken any work on TF, including, developing and implementing a national strategy to include TF. Further, on the operational level, there is no cooperation and coordination between the different operational agencies such as UCREF, LEAs and PPO to effectively conduct investigations and prosecutions into suspected TF activities. Moreover, the jurisdiction does not have any measures in place to disrupt potential TF activities and ensure that such activities are properly investigated and prosecuted.

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

204. The sanctions for TF are found within the LSMLTF and appeared to be proportionate and dissuasive (see R.5). However, taken into consideration there were no prosecutions and convictions for TF activities as of the completion of the on-site visit, the assessment team is unable to state that sanctions in practice would be effective, proportionate and dissuasive.

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

205. Haitian authorities have not taken any alternative measures where it is not possible to prosecute persons for TF offences. There are no disruption measures in place to prevent TF activities.

## ***Overall Conclusion***

206. Haitian authorities have not conducted any type of TF risk assessment and the authorities do not understand its TF risk (including outside of the absence of risk assessment). Haiti does not have a strategy or policies in place that incorporate TF. The authorities seem to place little or no focus on TF activities, despite several factors that indicate the jurisdiction may be or can become susceptible to TF, including a national convicted for TF abroad and subsequently deported back to Haiti. LEAs and other competent authorities have developed a reactive approach as in the case of ML to identify potential TF cases. Moreover, LEAs, PPO and UCREF lack the necessary resources and training to properly identify, investigate and prosecute TF cases, including STRs connected to TF. Potential TF cases may not be identified by the reporting entities as they do not have the necessary training and guidance to identify such reports. As a result of no TF prosecutions and convictions, no sanctions were applied and therefore effectiveness, proportionality and dissuasiveness cannot be assessed.

207. **Haiti has been rated as having a low level of effectiveness for IO.9.**

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

208. The Executive Order of August 22nd, 2016 represents the pillar for the implementation of measures that are necessary to address TFS-TF and ensuring that terrorist properties are identified and frozen without delay. However, as is identified in this section of the report several deficiencies, such as, procedures for delisting and the absence of a communication method and timelines for implementation of TFS-TF without delay (*see R.6- TC Annex*) exist and have a negative impact on the effectiveness of the system. Further, the legislation was enacted two years prior to the onsite visit, with no outreach and guidance provided to the relevant competent authorities as to their roles in accordance with the Order. Therefore, implementation and knowledge of most competent authorities and private sector officials regarding the Order and this area are lacking.

## ***Implementation of targeted financial sanctions for TF without delay***

### ***UNSCRs 1267/1373 (and successor resolutions)***

209. The procedure outlined in the Executive Order requires that upon receipt of the respective UN sanctions list, the Ministry of Foreign Affairs (MFA) shall transmit them to the MJPS, who is required to publish them by Ministerial Decree. Following the publication, UCREF is responsible for informing and distributing the UN sanction lists to the FIs and DNFBPs who are then required to cross-check their customer databases with the UN sanctions lists to identify funds and other assets with the intention of freezing same without delay. However, the requirement in law is not being observed, and interviewed competent authorities had little or no knowledge of their roles and functions as required by the Executive Order.

210. According to the Ministry MFA officials upon receipt of the UN sanctions lists from its diplomatic mission in New York, USA, it forwards the lists to the MJPS immediately. However, no supporting

information was provided to support or verify the assertion, though requested by the assessment team. Although officials from the MJPS informed the assessment team that they had distributed the list previously, they were unable to provide any information as to the last occasion the list was disseminated to the FIs. Further, the assessment team found no evidence based on interviews conducted and feedback received that the MJPS has disseminated the UN sanctions list to FIs, or any ministerial decree was obtained, as per the Executive Order authorising the publishing of the list prior to dissemination. UCREF has also failed to comply with its obligations in this area, as it is the agency that is charged with the responsibility of disseminating the lists to the relevant FIs and DNFBPs based on the text in the Executive Order and has not done so. Further, no action has been initiated by any of the competent authorities to inform reporting entities and raise their awareness of the requirements of the UNSCRs as required by the Executive Order. Therefore, outside of the larger banks that have some international nexus or are a part of a financial group, FIs and DNFBPs are unaware of their obligations under the Executive Order (*see IO. 3 for more detail*).

211. Despite the foregoing, BRH officials indicated that they have taken the initiative of disseminating the UN sanctions lists to the reporting entities it supervises. This was confirmed orally by one reporting entity, representing the banking sector. However, neither BRH officials nor this entity provided evidence to demonstrate the distribution of the UN sanctions lists when requested by the assessment team. Some banks, particularly the larger ones, did indicate that they have conducted screening of their customers' databases by cross-checking same against the UN sanctions lists made available by commercial entities online to determine whether they had terrorist property in their possession and have identified no such properties. However, there is no evidence to verify the veracity of the information in the absence of evidence to demonstrate such. Further, neither FIs nor DNFBPs are reporting to UCREF or to any other competent authority such as the BRH that they have conducted checks of their customer's databases and cross-checked same with the UN sanctions list and their findings (inclusive of negative "hits") as is required by Art. 5 (c) of the Executive Order. Moreover, there are no specific timelines by which the FIs conduct these checks (example; quarterly or only during the time of receipt of the lists or at the point of onboarding new customers). Save and except for some of the larger banks, the practice of cross-checking of the UN sanctions lists does not exist when onboarding a client.
212. In the absence of any guidance and training to the FIs and DNFBPs regarding their obligations to implement these measures without delay, the assessment team believes that most FIs and DNFBPs are unaware of their obligations to identify and apply the necessary freezing without delay. Therefore, should they identify any terrorist property, the actions to freeze without delay may not be instituted. Moreover, AML/CFT supervision seemingly does not include ensuring that FIs (DNFBPs are not supervised) are implementing the measures and conducting their functions relative to TFS-TF as required by the Executive Order. Should competent authorities identify breaches by FIs and DNFBPs in not implementing measures as required by the Executive Order (including to freeze without delay), there are no sanctions available to competent authorities for such breaches.

213. Haitian authorities have not made any designations as of the date of completion of the on-site visit in accordance with the procedures of UNSCR 1373. However, based on information obtained through credible open sources, one case exists within the jurisdiction where the authorities can consider possible recommendation for designation. Nevertheless, without more background about this case, it may be possible that designation was not merited. Haitian authorities have not provided any detail as to why this individual has not been designated by Haiti based on the provisions contained in the Executive Order

#### ***Dissemination of list and Freezing without delay***

214. Some of the factors that the assessment team identified that limits the ability of competent authorities and reporting entities to disseminate the sanctions list and implement freezing measures without delay respectively are: (i) Lack of delivery channels for dissemination of the UN sanctions list to FIs and DNFBPs, (ii) absence of set timelines from receipt of the UN sanctions list to the point of dissemination of same to competent authorities and reporting entities, (iii) the time period and procedures that should be undertaken by the MJPS to prepare the ministerial decree ( including circumstances where the Minister is not available or on weekends and public holidays) to give effect to the sanctions lists and (iv) lack of awareness of several reporting entities of their roles regarding implementation of TFS-TF, including measures to be taken should property be identified.

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

215. Haiti has over 25,000 associations and 391 active NGOs that are registered and in operation. However, not all associations are classified NPOs, as some operate for profits. The amount of associations that are not NPOs are unknown to the assessment team as the information was not provided. The primary focus of these NPOs are raising funds and contributing to the following: health, agriculture, education, the environment and other social factors that are affecting Haiti. Haiti depends largely on NPOs as a result of social factors and natural disasters that continues to affect the country. The oversight authority for NPOs is the Ministry of Planning and External Cooperation (MPEC), through its Department of Coordination of the Activities of NPOs. However, MPEC focus is mainly on the governance of NPOs to ensure that they are complying with their social obligations. Although there are measures contained within the LSMLTF, 2013 as amended that addressed the governance and supervision of NPOs in the context of TF, those measures are very limited. Further, the weaknesses identified in the legislation (*see R.8- TC Annex*) have a negative impact on the effective oversight and monitoring of NPOs pertaining to TF as these fundamental pillars are missing from the technical framework. Although, MPEC officials indicated that they do meet with NPOs on some occasions and supervised their activities, no information/evidence was provided to demonstrate that these meetings and oversight were geared towards ensuring that NPOs are not abused or vulnerable to abuse for TF.

216. MPEC still has a rules-based approach on NPOs and not a risk-based approach to oversight as the Haitian authorities have not identified the number of NPOs that falls within the FATF definition of

NPOs<sup>42</sup> and those that are at risk and likely to be abuse by terrorist financiers. Considering Haiti has a significant amount of associations and NGOs operating within the jurisdiction, coupled with its already limited resources, it is very important that the authorities identify those NPOs that are at risk, as not all NPOs can be inherently high risk or vulnerable to terrorist financing.

217. NPOs operating in Haiti are also governed by the Decree of September 14, 1989. For an NPO to operate in Haiti, the legal or natural person who controls the NPO is required to submit, inter alia, to MPEC the following documentation: (i) copies of their by-laws, a letter of guarantee issued by two accredited NPOs operating in Haiti or by a bilateral or multilateral agency; (ii) a permit by the municipal government of the targeted area; (iii) three copies of a guarantee certificate greater than G50,000.00 equivalent to approximately US\$737.00 issued by a bank in Haiti and (iv) information on its directors and board members including their duties and certificate of conduct. Besides the foregoing, foreign NPOs are further required to have a minimum, one third (1/3) of its directorate as Haitian nationals. Haitian authorities should be commended for the measures that were implemented for NPOs to operate within the jurisdiction. However, for the purposes of mitigating the vulnerability against TF, NPOs are not required to identify the methods that are utilised to raise funds nor the identity of their donors.
218. MPEC officials interviewed indicated that the Ministry has taken actions against 157 NPOs operating within Haiti by revoking their licences for breaches, such as, not filing their annual financial statements. Although it was stated that these breaches were reported to UCREF, no evidence was provided of such and UCREF was unable to verify this statement. Activities of NPOs are monitored primarily by MPEC, based on the NPOs submissions of their annual financial statements. However, given the large number of NPOs operating in Haiti, with no targeted approach by MPEC, coupled with the Ministry's lack of human resources at the disposal of the MPEC, the assessment team believes it is challenging and highly improbable for MPEC to comprehensively review the submitted annual financial statements, in order to ensure that NPOs are not engaged in TF activities and are utilising funds for legitimate purposes as required by their mandates, as a rule based and not risk -based measure is in place.
219. The current oversight regime in place, does not focus on NPOs' vulnerability and does not ensure that they are not subject to being abuse for TF purposes. Focus is primarily given to the management and governance of NPOs, including ensuring against their misuse against predicate offences such as fraud. These findings are predicated on the following: (i) no risk assessment of the sector to consider their vulnerability of TF; (ii) there has been no outreach or guidance to NPOs relative to TF; and (iii) no monitoring of how funds are raised and used by NPOs.

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<sup>42</sup> NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works"- Interpretive Note to Recommendation 8- The FATF Standards.

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

220. No assets or other funds from designated persons and entities, pursuant to Resolutions 1267 and 1373, have been identified in Haiti as of the conclusion of the on-site visit. Although FIs and DNFBPs are required to conduct checks of their databases to ensure that they identify potential terrorist properties, there is no indication that this is being done. The foregoing is based on the following: (i) absence of evidence that the UN sanctions list is distributed and all FIs and DNFBPs along with the Haitian public are aware of their obligations, (ii) absence of evidence that FIs and DNFBPs are genuinely conducting checks on their customer's databases against the UN sanctions list and are simply not just stating that they are conducting this action, (iii) lack of supervision by competent authorities in ensuring that reporting entities are conducting their functions regarding TFS-TF. Further, there is no indication that LEAs and other investigative authorities are focusing on the identification and deprivation of assets and instrumentalities derived from or intended for use in terrorism or by terrorists and terrorist organisations or the general population is aware of their obligations relative to TFS-TF.

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

221. Haiti has not yet conducted any assessment to determine its TF risk in the country, including TF risk for the NPOs sector (*see IO.1- Chapter 2*). Considering the foregoing, it is not possible to assess whether the lack of actions taken by the competent authorities is commensurate with the TF risk profile. However, based on the perceived TF risk that was articulated by competent authorities to the assessment team, the actions taken are minimal and, in some cases, non-existent.

### **Overall Conclusion**

222. Despite having a legal framework (*albeit weaknesses that exist*) for the implementation of targeted TFS-TF, there is no indication that these measures are implemented based on the requirements of the Executive Order. Further, the measure currently in place which allow for the dissemination of the UN sanctions list to FIs and DNFBPs does not allow for such without delay. Moreover, there is no evidence that FIs and DNFBPs are complying with their functions and checking their databases to identify potential terrorist property and applying the relevant freezing measures without delay. Apart from the governance issues of NPOs, competent authorities have not identified the number of NPOs that falls within the FATF definition of NPOs that can be subject to abuse for TF purposes. Haiti has not conducted any TF risk assessment of those NPOs to determine their vulnerability to TF and is applying a rules-based instead of a risk-based supervision with the focus being on governance and not TF.

**223. Haiti is rated as having a low level of effectiveness for I.O.10.**

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

224. At the time of the conclusion of the on-site visit, Haitian authorities had not enacted any laws or put measures in place to address PF (*see R.7*). Therefore, the authorities have not implemented

or taken any actions to address the requirements of IO.11 and ensuring that they are achieving an acceptable level of outcomes.

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

225. Haiti has not implemented any mechanism dealing with targeted financial sanctions for proliferation financing (TFS-PF). Therefore, no outcomes were identified or achieved during the on-site visit.

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

226. No property or other funds of persons and entities designated have been identified or frozen in Haiti. However, this is not an indication that such property does not exist. The findings of the assessment team are that due to the absence of any measures, competent authorities, FIs and DNFBPs are not focusing on the identification of assets and funds held by designated persons/entities.

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

227. Competent authorities have not conducted any outreach or guidance, due the absence of measures relative to PF. Therefore, there is no understanding of and compliance with obligations relative to PF of WMD.

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

228. There is no identified competent authority that is responsible for ensuring and monitoring compliance, neither are supervisors such as the BRH conducting any monitoring for compliance with the obligations regarding TFS-TF.

### **Overall Conclusion**

229. In the absence of any legal or enforceable measures to address PF of WMD, there is no implementation of any measures to address the core issues of I.O.11.

230. **Haiti is rated as having a low level of effectiveness for I.O.11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

Haiti has achieved a low level of effectiveness for IO.4.

- i. A risk-based approach (RBA) to compliance with AML/CFT requirements among FIs and DNFBPs is virtually non-existent. Overall, the understanding of risks seems most developed in large banks that are part of international financial groups, and which therefore benefit from more established corporate resources, policies and procedures. These institutions have identified certain specific threats and high-risk sectors. FIs (save for those represented on the CNLBA) and DNFBPs are unaware of the jurisdiction's work towards a National Risk Assessment (NRA). The actual nature and level of their ML and TF risks are unknown beyond general assumptions. Moreover AML/CFT policies, internal controls, and programs to mitigate actual risks are rudimentary or non-existent throughout all reporting sectors.
- ii. Some FIs, specifically smaller FIs, that are not part of a financial group and DNFBPs have limited understanding of their AML/CFT obligations. The assessment team also noted that, in some cases, DNFBPs defer to the banks for AML/CFT requirements, such as customer due diligence (CDD)
- iii. Larger FIs, specifically large banks, especially those exposed to the international financial system, give more consideration to their AML/CFT requirements and apply AML/CFT policies regarding internal controls, EDD for higher risk customers such as PEPs and reporting obligations, whereas smaller FIs and DNFBPs do not.
- iv. Generally, some FIs have demonstrated that they pay attention to undertaking certain CDD measures. However, compliance seems to be predicated on the size of their business. Larger banks, for example, have more understanding of CDD requirements and the need to identify the BO and are likely to conduct ongoing monitoring. Those FIs that conduct CDD measures often rely primarily on information held in the "Le Moniteur" (information on the initial incorporation of a business) when verifying the identity of BOs, and they do not seem to independently ascertain whether the purported persons are indeed in control of the entity. Further, the information in the Le Moniteur is not verified and updated. Therefore, uncertainty remains over its accuracy (*see- IO.5*). Also impacting the proper application of CDD is that several Haitians are still without national identification and other identification data due to national disasters including the earthquake. The result of these disasters has caused some sectors of the population to lose documents and relocate to other provinces in Haiti and therefore cannot provide documentation necessary for CDD such as proof of address.

- v. Haiti has made great strides towards financial inclusion. Nevertheless, the jurisdiction still remains cash based and informal. The authorities have not conducted any risk assessment to consider threats and vulnerabilities posed by the informal sector.
- vi. FIs and DNFBPs have received little to no guidance and feedback on their AML/CFT reporting obligations from competent authorities.
- vii. STR reporting is low and there are concerns about the quality of STRs filed by FIs given the varying level of understanding of their obligations. No STRs have been submitted by DNFBPs. Some CECs send STRs to the Federation of CECs for submission to UCREF. The process of submission to the Federation of CECs can take more than a month. The process does not allow for timely submission of STRs and is vulnerable to tipping off and breach of confidentiality of information.
- viii. TF risks are mostly unknown, including obligations regarding appropriate measures related to UNSCR lists.

***Recommended Actions***

- i. Haitian authorities should ensure that the deficiencies identified in R. 9-23 are addressed as a matter of priority, to eliminate the legislative compliance and regulatory gaps that directly impeded the jurisdiction's efforts in attaining effectiveness in the implementation of AML/CFT preventative measures across all reporting sectors.
- ii. Haiti should assess the risk and vulnerability of its informal cash-based sectors and should continue its good work towards financial inclusion which will encourage these sectors to reduce the risk of ML and TF.
- iii. Haiti's competent authorities, specifically supervisors, should work with FIs and DNFBPs to ensure that there is an overall understanding of ML/TF risks throughout these sectors. Such work should also inform a risk-based approach to AML/CFT compliance throughout all reporting sectors, as well as assist the jurisdiction's development of an NRA.
- iv. Supervisors should ensure that FIs' and DNFBPs' are properly identifying BOs, PEPs, and giving adequate consideration of UNSCR sanctions lists to better ascertain whether purported clients are in control of legal entities or have terrorist properties in their possession. Such processes should not only rely on the information contained in "Le Moniteur" which was found to have several deficiencies as reported in IO.5, chapter 7.
- v. The jurisdiction should also develop and urgently implement reporting mechanism which will provide much needed assurance to FIs and DNFBPs that their reports are submitted to UCREF with the highest possible levels of confidentiality and security.

- vi. Competent authorities should provide more guidance on implementing preventive measures, including on identifying BOs, typologies and red flags to help identify possible ML/TF suspicious activities, so as to improve the quality, timing and volume of STR reporting. FIs and DNFBPs particularly CECs should strengthen the STR reporting procedures and enhance the quality and understanding of their STR obligations. This will require more staff and targeted trainings.
- vii. UCREF and the BRH and other supervisory authorities should provide continuous feedback, guidance, outreach and training to FIs and DNFBPs relative to STRs, including, the identification, quality and reporting of STRs/CTRs. The outcome should be geared at generating more and better-quality reports.
- viii. Haiti should take urgent steps to ensure that the DNFBP sectors implement comprehensive and effective AML/CFT compliance programs that include reporting, record keeping, client identification and know-your-client requirements. As a matter of crucial priorities, such compliance programs should be fully implemented in the casino, gaming and lotteries sectors, as well by notaries and lawyers in Haiti; especially those in the latter categories who are involved in real estate transactions, in the formation of companies and in the holding of customers' funds.

231. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

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

##### *FIs*

232. All sectors (FIs and DNFBPs) are not of equal importance in terms of risk and context in Haiti, despite the absence of any documented ML/TF risk assessment. The relative importance of different types of entities regarding their perceived risk and materiality were considered in formulating conclusions on preventative measures. Despite the unavailability of official information on the size of all DNFBPs and all FIs, the number and asset size of some FIs and DNFBPs as represented at Chapter 1, table 5 and table 6 respectively were used by the assessment team to weigh the conclusions on preventive measures in Haiti and the assessment team's findings..

233. The financial sector is dominated by the banking system which comprises eight banks with an asset base of US\$ 4.86 billion accounting for ninety percent of the total assets of the financial sector, with the three largest banks account for eighty percent of the banking system. Banks offer a wide variety of products and services to a diversified client base. The relative importance of other types of FIs is minor in comparison with the banking sector and they rank in order of size as follows: development FIs, microfinance institutions and credit cooperatives. There is no securities activity in the Haitian financial sector.

## *DNFBPs*

234. The DNFBP sector of Haiti consists of casinos, borlettes, lawyers, notaries, accountants, real estate brokers, motor vehicle dealers and dealers in precious metals and stones. The assessment team was provided with conflicting numbers on the actual amount of the casino that exist in Haiti<sup>43</sup>. Nevertheless, the numbers of casinos as reported by the LEH (the regulator) is twenty-four, consisting of two casinos that are authorised to operate as a business by the MCI and registered with the LEH. The assessment team was informed that there were twenty-two that are licenced but have yet to be registered with the regulator (therefore operating illegally). There are no figures on the overall size of these casinos. There is also an unclear number of unregulated and unsupervised borlette operators (a popular, nationwide, unlicensed lottery system in Haiti's gambling sector, which is said to be privately administered by over 600 operators, having 20,232 points of purchase and creating 200,000 jobs). The assessment team was advised by the ANTB that the borlette sector generates over 500M Gourdes (US\$7.5M at the time of the onsite visit) per quarter.

235. There are 337 licenced notaries in Haiti whose functions include management of family assets, tax collector for the state, company formation and real estate contracts. The jurisdiction estimates that there are 2,300 lawyers in Haiti with eighteen bar associations that oversee the ethical and professional conduct of lawyers. The Fédération des Barreaux d'Haiti (FBH), a national association, has adopted a creed and a code of ethics which all bar associations are required to implement. Lawyers performed functions that are similar to notaries. The total number of certified accountants differ between those provided by authorities of 348 and the 450 members reported by OCPAH<sup>44</sup>. Real estate agents, dealers in precious metal and stones and motor vehicle dealers are unlicensed, unregulated and unsupervised for AML/CFT compliance. The actual numbers are unknown.

## *Financial Inclusion:*

236. The Haitian economy is predominantly cash-based, and it was reported in 2014 that only nineteen percent of the adult population had access to an account, therefore indicating that a significant portion of the Haitian population was not included in the formal financial sector and therefore not subject to the AML/CFT regime. The BRH has published guidelines for financial inclusion as a national plan and officials have noted that while the BRH does not work directly with FIs in this respect, it encourages them to develop financial products and services to allow for financial inclusion. The BRH further noted to the assessment team that Haitian banks have been eager to expand services in mobile banking in order to extend financial access to a greater portion of the population (see paragraph 264). The measures implemented by Haiti had some effect on financial inclusion as the 2017 Global Findex report shows that thirty-three percent of adults in Haiti has an account at a financial institution.

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<sup>43</sup> Though the assessment team is using the LEH's data on casinos it should be noted that the jurisdiction reported 39 domestic casinos in its initial submission. Moreover, creditable open sourced information indicated that there was a total of 157 casinos in Haiti. This highlights the urgency in better defining, identifying and regulating casinos in the jurisdiction, including thoroughly identifying risks and vulnerabilities of ML/TF abuse, regardless of the size of such establishments.

<sup>44</sup> The assessment team was informed that the figures provided by the OCPAH is authentic as they are a self-regulating body.

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

### *FIs*

237. Generally, some FIs have a partial understanding of their exposure to ML risk and overall, the understanding of risks at the institutional level seems most developed in large banks that are part of international financial groups.
238. Only the larger banks have implemented processes and procedures to identify, assess and document the risks associated with customers, products/services and geographical location though to a limited extent. FIs interviewed indicated that some of the significant risks include corruption, embezzlement, fraud and kidnapping, while high risk sectors consist of casinos, gaming houses, gas stations and real estate. Largely, FIs do not understand risks related to TF in the absence of any recognised terrorist organisation or activities in Haiti. The understanding of ML/TF risks is still evolving and needs to be further developed as the NRA process is implemented by the Haitian authorities.
239. Policies and procedures for the implementation of a risk-based approach towards compliance with AML/CFT requirements need to be developed in smaller FIs and possibly some of the larger ones. Improvements are particularly needed in areas such as CDD, KYC, especially as it relates to client identification, PEPs, BO and understanding and mitigating TF risk. The most pressing areas of improvement include, developing more effective procedures to properly identify and monitor the accounts of high-risk customers, and to give due consideration to establishing an internal risk assessment mechanism throughout their business process.
240. Regarding their AML/CFT obligations, some FIs, specifically the larger banks are aware of their AML/CFT legislative requirements, including giving consideration to compliance with regulations, guidelines and circulars issued by the BRH. These larger banks also conduct training to ensure that staff are aware of AML/CFT legislative requirements and internal policies and procedures. Nevertheless, FI sector's overall level of understanding of ML/TF risks and AML/CTF obligations is considered low and may be attributed to the lack of effective trainings in general.

### *DNFBPs*

241. DNFBPs have a rudimentary understanding of ML/TF risks, and a varying degree of comprehension among sectors of their AML/CFT obligations.
242. Despite being a high-risk sector for ML/TF, the casino sector has very limited understanding of its ML/TF risks and AML/CTF obligations and has not implemented preventative measures of any significance. Furthermore, it is not adequately regulated and appears reluctant to comply with requirements as demonstrated by the number of casinos that have not registered with the LEH, Haiti's gaming regulator.

243. Borlettes and other lotteries generate a substantial source of cash revenue for their private operators and the ANTB. In the absence of any risk assessment, the sector nevertheless appears highly vulnerable to ML/TF abuse. The ANTB, an industry association has very limited understanding of ML/TF risks and AML/CTF obligations. As such, the several hundred borlette operators in the jurisdiction are not aware of their ML/TF risks and obligations, which represents a serious concern to the assessment team, in light of the perceived highly intensive cash activities that are undertaken by this industry and their inherent high risk to ML/TF.
244. Notaries and lawyers are aware to a limited degree of ML/TF risks and AML/CFT obligations relative to some aspects of their activities. Notaries have attended workshops dealing with assessment of ML/TF risks with regard to client identification. The assessment team was advised that the code of ethics applicable to lawyers includes understanding of ML/TF risk. However, the authorities provided no information to substantiate this assertion, nor was any data, statistics or examples of compliance with the code provided to the assessment team. Both notaries and lawyers indicated some awareness of AML/CFT obligations regarding higher risk clients such as PEPs and suspicious transaction reporting. As for accountants, the *Ordre des Comptables Professionnels Agréés d'Haïti (OCPAH)*, Haiti's principle professional association for accountants, reported that eighty to ninety percent of accountants in the jurisdiction are in fact professional accountants working in businesses ('internal' professionals that are employees of other types of businesses, as those who are excluded in the FATF Recommendations glossary). In the absence of statistics or a competent authority's AML/CFT risk assessment of this sector, the assessment team was unable to determine the accuracy of this claim.
245. Real estate agents and dealers in precious metals and stones have little, if any, understanding of either ML/TF risks or AML/CFT obligations. Motor vehicle dealers, who are subject to the provisions of the LSMLTF, 2013 as amended, while aware of some AML/CFT obligations, were unsure of their requirements due to lack of guidance given by the authorities.

### ***Application of risk mitigating measures***

#### *FIs*

246. Some of the larger banks, primarily those with an international nexus that are a part of international group determine risk mitigation measures for identified inherent risks and make use of monitoring systems to determine the adequacy of controls implemented. Some FIs, specifically larger banks have some form of risk mitigation policy in place that includes AML/CFT policies and procedures for the identification of unusual activity and for risks connected to customers, products/services and geographical location. The policies and procedures generally address customer acceptance, updating of customer data, monitoring and reporting of STRs and handling of high risk. One institution advised that as part of its risk mitigation measures it had de-risked the casino, borlette and gaming sector.

247. FIs are required to conduct ML/TF risk assessment and are also required to have policies and procedures that include the identification of risk. Banks, MVTS, CECs and FEAs have policies and procedures that include the identification and assessment of ML/TF risks as is mandated by relevant Circulars and Guidelines that are applicable to them issued by BRH. However, as indicated previously in the report, there has been no ML/TF risk assessment conducted by any of the FIs. Nevertheless, larger FIs, specifically larger banks that are part of the financial group or have an international nexus have implemented some risk mitigation measures, such as EDD. Some FIs also view de-risking as a form of risk mitigation measure.

#### *DNFBPs*

248. There is minimal to no application of risk mitigating measures performed by DNFBPs, due in large part to the lack of AML/CFT oversight in all sectors. Those DNFBPs that have adopted basic AML/CFT compliance programs, comprising of basic KYC procedures do so on a self-regulating basis, in an effort to maintain a reputation of good standing among the international businesses with which they conduct business.

#### ***Application of enhanced or specific CDD and record keeping requirements***

##### *FIs*

249. Some FIs, primarily larger banks with an international nexus categorised their customers based on risk (usually low, medium, and high) that require commensurate CDD measures and monitoring procedures in accordance with the level of risk identified. FIs in general identify their customers and verify information when there are suspicions of ML/TF activity or there is doubt about the veracity or adequacy of the customer identification data previously obtained. However, interviewed FIs indicated that effective CDD was hampered by the lack of national identification and verifiable home addresses for a significant portion of the population. The lack of national identification and verifiable information was a result of natural disasters such as the recent earthquake and hurricane that occurred in Haiti, and also has an impact on effectively addressing financial inclusion. FIs have sought to address the issue of verifying home addresses by requesting affidavits from creditable witnesses and with regard to identification documents requiring customers to obtain replacement duplicates from the appropriate authorities. The foregoing speaks to the importance and the need for authorities and the sectors to conduct risk assessments. Similar deficiencies regarding basic CDD obligations were also being noted by BRH in its supervisory inspections.

250. FIs have not fully implemented mitigating measures commensurate with identified risks. Regarding the procedures for higher risk client, FIs need to apply more scrutiny, obtain additional information and impose stricter monitoring rules. The understanding of risks and the application of mitigating measures are most developed in larger FIs, particularly large banks. The larger banks thus have fairly stronger AML/CFT measures commensurate with their understanding of ML/TF

risks, although substantial work is still required. Overall, some FIs have implemented risk-based mitigation measures concerning CDD, record-keeping, and monitoring.

251. Larger FIs, specifically large banks apply general requirements to identify BO customers. These FIs apply specific verification and conduct ongoing monitoring on all business relations with the intention of understanding the nature of legal entities and ownership and control structures. Some FIs and entities interviewed indicated that most BOs of local entities were either known families or close associates of these families who are of good character and standing. Therefore, significant risk mitigation measures are not applied and CDD information on the BOs of all non-family firms is not always sought.
252. Generally, larger banks and some FIs make use of open sources and commercial databases for the screening process and conduct their own research, regarding the identification of BOs. FIs make use of the publicly available information in the “*Le Moniteur*” that they indicated contains updates on the BO of the legal entities registered with the Ministry of Commerce. With respect to conducting CDD and EDD on foreign companies, FIs, primarily the larger banks would request a letter of comfort from the parent company regarding its ownership structure in an effort to identify BO owners. However, the assessment team was unable to verify this information as no evidence was provided to demonstrate that this was being done. The requirements for information to identify and verify legal entities exclude the names of the relevant persons who hold senior management positions in the legal entities and do not cover legal arrangements. Those FIs, primarily the larger banks with international nexus require identification of senior management of legal entities. Interviewed FIs indicated that there were no trust arrangements in Haiti. While the above does provide for the identification of BO to some extent, it should be noted that there are concerns about the timeliness and accuracy of the data on beneficial ownership in “*Le Moniteur*” as reflected in IO.5. Additionally, the information may limit the understanding of beneficial ownership to the shareholders of the legal person. The weaknesses and deficiencies identified in R.24 and IO.5 have a cascading effect on the manner in which FIs conduct their business activities relative to legal persons including BO information.

#### *DNFBPs*

253. DNFBPs defer their CDD and some reporting obligations to the banks by requiring their customers to have bank accounts. In doing so, DNFBPs consider that banks are making sure their client have undergone the necessary CDD measures (i.e. should the client has a bank account, then they are presumed to be in good standing with the bank). With regards to the reporting of large cash transactions, DNFBPs that conduct reportable large cash transaction will simply include completed CTR forms in their cash deposit slips to the banks, with the assumption that banks will submit them on their behalf to UCREF. As such, DNFBPs are not submitting them directly to UCREF. Regarding KYC, some DNFBPs, for example notaries and lawyers reported that the requirements to conduct such checks on their customers have been detrimental to their business operations, as clients sometimes take their business activity elsewhere when asked for information required for

KYC. Most DNFBPs expressed a desire to have a general awareness campaign from competent authorities on the rationale for KYC to be performed, in an effort to make the public aware of the reasons for identification requirements related to certain business relationships and transactions that are subject to AML/CFT requirements. As a result of the perceived negative impact on business, KYC requirements, such as the procurement of proper identification documents, are often overlooked by many DNFBPs. Additionally, little consideration is paid to record keeping requirements for AML/CFT purposes, mostly due to the fact that DNFBPs are not subjected to adequate AML/CFT oversight, and that such records are not generated during the transaction beyond a bill of sales.

### *Application of EDD measures*

#### *FIs*

254. Some FIs, especially the larger banks that have international nexus and are a part of an international group, apply EDD measures proportionate to the risks identified in commercial relationships and transactions. FIs were not aware of the obligation for the application of counter-measures in accordance with the FATF requirements and there was no evidence that the authorities applied measures to inform FI about deficiencies in the AML / CFT systems of other jurisdictions, i.e. higher risk countries as noted by the FATF.
255. While FIs, particularly the larger banks determine if a customer is a PEP, Haitian law makes no provision for the allocation of different FATF measures in Recommendation 12 against the different categories of PEPs in Haiti (foreign, domestic and those from international organisations). Therefore, measures are applied broadly to all categories of PEPs. Local political appointees are published in “Le Moniteur” and this is used as a means of determining whether a customer is a PEP as all banks receive copies of such. The larger banks conduct KYC on PEPs and carry out enhanced monitoring on their accounts bi-annually as they are considered high risk. It was asserted that identification of domestic PEPs was made possible by extensive knowledge of local political appointees and their associates. Most FIs, except for the large banks did not determine whether a BO is PEP or require senior management approval for the continuation of a business relationship for a customer who becomes a PEP. With the exception of larger FIs, specifically large banks, who are part of a financial group or has an international nexus that have access to and utilise commercial databases such as World Check and World Compliance, there is no indication that all FIs have the capability of determining and conducting CDD and EDD on an individual who may be a foreign PEP or a PEP from an international organisation.
256. There is no evidence of any FIs receiving any official UNSCRs list of designated persons and entities for TFS-TF from any competent authority for four years, prior to the on-site visit. On the basis of the interviews conducted during the onsite visit, only the larger banks seem to be aware of their requirements to implement to TFS-TF. The assessment team was informed that these banks have measures in place to comply and screen using national and international databases before

establishing a business relationship, as well as during the course of the business relationship. However, no evidence was provided to substantiate the statement (*see IO.10 for more details*). These larger banks are also seemingly aware of the obligations to freeze without delay, any funds or assets made available directly or indirectly for or to the benefit of the designated persons and entities. There have been no instances for such freezing. Other FIs are unaware of the requirements regarding TFS-TF.

257. Some FIs, particularly larger banks that have an international nexus use automated models and systems for transactions monitoring to identify abnormal or unusual patterns according to the risk level of the client. Similarly, the understanding and sophistication of implemented measures are relatively better developed in larger FIs, specifically large banks, especially those that have an international nexus.

258. There are no correspondent banking relationships with FIs outside or inside Haiti. As previously indicated the banks have been involved in extending mobile banking to improve access to banking facilities and have been encouraged by the BRH to develop new products and services with a similar aim. These are being developed after due consideration of inherent risks in the products and services and any new technologies being deployed. A significant portion of wire transfers are carried out by agents and sub-agents of Western Union and Money Gram in Haiti. These agents and sub-agents are required to follow the AML/CFT procedures of Western Union and MoneyGram including identification of higher risk situations and application of appropriate measures.

#### *DNFBPs*

259. DNFBPs did not demonstrate any consideration to enhanced or specific CDD measures when dealing with higher risk clients, such as PEPs and UNSCR sanctions lists. Despite Haiti having a population in excess of ten million citizens, all DNFBPs reported that they intimately know every client of importance in Haiti, and that no extra measures were deemed necessary. DNFBPs were unaware of the requirements related to new technologies, TFS- TF and higher-risk countries identified by the FATF. Therefore, no measures were implemented to address those issues.

#### ***Reporting obligations and tipping off***

##### *FIs*

260. The STR requirements are somewhat understood. The larger banks maintain risk-based monitoring systems which take into consideration account size, type of customers, complexity, geographical exposure and type of transactions in relation to customer risk profile. These FIs can identify significant or abnormal transactions, and where reasonable suspicion is indicated file a STR with the UCREF. However, some FIs up to the date of the on-site had not filed an STR, save and except, some banks and funds transfer companies. The DNFBPs sector has not filed any reports with UCREF at the time of the on-site (*see IO.6.*) The reporting by banks, particularly larger ones reflects the fact that they are aware of the requirements and have in place measures for identifying,

analysing and submitting STRs to UCREF. With regards to the significant increase of STRs submitted by the MVTS for 2016 – 2017 (see table No.15- IO.6), UCREF advised that MVTS were not able to identify connected transactions and therefore submitted more STRs than necessary.

261. FIs submit STRs to UCREF in paper format with different templates for STRs depending on the type of FI or DNFBP. The low number or absence of STRs filed to UCREF compared to the country's risks could be attributed to the fact that some FIs remain unsupervised. The majority of FIs do not know the sector's risks, they have little or no guidance and feedback provided by BRH or UCREF regarding reporting obligations, analysis and dissemination of STRs, insufficient human resources and IT tools for case management, monitoring and strategic analysis of data and poor targeted training for staff. This affects the quality and efficiency of the information provided by FIs to UCREF, and at the same time the quality of STRs received by the UCREF, making it difficult to add valuable information to a case, or to disseminate to the competent authorities.

262. The assessment team was advised in interviews that some CECs submitted STRs first to the Federation of CECs, who is then required to forward them to UCREF. The reason for this arrangement was that the distance of some CECs from UCREF made hand delivery of STRs difficult. Due to this process, the ultimate submission of STRs can take more than a month. As a result, a key finding by the assessment team is that the process for submission by CECs to UCREF does not allow for timely submission of STRs and is vulnerable to tipping off and breach of confidentiality of information. Despite some CECs already submitting STRs to the Federation, UCREF has not received any STRs from CECs as shown at table 14- I.O.6- Chapter 3. This raises serious concerns about STR reporting using this process.

263. FIs and their directors, officers and employees are prohibited from disclosing to their clients and third parties that information has been provided to UCREF or that a STR on ML/TF will be or has been sent to UCREF. Regarding their obligations to report STRs, some FIs, particularly, the larger banks are aware of these obligations. However, most FIs are seemingly unaware their obligations hence the rationale for such low and some instances no reporting. The larger FIs, specifically the large banks are concerned with confidentiality regarding the information they disclose to UCREF, as they are fearful that the information maybe disclosed from that end. This has resulted in these larger FIs being reluctant to file STRs with UCREF. Nevertheless, these large banks have worked closely with UCREF to understand their internal processes and controls and have advocated for an electronic reporting system, to ensure confidentiality. Further, the large banks, specifically those that are a part of international group and conduct international transactions are required to comply with group-wide policies and international standards including the filing of STRs.

264. The assessment team was advised that UCREF has provided no feedback or guidance with respect to detecting and reporting STRs. Further, guidance has not been provided by the supervisor in this area. Moreover, there is no indication that training is provided by the supervisors or by the FIs (save and except for the large banks) to staff on how to identify suspicious transactions and the procedure

to follow. Whilst some larger FIs, specifically large banks have training manuals that incorporate STRs reporting, this does not apply to all FIs. The foregoing is reflected in the low number of reported STRs.

265. Furthermore, the continuation of STRs screening practices at the UCREF by its DG, as reported in Chapter 3, also points to a residual low level of confidence among staff of UCREF and the confidentiality of the information filed by the reporting entities.

#### *DNFBPs*

266. No DNFBP has reported any STRs to UCREF at the completion of on-site. Those DNFBPs who were interviewed had a vague knowledge of the UCREF's role and STR reporting expectations. This was probably due to a recent awareness campaign that UCREF had undertaken with leading members of the various DNFBP sectors.

267. The assessment team was advised that while some lawyers and notaries refuse to do business with suspicious individuals on the basis of ethical and moral standards, such individuals are able to conduct business elsewhere. However, such situations have never triggered the reporting of suspicious activity or attempted suspicious transaction reporting by any party as confirmed by those interviewed during the on-site, as well as the fact that there have never been any reported from the sector. This highlights a lack of clarity on the reporting of attempted suspicious transactions as highlighted in the TC Annex under R.20 as well as a lack of understanding of AML/CFT obligations. It also points to the need for adequate oversight of DNFBPs as well as the need for guidance and oversight by competent authorities in the DNFBP sector despite the perceived vulnerabilities that exist within

268. The lack of adequate AML/CFT oversight and guidance for DNFBPs, as well as the absence of adequate legislation or other enforceable means (see R.22 and R.23) to properly ensure AML/CFT compliance in the DNFBP sector, also reduces the assurance among DNFBPs that their reporting of STRs and other reports will be done securely, and with proper confidentiality.

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

##### *FIs*

269. In general, FIs have an understanding of and do implement some internal controls and procedures. This was apparent, in the larger banks that are members of financial groups. Such policies, procedures and controls are documented, reviewed, updated and approved by the Board of Directors on a regular basis, at least once a year. The documentation, and the Board's review and approval, are made available upon request to the BRH.

270. All banks have compliance units with specific AML/CFT responsibilities, designated compliance managers, internal audit units, staff training and hiring procedures that include appropriate screening. FIs are subject to annual internal and external audits for compliance with AML/CFT legal obligations and internal policies and procedures. FIs stated that the checks are focused on compliance with regard to ML/TF regulations, especially those issued by BRH. Some FIs, primarily banks that are a part of a financial group have AML/CFT group-wide programs in place to cover foreign branches. Such programs establish and maintain systems and controls for compliance with the regulatory requirements to limit their vulnerability to financial crime.

#### *DNFBPs*

271. DNFBPs have little or no awareness regarding AML/CFT internal controls and procedures. Several DNFBPs reported that they have been anticipating the passing of laws to better regulate their sectors for AML/CFT. In the meantime, they expressed appreciation for past consultations with the BRH in the course of new AML/CFT policy development, as well as for some recent outreach that had been done by the UCREF which included some guidance and awareness raising on ML/TF risks and methods to which their sectors may be vulnerable.

#### **Overall Conclusion**

272. A comprehensive understanding of the TF risk is non-existent, whilst ML risk is generally limited and varies across FIs (large banks having a better though limited understanding of risk). The understanding of risks seems most developed in large banks that are part of international financial groups and the risk-based approach (RBA) to compliance with AML/CFT requirements among some FIs and the entire DNFBP sector is virtually non-existent. In addition, smaller FIs and most DNFBPs have limited understanding of their AML/CFT obligations. FIs, specifically large banks, who are a part of a financial group and have an international nexus apply certain AML/CFT policies, have some internal controls, apply cursory CDD measures to identify and verify the identity of their customers (including BO), and conduct ongoing monitoring of clients. FIs and DNFBPs have received little to no guidance and feedback on ML/TF risks and on their AML/CFT reporting obligations from competent authorities. Particularly, there is no guidance or indication to reporting entities that the STRs and CTRs that are submitted to the UCREF are treated with the highest possible security and confidentiality, so as to assuage any fears that reporting entities may have. The assessment team also noted that, in some cases, DNFBPs rely on the banks for CDD measures, by requiring their customers to have bank accounts to ensure that CDD has been conducted. With respect to STR reporting, the level is low, with none ever having been filed by DNFBPs; and there are concerns about the quality of STRs filed by FIs, given the varying level of understanding of their obligations. Moreover, the assessment team was apprised of the practice of CECs submitting STRs to the Federation of CECs for filing to UCREF. However, UCREF has not received any of these STRs as the time of the on-site

273. **Haiti is rated as having a low level of effectiveness for IO.4.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

Haiti has achieved a low level of effectiveness for IO.3.

- i. The BRH is the primary supervisory authority that is fully operational in the jurisdiction. The BRH is in the process of considering technical assistance to develop a risk-based approach in its AML/CFT compliance supervision for the agencies which it supervises and to engender an enhanced focus on AML/CFT in its examination plans.
- ii. Supervisors have not conducted risk assessments of their relevant sectors. The BRH has very limited understanding of the ML/TF risks in the FI sector, specifically those banks that deal with sectors that are cash intensive and considered as high risk.
- iii. The BRH's primary focus is to conduct prudential supervision of FIs it is mandated to supervise, particularly banks, MVTS and CECs. The overall approach to supervision does not include a comprehensive AML/CFT risk-based approach. Some FIs are not supervised for AML/CFT purpose, despite the absence of ML/TF risk assessment that exempts them from such.
- iv. The BRH has imposed only the lowest levels of sanctions upon FIs for AML/CFT deficiencies found during on-site examinations. Thus far the only sanction issued was warning letters to address all deficiencies identified. As such, the range, proportionality and the dissuasiveness of existing sanctions have never been put to the test, and assessors could not verify the effectiveness of the sanctions' regime.
- v. Adequate measures to prevent criminals and their associates from beneficially owning a significant or controlling interest or holding a management function in FIs are implemented by the BRH in the licensing process and in subsequent changes in shareholding and management of the FIs for which it is responsible for licensing. Minimal fitness and propriety measures are applied for insurance companies, CECs, pension funds, microfinance institutions and DNFBPs.
- vi. The BRH has provided some guidance and other information on AML/CFT to FIs during the period under review. However, FIs advised that the training and guidance provided is insufficient. The limited quality of the training and guidance was reflected by the fact that only the major FIs with international relationships which are therefore subject to greater international scrutiny, are fully aware of their AML/CFT requirements and have adequate measures in place. Other FIs did not demonstrate a clear understanding of their AML/CFT obligations and ML/TF risks.
- vii. All existing supervisory authorities require additional staff and IT resources. The lack of resources widely translates into several deficiencies including low performing AML/CFT supervisory functions, limited monitoring of AML/CFT compliance, little AML/CFT

supervisory knowledge and limited training, feedback, guidance and awareness within supervisory bodies.

- viii. The LEH does not give due consideration to AML/CFT supervision in its role as regulator for the casino, borlette and gaming sector. Moreover, there is confusion at a national level as to which entity is the legal supervisor for the jurisdiction's borlette operators.
- ix. There is no enabling legislation to designate AML/CFT supervisory entities for the other DNFBP sectors. As a result, DNFBPs are not supervised for AML/CFT compliance.

***Recommended Actions***

- i. In light of the absence of an NRA, Haiti should ensure that supervisors undertake an exercise to identify and understand ML/TF risks of FIs and DNFBPs (such as sectoral risk assessment). This would ensure that measures, such as allocation of resources are implemented, in an effort to mitigate the identified ML/TF risks.
- ii. Haiti should ensure that additional staff and resources are provided for existing and future supervisory authorities, in particular the BRH and the LEH, so that they have a suitable number and quality of staff to undertake comprehensive risk-based AML/CFT supervision. The allocation of resources should also take into consideration the implementation of a comprehensive AML/CFT training program for existing and new staff. Moreover, supervisory authorities should consider the implementation of information management/IT solutions to enhance monitoring processes and capacity, so as to adequately monitor examination findings and address deficiencies.
- iii. Haiti should urgently register and license all operational FIs and designate the AML/CFT supervisory authority for the jurisdiction's insurance sector and those FIs that are not supervised for AML/CFT purposes.
- iv. The BRH should enhance its AML/CFT examination plans and bolster its remedial actions, taking into consideration the existing sanctions that are provided to address AML/CFT deficiencies, and ensuring that they are dissuasive, proportionate and effective. Such sanctions should be levied promptly, while clearly identifying, and providing remedial plans, and additional sanctioning for inaction, where appropriate, to address violations of AML/CFT requirements or failings in money laundering and terrorist financing risk management by FIs.
- v. Haiti should institute a complete and adequate legislative framework or other legitimate powers to the existing and future AML/CFT supervisors for the monitoring of compliance by the jurisdiction's DNFBPs. A comprehensive, risk based, and adequate resourced supervisory regime should be implemented for all DNFBPs, including Borlettes operators as a matter of urgency.

274. 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***

##### *FIs*

275. The licensing process for all FIs under the supervision of the BRH requires shareholders, board members and senior management personnel of licensee applicants to submit specific documents to the BRH for fit and proper analysis and for approval. Shareholders including beneficial owners who own direct or indirectly 5% or more of share capital are required to submit the requisite documents. BRH advised that since there is no securities market in Haiti, the number of shareholders in FIs is minimal and the BRH always identifies all-natural persons who either own or exercise control.
276. Fit and proper analysis is conducted from a legal and compliance aspect. The analysis process includes checks with the Tax Office to ensure that applicants have paid the requisite taxes, the MCI for basic and BO information, and law enforcement agencies for criminal information along with other entities. Due diligence is carried out on individual shareholders Board members and management personnel to ascertain whether they are of good moral standing. Notification to the BRH of the replacement of any individual is required immediately after the change has been made.
277. BRH checks for criminal records from the central judiciary police. On the financial side, credit soundness is assessed regarding the solvency, debt and any past dubious financial dealings. Internationally, the BRH can check with the Association of Supervisors of Banks of the Americas (ASBA) for information. Checks are also conducted for possible lawsuits filed against a person (even if they have not been convicted). If BRH discovers any false information, the applicant can be sanctioned, or conditions imposed in the licensing approval in accordance with the legal requirements. Nevertheless, no information or data was presented to the assessment team demonstrating that the BRH conducts this function, despite having the ability.
278. Should the BRH have sufficient grounds for additional checks, a vetting investigation will be conducted, however, this has rarely occurred. Complaints and/or letters about individuals of dubious character have resulted in some instances in disapproval and removal of such persons. The assessment team was not provided with information showing these actions stated by the BRH officials and the number of actions that were taken during the period under review (2015-2018) to demonstrate effectiveness of the system.

279. The BRH advised that fit and proper approvals of subsequent changes in shareholders, directors and management of FIs are done in practice to the entities that it is mandated to supervised. The fit and proper analysis and checks are similar to those of the licensing process. However, no information was provided by the jurisdiction to demonstrate such is occurring in practice. The BRH has removed one board member of a FI who did not meet the requirement to be a member of the board of directors, prior to 2014. However, this removal was not for AML/CFT purposes and falls outside the period under review. Licenses or registrations have not been denied or revoked to individuals or businesses because of fit and proper issues.

280. The BRH is not responsible for the licensing and/or registration of insurance companies, pension funds—and microfinance institutions. CECs legal existence to operate in Haiti comes from the National Council of Cooperatives (CNC) and the BRH. Prior to conducting their functions, all CECs must receive authorisation from the CNC after receiving the opinion/feedback from the BRH. However, the assessment team found not evidence, neither was any presented to the team that there are consultations between the BRH and the CNC to ensure that the necessary fit and proper checks are conducted. A supervisory authority for insurance companies was formally established in 2012. As at the date of the completion of the onsite there were plans to fully implement a supervision program for insurance companies and to request technical assistance from the IMF and other donors. The authority is under the aegis of the Ministry of Finance. However, although established, there is no active AML/CFT supervision of insurance companies due to the lack of legislative authority and the department has not received the necessary staff and resources to conduct its functions. There are minimal measures to prevent criminals and their associates from beneficially owning a significant or controlling interest or holding a management function in an insurance company. At the time of the onsite mission, insurance companies only required the approval of the MCI to operate. This process requires the submission of the by-laws of the company and information on the shareholders and directors. Minimal checks are conducted on the applicant for approval. The assessment team was advised that most insurance companies are privately owned by well-known families in Haiti. A similar process is also applicable to pension funds, CECs and microfinance institutions.

#### *DNFBPs*

281. Casinos are first required to be registered as a business entity with the MCI, the competent authority responsible for the registration of business enterprises (sole traders, LLC etc.), to be vested into casino activities. They are then required to obtain a business license to operate as casinos from the MEF and finally prior to the commencement of their operations, they are further required to register with the LEH to legally operate as a casino. Only two out of the estimated twenty-four casinos reportedly authorised by the MCI to operate in Haiti were registered with the LEH at the completion of the onsite visit. The largest casino, which is managed by a stock corporation, is one of the two registered by the LEH. Little has been done to bring the unregulated casinos into basic compliance, other than a letter sent in April 2018 encouraging them to register. The MCI's authorisation process comprises a review of a business' solvency, including checks of good moral

standing, criminal records check and other standard verifications. Haitian authorities advised that difficulties arising from the 2010 earthquake concerning the proper identification of physical addresses for citizens, including legal persons present an impediment to proper licencing and registration. Such licenses are nonetheless awarded to businesses based on reputational knowledge of the applicants' general moral standings. Annual reports are submitted by casinos to the LEH and include audited financial statements, as well as a list of active board members. The actual number of these reports submitted to date was not provided by the authorities, and the review of these annual reports does not appear to be in-depth. The MCI and the LEH lack AML/CFT compliance functions and minimal checks are done at the initial licensing and registration stage for casinos and other businesses. The above checks do not include a review of the management staff of casinos.

282. As of the completion of the on-site assessment, both the ANTB and the LEH claimed to be the official regulators for borlettes, the latter being a government entity and the former being an industry association. Assessors were informed by the LEH that the ANTB's role as regulator for this sector was not legal as of June 28, 2018 (during the onsite), as per a legislative decree that identified the LEH as the jurisdiction's regulator of borlettes, as well as for all other lotteries in Haiti. Despite competing legal claims to the borlettes and lotteries supervision authorities neither organisation has an AML/CFT supervision program. As such, there is very little consideration made to AML/CFT in the licencing and registration mechanism for operators in Haiti estimated to be between 920 (by the ANTB) and up to 22,000 (by information provided by the LEH). The assessment team was informed that borlette operators are responsible for the management of borlette earnings and disbursement of winnings. Measures to prevent criminals or their associates from becoming a borlette operator, or otherwise be involved in any official capacity in this sector, are minimal. According to the ANTB, operators must be Haitian nationals, be in good standing with Haiti's tax authorities (e.g. have a patent – or a proof of payment of tax) and hold a certificate of good standing from the Ministry of Social Affairs and the local police. Operators pay a registration fee with the ANTB of 10,000 Gourdes per year to operate.

283. There is no specific oversight for the compliance with AML/CFT requirements by notaries, lawyers and accountants. The measures to prevent criminals or their associates from becoming or continuing to be a notary are minimal. Notaries are appointed and commissioned by the President of the Republic once they have completed a law degree; a 3-year internship; and have passed an exam under the supervision of the government commissioner or the prosecutor's office or the courthouse. Lawyers, for their part, are required to be a member of one of the bar associations to practice law in Haiti. The requirements for membership include the requisite educational qualifications and personal integrity checks, as well as an adherence to a professional code of ethics. Minimal checks are conducted to ascertain the character of applicants and no further checks are carried out once a lawyer becomes a member of a bar association.

284. Accountants require a license from OCPAH to operate in Haiti. The licence is contingent on clean criminal records, and the successful completion of professional exams. Accountants are required to take an oath when they become members of OCPAH, which includes an adherence to its code

of ethics. These measures are similarly minimal with regard to vetting applicants and are only done at initial application.

285. Real estate agents, dealers in precious metal and stones and motor vehicle dealers are unlicensed, unregulated and unsupervised for AML/CFT compliance. They only require the approval of the MCI to operate. The requisite bye-laws of the proposed legal entity and information on the owners/partners/shareholders and directors are submitted to the MCI for approval. Minimal checks are conducted on the submitted information.

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

#### *FIs*

286. As of the date of the completion of the on-site assessment, the BRH had not conducted a risk assessment of the FI sector. The BRH's understanding of ML/TF risks is limited, nevertheless it has given some attention to ML and on institutions that have cash intensive customers. The BRH is aware of the type of products and services offered by its supervised entities. Emphasis is placed on the FIs that deal with sectors that are cash intensive and regarded as high risk such as borlettes, casinos, notaries, gas stations, hardware stores etc. The BRH considered the risks of CECs to be lower than commercial banks due to the nature of their operations, as they are each limited to one specified geographic district and offer only traditional credit union services. The BRH in an attempt to reduce the cash intensive nature of the Haitian economy and encourage financial inclusion has been encouraging FIs to utilise mobile banking services and improving the payments system in the country.

#### *DNFBPs*

287. There is a lack of enabling legislation for the appointment of competent authorities to be dedicated to the AML/CFT supervision of DNFBPs. As such little has been done to adequately identify and understand the ML/TF risks and vulnerabilities in each sector.

288. Though competent authorities agree that the casino, borlette and the entire gambling sector represents a high risk for ML/TF abuse in the jurisdiction, considering Haiti's cash intensive economy, a formal assessment of ML/TF risks in this sector has not been conducted. The LEH, the general regulator for this sector, is still attempting to have all casinos legally registered before developing a supervisory regime for casinos. No competent authority has been designated for the AML/CFT supervision of notaries, lawyers, accountants, real estate agents, dealers in precious metals and stones and motor vehicle dealers. Additionally, Haiti has yet to commence its NRA. Consequently, there is no ML/TF risk assessment of these DNFBP sectors to adequately identify risks and establish a corresponding AML/CFT supervisory regime.

289. Although the assessment team was advised that real estate agents and brokers mainly assist in listing properties and facilitate initial agreements between seller and buyer, some real estate transactions are still conducted informally in cash. This coupled with the national issues regarding the jurisdiction's address listings, whereby many residential and rural areas have not been properly demarcated/identified, raises the risk that informal real estate purchases continue to be conducted and are vulnerable to ML abuse.
290. Notaries are required to authenticate real estate transactions. The assessment team is of the view that notaries are high risk due to their role in handling large sums of cash in escrow for such real estate purchases, as well as for other transactions, such as vehicle purchases and bulk sales of used clothing (*a reportedly large sector in Haiti*). Notaries are also involved in the formation of companies.
291. Lawyers are also perceived by the assessment team as posing a high risk given their role in the formation of companies, and in the facilitation of foreign business relationships, investment and tax advice. The latter is of concern given that tax evasion is not a predicate offence to ML in Haiti. Lawyers have generated considerable business over the years by offering advice relative to international tax avoidance.
292. While the actual size of the precious metals and stones sector in Haiti is unknown, the assessment team was advised that sales are minor. However, given the fact that Haiti is at risk as a transient country for smuggling and given anecdotal evidence from interviewees that contraband also poses a high risk in the jurisdiction and the high value nature of the sector, a risk assessment should be done by competent authorities to clearly identify and understand actual risk. The assessment team was informed that informal cash purchases take place in the motor vehicle sector, and there is a thriving, under-regulated sub sector that facilitates the importation of motor vehicles that may pose a substantial risk for ML/TF. Consequently, there is also an important need for a risk assessment in this sector as well.

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

293. At the time of the onsite mission the BRH did not conduct risk-based AML/CFT supervision of its supervised entities. The assessment team was advised that the BRH was considering requesting technical assistance from the IMF in the development and implementation of a risk-based supervisory regime. The first phase of the technical assistance dealing with the development of inspection manuals and a review and change of internal procedures for supervision was being completed and the second phase including the effective implementation of risk-based supervision was due to commence shortly. A new Circular was due to be issued in 2018 requiring FIs to report quarterly on their AML/CFT programs. In this regard the BRH also requested all FIs to submit copies of their AML/CFT policies and procedures.

294. At present, supervision is carried out by two departments in the BRH, one responsible for banks, money transfer companies, development FIs, foreign exchange agents, investment promotion companies, financial leasing companies and credit card companies and the other for CECs. Supervision, both off-site monitoring and onsite inspections are focussed on prudential aspects of the operations of FIs (despite the BRH not having the powers to conduct inspections of CECs and microfinance institutions).
295. The absence of an AML/CFT supervisory risk-based approach is evidenced by the monitoring of FIs through the review of regular reports submitted by FIs on prudential criteria/ratios. This provides the basis for the on-site inspections conducted by the banking unit within the BRH. Therefore, the selection of banks for on-site examination is not based on AML/CFT risks. In addition, those institutions which are assessed as being well managed and well capitalised are inspected on a twelve to eighteen months cycle. All institutions are inspected at least once every three years. Inspections consist of general full-scale inspections which include an AML/CFT component and targeted inspections which focus on specific areas of concern. While there is a regular schedule of inspections based on an annual program, targeted inspections can be triggered on changes in monitoring criteria. However, there have not been any issues to trigger targeted inspections since 2011. Regarding CECs, the frequency of inspection is based on size, with the larger CECs being inspected the most. All CECs are inspected at least once every two years.
296. Full- scale inspections usually take place from two to three months dependent on the size of FI. The AML/CFT component of inspections largely consist of the review and evaluation of the FI's AML/CFT program, identification and customer due diligence programs, customer monitoring, management of information request, training programs, KYC for customer and employees, STRs reporting procedures and in a broader view the FI's AML/CFT risk assessment.
297. For the period of 2014 to 2018 BRH conducted a series of inspections as seen in the table below.

*Table 28: Inspections conducted by the BRH*

<b>Year</b>	<b>Banks</b>	<b>CEC</b>	<b>Other FIs</b>	<b>MVTS/ Foreign Exchange Agents</b>
<b>2014</b>	1	26		2
<b>2015</b>	2	23		1
<b>2016</b>	3	25		1
<b>2017</b>	4	29	1	
<b>2018</b>	1		1	
<b>Total</b>	<b>11</b>	<b>103</b>	<b>02</b>	<b>04</b>

*Source: BRH*

298. As can be seen above the number of inspections in the banking sector has been increasing over the review period with half the number of banks being inspected in 2017. The number of CECs inspected reached a high of twenty-nine in 2017. The above figures demonstrate an improvement in the inspection rate of banks and CECs of the BRH. However, the rate of inspection for money transfer companies and foreign exchange agents has declined with no inspections conducted in 2017.
299. Following the onsite inspection an exit interview is held with the institution to inform on the findings. The institution is issued an inspection report and a formal letter advising of any deficiencies identified in the inspections and the recommended remedial measures to be taken with relevant timelines for completion. Confirmation of the measures in the action plan submitted by FIs in response to the letter concerning deficiencies is done through follow-up mechanisms. The above supervision regime is not risk-based and is primarily focused on prudential criteria with AML/CFT issues forming only a minor part of the regime.
300. The Department of the Supervision of banks and other financial institutions is managed by a Director and three deputy directors. This Department is staffed with thirty-two officials/employees dispatched within three units and a secretariat held by two administrative assistants. The Inspection Unit with the department is staffed with fifteen employees that are divided into three teams of inspectors for the purpose of ratio-based inspection and another team of inspectors to which is assigned AML/CFT supervision. The Inspection Unit is managed by a Head of department that is charged with the coordination of the work of the various inspection teams. The analytical and statistical unit is endowed with twelve employees, that unit is charged with the desk-based supervision of FIs, except for Money transfer companies and Foreign Exchange Agents (FEAs). Regulatory reports from all FIs are received, processed and analysed on a regular basis by senior and junior financial analysts under the monitoring of the Head of Department. The Supervision Unit for the Activities of Currency Exchange and Money Transfer (SATC) is presently staffed with four employees and is charged with the desk-based supervision as well as onsite inspection of Money transfer companies and FEAs.
301. The AML/CFT knowledge of staff, particularly those in the supervisory position is limited due to lack of suitable targeted training. As such, AML/CFT supervision is also limited. There is no AML/CFT supervision of insurance companies and pension funds.

#### *DNFBPs*

302. There is a lack of enabling legislation for the appointment of competent authorities to be dedicated to the AML/CFT supervision of DNFBPs.

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

### *FIs*

303. BRH has the power to impose sanctions for violation of the legislative and regulatory provisions which include AML/CFT obligations. Sanctions range from warning notices, financial penalties and temporary interdiction to conduct certain operation to cancellation of the authorisation to operate.
304. At the date of the onsite mission, only warnings had been given for deficiencies that were noted during any on-site inspection performed by BRH. These warnings were documented through formal letters with timelines for follow-up to ensure that the proper actions were taken by the FI.
305. The main weaknesses identified during past on-site examinations include:
- Absence of some information and documents regarding customer identification in account files.
  - Lack of regular updates (12 to 18 months required) of AML/CFT risk assessment by some banks.
  - Lack of review by the audit department of AML/CFT compliance department activities of some banks
  - Failure of most banks to update customer files on a regular basis.
  - Lack of procedures by some banks on how to review the functions of their compliance department.
306. The BRH indicated that there were no circumstances where a breach was identified by the examiner that warranted further action in the follow-up process to the formal letter of warning. As such, the range and dissuasiveness of the sanctions have never been put to the test and assessors could not verify the effectiveness of the sanctions' regime.

### *DNFBPs*

307. As already noted, there is no AML/CFT supervision of DNFBPs, as such deficiencies have not been identified and therefore no remedial actions for non-compliance have been undertaken in these sectors.

## ***Impact of supervisory actions on compliance***

308. BRH advised that improvements were made following the issuance of a warning letters to FIs. FIs generally met imposed deadlines and there has been no need to escalate sanctions accordingly. However, there are circumstances that sometimes requires extension of periods for compliance, particularly issues relative to CDD, such as customer identification information and related documents. As noted previously there is a national problem with a significant proportion of the population lacking national identification documents and verifiable home addresses due to the 2010 earthquake. Given the imposition of only one type of sanction and the context described above, the assessment team was unable to evaluate the overall impact of supervisory actions on compliance.

## DNFBPs

309. Authorities have not addressed the severe lack of regulations and supervision in the DNFBP sectors since the 2008 Detailed Assessment Report (DAR). Given some of the risks identified in this Chapter and throughout this report, this is a situation requiring urgent attention.

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

### FIs

310. BRH issued circulars and guidelines to FIs on AML/CFT obligations in 2015 and 2016. AML/CFT training was also provided by BRH for banks in 2014 and 2015. The assessment team was subsequently provided with new information following the onsite visit (10 months) showing that a new circular came into force on July 2, 2018, three days subsequent to the conclusion of onsite visit. This circular replaced existing circulars 99-1 and 100-1 that are applicable to banks. However, there is no evidence of any training provided to the banks relative to the information contained in these circulars that addressed some aspect of risk. These actions have started to sensitize FIs towards exposure to ML/TF risks, but it is only the beginning of the work ahead. As noted, it is only larger FIs, specifically large banks with international relationships that are aware of some of their requirements in relation to TFS-TF and have measures in place. Nevertheless, the majority of the FIs are unaware of their obligations relative to TFS-TF issues. This reflects the lack of guidance, feedback and promotion from the supervisors. During the on-site, the FIs noted the need for guidance and feedback from the supervisory authority.

311. The tables below represent the training provided to the banks and other institutions by the BRH and other international agencies. The information in table shows that only two separate sets of training was provided to banks by the BRH during the period under review and demonstrate that there is a need for more training. The rationale for such low-level training shows that the BRH as the only supervisor is not promoting a clear understanding of AML/CFT obligations and potential ML/TF risk to FIs through training and outreach.

Table 29- *Training to Banks*

Year	Institutions	Details
2014	Banks	Technical assistance/ training provided by Supervisor
2015	Banks	Training provided to staff Technical assistance/training provided by Supervisors

Table 30: *Training to other entities and competent authorities*

Date	Theme	Organiser	Target Audience	Participants
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16.03.2018	Fight against ML/TF	BRH	MJPS Auditors Notaries Lawyers	2 executives/ institutions
15.03.2018	Fight against ML/TF	BRH	Ministry of Commerce and Industry Ministry of Finance and Economy Chamber of Commerce and Industry Notaries Car Dealers Association of Gambling and Casinos	2 executives/ Institutions
14.03.2018	Fight against ML/TF	BRH	Ministry of Planning and External Cooperation NPOs and Real Estate agencies Association of Construction Companies	2 executives/ institutions
6.12.2017	Fight against ML/TF- Module 2	BRH	Board and Employees of the Department of Supervision at the BRH	19 participants
4-7.02.2014	ML/TF	Board and Supervisors of BRH	Employees and Executives of the Compliance Department of the Haitian State Bank	35 participants
24.01.2014	AML	OTA	Board of BRH	

*DNFBPs*

312. Minimal efforts have been taken to implement guidance and awareness of AML/CFT obligations and ML/TF risks in the DNFBP sectors. The assessment team notes the recent efforts of UCREF to meet with various businesses, professions and their associations to provide some guidance and raise awareness on ML/TF risks and methods as well as highlighting reporting obligations. Though details on such training sessions were not provided, businesses that met the assessment team expressed their gratitude and a desire for additional oversight, guidance and indicators that would better assist them in understanding and complying with AML/CFT requirements.

**Overall conclusion:**

313. Adequate measures to prevent criminals and their associates from beneficially owning a significant or controlling interest or holding a management function in some FIs are implemented by the BRH in the licensing process and in subsequent changes in shareholding and management

of the FIs it is responsible for licensing. However, those FIs such as insurance companies, pension funds, microfinance institutions that fall outside the remit of the BRH along with the DNFBP sector are subject to minimal or no measures, making them susceptible to control by criminals and their associates. The BRH's primary focus is to conduct prudential supervision of the FIs it is mandated to supervise, particularly banks and CECs. However, the attention being paid to AML/CFT compliance is a supplementary function. Consequently, AML/CFT supervision remains in its embryonic stage and is not risk-based. The assessment team recognised that the BRH is in the process of considering requesting technical assistance from the IMF to implement risk-based AML/CFT supervision. In the meantime, some FIs remain unregistered and insurance companies are not currently supervised for AML/CFT. Although sanctions are enforceable in Haiti, the only sanction that has been applied is warning letters by the BRH, with limited follow-up action, in some instances, to ensure that FIs to address the identified deficiency within the stipulated time period. It is therefore not possible to determine if other sanctions are effective, proportionate and dissuasive. DNFBPs are not supervised for AML/CFT compliance in Haiti.

**314. Haiti is rated as having a low level of effectiveness for IO.3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

Haiti has achieved a low level of effectiveness for IO.5.

- i. There is no evidence of legal arrangements or any of their components operational in Haiti as no license has been granted by the BRH for such activities in accordance with the law governing banks and other FIs. The assessment team nevertheless on the basis of interviews conducted during the onsite visit, observed that there are some arrangements in Haiti that do appear to be trust like that may require the attentions of the Haitian authorities to determine the extent of these arrangements and whether such can be considered as Trust. The assessment team observed that lawyers are engaged in the management of assets on behalf of their clients. The extent and depth of such activities are unknown to the authorities as this sector is not regulated and supervised.
- ii. Some competent authorities such as LEAs and UCREF are aware to a limited extent based on their specific operations that legal persons are vulnerable to ML. Nevertheless, competent authorities have not conducted any type of formal ML/TF risk assessment to identify, assess and understand the vulnerabilities and the extent to which legal persons are vulnerable to being misused for ML/TF.
- iii. Basic information on legal persons are held by the Ministry of Commerce and Industry (MCI) and are accessible to the public upon their request. However, there is no mechanism mandating that BO information is obtained on legal persons, including by companies themselves, and available at a specific location in the country or otherwise determined. Although competent authorities have indicated that BO is maintained, this along with basic information is not always available in a timely manner as records are currently stored in paper format and requires time to search and retrieved. Competent authorities nevertheless recognised this deficiency and are seeking to address same with plans to implement an electronic record keeping mechanism.
- iv. The MCI lacks the necessary resources (human and technical) and training to effectively conduct proper oversight of legal persons and to ensure that they are not misused for ML/TF.
- v. There are deficiencies in the manner basic and BO information is obtained, verified and updated, including when legal persons are incorporated by company formation agents, such as lawyers and notaries. This is due to the fact that competent authorities are placing a significant amount of reliance on lawyers and notaries to ensure that BO information is accurate and up-to-date, without any verification by the MCI. However, this action is not being undertaken by lawyers and notaries. Therefore, basic and BO information held by the competent authority may not be accurate and up-to-date in some instances.
- vi. Bearer shares, nominee directors and nominee shareholders are permitted within Haiti. However, measures, specifically those called for by the FATF, such as immobilising bearer shares and requiring nominee shareholders and directors to disclose the identity of their

nominator in an effort to ensure that these corporate vehicles are not misused, have not been implemented by the authorities to prevent their misuse for ML/TF.

- vii. Haiti should be commended for its efforts to enact legislation in May 2018 (Law of May 21, 2018) relative to legal persons. However, the provisions in the law do not address requisite technical deficiencies (R.24) and substantial deficiencies still exist. Further, measures in the new legislation have not been implemented and no timeframe was provided for their implementation. The deficiencies that exist within the law have a negative impact on achieving effectiveness and desired outcomes.

***Recommended Actions***

- i. The MCI should be provided with the relevant resources, including human and financial to fully implement the requirements of the law of May 21, 2018 in an effort to address the operation of legal persons in conformity with the requirements of international standards. Further, the existing technical deficiencies that should be remedied and measures implemented to ensure that legal persons are not misused for ML/TF and desired outcomes are achieved.
- ii. Competent authorities should conduct an assessment of risks of legal persons, with the intention of identifying the vulnerabilities associated with the sector and to determine the extent to which it can be misused for ML/TF purposes.
- iii. Measures should be implemented to ensure that basic and BO information are maintained. Further the authorities should ensure that such records are accurate, verified and up-to-date, including when same is obtained through company formation agents such as lawyers and notaries.
- iv. The MCI should be provided with the necessary resources to continue the implementation of the computerised system with the aim of ensuring that basic and BO information are easily accessed, retrievable and available in a timely manner.
- v. The MCI should ensure that all records relative to legal persons, including, change of directors and shareholders are submitted to the registry within a specified time-period, in an effort to ensuring that the records held, are up- to-date and accurate.
- vi. Competent authorities should be provided with the requisite training and resources to ensure that they are adequately equipped to conduct their functions (oversight of legal persons).
- vii. Haiti should take the necessary precautions to ensure that bearer shares and nominees are not utilised by criminals to launder/hide their proceeds through legal persons. Such measures can include, but are not limited to, provisions to immobilise bearer shares and requiring nominees to disclose their nominator (*see FATF Guidance on Beneficial ownership*).

315. The relevant Immediate Outcome considered and assessed in this chapter is IO 5. The recommendations relevant for the assessment of effectiveness under this section are R24&25

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

### ***Overview of Legal Persons and Arrangements***

316. Legal persons are permitted to register and operate within the jurisdiction under several different laws that have been enacted in the jurisdiction (*see R.24- Technical compliance Annex*). The MCI is responsible for the oversight of the registration of legal persons with a specific department charged with administering this function. Companies registered in Haiti include, but are not limited to; sole traders, partnerships, limited partnership and public companies (*see table 7, Chapter 1*). There are provisions for the incorporation of external companies in Haiti. For an external company to operate in Haiti, it is first required to submit the documentation for authentication to the Haitian Consulate in the country it operates. These types of companies are also required to have a civil notary to process and file the information on its behalf in Haiti. External companies are engaged in different types of business activities in Haiti with the exception of armed security.
317. The operations of trust in Haiti are governed by the law governing banks and other FIs with the BRH responsible for granting license under this legislation. The law mandates that a fiduciary company organised as a legal entity according to the law governing private stock companies can be classified as a FI. The foregoing law at Article 5 defined trust companies as companies that manage the assets entrusted to them by third parties as per these third parties' instructions. These types of activities are mandated to be regulated by the BRH. Discussions held between public and private sector officials including lawyers and FIs and the assessment team suggest that no such operations are taking place in the jurisdiction.
318. Nevertheless, the assessment team findings based on interviews conducted suggest that there are some activities that are conducted by lawyers in Haiti which requires the scrutiny of competent authorities to determine whether same are classified as trust and apply the relevant mechanisms in place, as they appear to be trust like arrangements. These activities include holding and managing assets on behalf of their clients. These activities are also of concern to some FIs who have indicated that when such arrangements exist, it represents a risk to their institutions, as some lawyers are reluctant to disclose the identity of client due to attorney-client privilege that is expressed. As a result of lawyers being unregulated and unsupervised, their activities relative to AML/CFT are not regulated and the extent of this type of trust-like arrangement are unknown to the authorities. Should these types of activities be considered as trusts, Haiti does not have any provision to address the requirements of the FATF

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

319. Information on the creation of the different types of companies permitted in Haiti is accessible to the public upon request and available at the MCI, through the Legal Directorate of the Directorate General of the MCI who maintains a register of the records.
320. The following are some of the basic types of information that are maintained in the company registry and are publicly available: type of company, company's name, its purpose, address of the registered office, names, roles and personal addresses of the partners and third parties having the

power to manage or administer the company, amount of the capital, the life of the company (the number of years for which it was created and the signed articles).

321. Legal persons are required to submit to the MCI's company registry the following; any changes in the life of the company including to their directors, shareholders and beneficiaries. However, a significant amount (figures unknown) of legal persons are not complying with this obligation. Further, there are no mechanisms that allow the MCI to mandate those legal persons to submit those changes within the stipulated timeline neither have any sanctions have applied. The conclusion drawn from the foregoing is that the information contained in the register of companies is possibly not up- to- date and accurate.

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

322. Haitian authorities have not conducted any risk assessment to identify, assess and understand the ML/TF risks and vulnerabilities that are associated with legal persons and the extent that they can be misused for ML/TF. Therefore, no clear mitigating measures have been taken by the authorities to address the potential risk. Despite the absence of any ML/TF risk assessment, some competent authorities primarily LEAs and investigative authorities are aware of the vulnerability of legal persons for ML as they have indicated that companies are frequently used to commit ML and other financial crimes. This was substantiated by the cases submitted by LEAs to the assessment team for review, showing companies were utilised to potentially launder suspected proceeds of crime (*see case referenced in IO.6 as an example*). Further, some private sector officials indicated that companies, specifically those that conduct significant cash transactions are vulnerable to ML.
323. The lack of measures (for example, no verification of information and the use of bearer shares and nominee shares without proper preventive measures) taken by competent authorities and company formation agents (lawyers and notaries) represents a deficiency and makes legal persons vulnerable to ML/TF. The assessment team was informed that certain categories of companies, specifically commercial companies such as Limited Liability Companies (LLCs) are registered through the use of a lawyer or a notary. Prior to the filing of the application for registration of a legal person, the legal requirements mandate that the identity of the leaders (including managers) the address of the head office, the authenticity of the statutes (by-laws), etc. ought to be verified and should be accurate. However, company formation agents such as lawyers and notaries do not conduct requisite checks and verifications prior to the incorporation of the company. This may be due to company formation agents not being provided with any sensitisation, training, outreach or guidance regarding their AML/CFT roles in this regard (misuse of legal persons and arrangements) and therefore not understanding their AML/CFT obligations. Further, this may also be due to weakness in legislation as the law does not require an applicant or his representative to verify their identity when an application to the MCI is submitted on their behalf by an Attorney -at- Law (*Art.1132-3 of the law of May 21, 2018*). In addition, the staff responsible for the registration and oversight of legal persons has not received specific training in ML/ TF and are therefore not equipped to adequately conduct their AML/CFT functions relative to this sector. Nevertheless, in

cases where company's documents are incomplete, the authorities have chosen not to incorporate the company.

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

324. Despite of the absence of a ML/TF risk assessment, there is some limited understanding of risk of utilising legal persons for ML/TF purposes as stated previously. The authorities through the enacted legislation (law of May 21, 2018) has created some mitigation measures, though limited. These mitigation measures are nevertheless designed to ensure that legal persons are not subject to misuse by criminals. The process includes the registration and incorporation of legal persons and the submission of certain documentations to the MCI to reduce their ML/TF risks and vulnerabilities. However, the mitigation measures identified in the legislation have not been implemented by competent authorities as at the time of the completion of the on-site visit and no timeframe was given for implementation. Some of the new measures contained in the legislation are stated below.
325. Section III of the law of May 21, 2018 mandates that a request for registration of a legal person must contained several pieces of information including a certificate of good moral conduct. The objective of the foregoing is to seemingly prevent criminals from registering and owning interest in companies. However, this provision does not apply to directors and BOs. Public limited companies are required to verify during their constitution, the subscriptions and the payments following a notarised declaration, as well as the verification of contributions in kind. Article 45 of the Commercial Code further provides that the articles of association must be filed in two originals accompanied by a request addressed to the MCI, requesting the registration of the company. The Commercial Code also requires the publication of the company's articles of association in a large circulation newspaper likely to inform the public. The production of information by legal persons to the MCI's registry allows competent authorities to identify the persons who control a company, its directors, owners and shareholders, the company's address, the amount and distribution of capital and its objective/purpose. This type of information contributes to the transparency of the company and allows LEAs, investigative authorities, FIs and DNFBPs to access this information in case of need. Nevertheless, since the law of May 2018 was enacted just prior to the on-site visit, hence several measures such as the production of criminal records on shareholders have not been implemented. Therefore, those mitigation measures are not enforced.
326. Further, a person is prevented from engaging in any commercial activity if he has been the subject of a general, definitive or temporary prohibition pronounced by a Haitian court or has been subject to a conviction which has become res judicata for an offense in economic or financial matters (*Law of May 21, 2018. Art. 1112-6*). Similarly, any application for registration must include a certificate of good life and morals. The law (*law of May 21, 2018*) also established a national file that centralised all the information recorded in the commercial register. However, as stated previously, the implementation has not commenced, and legal persons remained vulnerable to ML/TF.

327. Further, in light of the absence of any assessment of the vulnerability of legal persons and the extent to which they can be misused for ML/TF purposes, no measures to prevent their misused have been implemented.

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

328. All information related to the registration of legal persons must be published in the national gazette namely “Le Moniteur” or the local newspaper (dependent on the type of company), which are publicly available. Most of the information held at the company’s registry at the MCI are kept in hard copy (paper based) and must be physically accessed and retrieved by staff. The information is available upon request. However, for several years (numbers unknown), this information was publicly unavailable due to structural damage cause by the earthquake of 2010 to the infrastructure and building that housed the MCI. Both public and private sector officials, primarily FIs, UCREF and LEAs rely on basic and BO information that are held by the MCI to effectively conduct their functions.

329. There is a consensus among competent authorities and private sector officials, particularly LEAs, that the quality of the basic and BO information provided by the MCI has improved over time, although not always provided in a timely manner. The time-period taken by the MCI to produce information often ranges from two weeks to six months and therefore suggests that the information is not often available in a timely manner. The delays and the lack of quality responses are mainly due to the misplacement and damages of records during the hurricane and the earthquake that occurred in 2016 and 2010 respectively. Further delay is also cause by the lack of computerisation of the records held by MCI, which means records had to be physically retrieved by members of staff.

330. Private sectors representatives such as FIs rely on the information on companies published in the “Le Moniteur” to identify BO for legal persons who are opening accounts with their institutions for CDD purpose. Nevertheless, the information provided in most instances is deemed to be insufficient as it does not capture all of the requisite information relative to these institutions to conduct their functions. The information to FIs is often provided by the MCI within one to two weeks of the receipt of request. The reason(s) for the disparity in response time to the FIs and the LEAs and other competent authorities is unknown since this was not provided by the competent authorities.

331. At the time of the on-site visit, the MCI was in the process of digitalising its records, a process that began in 2012. The timeframe for the completion of this exercise was not provided, nevertheless, the authorities should be commended for taking this initiative. Further, the recently enacted law of May 21, 2018, created some reforms regarding the status of the companies. The changes relate to the acts of commerce, organising and restructuring the MCI’s company registry. The digitalisation and reform to the registry would result in a “one-stop shop” and a digital database

of all registered companies. The digitalisation is intended to provide each registered legal persons a unique identity and have the relevant information electronically available, thereby contributing to its timeliness. The assessment team believes such reform would greatly improve the accessibility and timeliness of information held by the competent authority

***Verification of information.***

332. There is no verification of the information on directors, shareholders and other officers that is submitted to the MCI company's registry during the incorporation/registration process. Significant reliance is placed on company formation agents to ensure that information is verified and correct prior to submission of the necessary documents. However, no such verifications are conducted by these company formation agents. Some company formation agents indicated that most companies are owned by Haitian families who are generally known to the legal fraternity and are of good standing within the country. Therefore, personal and professional knowledge of the individuals, whose names would appear on the incorporation documents are used as due diligence measures. In circumstances, where the individual or information are not professionally or personally known, the lawyer or notary who on most occasion are the company formation agents will refuse the service or merely rely on the documents submitted by the client. The foregoing shows that the process lacks any proper verification which is intended to prevent criminals from holding interest in companies and using same for ML/TF purposes. Regarding external companies, reliance is placed on the photo identification and proof of address of the individuals who appear as the directors, shareholders or owners to verify the information. Should the MCI any concerns arise regarding the submitted information, the assistance of the Ministry of Foreign Affairs (MAF) is sought to request the information from foreign authorities. However, there has been no such case where such assistance was sought. Considering the foregoing, the assessment believes that there is a high probability that the information held at the MCI's company registry in some instances is inaccurate and has a negative effect on the reliance placed on such information by LEAs, investigative authorities and FIs.

***Beneficial Ownership information:***

333. There are no mechanisms to ensure that BO is obtained by the company and available within a specified location within the country or otherwise determined and available in a timely manner. There are circumstances in Haiti where the shareholder of a company can be another legal entity. The jurisdiction also allows for the use of nominees and bearer shares. In cases where a company is owned by another legal entity, the name of the natural person who is the owner of company is submitted to the tax authority, along with all documentation to conduct the relevant due diligence and verification for tax purposes. The process of registration also includes legal persons submitting evidence of tax information to the MCI. Therefore, competent authorities are placing some reliance that the BO information presented to the tax authorities and the MCI is accurate. Nevertheless, as stated previously a significant amount of reliance is placed on the company formation agents, specifically lawyers and notaries to conduct the relevant checks and verification, which is not being done. Therefore, the system lacks any checks and verification to determine the BO of the company.

334. Further, there are no measures in place to address the use of nominees, including but not limited to requiring nominees to disclose the identity of their nominator and requiring the nominee to be licensed and their status recorded (*see c.24.12 of the FATF Recommendations for full range of measures*). Due to the lack of measures implemented by the authorities, criminals including money launderers and terrorist financiers who are the BO of a company can utilise nominees (i.e. intermediaries/straw men) to act on their behalf and launder their proceeds.
335. Companies, including stock corporations (banks and under FIs are required to incorporate as stock corporation as part of the licensing requirements) in Haiti utilise bearer shares predominantly when they are in the process of raising funds through the sale of shares. Companies are required to keep records of bearer shares in the company's register, including their sale and transfer which must be signed by the transferor, the buyer or their representative, as in the case for stock corporations. Of concern to the assessment team is the provision that allows representatives to sign on the behalf of transferor and buyer, as there is no information as to who can be deemed as a representative, and in the case of lawyers or other company formation agents they are not fully included under the AML/CFT regime and does not conduct any verification of information. It therefore means that BO can be still obscured. Further, should such shares be sold, they are required to notify the MCI. However, the MCI officials have no knowledge of bearer shares being used in the jurisdiction and no reports of their use have been reported to the MCI. Further, the MCI has not implemented any measures to address the use of bearer shares, including ensuring that they are reported by the companies, immobilising them or ensuring that companies are properly maintaining records of such.
336. Based on the foregoing, it necessary to conclude that BO is not sufficiently obtained and maintained by the authorities in the jurisdiction and the information obtained in some instances may not be accurate. This is substantiated by evidence that some companies do not inform the MCI of any changes that have occurred within a timely manner, along with the lack of measures to adequately address the use of bearer shares and nominees.
337. Regarding NPOs, BOs information is required to be held by the Ministry of Planning and External Cooperation (MPEC). However, the authorities did not advise whether this information is being kept and maintained.

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

338. No information was obtained based on interviews conducted with competent authorities and private sector officials (lawyers and FIs) to suggest that legal arrangements, or any of their components are operating within the jurisdiction. Therefore, no basic or BO information are kept by the authorities or private sector officials such as FIs relative to this type of activity. Nevertheless, of concern to the assessment team are some of the business that are conducted by Attorneys, such as managing assets including finances on the behalf of their clients and the holding of monies in escrow accounts. This type of activities based on the information received from private sector officials represents a risk to the jurisdiction, primarily FIs, as lawyers are reluctant to disclose the

name of their clients under the pretext of legal privileges to UCREF and FIs. It therefore means that the information held in these circumstances is not accessible, should the extent that these activities are classified as trusts.

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

339. The Law of May 21, 2018 (*Art. 1137-2*) mandates that penalties contained in the commerce code (*dating back to the 18<sup>th</sup> century*) are applicable to all merchants (including legal persons) for not fulfilling their requirements with the company registry or to have done so fraudulently. However, the sanctions provided for in the commerce code were not provided to the assessment team from a technical compliance standpoint. No information was presented to the assessment team to show that sanctions were levied against any legal person for breaches, therefore, the assessment team is unable to state whether such sanctions are effective, proportionate and dissuasive.

### **Overall Conclusion**

340. There is no evidence that elements of legal arrangements are operating in Haiti. However, some activities that are conducted by lawyers appear to be trust like arrangements. As these Attorneys are not supervised for AML/CFT purposes, the extent of their activities and whether same can be considered as Trust is unknown to the assessment team and the authorities in the jurisdiction. Information on the creation of legal persons is publicly available upon request and held by the MCI's company registry. Some competent authorities do have some understanding of vulnerability of the misuse of legal persons for ML on the basis of their operations. Nevertheless, the authorities have not conducted any type of risk assessment in an effort to assess, identify and understand the ML/TF risks and vulnerabilities that are associated with legal persons. Some measures are contained in the legislation enacted just prior to the on-site visit to ensure that criminals do not wholly or partly hold interest or utilised legal persons for ML/TF (albeit limited). Nevertheless, these measures are yet to be implemented by the authorities and therefore do not have any impact on the effectiveness of the system. Authorities are not conducting any verification of the information provided by company formation agents such as lawyers and notaries, during the incorporation of a legal person.

341. Due to the lack of verification of the information by the MCI the basic and BO information held by the MCI and published in the "Le Moniteur may not always be accurate and up-to-date. Information held by the company registry of the MCI is not always available in a timely manner, since most of the records are paper-based and some were misplaced, as a result of the damages caused to the MCI infrastructure by natural disaster. Nominees shares and directors along with bearer shares are permitted and utilised by Haitian companies. However, the authorities have not implemented any measures to ensure that they are not use for ML/TF purposes, thereby making them susceptible to such.

342. **Haiti is rated as having a low level of effectiveness for I.O.5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

Haiti has achieved a low level of effectiveness for IO.2.

- i. Haiti's legal framework allows for international cooperation relative to ML and TF to a very limited extent. The technical deficiencies that exist (R.37-40) which represents the fundamental pillars to an effective international cooperation regime can severely impact the effectiveness and the ability of competent authorities to render assistance to their foreign counterparts relative to ML, associated predicate offences and TF when called upon to do so.
- ii. Competent authorities have received MLA requests from foreign counterparts (albeit minimal). However, most of requests received have not been processed and no timeline was given as to when this would be done, despite the inordinate delay.
- iii. Competent authorities have not requested information through MLA and other forms of cooperation related to the investigations and prosecutions of ML, associated predicate offences and TF from foreign counterparts despite the perceived ML/TF risks to the jurisdiction. Further, competent authorities are not utilising international cooperation to identify, trace and confiscate the proceeds of crime.
- iv. Haiti and US authorities have a good level of international cooperation that has resulted in Haiti's authorities restraining and confiscating several pieces of assets in Haiti (see IO.8). Haitian authorities at the request of US officials have transferred several persons, including Haitian nationals to the USA primarily for drug trafficking offences. The jurisdiction has also extradited foreign nationals to other countries including the Dominican Republic with whom it shares a border.

#### ***Recommended Actions***

- i. The technical deficiencies that exist within laws should be urgently addressed to ensure that competent authorities and the jurisdiction can render assistance on a timely basis to its foreign counterparts. These include, encouraging competent authorities to sign bilateral agreements such as MOUs with foreign counterparts to facilitate information sharing.
- ii. Competent authorities should utilise international cooperation, including MLA and other forms of cooperation in conducting their functions. This includes international cooperation in conducting investigations and prosecutions of ML, associated predicate offences and TF, tracing and identification of assets, and conducting their supervisory and oversight functions.
- iii. Competent authorities including PPO, LEAs, BRH and UCREF should be sensitised through training on the value and importance of international cooperation to their functions, including through MLA and other forms of cooperation.

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).***

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

#### ***Mutual Legal Assistance***

343. Haiti has a legal framework for international cooperation, including MLA in the fight against ML, associated predicate offences and FT and have demonstrated with the USA a good working relationship with regards to the sharing information that has led to several pieces of assets being confiscated in Haiti. However, the existence of weaknesses in the legal framework *as identified in Recommendations 36- 40)* impedes the ability of competent authorities to render assistance to foreign counterparts and has negative impact on the effectiveness of the system. For example, Haiti inability to keep proper records due to the absent of a proper case management system.
344. The Ministry of Foreign Affairs (MFA) is the competent authority responsible for receiving MLA from foreign jurisdictions. The MFA has a legal department comprising of three persons who are responsible for receiving MLA requests and are requested to conduct other functions within the department. Nevertheless, considering that Haiti does not receive a large amount of requests, the assessment team does not believe that the human resources of this department is insufficient. The legal department conducts the necessary reviews of all MLA requests received to ensure that they are in compliance with the standards of the international conventions and commitments signed by Haiti, prior to dispatching them to the MJPS. Requests received by the legal department are said to be dispatched within twenty-four to forty-eight hours according to the authorities. The transmission of the request to the MJPS is accompanied by the recommendations of the MFA, including whether the request can be processed or refused, based on the conventions or treaties under which it was made. Following the receipt of the MLA request, the legal department of the MJPS reviews the case, inclusive of reviewing the facts, prior to forwarding it to the PPOs for action (*delegating them to the relevant LEA or the investigating magistrate*). All MLA requests received by the MFA are transmitted through diplomatic channels, which are considered to be secured. However, transmissions to the MJPS and to the PPO are done via hand and there are no measures to ensure that the information remains confidential from there on. Further, persons who are processing the request are not bound by confidentiality.
345. The system described by competent authorities in the previous paragraph is not documented, neither does it incorporate the procedures and actions to be taken for executing requests for MLA received by the country. Further, the measures do not allow competent authorities to track the progress until its completion. There are no measures for ensuring the confidentiality of the information contained in the requesting country's application and the manner in which it should be handled, used, and maintained. Moreover, there is no established procedure or system for the rapid

processing of MLAs as there is no follow-up system or system for tracking these MLAs. Finally, competent authorities have not implemented any measures for evaluating the selection and prioritisation of MLA requests received, neither do they ensure that proper statistics relative to the number of requests received, processed and completed are kept. The assessment team nevertheless does not see the urgency for Haiti to implement a case management system due to the limited amount of MLA and extradition requests that were received by Haiti.

346. Despite the perceived threats and risks of ML and associated predicate offences highlighted in the scoping for higher issues (*Chapter 1*) and IO. 1 (*Chapter 2*), competent authorities have not demonstrated that they are requesting information from foreign competent authorities.

347. Haitian authorities received four MLA requests for the period 2017 to 2018 as reflected in the table below (*table 29*). No information was provided on the number of MLA requests received for the previous years. The assessment team is unsure as to whether the data provided by the authorities is true and correct or the lack of data maybe as a result of a lack of record keeping measures in place. The lack of MLA requests to the jurisdiction may nevertheless be due to the fact that the jurisdiction does not have significant financial sector and is neither a company formation center.

348. MLA requests were received from the Republic of Georgia, Switzerland, Mexico and Chile. Although the number of requests received are considered minimal, they have not been subject to rapid processing. The reasons for the delay in processing these requests were not communicated by the authorities. However, the assessment team believes that this can be attributed to several factors, including, the complexity of the request.

*Table 31: No of MLAs and extradition received and by competent authorities.*

Date of Request	Requesting Country	Date Processed	Offences	Extradition
5.04.2018	Switzerland	Outstanding	Fraud/Breach of Trust	
5.04.2018	Mexico	Outstanding	Forgery	
19.04.2018	Republic of Georgia	Outstanding	Fraud/ Legalisation of illicit profits	
Not available	Chile	Outstanding	Migrant Trafficking	
Not available	Dominican Republic	Outstanding	Double Murder	x <sup>45</sup>
11.09.2017	Argentina	Not available	Intellectual fraud, commercial and judicial maneuvers	x

*Source: The Haitian Court.*

<sup>45</sup> Denotes the case involves a request for extradition by the requesting country.

## ***Extradition.***

349. ML and TF are both extraditable offences. The process that is used for the transmission of MLA requests is also applicable to extradition requests, with transmission to the PPO for action. The legal framework for extradition is contained in the law governing extradition 1912, LSMLTF, 2013 and its amendment and the law of 2001 relative to the laundering of assets derived from drug trafficking and serious crimes. There are several fundamental deficiencies that exist within the Haitian legal framework that have a negative effect on the manner in which extradition is governed. Some of these deficiencies include; not all associated predicate offences are extraditable offences, for example, tax evasion, which is not considered to be a predicate offence (*see- R.3 and R.39*). Besides the primary legislation governing extradition, Haiti signed an extradition treaty with the USA on August 9, 1904. However, it is not compulsory that either party extradite their nationals (*section 4*).
350. Unlike the law governing extradition and the Haitian constitution, the 2001 law relative to the laundering of assets and the LSMLTF, 2013 do not explicitly exempt the extradition of Haitian nationals. However, they both require that extradition should be governed by the principles and procedures that are set out in the extradition treaty and the constitutional guarantees protecting the rights of Haitian nationals. Taking into consideration that Haiti's Constitution (1987/Revised 2011) states that the Republic of Haiti is inviolable and may not be alienated either in whole or in part by any treaty or convention (Art 8-1) and no person of Haitian nationality may be deported or forced to leave the country for any reason, this implies that Haitian nationals cannot be subject to extradition. This is further supported by the law governing extradition, which prevents the extradition of Haitian nationals (*Art.4*). Haiti nevertheless can initiate proceeding on the behalf another country although this has never been done.
351. Haiti has received two extradition requests from Chile and Argentina (*see table 29*). However, both extradition cases were not related to ML/TF offences. The first was sent by Argentina on September 11, 2017, concerning a Chilean national for crimes of intellectual fraud, and commercial and judicial maneuvers and was completed. However, no time period was provided as to the date of execution. The second request for extradition was received from the Dominican Republic who requested the extradition of a Haitian national wanted for a double murder and is still pending with no reason provided by the Haitian authorities for this delay. However, taking into consideration Haiti's laws do not permit Haitian authorities to extradite its own nationals, the possibility exists that this will not occur. The assessment team found that some competent authorities that are involved in the extradition process lacked knowledge of extradition procedures, based on interviews conducted.
352. Haiti's legislation provides for the refusal to execute an extradition request. Competent authorities can refuse to execute an extradition request on the basis that the conditions for extradition are not met, with the principal one being that Haiti was not a party to the convention under which the

extradition is being requested by the foreign State. Regarding the issue of whether dual criminality is a requirement for extradition, and the process that applies when the offence for which extradition is sought, is not criminalised in Haiti, no response was provided by competent authorities, as there is seemingly very limited knowledge in this area. Although Dual criminality is a requirement for extradition, Haiti can satisfy extradition on the basis that both countries criminalised the underlying predicate offence. However, there is no case of such occurrence in Haiti.

353. Haitian and the US authorities have shown that they have an excellent relationship in the area of combatting ML/TF and other associated predicate offences. This relationship has resulted in the transfers of several persons, including Haitian nationals to the USA (see table 31). The offences for which individuals were transferred include drug trafficking and ML. The transfer of these individuals for drug trafficking substantiates the claim that this offence represents a threat to the jurisdiction. The information in the table shows that between the period 2015- 2018 a total of thirty-four individuals were transferred to the USA and one to the Dominican Republic. The data shows a continuous increase in the number of persons transferred yearly and represents a clear willingness of the Haitian authorities to cooperate with foreign counterparts particularly the USA despite the challenges. The process of transferring a person from the jurisdiction differs from extradition and is a simple informal arrangement according to the authorities. The process involves US officials liaising with their Haitian counterparts, and subsequently travelling to Haiti with a provisional arrest warrant, where the individual is arrested and escorted to the USA to stand trial. The authorities did not provide any information as to the estimated time-period from the request for the transfer of these nationals and the date of transfer to demonstrate the timeliness and efficiency of the process.

*Table 31: List of persons transferred from Haiti.*

<b>Year</b>	<b>Number of persons</b>	<b>Offence(s)</b>	<b>Jurisdiction(s)</b>
<b>2015</b>	04	Drug Trafficking & Murder	United States of America
<b>2016</b>	06	Drug Trafficking & Rape	United States of America
<b>2017</b>	12	Drug Trafficking, ML, Illegal Arms Trafficking, Fraud, Rape, Murder, Forgery and use of forgery and Assassination.	United States of America and Dominican Republic
<b>2018- as of July 7</b>	12	Drug trafficking, ML, Fraud, Rape, Murder, Kidnapping, Burglary and Assault	United States of America
<b>Total</b>	<b>34</b>		

Source: MJPS

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

354. Despite the perceived threats and risks of ML and associated predicated offences (which are transnational in nature) that were communicated to the assessment team by competent authorities and highlighted in the scoping for higher issues (Chapter 1) and IO. 1 (Chapter 2), competent authorities have not requested any information relative to ML, associated predicate offences or TF from foreign jurisdiction. Although, the jurisdiction is not a financial center, the assessment team is of the view that the jurisdiction's exposure to transnational crimes such as drug trafficking and ML due to its geographical location and vulnerability based on its lack of resources and the volume of cross-border transaction through the MVTs sector should result in competent authorities requesting information from other jurisdiction.
355. There were no requests for MLA relative TF. This may be due to the lack of focus on TF by the authorities and the failure to conduct any form of risk assessment. In the absence of any TF risk assessment, the assessment team cannot confirm whether competent authorities are correctly utilising MLA for information relative to TF. There is no indication that any request for information was made by the Haitian authorities to their US counterparts relative to the Haitian national who was deported to Haiti on TF related activities for the purpose of designation or for any other investigation (see IO.9 for more information on this case).

### ***Providing and Seeking other forms of international cooperation for AML/CTF purposes***

356. Most of the competent authorities do not have a detailed framework for seeking cooperation from their foreign counterparts (*See R.40*). Competent authorities are not requesting information from their foreign counterparts, taking into consideration the perceived ML/TF that exist within the country and the transnational nature of crimes such as ML, drug trafficking and TF.
357. UCREF received one request for information from Argentina during the period 2014-2018, which it responded to in a timely manner. The requesting FIU was provided with all relevant information collected from UCREF's, other authorities' and FIs databases.
358. UCREF has signed two MOUs, one with Sint Maarten and the other with the Dominican Republic. The lack of bilateral agreements signed by UCREF, coupled with no request for information are further evidence that international cooperation is not a priority and not utilised by UCREF to execute its functions. UCREF is not a member of the Egmont Group<sup>46</sup>. Although, not mandated by the FATF standard to be a member of Egmont Group, but to apply to become a member of this group. The inability of UCREF to become an Egmont Group limits the effectiveness of international cooperation and the use of a secure mechanism.

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<sup>46</sup> The Egmont Group is a united body of 155 FIUs that provides a platform for the secure exchange of expertise and financial intelligence to combat ML/TF-

359. Haiti is a member of the International Criminal Police Organisation (INTERPOL), which enables police in its 192-member countries to work together to fight transnational crimes. However, no evidence of LEAs utilising Interpol to request information related to ML/TF and associated predicate offences were presented to the assessment team. The DCPJ shares a good cooperation and coordination relationship with foreign countries, such as, the USA, Canada, the Dominican Republic as demonstrated by the number of persons who were transferred to the USA. Nevertheless, no information was provided to demonstrate that BAFE and BLTS are utilising this cooperation and coordination relationship to request and obtained information relative to ML/TF and associated predicate offences.

360. The AGD is a member of the World Customs Organisation (WCO) since 1958 and can utilise this organisation to facilitate the exchange of information. Nevertheless, there is no evidence that the AGD has utilised international cooperation, despite the perceived high-level threats of contraband and the cross-border movement of cash and BNI during the period under review.

361. The BRH has not shared or requested any information from their foreign counterparts.

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

362. The MCI has not exchanged any basic and BO information in the context of its operation, particularly, regarding the registration of external companies. Further, competent authorities including LEAs and investigative authorities have not requested or received any request for assistance from foreign counterparts, relative to the identification and exchange of basic and BO information relating to legal persons. Regarding the lack of requests from foreign counterparts, the assessment team believes that this is due to the country not being a company formation center and most of the companies registered and operating in the jurisdiction are owned by Haitian nationals. There is no exchange of basic and BO information relative to legal arrangements, as a result of no Trust operating in Haiti (*see IO.5- Chapter 7 and R.24- TC Annex*).

### **Overall Conclusion**

363. The current legal framework and measures that exist within Haiti contained several weaknesses that have an impact on implementation and the effectiveness. Haitian authorities have received very limited requests for assistance and have not demonstrated that they are requesting assistance from their foreign counterparts. Further, most MLA requests received by the country are still outstanding with no timeline given for completion. Competent authorities do not have a case management system in place for MLA and extradition requests but there is no urgency for such. Haitian authorities have shown through cooperation with US officials that they are willing to transfer their nationals to that jurisdiction for offences committed.

364. **Haiti is rated as having a low level of effectiveness for IO.2.**

## TECHNICAL COMPLIANCE ANNEX

1. 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.
2. 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 June 2008. This report is available from [www.cfatf-gafic.org/index.php/documents/cfatf-mutual-evaluation-reports/haiti-2](http://www.cfatf-gafic.org/index.php/documents/cfatf-mutual-evaluation-reports/haiti-2).

### *Recommendation 1 – Assessing Risks and applying a Risk-Based Approach*

3. The requirements of R.1 were added to the FATF standard in 2012 and were therefore not assessed during the previous mutual evaluation of Haiti.
4. **Criterion 1.1:** The country has not conducted any formal risk assessment that would enable it to identify and understand its ML/TF risks.
5. **Criterion 1.2:** The Ministry of Justice and Public Security (MJPS) is responsible for coordinating the actions to assess the ML/TF risks but has delegated this responsibility to the CNLBA. However, there are no documented measures designating the MJPS or the CNLBA to undertake the foregoing functions as cited by the competent authorities.
6. **Criterion 1.3:** There are no measures in place to address this criterion.
7. **Criterion 1.4:** There are no measures in place to address this criterion.

### *Risk mitigation*

8. **Criterion 1.5:** There are no measures in place to address this criterion.
9. **Criterion 1.6:** (a) (b) All FIs and DNFBPs are mandated to apply all FATF Standards.
10. **Criterion 1.7:** (a) (b) There are no measures in place to address this criterion.
11. **Criterion 1.8:** Based on a risk assessment, the BRH in collaboration with UCREF may by ruling, define circumstances under which the CDD and verification measures may be reduced or simplified (*Art. 26 of the LSMLTF 2013*). However, there is no need for such assessment to be consistent with the country's risk assessment.
12. **Criterion 1.9:** Haitian authorities have only imposed part of the obligations of R.1 on banks, savings and loans cooperatives (CECs) and funds transfer companies (FEAs), therefore, the supervisor (BRH) for these entities is required to ensure compliance only for the institutions that it supervises. The DNFBP sector is not supervised and therefore no measures exist for ensuring that they are implementing the obligations under R.1 (*See criteria 1.10 to 1.12 along with R.26 and R.28*).

### ***Risk assessment***

13. **Criterion 1.10:** Banks, money value transfer services and funds transfer companies are required to identify, assess and understand their risk. However, (a) CECs are required to document their ML risks through its prevention and compliance program, although not explicitly stated in the legislation. The assessment team nevertheless relied on the fact that the risk assessment is required to be updated every twelve months, which may require some documentation. Documentation does not extend to its TF risk (*s.2.4, CECs Guidelines*). Documentation of risk is not applicable to the other FIs and DNFBPs. (b) There are no measures available to address this criterion. (c) Only CECs are required to update their risk assessments, which is mandated to be done on a yearly basis (*s.2.4 CEC Guidelines*). (d) There are no measures to address this criterion.
14. **Criterion 1.11:** (a) Banks, money value transfer services (MVTs), CECs and FEAs are the only categories of FIs that are required to have policies and procedures that include the identification and assessment of ML/TF risks (*s.5 circular No. 100-2 to Banks, s.6 of circular No.107 to Funds transfer companies, s.2.4 of the guidelines for savings and credit cooperatives and s.1.3 of the guidelines for FEAs respectively*). Except for FEAs, policies and procedures must be subject to the approval of the board of directors or senior management. CECs, FEAs and banks are the only entities whose policies that call for the application of risk mitigation measures (*s. 2.4 (b) of guidelines governing CECs, s. 1.3 of guidelines for FEAs s.1 of circular 100-2*). With the exception of banks (*s.1 of circular 100-2*), there are no measures for FIs and DNFBPs to have risk management measures. (b) No provision was cited by the authorities to monitor the implementation of control mechanisms and enhance them if necessary. (c) Only banks, MVTs, CECs as FIs are required to apply EDD in circumstances where higher risks are identified (*s. 3 of Circular 99-2, s. 2.4 of the CEC guidelines, s. 3 of Circular No.107*). There are no measures requiring the DNFBP sector to adhere to the requirements of this criterion.
15. **Criterion 1.12:** The authorities provided no information on this criterion.

### ***Weighting and Conclusion***

16. Haiti has not conducted any assessment of its ML/TF risks. The MJPS has delegated the responsibility of the coordination of the NRA to CNLBA despite the absence of any documentation designating the MJPS or the CNLBA with such responsibility. There is no obligation for the country to identify its risk and ensure that its AML/CFT regime addresses such risk including the measures set out *c.11.7 (a) and (b)*. The BRH in collaboration with UCREF may define the application of simplified or reduced measures based on an assessment of risk. However, there is no obligation for this to be done in accordance with the identification and assessment of the country's risk. Only a small fraction of FIs in Haiti are required to conduct risk assessments and have measures to mitigate their risk. Although the financial sector in Haiti is of more importance in comparison to DNFBP sector based on materiality, the assessment team took into consideration that some DNFBPs, such as real estate and casinos are perceived as high risk-and the requirements of R.1 do not apply to them or the entire DNFBP sector. **Recommendation 1 is rated NC.**

## *Recommendation 2 – National Cooperation and Coordination*

17. Haiti was rated PC for R.2 (formerly R.31) in its 3<sup>rd</sup> round MER due to; (i) ineffectiveness of the co-ordinating body and (ii) lack of operational co-ordination between Haiti's authorities in the fight against ML and TF. Haiti sought to remedy these deficiencies with the creation of the CNLBA. Recommendation 2 specifically calls for national policies which are informed by risk and elements of cooperation and coordination amongst competent authorities in respect to ML, TF and PF.
18. **Criterion 2.1:** There are no national AML/CFT policies that are informed by Haiti's identified ML/TF risks.
19. **Criterion 2.2:** The CNLBA is the designated authority responsible for co-ordination of national AML/CFT policies (*Art. 19 of the organic law of UCREF*). CNLBA is comprised of members from key public and private sectors entities. The CNLBA is further responsible for identifying measures aimed at improving the collaboration between the various actors in the fight against ML and TF.
20. **Criterion 2.3:** Several competent authorities including the BRH are members of the CNLBA, the body responsible for collaboration on policy level. Although represented on the CNLBA by their oversight body, the MJPS, the absence and the direct participation of competent authorities that are actively involved in the fight against ML/TF such as LEAs, UCREF and prosecutorial authorities on the CNLBA represent a critical gap in the information that these agencies can provide based on their knowledge and expertise as a result of their operations. There is no mechanism/body responsible for cooperation and coordination at the operational level.
21. **Criterion 2.4:** There are no measures to address this criterion.

### ***Weighting and Conclusion:***

22. The CNLBA is responsible for coordination and cooperation relative of national AML/CFT policies. The CNLBA is comprised of several key stakeholders including UCREF and the BRH but does not include key competent authorities such as the PPO and LEAs, although they are represented through their oversight body the MJPS. There is no mechanism to facilitate the coordination and cooperation at the operational level. Haiti does not have any national AML/CFT policies based on identified risk that are reviewed regularly nor is there any cooperation and coordination mechanism regarding PF. **Recommendation 2 is rated PC.**

## *Recommendation 3 – Money laundering offence*

23. Haiti was rated "NC" for R.3 (formerly R.1) in its 3<sup>rd</sup> round MER due to; (i) the criminalisation of ML did not cover all serious offences, and (ii) ineffectiveness of the system. Haiti sought to address the deficiencies through the enactment of the LSMLTF, 2013 subsequently amended in 2016.
24. **Criterion 3.1:** The offence of ML is criminalised in accordance with most of the requirements of the Conventions. Art. 5 of the LSMLTF 2013, covers all of the physical elements of the Conventions. Article 5 (a) of the LSMLTF addresses the conversion and transfer of assets that are the proceeds of criminal activity for the purpose of disguising and concealing. However, the

material element of “*knowing*” that the property is the proceed of crime *as prescribed by the Palermo Convention (6(1)(a)(i))* is absent from the legislation. Nevertheless, by virtue of Haiti ratifying this convention and the Haitian Constitution (Art 276-2) allowing for treaties and agreements ratified in accordance with the Constitution to become legislation in the country, Haiti has adequately addressed this core issue, but only in circumstances when the offence was committed by organised criminal group. Art. 5 (b) of the LSMLTF, 2013 makes provision for the concealment or disguise of the true nature, source, location, disposition, movement or ownership of the asset or the right thereto by any person who should have known that these assets are the proceeds of criminal activity. The acquisition, possession or use of assets by any person who knows that such assets are the proceeds of criminal activity are included (*Art. 5 (c) of the LSMLTF, 2013*).

25. **Criterion 3.2:** Haiti has adopted the list of predicate offences approach (*Art. 3 of the LSMLTF (Amendment), 2016*). The provision covers approximately eighty-five percent of the designated categories of offences by the FATF<sup>47</sup>. The missing offences are: bribery, piracy of products, piracy, murder and grievous bodily harm, forgery, smuggling (including in relation to customs and excise duty and taxes) and tax crimes (related to direct and indirect taxes). The assessment team placed significant weighting of tax offences not being a predicate for ML, as most of the competent authorities met with during the onsite visit viewed tax offences as being high risk for ML. Further, there are issues surrounding the full coverage of the predicate offence of TF- as required by the convention (*see R.5*)
26. **Criterion 3.3:** Haiti does not apply the threshold or combined approach (*see criterion 3.2*).
27. **Criterion 3.4:** ML offences are applicable to all property (goods) that was directly or indirectly derived from the commission of the offense or directly or indirectly obtained from it. There is no need for a specific value to be attached to the property (*Art.4 of the LSMLTF, 2013*).
28. **Criterion 3.5:** There are no measures to address this criterion.
29. **Criterion 3.6:** The offence of ML applies to any person or legal entity and to any organisation that is subject to litigation in Haiti, regardless of where the act occurs (*Art. 9 of the LSMLTF, 2013*).
30. **Criterion 3.7:** There are no measures to address this criterion.
31. **Criterion 3.8:** In Haiti it is possible for the knowledge or intention to prove ML to be inferred from objective factual circumstances, as the law mandates that ML may be deduced from objective factual circumstances (*Art. 5 of the LSMLTF, 2013*).
32. **Criterion 3.9:** Sanctions applicable for ML are proportionate and dissuasive. A person convicted for the offence of ML is punished by imprisonment for a term of three to fifteen years imprisonment

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<sup>47</sup> FATF Methodology- updated February 2018; glossary- page 151-152: Retrieved from: <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>

and a fine of Haitian Gourdes (HTG)2,000,000 (US\$31,000.00)<sup>48</sup> to HTGG100,000,000 (US\$1,555,000) dependent on the seriousness of the crime (*Art. 57 of the LSMLTF, 2013*).

33. **Criterion 3.10:** Sanctions for legal persons are proportionate and dissuasive. Legal persons are liable for a fine equal to five times that specified for natural persons without having effect on any sentences given to the perpetrators or accomplices. Further penalties include, prohibition from undertaking certain professional activities for a period of five years, closure (temporarily or permanent), dissolution when they were created to commit the offence and dissemination of the information to the press or by any means of communication (*Art. 58 of the LSMLTF, 2013*).
34. **Criterion 3.11:** Most of the ancillary offences (attempting, aiding, counselling, inciting, participating, association and conspiracy) are incorporated within the legislation (*Art. 57 of the LSMLTF 2013*) with the exception of abetting and facilitating.

### ***Weighting and conclusion***

35. Haiti has criminalised the offence of ML in accordance with the relevant articles of the relevant UN Conventions. However, the material element of “*knowing*” that property is the proceeds of crime during conversion and transfer is missing from the legislation but is covered as a result of Haiti’s ratification of the Palermo Convention. Nevertheless, the foregoing is only applicable in circumstances when the offence is committed by three or more persons (organised criminal activities). The jurisdiction has adopted the list approach and has designated approximately eighty-five percent of the FATF designated categories of offences, as predicate offences for ML and some elements of TF offences based on the international convention are missing. The offence of ML applies to both natural and legal persons no matter where the act occurs, with the sanctions available considered to be proportionate and dissuasive. The ancillary offences such as aiding, attempt, counselling etc are all captured in the legislation. However, abetting and facilitating are absent. The information provided by the authorities does not address the requirements criteria of 3.5 and 3.7. **Recommendation 3 is rated PC.**

### ***Recommendation–4 - Confiscation and provisional measures***

36. Haiti was rated as “PC” for R.4 (formerly R. 3) in its 3<sup>rd</sup> MER. The lone deficiency was an ineffective system due to confusion in the implementation and management of conservatory measures and seizures. This was addressed through the enactment of the LSMLTF,2013 as amended. The main requirements of this recommendation remain the same. However, the revised R.4 requires countries to have mechanism for managing and when necessary, disposing of property frozen, seized and confiscated.
37. **Criterion 4.1:** (a) Confiscation of goods is applicable in all cases involving a final judgement for ML/TF or an attempt to commit ML/TF, with no exemption to the types of goods, therefore, all goods that have a nexus to ML/TF including those laundered can be confiscated. (*Art. 64 (a) of the*

*LSMLTF 2013*). (b) Confiscation is applicable to the income or benefit obtained by an individual convicted of a ML offence (*Art. 64 (a) of the LSMLTF 2013*). Further, a judge may also make a confiscation order, should evidence be provided that such goods are the proceeds of a criminal offence (*except those criminal offences missing under R.3*) or an offence under the law (*Art. 65 of the LSMLTF 2013*). However, there are no provisions for the confiscation of benefits derived from predicate offences or to the proceeds and instrumentalities of crime intended to be use in ML and predicate offences. (c) Confiscation proceedings are applicable to persons who have been convicted for a TF offence, when the property was derived from that offence (*Art. 64 of the LSMLTF 2013*). However, this is not applicable to property that was intended or allocated to be used in TF. Further, assets that are held by terrorist organisations and are related to the offenses of ML/TF, or where their lawful purpose cannot be established are liable for confiscation (*Art. 66 of the LSMLTF 2013*). There is no provision for confiscation of properties that are the proceeds of, or use in, or intended or allocated for use in terrorism and terrorist organisation. (d) Assets of corresponding value can be confiscated (*Art. 64 of the LSMLTF, 2013*).

38. **Criterion 4.2:** (a) There are no measures to address this sub-criterion. (b) An investigating magistrate is permitted to impose preventive measures on funds and goods concerning the offence(s) that is subject to the investigation (*Art. 46 of LSMLTF, 2013*). The foregoing measure allows for the preservation and the availability of such funds, assets and instruments, that maybe subject to confiscation. Further, a judicial authority on the request of the PPO or of his own will may impose freezing measures on assets which may be seized or confiscated (*Art 4.1.2 of the law of 2001*). However, there is no provision authorising the foregoing freezing mechanism to be conducted *ex-parte* or without prior notification to the owner. Further, the citations are limited to goods concerning the offence(s) being investigated by the magistrate at the time, ML and some predicate offences (property laundered) and not to benefits or property of correspondent value that can be realised to satisfy a confiscation order. (c) There are no measures to address this sub-criterion. (d) There are no measures to address this sub-criterion.
39. **Criterion 4.3:** Protection of the rights of bona fide third parties exists within the law. Assets confiscated are required to be vested to the state, who shall place them into a fund to combat organised crime. However, these assets are required to remain encumbered to their real, lawfully established value for third parties (*Art. 68 of the LSMLTF 2013*). However, the foregoing is only applicable following a confiscation and there is no provision for the protection of the rights of third parties during the point of seizure and restraint or when some other provisional measures are in place.
40. **Criterion 4.4:** Money or other goods confiscated are required to become the property of the State of Haiti and are placed in the special fund to combat organised crime (*Art. 69 of the LSMTF 2013*). The LSMLTF further makes provision for the seized property to be auctioned by the board of directors according to procedures laid down in Article 895 and subsequent to the Civil Procedure Code (CPC). No mechanisms were cited for management and disposal of properties frozen or seized, neither were the assessors provided with the procedures in the civil procedure codes.

### ***Weighting and Conclusion***

41. The Haitian legal framework allows for the confiscation of laundered property and the proceeds and benefits derived from ML/TF. However, there is no mechanism for the confiscation of proceeds and instrumentalities intended to be use in ML. Furthermore, the measures cited by the authorities do not allow for the confiscation of proceeds that were derived from predicate offences including terrorism, as the current mechanism requires that an individual must first be convicted of a ML/TF offence for confiscation to be initiated. Moreover, no provision was cited to allow for competent authorities to have the relevant powers to identify, trace and evaluate properties that may become subject to confiscation. The mechanism for freezing of property that may become subject to confiscation cannot be done *ex-parte*. There are measures in place for the disposal of assets and properties that have been confiscated. However, no such measures exist for the management and when necessary disposal of properties frozen or seized. Measures only exist at the confiscation stage for the protection of bona fide third parties and not at the stage of seizure and restraint.

**Recommendation 4 is rated PC**

### ***Recommendation–5 - Terrorist financing offence***

42. Haiti was rated ‘NC’ for R. 5 (formerly SR. II) in the 3<sup>rd</sup> round MER due to no legislation on the financing of terrorism and no signing or ratification of the International Convention for the Suppression of the Financing of Terrorism. The deficiencies were addressed by the enactment of the LSMLTF and Haiti’s accession in January 2010 to the International Convention for the Suppression of the Financing of Terrorism
43. **Criterion 5.1:** TF is criminalised by Art. 6 of the LSMLTF (Amendment), 2016. In accordance with the UN Convention for the Suppression of the Financing of Terrorism, the following elements are outstanding: (i) Art. 2, no. 1. b) of the Terrorist Financing Convention is not incorporated in Art 2. of the LSMLTF (Amendment) 2016. (ii) Art. 6 of the LSMLTF (Amendment), 2016 at paragraph four, sets out the criminal conducts of attempting to commit, enticing, assisting or facilitating. However, the same does not incorporate all the criminal conducts, including organising or directing others to commit an offence and contributing to the commission of one or more offences by a group of persons acting with a common purpose; as established in Art. 2, no. 5 a) b) and c) (i) and (ii) of the Convention.
44. **Criterion 5.2:** TF means all acts committed by an individual or by a legal person, by any means whatsoever, who directly or indirectly, has deliberately supplied or collected funds with the intention of using same, or knowing that they will be used in whole or in part, with the view to: a) commit one or several terrorist acts; b) commit one or several terrorist acts by a terrorist organisation; c) commit one or several terrorist acts by a terrorist or a group of terrorists (*Art. 2 LSMLTF (Amendment) 2016*).

45. **Criterion 5.2 bis:** TF offences do not capture financing the travel of individuals as stipulated in the criterion.
46. **Criterion 5.3:** Funds are adequately defined as assets of all nature, including bank loans, letters of credits, dividends or other income (Art.1 of the LSMLTF (Amendment), 2016). TF is applicable to applicable to all funds (see c.5.2). There is no differentiation between legitimate or illegitimate sources.
47. **Criterion 5.4:** In accordance with Art. 2 (paragraph 4) of the LSMLTF (Amendment) 2016, the infraction of TF is committed whether the act targeted by the foregoing article is perpetrated or not, or whether or not the use of funds generally could be determined in the perpetration of that act.
48. **Criterion 5.5:** The knowledge or intention, as elements of the intended activities may be construed from objective factual circumstances (Art. 6 of the LSMLTF (Amendment) 2016).
- Criterion 5.6:** Any person convicted of TF shall be punished by imprisonment for a term of 3 to 15 years and a fine of HTG2,000,000 (US\$24,175.00) to HTG100,000,000 (US\$1,208,765.00), depending on the seriousness of the case (Art. 57 of the LSMLTF 2013).
49. **Criterion 5.7:** Legal entities for the account or benefit of which the offense of TF has been committed, shall be liable to a fine equal to five times that specified for individuals and referenced in c.5.6, without the effect on any other sentences given to perpetrators or accomplices. Legal entities may also be subject to additional sentences, such as the prohibition to carry out certain professional activities permanently or for a period of five years, closure of premises permanently or for a period of five years and dissolution of the legal entity (*Art. 58 of the LSMLTF 2013*).
50. **Criterion 5.8 :** An attempt to commit an offence of TF, or the fact of assisting, enticing or assisting someone with the intent of committing, or the fact of facilitating the execution thereof, with the view to commit same, or the fact of facilitating the execution thereof, is penalised in the same manner as if the offence had been committed (Art. 2 of the LSMLTF (Amendment) 2016). Additionally, the last paragraph of Art. 57 of the LSMLTF 2013 covers most elements of the criterion, but has omitted the offences of organising or directing others to commit a TF offence or attempted offence and contributing to the commission of one or more TF offence(s) or attempted offence(s), by a group of persons acting with a common purpose as established in sub-criteria (c) and (d) of this criterion, with the relevant elements of intent provided for guidance at footnote 3.
51. **Criterion 5.9:** TF is a designated predicate offence for ML (Art. 2 of the LSMLTF (Amendment), 2016).
52. **Criterion 5.10:** TF is applicable regardless 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) or terrorist organisation(s) is located (Art. 9 of the LSMLTF, 2013).

## ***Weighting and Conclusion***

53. The Republic of Haiti has adequately addressed several of the criteria for Recommendation 5. However, several weaknesses still exist within the legislative framework. The criminalisation of TF does not include the financing of travel by persons going to a State other than Haiti, with the aim of committing, organising or preparing terrorist acts. Further, several elements of the UN Convention are absent into the domestic law with several of the ancillary offences, such as, organising and directing others to commit an offence and contributing to the commission of one or more offences by a group of persons acting with a common purpose, not being TF offences. **Recommendation 5 is rated PC**

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

54. Haiti was rated “NC” for R.6 (formerly SR.III) in the 3<sup>rd</sup> round MER due to the absence of legal framework for freezing assets used in TF. Haiti sought to address these deficiencies through the enactment of the LSMLTF and the Executive Order of August 2016.

## ***Identifying and designating***

55. **Criterion 6.1:** (a) The Executive Order does not explicitly identify the MJPS as the competent authority responsible for proposing designation to the 1267/1989 and 1988 UN Committees. Nevertheless, this can be inferred based on the information contained at sub-criterion (b). (b) Where clues/information exist that lead to the belief that any individual or legal persons meet the criteria of the sanctions list, the MJPS is notified of same by a formal request. The MJPS is required to transmit such request to the Ministry of Foreign Affairs, following its analysis, for forward transmission to the UNSC Committee (*Art. 8 of the of the Executive Order of August 22nd, 2016*). However, these mechanisms are not fully aligned with the designation criteria that are set out in the relevant UNSCRs and is therefore not comprehensive. (c) The evidentiary standard of proof of reasonable grounds or reasonable basis though not explicitly stated in the Executive Order can be implied as designation is not conditional on the existence of criminal proceedings (*Art 9 a-d of the Executive Order of August 22nd, 2016*). In Haiti, criminal cases are prosecuted on the basis of beyond a reasonable doubt and not on the standard of reasonable doubt or reasonable grounds or basis. Proposal for designation in Haiti can be based on a police report, financial report or an intelligence report and therefore does not require an evidentiary threshold of beyond a reasonable doubt. Based on the foregoing the assessment team believes that designation can be applied on the evidentiary standard of reasonable grounds or reasonable basis, although not explicitly stated in the provision. The authorities did not provide any measures to addressed sub-criteria (d) and (e).
56. **Criterion 6.2:** (a) The MJPS is responsible for ensuring that in the list are included individuals and entities designated in accordance with UNSCR 1373 (*Art 7 of the Executive Order of August 22nd, 2016*). Haiti can designate on its own motion or on the request of another country (*Art. 9 of the Executive Order of August 22<sup>nd</sup>, 2016*). (b) Where clues exist that lead to belief that any individual or legal persons meet the criteria for the list, the MJPS is notified of same by a formal request. The

MJPS after analysis, is required to transmit the request to the Ministry of Foreign Affairs, who is required to forward same to the UNSC Committee (*Art. 8 of the Executive Order of August 22nd, 2016*). However, these mechanisms are not fully aligned with the designation criteria that are set out in the relevant UNSCRs 1373 and is therefore not comprehensive. (c) The measures cited by the country are not applicable to this criterion. (d) The evidentiary standard of proof of reasonable grounds or reasonable basis, when deciding to make a proposal for designation is not explicitly stated in the Executive Order. Nevertheless, the evidentiary standard of reasonable grounds or reasonable basis can be implied, as designation is not conditional upon the existence of criminal proceedings (*Art 9 a-d of the Executive Order of August 2016*). (e) No measures were provided by the authorities to address the requirements of this sub-criterion.

57. **Criterion 6.3:** (a) The MJPS can gather information from UCREF and public institutions in charge of the investigations and prosecutions of financial crimes to identify persons and entities likely to have a link to terrorism and TF (*Art. 9 of the Executive Order of August 22nd, 2016*). However, those powers are limited, and do not include the collection of the widest possible range of information from all relevant sources (*see Interpretive Note 6- FATF Recommendations*<sup>49</sup>). Although, the Executive Order of August 22nd, 2016, does not explicitly state that the collection of information is based on the threshold of reasonable grounds or reasonable basis, this can be inferred from Art. 9 (c) and (d) of the Executive Order. (b) There is no provision for the competent authority to operate *ex-parte*.
58. **Criterion 6.4:** FIs and DNFBPs are required to freeze funds and financial resources without delay to execute measures ordered by the UNSCR (Art. 47 of the LSMLTF 2013). The Ministry of Foreign Affairs upon receipt of the list updated by the UN Security Council in accordance with Resolutions 1267 (1999), (1989) and (1998) is required to transmit the said list without delay, in any form it may be to the MJPS who is required to publish same by means of a Ministerial Decree. Following which UCREF shall notify the declaring entities and shall order the freezing of funds and assets of the individual and entities designated without delay (*Arts. 4 & 10 of the Executive Order of August 22<sup>nd</sup>, 2016*). The foregoing suggests that there is a time-period, including when the jurisdiction receives the list, publishes same by Ministerial Decree and relays the information to the relevant sector. This length of this time-period is unknown and was not provided by the authorities. Therefore, uncertainty remains as to whether implementation can be done without delay. There is no provision for the implementation of TFS-TF without delay relative to the UNSCR 1373, as the foregoing provisions are not relevant to this resolution.
59. **Criterion 6.5:** UCREF and the other regulating entities such as the BRH, within the legal framework of their duties are required to ensure that declaring entities comply with the requirement of the Executive Order (*Art.16 of the Executive Order of August 22<sup>nd</sup>, 2016*). The Ministry of Foreign Affairs, Economy and Finance, Planning and External Cooperation and MJPS is also tasked with enforcing the Executive Order (*Art.17 of the Executive Order of August 22nd 2016*)

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<sup>49</sup> Paragraph 4 (c) requires the competent authority(ies) to have appropriate legal authorities and procedures or mechanism to collect or solicit as much information as possible from all relevant sources to identify persons and entities for designation- Taken from: [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

(a) FIs and DNFBPs are required to check for funds linked to designated natural and legal persons on the list in their database, and to freeze funds and other assets detected without delay (*Art 5 of the Executive Order of August 22<sup>nd</sup> of 2016*). The foregoing provision is not applicable to all natural and legal persons in the country. However, a provision within the LSMLT, 2013 as amended, provides for all FIs and other persons and entities holding funds of persons and entities designated by the UN Security Council are required to freeze them immediately (*Art. 47 of the LSMLTF 2013*). Nevertheless, neither provisions make it a requirement for freezing to be instituted without prior notice. (b) (i- iv) There is no distinction as to the types of funds that FIs and other persons or entities are required to freeze, therefore, freezing is applicable to all funds (*Art. 47 of the LSMLTF 2013*). Further FIs and DNFBPs are required to check their respective databases for funds and assets connected with the person or entity designated and initiate freezing (*Art.5 of the Executive Order of August 2016*). (c) The measure cited does not address the requirements of this criterion. (d) UCREF is only mandated to notify without delay the reporting entities. However, there is no mechanism for communicating the designations and no provision mandating that guidance be provided to reporting entities that may be holding funds of their obligation to freeze without delay. (e) FIs and DNFBPs are required to declare immediately to the UCREF the assets frozen and the measures taken in accordance with the UNSCRs (*Art. 5 of the Executive Order of August 2016*). However, there is no requirement to report attempted transactions. (f) There are no measures to address this sub-criterion.

***De-listing, unfreezing and providing access to frozen funds or assets***

60. ***Criterion 6.6:*** There are some procedures for de-listing in Haiti, however this is limited and does not apply to designation in all instances. (a) Any individual or legal person included on the list, as well as relatives, nationals or residents of the deceased national can submit a request for removal from the list before the Mediation Bureau of the UNSC or the MJPS who shall analyse same and transmit it through the relevant channels to the UNSC. This process does not provide much detail and is not aligned with those adopted by the 1267/1989 or 1988 Committee. (b) (Art.11) of the Executive Order mandates that the MJPS shall remove ex-officio, at any time, the designation of an individual or legal person, based on conclusive evidence. The MJPS is required to hear and follow-up on requests aimed at removal from designation including requests from UCREF and foreign states. (c) A designated individual or legal entity can petition the National Audit Department (Superior Court of Account and Administrative Disputes) to review the decision of the MJPS to not de-list a natural or legal person when an application is made to the MJPS (Art.11). Where the MJPS has de-listed a person UCREF is mandated to notify the PPO with the intention of the releasing of funds or assets by the competent judiciary authority. (d) No mechanism to address this criterion. (e) No mechanism to address this criterion. (f) No mechanism to address this criterion. (g) No mechanism for addressing this criterion.
61. ***Criterion 6.7:*** Access is granted to the funds or other assets which are essential for basic expenses or only to pay reasonable professional fees and reimbursement for legal expenses or charges or fees for safekeeping or management of frozen funds or other financial assets or economic resources and is in keeping with the requirements UNSCR 1452. The request for access to funds or other assets

shall be submitted by the person in charge of the MJPS, specifying the reason in support of the request, the amount requested and the location of the funds or assets (*Art. 12 and 13 of the Executive Order of August 2016*). Further provision allows for the judiciary to modify the freeze, in circumstances when the funds and other assets are necessary for essential expenses upon request by a designated individual or legal person or by a legal representative acting on their behalf.

### ***Weighting and Conclusion***

62. Haiti does possess some aspects of a legal framework that allows for the implementation of TFS-TF. The legal framework identifies the competent authorities responsible for the designation of natural and legal persons based on the evidentiary standard of reasonable basis, and implementation and enforcement of TFS-TF. However, several weaknesses exist within the legal framework resulting in several requirements of the recommendation not being addressed. Principal among the deficiencies, which the assessment team considered to be most important in the context of Haiti and gave significant amount of weight, is the jurisdiction's inability to implement TFS-TF without delay and the lack of due process including the lack of publicly available information and known public procedure for unfreezing funds and mechanism for communicating de-listing .
- Recommendation 6 is rated NC**

### ***Recommendation 7 - Targeted financial sanctions related to Proliferation***

63. This recommendation is a new addition to the existing recommendations; therefore, Haiti was not previously assessed against this recommendation.
64. **Criteria 7.1- 7.5:** There are no measures to address these criteria

### ***Weighting and Conclusion***

65. Haiti has not indicated how the country addresses targeted financial sanctions related to proliferation. **Recommendation 7 is rated NC**

### ***Recommendation 8 – Non-profit organisations***

66. Haiti was rated 'NC' for R. 8 (formerly SR. VIII) in the 3<sup>rd</sup> round MER due to: (i). Absence of legal framework to combat terrorist financing; (ii). Ineffective supervision of non-profit organisations and (iii). Absence of any assessment of the risks of Haitian non-profit organisations being misused for TF purposes. The deficiencies remain outstanding and were to be addressed through the enactment of new legislation as indicated in the 12<sup>th</sup> FUR. For R.8 there is now clarity as to the sub-set of NPOs subject to the related requirements, in order to ensure that R.8 is in line with the targeted risk-based approach.
67. **Criterion 8.1:** (a) Haiti has identified non-government organisation, associations and foundations that collects, receives, gives or transfer funds through their philanthropic activities as the sub-set

of NPOs that meet the definition of NPOs. NPOs are subject to some AML/CFT measures (*s.3 of the LSMLT, 2013*). Most NPOs in Haiti are engaged in charitable, religious, cultural, educational, social and other types of good works. However, the actual number of NPOs operating in these activities is unknown to the assessment team. (b) Haiti has not identified the nature of threats posed by terrorist entities to their NPOs, and the possibility of how terrorist actors abuse NPOs. (c) Since the subset of the NPOs likely abused for TF has not been identified, there is no indication that the legislation and measures in place have been reviewed. (d) No periodic assessments of the NPO sector has been carried out by Haiti.

68. **Criterion 8.2:** (a) There are measures which promote accountability, integrity, and public confidence in the administration and management of Haiti's NPOs (*Art. 28 of the LSMLTF, 2013*). NPOs are required among other things to produce reports on their purpose and objectives; and the identity of the person(s) who own, control or manage the activities of the NPO. Additionally, they are required to publish financial statements. NPOs must also have control mechanisms which ensure that all funds they receive are properly accounted for and used in compliance with the purpose of and for the NPOs' activities. There is also a record keeping obligation and to make such records available to the authorities. No information was provided by the Haitian authorities to prove outreach to the NPO sector was conducted. Finally, there is no evidence that Haiti has encouraged NPOs to conduct transactions via regulated financial channels. Therefore, (b) (c) & (d) are not met.

**Criterion 8.3:** The Ministry of Planning and External Cooperation (MPEC) is required to announce rules to ensure that the funds from NPOs are not use for ML/TF (*Art. 27 of the LSMLTF 2013*). However, there is no indication that such rules were drafted and issued. Moreover, the measure identified in the foregoing is limited and does not address the requirements of the criterion in its entirety. There is no indication that Haiti has taken the steps necessary to promote effective supervision or monitoring of their NPOs.

69. **Criterion 8.4:** (a) (b) The provisions (as is) cited by the Haitian authorities does not addressed the requirement of the sub-criteria. Further, the legislation was not provided to verify the information
70. **Criterion 8.5:** (a) and (b) No measures were provided which allow for effective co-operation, co-ordination and information-sharing, and for having investigative expertise to investigate those NPOs suspected of being exploited by, or actively supporting terrorist activities or terrorist organisations. (c) NPOs must retain records on their domestic and international transactions, for five years and make such information available to the authorities (*Art. 28 of the LSMLTF, 2013*). The foregoing is limited to transactional records and does not include other information on the administration and management of the NPO. (d) No measures were provided.

71. **Criterion 8.6:** There are no measures for addressing this criterion.

**Weighting and conclusions:**

72. Haiti has not identified the number of organisations which falls within the definition of NPOs, neither has the jurisdiction conducted a risk assessment of the sector to identify the threat posed by

terrorist entities and determine how terrorist actors can abuse NPOs. There are some measures that promote accountability, integrity and confidence in the administration and management of NPOs. There is no indication that authorities have conducted any outreach and educational program for the sector and the donors relative to risk of abuse by money launderers and terrorist financiers. Further, there is no indication that NPOs are subject to effective supervision and with the absence of a risk assessment for the sector, no risk-based measures are applied. No sanctioning regime was provided by the jurisdiction, therefore no indication that such is proportionate or dissuasive. There appears to be no mechanism for effective co-operation, co-ordination and information sharing among authorities that hold relevant information on NPOs, neither is there provision for information to be share promptly with competent authorities, so as to take preventive or investigative actions when there is reason to suspect that a particular NPO is involved in TF abuse, being exploited as a conduit for TF or is concealing or obscuring the clandestine diversion of funds intended for legitimate purpose for the benefit of terrorist or terrorist organisation.

**Recommendation 8 is rated NC**

### *Recommendation 9 – Financial institution secrecy laws*

73. This Recommendation (formerly R.4) was rated PC in the 3<sup>rd</sup> MER since bank secrecy was too broad in scope and excessively restrictive and UCREF exceeded its legal right of access to banking information. The legislative deficiency regarding bank secrecy was addressed by amendment of the law governing banks and other FIs.
74. *Criterion 9.1:* Art. 179 of the Law on Banks and other FIs of May 14<sup>th</sup>, 2012 prohibits the use of professional secrecy where the BRH, UCREF or any other entity requests information during an investigation regarding proceeds relating to ML/TF or where the judiciary authorities are acting in accordance with penal procedures. Nevertheless, Articles 98 and 180 of the Law on Banks and other Financial Institutions provide for the BRH to share information with foreign supervisory counterparts. Articles 3(d), 27 and 28 of the Organic Law of 2017 allows UCREF to share information with foreign counterparts and institutions and authorities that apply administrative sanctions. Sharing of information between FIs is allowed under conditions to be stipulated by the BRH through regulatory means, as per Art.179. Similar conditions apply to sharing of information between a parent company and an affiliated banking company established in Haiti. Measures for the sharing of information as required under R.13,16 and 17 are set out in circular 99-2 issued by the BRH for banks. Further, CECs are prohibited to use professional secrecy relative to the BRH or a judicial authority acting in the framework of a criminal proceeding (*Art.84 of Savings and Credit Cooperatives Act, July 10, 2002*).
75. The above measure limits the BRH to only accessing information during the course of its functions for CECs and instances of judicial authority acting within the framework of criminal proceedings. The measures also only limit the BRH to share information with foreign counterparts and not with local competent authorities. While it is acknowledged that there is general authority for FIs to share information, shortcomings noted in R. 13, 16 and 17 inhibit the ability to share information. Finally,

the Law on Banks and other FIs as set out in article 1 does not cover insurance companies, microfinance institutions and pension funds. Contractual confidential requirements are applicable to business conducted by insurance companies, microfinance institutions and pension funds.

### ***Weighting and Conclusion***

76. Competent authorities have access to information only during investigations and judicial procedures. Although there are provisions to share information by UCREF and the BRH, the latter can only share information with foreign counterparts. Sharing of information is limited by the shortcomings identified in R. 13, 16 and 17. Finally, the secrecy provisions that are contained in the Law on Banks and other Financial Institutions and the Savings and Cooperative Act do not cover insurance companies, microfinance institutions and pension funds- Contractual confidential requirements are applicable to business conducted by insurance companies, microfinance institutions and pension funds. **Recommendation 9 is rated LC**

### ***Recommendation 10 – Customer due diligence***

77. This Recommendation, (formerly R. 5) was rated NC in the 3<sup>rd</sup> MER due mainly due to no identification requirement when there is a suspicion of ML/TF, no requirement to identify and verify the identity of beneficial owners and understand the ownership and control structure of a legal person, no ongoing due diligence and no enhanced diligence for high risks. The above deficiencies were addressed by the enactment of the LSMLTF in November 14, 2013 and its amendment of September 28, 2016 together with part 4 of circulars 99 and 99-1 of the BRH. Circular No. 99-2 repealed and replaced 99-1 and took effect from July 2<sup>nd</sup>, 2018, three days prior to the completion of the onsite visit. Nevertheless, the assessment team was provided with this information ten months following the completion of the onsite visit and mostly relied on Circular 99-1 to address this recommendation and others initially. The assessment team nevertheless took into consideration the submissions by Haiti based on the text of Circular 99-2.

78. **Criterion 10.1:** Art. 13 of the LSMLTF (Amendment), 2016 prohibits all FIs from holding anonymous accounts or accounts in fictitious names. FIs as defined under article 2 of the LSMLTF include banks, insurance companies, insurance agents and brokers, institutions that issue or manage credit cards, savings and credit cooperatives, money change agents, transfer houses and development finance companies but does not cover microfinance companies that are operational in Haiti and has a good asset size (see materiality- chapter 1).

79. **Criterion 10.2 :** Art. 17 of the LSMLTF 2013 requires FIs to identify their customers and verify information in the following situations: establishing business relationships; executing occasional domestic or international transfer of funds equal to or greater than the regulatory amount whether in a single transaction or several linked transactions; transactions less than the regulatory amount when lawful origin of funds is uncertain; any occasional transfers; suspicions about ML/TF or the veracity or adequacy of the customer identification data previously obtained. The reference to any occasional domestic or international transfer of funds would be applicable to occasional wire transfers. There is no definition as to the regulatory amount regarding occasional transactions. The

above measures comply with the requirements of the criterion except for the lack of a definition of the regulatory amount. Consequently, occasional transactions over the designated threshold of USD/EUR 15,000 are not subject to CDD measures.

80. **Criterion 10.3:** Art. 17 of the LSMLTF 2013 requires FIs to identify their customers and verify information through documents, data sources or independent and reliable information.
81. **Criterion 10.4:** Where a FI is not certain that a client is acting for his own account, the FI is required seek information on the identity of the real client by any means at its disposal (Art. 19 of the LSMLTF 2013). This is further reinforced in circular 99-2 (s.3.1) which mandates banks to obtain the necessary information on the identity of the person in whose interest an account is being opened or transaction is being made. The proxy be it a lawyer, accountant or notary is not permitted to cite professional secrecy for not wanting to disclose the BO. The foregoing however does not fully address the requirement of the criterion as FIs are not mandated to verify that the proxy is authorised to act on behalf of the client but merely identify. Further, FIs are only mandated to obtain identification on in circumstances where there are uncertainties.
82. **Criterion 10.5:** Art. 19 of the LSMLTF 2013 requires where a FI is not certain that a client is acting for his own account that the FI seek information on the identity of the real client by any means at its disposal. Although, there are no explicit measures within Art 19 for verification, Art.18 of the LSMLTF 2013 upon which Art 19 is predicated, contain measures for verification of the identity of natural and legal persons. Additionally, section 3.1 of circular 99-2 requires banks to take reasonable measures to obtain information about the identity of beneficial owners and to verify such information and update same when it appears to be no longer valid. Similar requirements are set out in section 4 of guidelines issued by the Central Bank to CECs. Identification measures are also contained in s.2 Circular 107 for funds transfer companies. While there is a general requirement to identify BO with respect to natural and legal persons, the specifics of the criterion regarding verification relative to legal persons is only applicable to banks as per the revised Circular 99-2 -, CECs and funds transfer companies as set out in the relevant guidelines.
83. **Criterion 10.6:** Section 2 of circular 99 – 2 stipulates that customer identification regarding an individual or legal entity must include the purpose and the nature of the business relation envisaged. Similar requirements are set out in section 3.1 of guidelines issued by the Central Bank to CECs. The foregoing measures are only applicable to banks and CECs.
84. **Criterion 10.7:** (a) Art. 5 LSMLTF (Amendment) 2016 requires FIs to exercise constant diligence concerning all business relations and scrutinise transactions to ensure that they conform to the knowledge of their clients, of their commercial activities, of their risk profile, and should the occasion arise of the source of their funds. (b) Banks are responsible for updating the identity and verify the identity of customers only in circumstances when there are doubts surrounding the veracity of the information previously obtained (s.2- circular 99-2). Additionally, banks are required to update information on customers' identities at least every two years for high risk

customers (s. 8 – Circular 99-2). The foregoing measure is limited to customer identification and is only required of banks. It does not include measures to keep up-to-date and relevant all existing information/documents relative to the CDD process and does mandate that records are kept-to-date and relevant by undertaking reviews of existing records.

85. **Criterion 10.8:** Section 1 of circular 99-2 of the BRH requires banks to review customer transactions to ensure that they are consistent with what they know about the customer’s business activities and risk profile. Section 2.4 of guidelines issued by the Central Bank to CECs requires CECs to take into account the nature and activities of their customers. The requirement for banks deals with monitoring and does not impose a direct obligation to understand the nature of the customer’s business. However, the requirement for CECs would include understanding the nature of a customer’s business. Neither requirement includes the customer’s ownership and control structure. Consequently, only CECs are required to understand the nature of a customer’s business. Further the foregoing measures do not apply to other FIs operating in Haiti.
86. **Criterion 10.9:** Sub-section 2.1.3 of the circular 99-2 issued by the BRH stipulates the information and document requirements for banks to identify specific legal persons including civil societies, partnerships and joint-stock companies, stock corporations, non-governmental organisations, CECs (savings and loans, agricultural co-ops, transportation co-ops), foundations, other business companies, companies in formation, charitable organisations, clubs, associations, churches and political parties. The requirements set out comply with the criterion but only with respect to banks. Additionally, the measure does not cover legal arrangements. Similar requirements are set out in section 3.2.2 of the guidelines for CECs issued by the BRH. However, the legal entities listed only include civil societies, other business companies, clubs and associations. Not all FIs operational in Haiti are covered under the foregoing provisions.
87. **Criterion 10.10:** (a) Section 3.1 of circular 99-2 issued by the BRH requires banks to identify individuals who hold a controlling interest of at least 25% of equity in customers who are legal entities along with their address. A similar requirement is set out in section 4 of the guidelines issued by the BRH for CECs. While the above measures comply with the requirements of the criterion, it is only applicable to banks and CEC and not all FIs operational in Haiti. (b) and (c) There are no measures for alternative means of identifying and verifying BOs.
88. **Criterion 10.11:** There are no specific measures to identify and verify the identity of BOs of legal arrangements.
89. **Criterion 10.12/10.13:** There are no measures for CDD of beneficiaries of life insurance policies.
90. **Criterion 10.14:** Art. 17 of the LSMLTF 2013 requires FIs to identify and verify the identity of customers for establishing business relationships and when occasional transactions are carried out for amounts equal to or more than the regulatory threshold. There is no indication in the LSMLTF, 2013 that such CDD should occur before or while establishing a business relationship.

Nevertheless, section 1 of circular 99-2 does stipulate that banks should conduct customer identification at the onset of the business relations. Section.1 of circular 107 applicable to funds transfer companies and s. 3 of the guidelines for CECs stipulate that funds transfer companies and CECs conduct CDD from the onset of the business. While the above measures do require CDD before occasional transactions, they are not applicable to other FIs operational in Haiti outside of banks, CECs and FEAs.

91. **Criterion 10.15:** Banks are required to have risk management procedures in place stipulating the conditions under which customers can benefit from the business relationship before verifying their identification, in the circumstance where the customer is not physically present (s.1 circular 99-2). The foregoing does not fully conform with the criterion as it does not apply to customers in all circumstances or to all FIs that operating in Haiti.
92. **Criterion 10.16:** Banks are required by section 4 of circular 99-2 to enforce due diligence measures regarding their existing customers based on the level of risk which these customers represent. A similar requirement is set out in section 2.4 of guidelines issued by the BRH for CECs. The above provisions are limited to banks and CECs and do not include materiality as a factor for diligence measures on existing accounts nor do they require that the measures be applied at appropriate times considering whether and when previous CDD was undertaken and the adequacy of the data obtained.
93. **Criterion 10.17:** In accordance with section 3 of circular 99-2, banks based on their assessment of the risks are required to exercise enhanced due diligence in situations which are likely to create a high risk of ML/TF. A similar provision is also set out in section 3 of circular 107 for funds transfer companies and section 2.4 of the CECs guidelines that are applicable to CECs. The foregoing measures are not applicable to all FIs operating in Haiti and are only applicable to banks and funds transfer companies.
94. **Criterion 10.18:** Art. 26 of the LSMLTF 2013 allows for the BRH based on a risk assessment together with UCREF to define by ruling the circumstances under which simplified CDD measures can be applied. No such ruling has been issued by the authorities.
95. **Criterion 10.19:** (a) Section 2 of circular 99-2 stipulates that if banks are unable to comply with customer identification procedures as set out in the circular 99-2, they can neither enter into a business relationship nor perform transactions for the customer. Similar provisions are detailed in sections 3.1 of the guidelines for CECs and section 1 of circular 107 for funds transfer companies. There is no requirement to terminate the business relations for not complying with all CDD measures. (b) Where banks, funds transfer companies and CECs are unable to comply with customer due diligence procedures they must determine whether it is appropriate to submit a suspicious transaction report to UCREF or prepare a confidential internal report in accordance with Art. 20 of the LSMLTF 2013 (Sec. 2 of circular 99-2, sec 1 of circular 107 and sec 3.1 of guidelines

for CECS). The above provisions are only applicable to banks, funds transfer companies and CECs and not all categories of FIs that are operating in Haiti.

96. **Criterion 10.20:** There are no measures permitting FIs when suspecting ML/TF to cease the CDD process due to reasonable concern that it will tip-off the customer and instead to file an STR.

### ***Weighting and Conclusion***

97. There are basic CDD obligations in compliance with FATF requirements. Most CDD obligations are applicable only to banks, CECs and money transfer providers. Legal arrangements are not included in some provisions since Haiti is a civil law jurisdiction. There is no measure for verifying that a client is authorised to act on behalf of the substantive. While there is a general requirement to identify BO, the specifics regarding verification are only applicable to banks and CECs and funds transfer companies. Banks and CECs are required to include the purpose and nature of the business relationship as part of customer identification regarding an individual or legal entity. While FIs are required to exercise constant diligence concerning all business relations, there is no requirement to ensure that documents, data or information collected during the CDD process is kept up-to-date and relevant. Only CECS are required to understand the nature of the business relative to legal entities. There is no requirement to understand customers' ownership and control structures. Requirements for the identification of natural individual who has a controlling interest in legal entities are only applicable to banks and CECs. There are no measures to identify and verify BO of legal arrangements and beneficiaries of life insurance policies. While there are measures requiring CDD before occasional transactions, such requirements for establishing business relations are only applicable to banks. There are no specific requirements to adopt risk management procedures concerning conditions under which a customer may utilise the business relationship prior to verification. The requirements for due diligence measures for existing customers are limited to banks and CECs and do not include materiality as a factor nor are, they required to be applied at appropriate times. Banks and money transfer companies based on their assessment of the risk are required to exercise enhanced due diligence in situations which are likely to create a high risk of ML/TF. No ruling has been issued concerning the circumstances under which simplified CDD measures can be applied. **Recommendation 10 is rated PC**

### ***Recommendation 11 – Record-keeping***

98. Haiti was rated "LC" for R.11(formerly R.10) in the 3<sup>rd</sup> round MER due to lack of legal basis for authorities to request extension of the length of time that records must be held. The deficiency was addressed by the enactment of the LSMLTF 2013.
99. **Criterion 11.1:** Art. 23 of the LSMLTF 2013, requires that FIs shall retain records on transactions carried out by customers for at least 5 years after completion of the transaction. This measure does not extend to all necessary records on transactions as required.

100. **Criterion 11.2:** Pursuant to Art. 23 of the LSMLTF 2013, the FIs shall maintain records on the identity of customers for at least five (5) years after the closing of accounts or the termination of the relationship with the customer. Further, section 7 of circular 99-2 requires banks to maintain records of identification documents, account files and business correspondence for at least five (5) years after the closing of the account or termination of the relationship. Similar provisions are set out in section 8 of the guidelines for CECS and section 5 of circular 107 for money transfer companies. However, the foregoing measures do not extend to the results of any analysis undertaken. Additionally, there is no measure to address the requirement for records after the date of an occasional transaction.
101. **Criterion 11.3:** In accordance with Art. 20 of the LSMLTF 2013, reports on transactions with unusual or unjustified complexity or having no economic justification or lawful purpose must contain all relevant information in terms of the transactions, the identity of the payer and where appropriate the parties involved. This provision should allow for the reconstruction of the individual transactions covered in these reports. Further, section 7 of circular 99-2 requires that banks maintain records of all transactions that allow for their reconstruction to provide evidence for prosecution if necessary. Similar requirements are set out in section 8 of the guidelines for CECS and section 5 of circular 107 for money transfer companies. The foregoing measures are only applicable to the FIs to which circulars and guidelines are applicable and not all FIs that are operational in Haiti.
102. **Criterion 11.4:** Art. 36 of the LSMLTF 2013 requires FIs to provide upon request information and documents on cash threshold transactions and STRs to relevant judicial authorities, officials responsible for the detection and punishment of AML/CFT offences based on a warrant and to UCREF and BRH within the scope of their respective powers. The provision is limited to prescribed transactions and does not stipulate that the information and documents be made available swiftly. There is no similar requirement for all CDD information. Furthermore, the measure does not cover all transaction records as required.

### ***Weighting and conclusion***

103. FIs are required to maintain records on transactions carried out by customers and records on the identity of customers. Only banks, CECs and money transfer companies are required to keep records obtained through account files, business correspondence but not of any result of any analysis undertaken. Further, there is no provision for FIs to keep records after the date of an occasional transaction. While FIs are required to maintain information relative to unusual and unjustified transactions that have no economic justification or lawful purpose, there is no provision for transactions records to be sufficient to permit reconstruction of individual transactions in the event of a prosecution. There are no requirements for FIs to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities. **Recommendation 11 is rated PC**

## *Recommendation 12 – Politically exposed persons*

104. Haiti was rated as “NC” for R.12 (formerly R.6) in its 3<sup>rd</sup> round MER due to the absence of the requirement to conduct EDD on foreign PEPs. The deficiency was addressed through the enactment of the LSMLTF, 2013 and Circular 99-2 of the BRH. The revised R.12 now identifies two categories of PEPs, namely; domestic and international organisations, with the level of due diligence applied to these categories’ dependent on the level of risk
105. **Criterion 12.1:** There is no distinction within Haitian law between a foreign or domestic PEP are broadly defined as persons who are or have been entrusted with prominent public functions in a foreign country or in Haiti within or on account of an international organisation. *(a)* FIs are required to have adequate risk management systems to determine whether a customer is a PEP (*Art. 15 of the LSMTF 2013*). Banks are mandated to apply similar measures for BOs who have been identified as PEPs resident abroad (*s.3 of Circular 99-2*). The weakness still exist for banks to some extent as the requirement does not extend to BOs identified as PEPs residing in Haiti, especially with the threat of corruption that was scoped as a higher issue. Whilst banks are mandated to applied measures for BO identified as PEPs from abroad, there are no measures obligating FIs, including banks to mandatory make a determination as to whether a BO is a PEP. *(b)* FIs are mandated to obtain approval from senior management before establishing a business relationship with a client who is a PEP (*Art. 15 (a) of the LSMLTF 2013*). Section 3.2 of circular 99-2 and section 5 of the guidelines for CECs mandates that senior management approval for continuation of a business relationship with an existing customer who is identified as a PEP. This requirement for senior management approval does not extend to all FIs operational in Haiti. *(c)* FIs are required to take reasonable measures to identify the source of funds of customers who are identified as PEPs (*Art.15 (b) of the LSMLTF 2013*). Only banks under section 3.2 of circular 99-2 are required to identify the source of wealth of customers who have been identified as a PEP. Furthermore, there is no provision for FIs to identify the BO or their source of funds or wealth (apart from banks for the source of wealth) of individuals who are foreign PEPs. *(d)* FIs are required to conduct enhanced and ongoing monitoring of the business relationship with PEPs (*Art. 15 (c) of the LSMLTF, 2013*).
106. **Criterion 12.2:** Haitian laws make no distinction between the three categories of PEPs (Foreign, domestic and those from international organisations). The requirements that are applicable to foreign PEPs also apply to the other two categories of PEPs<sup>50</sup>. Therefore, the measures that are applicable to criterion 12.1 (foreign PEPs) are also applicable to criterion 12.2, dealing with domestic PEPs and PEPs from international organisations. *(a)* FIs are required to take measures to determine whether a customer is a PEP (*Art.15 of the LSMLTF 2013*). However, this measure does not require the FI to take reasonable measures to determine whether a BO is a PEP. *(b)* The measures cited at 12.1 (b) to (d) are applicable to all PEPs regardless of the risk and deficiencies identified is also applicable including not all FIs operational in Haiti are mandated to have approval

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<sup>50</sup> Discussion with Haiti’s officials indicate that corruption is perceived as high risk for ML and involves some persons who are PEPs. Further, there have been several reported instances of allegation of corruption involving PEPs in Haiti. Based on the foregoing, Haitian authorities have indicated that high level of scrutiny is given to all PEPs including domestic.

from senior management before continuing the business relationship with a customer who is identified as a PEP and to identify the source of wealth of customers or BO who are identified as PEPs, especially in light of perceived corruption in Haiti and the assessment team being informed that corruption including those involving PEPs are high risk in Haiti.

**Criterion 12.3:** PEPs include family members and any other person closely related or associated with the individual who is deemed to be a PEP (*Art. 5 (13) of the LSMLTF 2013*). However, the deficiencies identified criteria 12.1 and 12.2 above are also applicable to the family members and close associates of the different types of PEPs.

107. **Criterion 12.4:** There are no measures for addressing this criterion.

***Weighting and Conclusion:***

108. PEPs are defined within Haitian laws, however, there is no differentiation between the different types of PEPs, therefore, the standards/requirements are applied broadly to all PEPs. FIs are required by law to determine whether a customer is a PEP and to obtain senior management approval before establishing a business relationship. However, there is no provision requiring FIs to determine whether the BO is a PEP. Only banks and CECS are required to obtain senior management approval for the continuation of the business relationship. Although, there is an obligation for FIs to take reasonable step to identify the source of funds of customers who are PEPs, there is no obligation to identify the source of wealth of foreign PEPs, only banks are required obligated to identify the source of fund and wealth of the BO who are foreign PEPs. There are no measures in place within the jurisdiction requiring FIs to take reasonable measures to determine whether the beneficiaries and or the BO of the beneficiary are PEPs relative to life insurance policies. **Recommendation 12 is rated PC.**

***Recommendation 13 – Correspondent banking***

109. Haiti was rated “NC” for R.13 (formerly R. 7) in the 3<sup>rd</sup> round MER due to the lack of requirements pertaining to the establishment of correspondent banking or equivalent relationships. All requirements except for documenting the respective AML/CFT responsibilities of each institution were addressed by the enactment of LSMLTF, 2013, as amended.

110. **Criterion 13.1:** (a) Art. 24 (b) of the LSMLTF (Amendment) 2016 requires FIs to “collect information on the nature of the client institution’s activities”. This obligation is lower than the required standard, as the specific extent of information is not outlined to include information to understand fully the nature of the respondent’s business. Art. 24 (c) requires assessment of the institution’s reputation on the basis of public information as well as the level of surveillance the institution is subject to. This measure while compliant with the requirement regarding the institution’s reputation, does not fully address quality of supervision the respondent institution may be subject to and whether it has been subject to ML/TF investigation or regulatory action. It should be noted that ‘surveillance’ appears to be synonymous with ‘monitoring’ which has a lighter touch

to supervision and regulation as the latter is suggestive of authority to instruct / direct while monitoring is suggestive of observation. (b) – (c) Art. 24 (d) and 24 (e) of the LSMLT, (Amendment) 2016, addresses the requirement for FIs to assess the respondent’s institution’s AML/CFT controls and to obtain approval from senior management before establishing new correspondent relationships. (d) There are no measures requiring FIs to clearly understand the respective AML/CFT responsibilities of each institution.

111. **Criterion 13.2:** Article 24(f) of the LSMLTF as amended in 2016 requires FIs with regard to “payable-through accounts” to ensure that the client institution has (a) performed CDD obligations on customers that have direct access to the correspondent accounts and (b) is capable of providing relevant identification information on request. While the above measure satisfies 13.2 (a), it only requires the provision of relevant identification data rather than relevant CDD information as mandated by 13.2 (b).

112. **Criterion 13.3:** Under Article 24 of the LSMLTF, FIs are prohibited from establishing correspondent banking relationships with shell banks. There is no prohibition against continuing such relationships with shell banks as required by the FATF standard. Additionally, FIs are required to take appropriate measures to ensure that they do not establish or maintain correspondent relationships with a bank that allows its accounts to be used by shell banks. This measure is limited to respondent banks rather than to all respondent FIs as required by the FATF standard.

### ***Weighting and conclusion***

113. FIs are required to obtain information on respondents’ activities, assess their AML/CFT controls and satisfy themselves about CDD regarding “payable-through accounts” However, there are omissions in the lack of specification that information collected should be sufficient to fully understand the nature of the respondent’s business, and the need to gather sufficient information to assess of the quality of the supervision to which the respondent institution is subject and whether the respondent is subject to ML/TF investigations or regulatory action. The jurisdiction also appears to specify “surveillance / monitoring” which is a lower threshold to that required by the standards. Additionally, only relevant identification data is required rather than relevant CDD information, there is no prohibition against continuing correspondent banking relationships with shell banks and the prohibition not to establish or maintain correspondent relationships with institutions that allow their accounts to be used by shell banks is limited to respondent banks rather than all respondent FIs. **Recommendation 13 is rated PC.**

### ***Recommendation 14 – Money or value transfer services***

114. Haiti was rated ‘NC’ for R.14 (formerly SR.VI) in its 3<sup>rd</sup> MER due to deficiencies in due diligence, record-keeping and supervision of MVTs. These deficiencies are still outstanding.

115. **Criterion 14.1:** Art. 155 of the law on banks requires, amongst other institutions, funds transfer companies to obtain authorisation from the BRH to operate prior to exercising their activities. The obligation does not extend to natural persons conducting these activities. In addition, Art. 5 of the law on banks defines “Funds transfer companies” as companies other than commercial banks that perform foreign exchange remittances between the international market and the national market”. This definition is not in accordance with the FATF’s definition of MVTS, as the FATF standards do not limit MVTS activity to foreign exchange remittance, neither does it limit it to remittance between the international market and the national market. Haiti’s definition of funds transfers companies therefore leaves a gap with respect to domestic transfers which may be a mechanism susceptible to ML/TF/PF.
116. **Criterion 14.2:** BRH is empowered by Art. 79 of the law on banks to take steps to determine whether a person or company is performing operations targeted in articles 3, 4 and 5 (which includes money transfers) without the operating license. The BRH has the power to “demand the audit of the records, accounts, and files of that person or of that company, in order to ensure that if such is indeed the case, it may through a Justice of Peace, draw-up a report attesting to the illegal operations conducted by that person or company” and act to close down the company or institution in question. Article 80 imposes a fine of one hundred thousand Gourdes (G 100,000.00) fine per day of violation to be ordered by the Correctional Court. The gap identified in criterion 14.1 above also applies to this criterion.
117. **Criterion 14.3:** Art. 161 of the law on banks empowers the BRH to ensure compliance by institutions with applicable legal and regulatory obligations and to sanction any violations of the same. These obligations also include AML/CFT requirements under the LSMLTF, 2013 as amended. Further, the BRH regulation may vary according to the type of financial institutions (including MVTS). Unless it is proven that the domestic transfers within Haiti are very limited and a proven low risk, there remains a gap in the compliance with this criterion.
118. **Criterion 14.4:** Art.155 of the Law on banks requires funds transfer companies to obtain authorisation from the BRH to operate prior to exercising their activities. Further, Any FI wishing to open an agency or branch office or service point is required to notify the BRH thereof, one month at least prior to the opening of that agency, or branch office or service point (*Art. 160 of the law governing banks and other FIs*). The provision with the law is broad and is interpreted to include agents of MVTS who can be classified as FIs. Although not explicitly provided in law, all FIs with the exception of foreign exchange brokers are required to be a legal person (stock corporation). Therefore, a natural person is prohibited from acting as an agent of a MVTS.
119. **Criterion 14.5:** There are no measures requiring MVTS providers to include their agents in their AML/CFT programmes and to monitor them accordingly.

### ***Weighting and conclusions***

120. While there are licensing requirements for MVTS providers, domestic transfer activity is not covered. The BRH is responsible for monitoring MVTS providers for AML/CFT obligations and checking for illegal MVTS operations. **Recommendation 14 is rated PC.**

### ***Recommendation 15 – New technologies***

121. Haiti was rated as “NC” for R.15 (formerly R.8) in the 3<sup>rd</sup> round MER. The lone deficiency was the absence of requirements relative to business relationships conducted at a distance or risk associated with new technologies. This was addressed by provisions of the LSMLTF and Circular 99-1 of the BRH, which was subsequently amended to circular 99-2. The revised R.15 focuses on the ML/TF risk associated with new technologies, products and new business practices.
122. **Criterion 15.1:** Banks are required to identify and assess their ML risk arising from; (a) development of new products and new business practices, including from new distribution mechanisms and (b) the utilisation of new technologies or technologies in the development of new products or pre-existing products (*s. 2.2 of Circular 99-2*). The foregoing measure does not include TF risk that may arise relative to the use of new technology, neither is it applicable to all FIs based on the definition by the FATF and operational in Haiti, except funds transfer companies/ MVTS (*s.4 of circular No. 107*). The shortcoming regarding TF cited previously for banks, also applies to funds transfer companies. The country has not identified and assessed ML/TF risks arising from the development of new products and business practices.
123. **Criterion 15.2:** Banks are mandated to conduct their risk assessment prior to the launching of new products or the implementation of new business practices or prior to the utilisation of new technologies in development (*s.2.2 of Circular 99-2*). Banks are also required to take appropriate measures to manage such risk. The foregoing measures are also applicable to funds transfer companies (*s. 4 of Circular No. 107*). This requirement does not apply to all FIs that are operational in Haiti and represents a shortcoming.

### ***Weighting and Conclusion:***

124. Only banks and funds transfer companies are required to identify and assess their ML risk that may arise in relation to the development of new products, business practices and use of new technology. The risk assessment must be undertaken prior to the launch of products or use of new technologies and measures taken to mitigate the risk. The foregoing does not include TF risk. Additionally, there is no requirement for the country to do a similar risk assessment. **Recommendation 15 is rated PC.**

### ***Recommendation 16 – Wire transfers***

125. This Recommendation formerly SR. VII was rated NC in the 3<sup>rd</sup> MER, due to (i) the identification threshold being too high and (ii) an absence of requirements for wire transfers to convey identification data. The deficiencies were addressed by measures set out in circular 99-1 of the

Central Bank. This circular was subsequently repealed and replaced by circular 99-2 that was enforced on July 2, 2018.

126. **Criterion 16.1:** (a) Art. 21 of the LSMLTF 2013 requires FIs whose activities include electronic transfers to obtain and verify the full name, account number and address or in the absence of the address, the national identification number or the date and place of birth including, if necessary, the name of the FI of the person ordering the transfers. This information must be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number must accompany the transfer. The above measure is applicable to all transfers and complies with the requirements for accurate originator information. (b) Section 6 of circular 99 -2 requires banks to ensure that electronic funds transfers over HTG60,000 (US\$713) or the foreign currency equivalent contain all information required on the principal/and or beneficiary. However, details of the information required on the beneficiary is not stipulated in the circular. As such, there is no obligation to obtain all the beneficiary information as required by the FATF. Further, the circular is limited to banks and does not apply to all FIs.
127. **Criterion 16.2:** There is no requirement for cross-border wire transfers in batched files to contain required originator information and full beneficiary information.
128. **Criterion 16.3:** (a) Art. 21 of the LSMLTF 2013 as noted above is applicable to all wire transfers and requires accurate originator information as required by the recommendation. (b) Section 6 of circular 99 – 2 requires banks to maintain all beneficiary information relative to wire transfers that are cross-border or national in nature. However, the circular does not specify the details of such information as required under this sub-criterion. The provision for beneficiary information to be maintained is limited to banks and does not include all FIs that are operational in Haiti.
129. **Criterion 16.4:** Art. 17 of the LSMLTF 2013 requires FIs to verify the information pertaining to their customers where there is suspicion of ML and TF.
130. **Criterion 16.5:** Art. 21 of the LSMLTF 2013 as noted above is applicable to all wire transfers thereby including domestic wire transfers and requires accurate originator information.
131. **Criterion 16.6:** Not applicable as all domestic wire transfers must have accurate originator information in accordance with Art. 21 of the LSMLTF 2013.
132. **Criterion 16.7:** The FIs' obligations of Art. 23 of the LSMLTF 2013 include information on all transactions thereby covering wire transfers and originator and beneficiary information.
133. **Criterion 16.8:** Although criteria 16.5 and 16.7 have been met, the obligations of criteria 16.1 - 16.4 are not fully required of FIs in executing a wire transfer. Additionally, the prohibition against a FI carrying out a wire transfer as set out in Art. 22 of the LSMLTF 2013 is only applicable to receiving a wire transfer and does not include sending a wire transfer as required by this criterion.

134. **Criterion 16.9:** Section 6 of circular 99 -2 requires banks to ensure that electronic funds transfers over HTG60,000 (US\$713) or the foreign currency equivalent contain all information required on the principal/and or beneficiary. This provision makes no distinction between ordering, intermediary and beneficiary entities and should be applicable to intermediary banks in the chain of transmission of cross-border wire transfers. However, the provision is only applicable to banks not all intermediary FIs and details of beneficiary information have not been specified in the circular in accordance with FATF standards.
135. **Criteria 16.10- 16.17:** There are no provisions to cover requirements under each criterion.
136. **Criterion 16.18:** Art. 47 of the LSMLT 2013 requires FIs immediately upon notification of ministerial decree to freeze the funds of terrorists, persons, entities or organisations that finance terrorism and terrorist organisations designated by the United Nations. Additionally, Art 5 of the Executive Order of August 22<sup>nd</sup>, 2016 requires FIs to act without delay in the freezing of funds or other assets detected with freezing actions to include all measures aimed at preventing the movement, transfer or use of funds. These measures would cover wire transfers. However, in Rec 6 there is no provision for freezing to be done without prior notice and no requirement to reported attempted transactions regarding frozen assets. Further, all Executive Order calls for freezing without delay, the process currently in place for implementation and communication of sanctions list does not allow for such.

### ***Weighting and Conclusion***

137. There are requirements for accurate originator information for all wire transfers and freezing measures. The requirement for beneficiary information lacks the necessary details and is limited to banks. Except for the requirement for intermediary banks to ensure that all originator and beneficiary information accompany a wire transfer there are no other requirements for intermediary and beneficiary FIs or MVTs providers. **Recommendation 16 is rated NC.**

### ***Recommendation 17 – Reliance on third parties***

138. This Recommendation formerly R.9 was rated NC in the 3<sup>rd</sup> MER due to absence of obligations on intermediaries and business introducers and lack of certainty about the ultimate responsibility of the FI to meet the requirements of due diligence. These deficiencies were still outstanding at the end of the 3<sup>rd</sup> round follow-up process. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.
139. **Criterion 17.1:** Art. 10 of the LSMLTF 2013 authorises FIs to use intermediaries or other third parties to identify clients in accordance with the requirements of Articles 17 and 18 if they are able to ensure that the third party can provide upon request and without delay, copies of the identification

information and other documents in accordance with due diligence requirements. Additionally, the third party should be subject to regulation, control and surveillance and take measures to comply with due diligence requirements regarding its clients and comply with record keeping requirements when another FI is involved. The final responsibility rests upon the FI that use third parties. While the above measures meet some of the requirements of criterion 17.1 there is no requirement for FIs to immediately obtain information on the identification of the customer, identification of the beneficial owner and understanding of the nature of the customer's business from the third party. While there is a requirement for FIs to ensure that third parties have due diligence and record keeping procedures these procedures do not need to be in compliance with the requirements of Recs 10 and 11.

140. **Criteria 17.2 & 17.3:** There are no measures to address the requirements of these criteria.

### ***Weighting and Conclusion***

141. There are requirements to ensure that the third party can provide upon request and without delay, copies of the identification information and other documents in accordance with due diligence requirements. However, there is no requirement for FIs to immediately obtain information on the identification of the customer, identification of the beneficial owner and understanding of the nature of the customer's business from the third party and ensure that third parties' due diligence and record keeping procedures comply Recs 10 and 11. Additionally the requirements of criteria 17.2 and 17.3 are not addressed. **Recommendation 17 is rated NC.**

### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

142. Haiti was rated "PC" and "NC" for R.18 (formerly R.15 and R.22) in the 3<sup>rd</sup> MER. Deficiencies were the lack of information on the data and documents the compliance officer could access; and absence of obligations on foreign branches and subsidiaries of Haitian FIs, on their capacity to implement satisfactory measures to fight ML and TF. According to the 12<sup>th</sup> FUR, the deficiencies in the former R.15 remained outstanding while those of the former Rec 22 were addressed in the LSMLTF, 2013. The revised R.18 requires the sharing of information and analysis of transactions or activities which appear unusual, including a STR, its underlying information or the fact that a STR has been submitted.

143. **Criterion 18:** Art. 16 of the LSMLTF, 2013 requires FIs to develop and implement programmes for the prevention of ML and TF. (a) At Art. 16 (c) such programmes must include the designation of a compliance officer at the headquarters of each branch and at each agency or office. There is no obligation that the compliance officer be employed at the management level. (b) At Art. 16 (a) FIs are required to ensure that the programmes contain policies, procedures and internal controls, including compliance control measures, and proper procedures for employee hiring, to ensure that it is carried out according to strict criteria. (c) On-going staff training to help identify transactions and actions that may be related to ML and TF is mandated at Art. 16 (d). (d) Art. 16 (e) requires

an internal control function to verify compliance, adherence and effectiveness of the measures taken to apply the LSMLTF. While the measure requires an internal control function there is no specific obligation for an independent audit function.

144. **Criterion 18.2:** (a) & (b): Art. 9 of the LSMLTF, 2013 mandates FIs to ensure that their branches abroad, that conduct the same activities as they do, enforce ML and TF prevention programs by the financial group, including developing policies and procedures for sharing information within the group in terms of preventing ML and TF. The foregoing provision does not allow for the sharing of information within the group relative to a STR, its underlying information, or the fact that STR has been submitted to the competent authorities. The amended law is silent on whether these policies and procedures are required to be consistent with those prescribed under the obligations for R.18.1 and detailed at Art. 16 of the LSMLTF, 2013. Additionally, Art. 37 prohibits FIs, their directors, officers and employees from disclosing to clients and third parties that information has been provided to UCREF or that a STR on ML/TF will be or has been sent to UCREF. This effectively prevents the sharing of STR information at group level. (c) There are no measures for safeguards on the confidentiality and use of information exchanged.

145. **Criterion 18.3:** Further, at Art. 9 of the LSMLTF, 2013, FIs must ensure by means of the programs developed and implemented by their group that their branches abroad enforce measures that are consistent with the requirements of the LSMLTF. There are no obligations pertaining to the application of appropriate additional measures to manage ML/TF risks and informing their home supervisor where the host country does not permit proper implementation of AML/CFT measures.

### ***Weighting and conclusion***

146. FIs must develop and implement programmes for the prevention of ML/TF including the designation of a compliance officer, although there is no obligation that the compliance officer be employed at the management level. Additionally, FIs must ensure that staff are screened when hired and subject to on-going training to identify transactions and actions that may relate to ML/TF. There is no specific requirement for an independent audit function and there are no safeguards on the confidentiality and use of information exchanged. There are no obligations pertaining to the application of appropriate additional measures to manage ML/TF risks and to advise the home supervisor where the host country does not permit proper implementation of AML/CFT measures.

**Recommendation 18 is rated NC.**

### ***Recommendation 19 – Higher-risk countries***

147. Haiti was rated “NC” for R.19 (formerly R 21) in the 3<sup>rd</sup> round MER. Deficiencies were an absence of legal framework and operational mechanism for Haiti to guard against countries with weak systems for combating ML. This was addressed by the LSMLTF, 2013. R. 19 requires the application of enhanced due diligence (EDD) measures for transactions and business relationships from countries and to be able to apply countermeasures when called for by the FATF.

148. **Criterion 19.1:** Art. 5 of the LSMLTF (Amendment), 2016, requires FIs to pay special attention to business relations with individuals and legal persons from countries that do not enforce, or do not sufficiently enforce international norms in terms of suppressing ML/TF. Further, banks are required to apply EDD measures to situation that by themselves that may posed a risk to ML/TF and to exercise particular vigilance in respect to transactions originating from institutions and FIs that are not subject to sufficient customer identification or transactions controls (*s.3 of circular 99-2*). While the LSMLTF, 2013 requires FIs to pay special attention it does not mandate the application of EDD proportionate to the risks identified and does not cover transactions. Circular 99-2 does not require the application of EDD for business relationships and is also only applicable to banks. Both the law and the circular do not make explicit reference to the application of EDD when there is a call by the FATF.

149. **Criterion 19.2:** There are no provisions for the application of counter measures proportionate to the risks identified either by a call by the FATF or independently of any call by the FATF.

150. **Criterion 19.3:** There are no measures in place to advise FI on weaknesses in the AML/CFT systems of other countries.

**Weighting and Conclusion:**

151. There is a requirement to pay special attention to business relations from countries that do not enforced or do not sufficiently enforce international AML/CFT norms. There is no requirement for the explicit application of EDD proportionate to the risks identified to business relationships and transactions or to apply EDD when this is called by the FATF. There is no requirement to apply countermeasures and no measures to advise FI on weaknesses in the AML/CFT systems in other countries. **Recommendation 19 is rated NC**

**Recommendation 20 – Reporting of suspicious transaction**

152. Haiti was rated as “NC” for R.20 (formerly R.13 and SR. IV) in the 3<sup>rd</sup> MER. The deficiencies were absence of TF in the suspicious transaction reporting requirement and lack of implementation of the system of suspicious transactions reporting by FIs. The legislative deficiency regarding TF was addressed by the LSMLTF 2013 while the implementation of suspicious transaction reporting was in progress as indicated in the 12<sup>th</sup> FUR.

153. **Criterion 20.1:** FIs that suspect or have reasonable grounds to suspect that funds or assets are the proceeds of crime and are related or associated with ML and TF are required to file a STR promptly with UCREF (*Art. 31 of the LSMLTF, 2013*). However, not all categories of offences that are predicate to ML are captured in the law (*see R.3*). Therefore, FIs who suspect or have reasonable grounds to suspect that funds are the proceeds of those categories of offences are not mandated to file a STR with UCREF.

154. **Criterion 20.2:** FIs are required to file STRs with UCREF, including transactions that were rejected as per Art. 19 (*Art. 31 of the LSMLTF of 2013*). Some of the basis for rejecting a transaction

includes; questionable client identification. A rejected transaction does not capture the full scope and meaning of an attempted transaction and therefore does not fully address the requirement to report attempted transactions. There is no requirement that transactions be of a specified amount for a STR to be filed with UCREF.

***Weighting and Conclusion:***

155. FIs are mandated by law to file STRs relative to funds and assets that are suspected or where they have reasonable grounds to suspect are the proceeds of crime or are associated with ML/TF. However, as a result of the omitted associate predicate offences under R.3, FIs are not required to submit a STR to UCREF regarding these offences. The law does not place a value/amount on a transaction before filing same with UCREF. FIs are mandated to file reports of rejected transactions. However, the assessment team does not consider a rejected transaction to mean an attempted transaction. **Recommendation 20 is rated PC.**

***Recommendation 21 – Tipping-off and confidentiality***

156. Haiti was rated as “C” for R.21 (formerly R.14) in the 3<sup>rd</sup> round MER. There were no significant changes to this recommendation for the 4<sup>th</sup> round mutual evaluation process.

157. **Criterion 21.1:** Persons, officers, officials and employees of FIs who act in good faith, provide information or file a STR with UCREF are protected against prosecution including criminal and civil proceedings. (*Arts. 41 & 42 of the LSMLTF 2013*). However, these provisions are not applicable to FIs themselves, therefore actions, such as civil litigation can be brought against the institutions.

158. **Criterion 21.2:** FIs and their directors, officers and employees are prevented from disclosing to their clients and third parties that information has been provided to UCREF or that a STR on ML/TF will be or has been sent to UCREF (*Art. 37 of the LSMLTF, 2013*). However, the provision is limited to STR report on ML/TF and does not include STRs that have a nexus to proceeds of criminal activities/predicate offences as included in article 31 mandating STR reporting.

***Weighting and Conclusion:***

159. Provisions exist for the protection of directors, officials and employees of FIs against criminal and civil prosecution, who have made a disclosure or provided information in good faith to UCREF. However, these provisions do not extend to the FIs themselves, thereby making them susceptible to civil proceedings. Tipping off provisions exist and are applicable to FIs, their directors, officers and employees. Tipping off provisions prevent the foregoing individuals from disclosing that a STR relative to ML/TF has been or is being filed with UCREF. However, such provisions are limited to STRs that have a nexus to ML/TF and do not extend to STRs relative to all criminal activities. **Recommendation 21 is rated PC.**

## *Recommendation 22 – DNFBPs: Customer due diligence*

160. In the 3<sup>rd</sup> round MER in 2008, Recommendation 22 (formerly R. 12) was rated ‘NC’ since many of the DNFBPs were not included in the Haitian AML/CFT regime. This deficiency was addressed by provisions in the LSMLTF.
161. **Criterion 22.1:** DNFBPs as defined in Art. 3 of the LSMLTF include not only the FATF categories of entities but also lotteries, gaming establishments, non-governmental organisations working in development and vehicle dealers. Regarding the activities covered there are no limits on casinos and real estate transactions as set out in the FATF requirements. CDD requirements for DNFBPs are set out in articles 29 and 30 of the LSMLTF and article 5 of the amendment of 2016. Article 29 of the LSMLTF requires casinos and gaming establishments to ensure the identity of players who purchase, provide or exchange tokens or chips for an amount greater than or equal to the amount established by the Ministry of Economy and Finance. No information has been provided regarding the threshold to be set by the Ministry of Economy and Finance. Further, Art. 30 of the LSMLTF 2013 requires those who carry out, supervise or advise on real estate transactions to identify parties of the transactions in accordance with Art. 18 of the LSMLTF 2013 which requires the identification and verification of identity of persons and legal entities. Art. 5 of the amended Law requires DNFBPs to exercise constant diligence concerning all business relations and scrutinize transactions to ensure that they conform to their knowledge of their clients, of their commercial activities, of their risk profile, and should the occasion arise of the source of their funds. This obligation complies with criterion 10.7 (a). regarding ongoing due diligence. The above measures only cover a small fraction of the CDD obligations of Rec.10. Further only casinos, gaming establishments and persons involved in real estate are required to carry out basic CDD measures while all DNFBPs are required to conduct some ongoing due diligence obligations.
162. **Criterion 22.2:** Haiti referenced Arts. 28 and 29 of the LSMLTF 2013, as addressing this criterion. However, Art. 28 is relevant to NPOs and is not applicable to this criterion. The record-keeping requirements as detailed in Rec.11 in this report are not applicable to DNFBPs since the specific legislative provisions refer exclusively to FIs. Art. 29 of the LSMLTF, 2013 requires casinos and gaming establishments to record all transactions of players who purchase, provide or exchange tokens or chips for an amount greater than or equal to the amount established by the Ministry of Economy and Finance in a register. The details to be recorded on transactions include nature of the transaction, amount, names of players and identification number of ID document. The information is to be kept for at least five years after the last recorded transaction. No information has been provided regarding the threshold amount to be set by the Ministry of Economy and Finance.
163. **Criterion 22.3 – 22.4:** There are no measures to address these criteria

### ***Weighting and conclusions***

164. The requirements for customer identification for casinos, gaming establishments and those who carry out real estate transactions are minimal. Ongoing due diligence obligations for DNFBPs are similarly limited. Legislative measures for DNFBPs do not comprehensively address the requirements of Recommendation 10. Only casinos and gaming establishments are subject to record-keeping requirements for transactions above a threshold. However, the threshold has not been stipulated. There are no measures for the requirements of Recs 12, 15 and 17. **Recommendation 22 is rated NC.**

### ***Recommendation 23 – DNFBPs: Other measures***

165. Haiti was rated “NC” for R.23 (formerly R.16) in the 3<sup>rd</sup> round MER. The deficiencies included; (i) weakness in STR mechanism; (ii) overly restrictive coverage of DNFBPs; (iii) absence of STR reporting by DNFBPs and; (iv) absence of enforcement of existing legal provisions. Legislative requirements for STR reporting by DNFBPs was included in the LSMLTF.

166. **Criterion 23.1:** (a) DNFBPs including lawyers, notaries and accountants who suspect or have reasonable grounds for suspicion that assets or funds are proceeds of criminal activity or related to ML/TF when engaged in a financial transaction conducting the functions stipulated in Art 3 are required to file a STR to UCREF in accordance with Art. 31 of the LSMLTF, 2013. However, the foregoing does not include independent legal professionals as this is absent from the Haitian legislation. Moreover, the FATF Glossary definition for lawyers “refers to sole practitioners, partners or employed professionals within professional firms”. Article 4 limits obligated lawyers on the basis of financial transactions and is therefore not broad enough to comply with the FATF requirements. (b) dealers in precious metals and stones targeted in Articles 2 and Art. 3 of the LSMLTF 2013 are required to file a report with UCREF on all cash transaction of G600,000.00 (US\$9,330.00/Euro7,574) in accordance with Art. 11 of the LSMLTF, 2013. (c) Trust and Company Service Providers (TCSPs) when acting on behalf of or for a client, in transactions in relation to the activities described in criterion 22.1 (c) are required to file a STR to UCREF in accordance with Art. 31 of the LSMLTF, 2013. However, the shortcomings that exist in R. 20 has a cascading effect on this recommendation. These shortcomings include; there is no requirement for these entities to file attempted transactions, further not all criminal offences are predicate offences to ML.

167. **Criterion 23.2:** The measures for Rec.18 in article 16 of LSMLTF are only applicable to FI. Consequently, there are no measures for DNFBPs concerning this criterion.

168. **Criterion 23.3:** Art. 5 of the LSMLTF (Amendment), 2016 mandates that DNFBPs are required to pay attention to business relations with individuals and legal entities coming from countries that do not enforce or do not sufficiently enforce international norms in term of suppressing ML/TF. Whilst the foregoing measures exist, the deficiencies in R.19 have a cascading effect. DNFBPs are therefore not required to apply EDD measures (c.19.1) when call for by the FATF. There are no procedures to apply countermeasures that are proportionate with the risk (c.19.2) when called for

by the FATF or independent of any called by the FATF and no measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT system of other countries.

169. **Criterion 23.4:** Article 37 of the LSMLTF, 2013 prevents DNFBPs and their directors, officers and employees from disclosing to their clients and third parties that information has been provided to UCREF or that suspicious transaction report on ML/TF will be or has been sent to UCREF. However, the legislation is limited to STRs relative to ML/TF and does not include those that may be related to proceeds of criminal activities. Further, Art. 41 and 42 of the LSMLTF, 2013 protects persons, officers, officials and employees of DNFBPs against prosecution, criminal and civil proceedings respectively, who in good faith, provided information or file a STR with UCREF. However, these provisions are not applicable to the entities themselves and therefore means that actions can be taken against the institutions

**Weighting and conclusion:**

170. DNFBPs including lawyers, dealers in precious metals and trust and company service providers are required to file STRs relative to criminal activities, ML and TF with UCREF. However, there is no requirement for the sector to file attempted transactions, neither is there any requirement to file STRs pertaining to proceeds generated by omitted designated categories offences. There is no requirement for DNFBPs to comply with the measures sets out in R.18 and whilst there are some measures for these entities to pay attention to countries that do not enforce or sufficiently enforce the international AML/CFT norms, these measures are not detailed or conform with the requirements of R.19. Requirements exist for DNFBPs to comply with R.21. However, protection against criminal and civil sanctions is not applicable to the entity itself. Further, tipping off provisions are not applicable to STRs filed relative to other criminal activities besides ML/TF. **Recommendation 23 is rated NC.**

**Recommendation 24 – Transparency and beneficial ownership of legal persons**

171. Haiti was rated “NC” for R. 24 (formerly R. 33) in the 3<sup>rd</sup> round MER. The highlighted deficiency was the absence of an effective system of transparency for legal persons, that allow for rapid access to reliable, up-to-date beneficial ownership and control information. This deficiency remained outstanding.

**Criterion 24.1:** (a) Haiti has several pieces of legislation which identify and describe the different types and form of legal persons operating within the jurisdiction. However, the laws/measures provided do not cover all of the different types of legal persons operating within the jurisdiction.

**Table 32: Types of laws and legal persons**

Laws	Types of legal Persons
The law of August 3, 1955	Limited liability Corporation
Decree of August 28, 1960	Limited Liability Corporation

Decree of November 11, 1968	Limited Liability Corporation
Decree of October 10, 1979	Formalities of the creation of limited liability corporation
Law of September 16, 1963	Joint LLC
Law of June 16, 1975	Foreign LLC
Law of July 13, 1956	Insurance Companies
Law of August 30, 1982	Financial Companies of development
Law of August 3, 1995	Operation and formation of stock corporations.

(b). The registration process for some legal persons are outlined in their respective legislations. The respective pieces of legislation cited above requires the authorities to request and record some basic information. The process of registration includes, the company information being published in the local gazette, the “La Moniteur” or 1 or 2 local newspapers dependent on the type of company. The process also includes the submission of documents to the company registry which is located within the MCI. There is however no process cited for the recording of BO information.

172. **Criterion 24.2:** There has been no assessment of the ML/TF risks associated with the different types of legal persons created in the country.

173. **Criterion 24.3:** Haiti enacted legislation in May 2018 to reform and govern its company registry (*Law of May 21, 2018*). This fairly new legislation mandates that legal persons register with the MCI company’s registry. The company’s name, proof of incorporation, legal form, address of registered office and the main element of governing the company operations must be provided during the registration process (*Art. 1133-2 law of May 21, 2018*). However, the registration process does not include identity of the owners, directors and shareholders of the company. The information held by the company registry is publicly available (*Art.1133-1(b) of the law of May 21, 2018*).

174. **Criterion 24.4:** The authorities referenced the measures applicable in criterion 24.1 as addressing this criterion. However, those measures are not applicable to this criterion.

175. **Criterion 24.5:** The measures cited by the jurisdiction do not address this criterion.

176. **Criterion 24.6:** The authorities provided no information to address the requirements of sub-criteria (a), (b) (c)

177. **Criterion 24.7:** The authorities referenced the information in criterion 24.1 as addressing this criterion. However, no information was provided to the assessors to verify this information.

178. **Criterion 24.8:** The information provided by the authorities does not address the requirements of sub-criteria (a) (b) and (c).

179. **Criterion 24.9:** The authorities referenced Art. 12 of the Commerce Code as the measure to address this criterion. However, same was not provided to the assessment team to verify the information provided.
180. **Criterion 24.10:** Any person including LEAs can obtain in electronic format, the information appearing in the forms filed with the company registry that are kept in the national database. All requests for information are required to be dealt with immediately and at the latest within forty-eight hours (*1135-2 of the law of May 2018*). However, the information filed with the company registry does not capture all basic information, neither does it include BO information (*c.24.1*).
181. **Criteria 24.11** The use of bearer shares are allowed in Haiti. For stock corporation which is only one of the type of companies that are incorporated in Haiti, the ownership of the shares can be established by an entry in the corporation's stock record. In cases where transfer of shares is to be made, it must be made via a declaration of transfer in the corporation stock record and signed by the transferor, by the buyer or their representative (Art. 8 of law of 1955 governing stock corporation). This does not cover the full scope of the FATF guidance to address bearer shares as there is no requirement for the provision of identification by none of parties, and the company to keep a record of same, neither does this apply to all legal persons who are utilising bearer shares.
182. **24.12:** The use of nominee shares and nominee directors is permitted in Haiti, however, there are no measures as required by the FATF to ensure that they are not misused.
183. **Criterion 24.13:** Sanctions are only available and applicable against legal persons who have not fulfilled the necessary registration formalities with the MCI company registry or have done so fraudulently (*Art.1137-2 of the law of May 2018*). The penalties are specified by Arts. 1332-1 and 1332-2 of the Code of Commerce. For failing to file and registered with the register of commerce, the fine is HTG30,000.00 (US\$357) (Art.1332-1) and for filing a false statement a penalty of a fine of HTG50,000.00 (US\$595) and imprisonment of one to three years. The financial penalty that is assigned in both instances does not appear to be proportionate and dissuasive.
184. **Criteria 24.14- 24.15:** There are no measures to address these criteria.

### ***Weighting and conclusions***

185. Haiti has several legal and other measures to address the registration and incorporation of legal persons within the jurisdiction. The legal framework also requires legal persons to submit some basic information to the company's registrar upon their registration. However, this does not apply to BO information. The information held by the Registrar is publicly available, including to LEAs and should be available immediately or within 48 hours at the latest. However, since there is no mandatory requirement for the company or the legal persons themselves to keep BO information, LEAs do not have access to BO information, since there is no requirement by the Registrar or the company itself to request or record BO information. Although there are provisions for sanctions, the assessment team was unable to determine whether these are proportionate or dissuasive, since they were not provided. The current legal framework governing legal persons is significantly

deficient and does not address a significant amount of the criteria, thereby making legal persons vulnerable to ML/TF. **Recommendation 24 is rated NC**

***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

186. R. 25 (formerly R. 34) was rated ‘NA’ in the 3rd MER since the jurisdiction indicated that the concept of trust was absent. R. 25 now requires that trustees provide information to the FIs or DNFPBs regarding their establishment as a trustee among other things. Trustees are also required to guarantee that such information can be accessed in a timely manner by competent authorities. The changes made in R 25 provide that the country must apply minimum transparency requirements even if it does not legally recognise trusts.
187. **Criterion 25.1:** (a) and (b) do not apply to Haiti. (c) There are types of professional trustees which may exist. For example, Art. 2 of the Law governing Banks and other financial institutions defines financial institution to include “a fiduciary company”, provides for banks to perform “management of assets” and Art. 5 defines the activities of trust companies. It is unclear whether the AML/CFT law and its attending requirements apply to such financial institutions. Further, it would appear that lawyers can act as professional trustees since they can manage funds, securities or other assets belonging to the client or manage bank accounts. Record keeping requirements apply to them. Further, any deficiencies noted in the CDD and record keeping (R 10 and 11) requirements would be applicable. Additionally, there appears to be no provision which preclude trusts or similar legal arrangements established under foreign law from conducting their activities through the Haitian financial system and no prohibitions for persons under the jurisdiction of Haiti to act as trustees or provide other trust related services.
188. **Criteria 25.2-24.5:** There are no measures to address these criteria.
189. **Criterion 25.6:** Competent Authorities can provide mutual legal assistance while respecting constitutional guarantees (*Art.79 of the LSMLTF, 2013*). It is unclear whether these measures include the use of international cooperation and investigative powers to exchange information on trusts and other legal arrangements as these are not covered in law. Further the obstacles identified in R.37 and R.40 would be applicable here. Moreover, no provision was cited by the authorities which may prevent the swift access of such information on the behalf of foreign counterparts specifically relating to BO.
190. **Criterion 25.7:** The Authorities have not provided any citations of law which make professional trustees legally liable for any breach of their obligations and with proportionate and dissuasive sanctions, whether criminal, civil or administrative for failing to comply.
191. **Criterion 25.8:** The Authorities have not provided any citations of law which provide for the imposition of sanctions for failure to grant, to Competent Authorities, timely access to information

### ***Weighting and Conclusion***

192. Due to the apparent limited development of trusts and legal arrangements in Haiti, the obligations of R. 25 apply principally to professional trustees which are subject to AML/CFT obligations. There are no measures to address most of the criteria, although the definition of FIs includes fiduciary companies. Nevertheless, due to the structure that is in place, as trusts are included in the definition of FIs, the measures the CDD measures as noted in Recommendation 10 and the other preventive measures in Haiti will apply to those entities that are operating as trusts.  
**Recommendation 25 is rated NC.**

### ***Recommendation 26 – Regulation and supervision of financial institutions***

193. This Recommendation (formerly R. 23) was rated NC in the 3<sup>rd</sup> MER due to the absence of requirements of integrity and competence for many pillars of the financial sector, particularly for money changers, insurance companies and microfinance institutions. There was also an absence of the coverage of beneficial owners and an unregulated informal sector of MVTS. The lone recommended action was implemented through the 2012 enactment of the Law governing Banks and other FIs. There has been no substantive change in the Recommendation, except for the inclusion of the prohibition of shell banks.

194. **Criterion 26.1:** The BRH is responsible for ensuring the compliance of banks with the legislative and regulatory provisions that are applicable to them (*Art. 98 of the Law governing Banks and other FIs*). This would include AML/CFT requirements as set out in these provisions. The BRH through the DIGCP is also responsible for the supervision of CECs (*Art. 10 Savings and Credit Cooperative Act*). However, FIs such as insurance companies, pension funds and microfinance institutions are not supervised and monitored for AML/CFT requirements.

195. **Criterion 26.2:** The BRH is the competent authority charged with granting approval to banks prior to operating in the country (*Art. 20 of the Law governing Banks and other FIs*). Additionally, Article 155 stipulates the same requirement for the operations of investment companies, credit card companies, factoring companies, fiduciary companies, development finance companies, funds transfer companies and foreign exchange brokers. The CNC is the competent authority charged with the responsibility of granting authorisation for CECs to operate in Haiti following consultation with the BRH (*Arts. 17 & 18 of the Savings and Credit Cooperative Act*). However, the above provisions are not applicable to insurance companies, pension funds and microfinance institutions. While there is no specific prohibition against the establishment of shell banks, the information and document required for the approval process by the BRH for bank applications as set out in Arts. 24 and 25 including address of registered office and names and details of managers of the proposed institution will negate the establishment of shell banks. No measures were cited by the authorities to prevent the continued operation of shell banks.

196. **Criterion 26.3:** The BRH has the authority to approve shareholders (direct and indirect), whether persons or legal entities who exercise a significant influence over a bank, directors and managers

based on professional integrity and expertise (Arts. 24 to 29 of the Law governing Banks and other FIs). Professional integrity excludes recorded criminal activity in any jurisdiction, being an undischarged bankrupt or defaulted debtor and involvement in the management of any bank that the BRH had liquidated. The specific obligations as outlined in the law are adequate for fit and proper criteria. The BRH also has approval over subsequent changes in directors and managers of banks. The BRH must be notified within forty-eight hours of any proposed change and can request additional information on the relevant persons and require changes where necessary (Art. 37 of the Law governing Banks and other FIs). However, the above does not include approval subsequent changes in shareholders. As already noted, these provisions do not include insurance companies, pension funds, CECs and microfinance institutions.

197. . **Criteria 26.4-26.6:** There are no measures to address these criteria

### ***Weighting and conclusion***

198. BRH is the designated authority for AML/CFT compliance for banks and other FIs. Approval from BRH is required before banks and other FIs can operate in Haiti. Shareholders, directors and managers of banks and other FIs are subject to fit and proper approval by the BRH when applying to operate in Haiti. The BRH is also responsible for conducting supervision of CECs through the DGICP. However, there is no measures that mandate any of the competent authorities to conduct fit and proper checks and approval on CECs. The above measures do not apply insurance companies, pension funds and microfinance institutions. Fit and proper approvals do not include subsequent changes in shareholders. No information has been provided regarding compliance with the principles of the BCBS, the IAIS and IOSCO, the basis for the frequency and intensity of on-site and off-site supervision of FIs and the review of the assessment of the ML/FT risk profile of FIs. **Recommendation 26 is rated NC**

### ***Recommendation 27 – Powers of supervisors***

199. This Recommendation (formerly R.29) was rated PC in the 3<sup>rd</sup> MER due to excessive restrictions on the ability of financial sector supervisors to gain access to all necessary records and weaknesses in the ability of supervisors to impose sanctions on FIs, their directors and their shareholders. The deficiencies were addressed by the 2012 enactment of the Law governing Banks and other FIs. There is no revision to the Recommendation other than supervisors should have powers to supervise and monitor compliance.

200. **Criterion 27.1:** The BRH is the authority that is responsible for ensuring the compliance of banks with the legislative and regulatory provisions that are applicable to them, inclusive of AML/CFT requirements as set out in the provisions (*Art. 98 of the Law governing Banks and other FIs*). Additionally, the BRH has the authority to sanction FIs for violation of the legislative and regulatory provisions (*Art. 161 of the Law governing Banks and other FIs*). The BRH through the DIGCP is charged with the responsibility of ensuring that CECs are in compliance with the laws and regulations that are applicable to them and sanctions any breaches that are found (Arts.7 & 10

*Savings and Credit Cooperative Act*). However, insurance companies, pension funds and microfinance institutions that are all operational in Haiti are not covered by the foregoing provisions or any other provisions.

201. **Criterion 27.2:** The BRH has the authority to conduct examination of banks and the other FIs referred to under the legislation (*Arts. 99 & 166 of the Law governing Banks and other FIs*). However, the law does not cover those categories of FIs specified in *c.27.1* and CECs.
202. **Criterion 27.3:** The BRH has access to all information it deems necessary for its mandate including assessing compliance with all legislative and regulatory provisions governing banks (*Art. 99 of the Law governing Banks and other FIs*). The BRH has the authority to determine by regulatory means the list, format and deadline for transmission of documents and information that must be provided to it. Additionally, the BRH may further demand from FIs any information, clarifications or justifications necessary for it to fulfil its mandate (*Art.163 of the law governing banks and other FIs*). CECs or the Federation of CECs are required to present to the BRH, when requested, all information, books and documents it deems necessary to enable it to know the position of the inspected institution (*Art.83 of the Savings and Credit Cooperative Act*). The foregoing is limited in scope and only applies to CECs that were subject to inspection by the Federation (who has the mandate to conduct inspection). There are no measures in place that cover the FIs that not covered by the requirement of *c.27.1*.
203. **Criterion 27.4:** The BRH has the power to impose sanctions for violation of the legislative and regulatory provisions which would include AML/CFT obligations (*Articles 98 and 161 of the Law governing Banks and other FIs*). Sanctions ranging from warning notice, financial penalty, temporary interdiction to conduct certain operations to cancellation of the authorisation to operate in conformity of the disposition of the law are available to the BRH (*Art. 109 of the law governing banks and other FIs*). Similar sanctions, with the exception of the financial penalties can also be applied to CECs by the BRH with notification to CNC without prejudice of other sanctions for breaches of the law and any regulations that are applicable to them. The BRH can apply two or more of the sanctions under the law for the same violation, depending on the seriousness of the breach (*Art. 139 of the of the Savings and Cooperative Act*). Sanctions are applicable to all Directors of CECs but not managers. Sanctions that can be imposed are proportionate and dissuasive. Despite the foregoing, the law does not apply to those institutions specified in *c.27.1*. Sanctions are applicable to senior management and directors (*Art.109 of the law governing banks and other FIs*).

### ***Weighting and Conclusion***

204. The BRH has the power to supervise banks, to carry out inspections, access all information necessary for assessing compliance with AML/CFT. The BRH has the authority to supervised CECs but does not have the authority to conduct inspection of CECs. Although, the BRH has the authority to compel the production of records from CECs, it is only limited to those that were inspected. The BRH has obligations and can impose a wide range of administrative sanctions for

violations of the laws by FIs and CECs. These sanctions are proportionate and dissuasive. The measures do not cover insurance companies, pension funds and microfinance institutions. **Recommendation 27 is rated PC**

### *Recommendation 28 – Regulation and supervision of DNFBPs*

205. Haiti was rated “NC” for R. 28 (formerly R.24) for its 3<sup>rd</sup> round MER. The highlighted deficiencies being; inadequate framework of supervision for DNFBPs and a lack of monitoring and oversight of legal obligations of DNFBPs. The 12<sup>th</sup> FUR noted deficiencies highlighted for R. 24 had not as yet been addressed by Haiti.
206. **Criterion 28.1:** The measures cited by the authorities do not address the requirement of this criterion.
207. **Criterion 28.2:** The measures cited by the authorities do not address the requirement of this criterion.
208. **Criterion 28.3- 28.5:** There are no measures to address these criteria

### *Weighting and conclusion*

209. Casinos within Haiti are not required to be licensed, neither is there a requirement for any fit and proper testing to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. There are weak or non-existent competent authorities and legal or regulatory measures for the sector and other DNFBPs to monitor for AML/CFT compliance and to ensure the DNFBP sector is not misused and abused for the purposes of money laundering and the financing of terrorism. **Recommendation 28 is rated NC**

### *Recommendation 29 - Financial intelligence units*

210. Haiti was rated ‘PC’ for R. 29 (formerly R.26) in its 3<sup>rd</sup> MER. The deficiencies identified include but are not limited to; (i) ambiguities as regards the operational independence and autonomy of UCREF. Issues that arise, based on the new requirement of R.29 include, but are not limited to; whether the FIU: (ii) conducts operational and strategic analyses; (iii) has access to the widest possible range of information; (iv) has the ability to disseminate information spontaneously; (v) information is protected and (v) has applied for Egmont membership.
211. **Criterion 29.1:** UCREF is an autonomous entity under the authority of the MJPS (*Art.1 of the Organic Law on UCREF*). UCREF responsibilities include: the receiving, analyzing and processing of declarations of information which are required to be forwarded to UCREF within the framework of the fight against ML and TF (*Art.2 of the Organic Law on UCREF*). Nevertheless, UCREF is not mandated to receive STRs that may have a nexus to the missing associated predicate offences that are identified in Recommendation 3. There is no provision within the law or any other

measures for UCREF to disseminate the results of its analyses in all circumstances that involves suspicion of the commission of criminal act, as the Unit can disseminate to the Government Commissioner/PPO when there is serious clues of ML/TF (*Art.35 of the LSMLTF, 2013*). Therefore, UCREF is not allowed to disseminate reports that are solely connected to an associated predicate offence. Moreover, dissemination hinges solely on the basis of serious clues and not suspicion, which is a higher standard that what is required by the FATF Standards<sup>51</sup> (*See FATF Recommendations- Interpretive Note Recommendation 29*).

212. **Criterion 29.2:** (a) UCREF is the central authority that is mandated to receive STRs relative to proceeds from criminal activities, ML and TF from FIs and DNFBPs (*Art. 31 of the LSMLTF, 2013*). However, the deficiency of the missing predicate of ML has an impact here (see R.20) means that UCREF is not authorised to receive STRs that have a nexus to these offences. (b) The General Administration of Customs (AGD) officials are required to transmit information on cash declarations they receive from persons entering and leaving Haiti to UCREF (*Art. 10 of the LSMLTF 2013*). Further UCREF is authorised to receive reports of cash transactions for amounts equal to or exceeding G600,000.00 or its foreign equivalent (*Art 4 of the LSMLTF, 2016*). UCREF is authorised to receive reports relative to wire-transfers in the amount of G60,000.00 or its foreign equivalent (*Art 4 of the LSMLT, 2016*).
213. **Criterion 29.3:** (a) The law dictates that UCREF receives all other information, generally whatsoever, that are useful for it to fulfil its mission (*Art. 2 of the Organic Law on UCREF*). Additionally, all reporting entities are required to provide UCREF with all information and documents within the framework of an investigation undertaken pursuant to the reporting of a STR upon the unit's request (*Art. 28 of the Organic law of UCREF*). (b) UCREF also has indirect access to the databases of public institutions, pursuant to Art. 28 of the Organic Law on UCREF. UCREF has demonstrated that it has indirect access to financial, law enforcement and administrative databases such FIs, HNP, Companies Registry and Tax authorities. No information was provided to show that UCREF has access to commercial databases.
214. **Criterion 29.4:** (a) There is no measure authorising UCREF to conduct operational analysis with the view of identifying specific targets, to follow the trail of particular activities and transactions and determine the links between those targets and possible proceeds of crime, ML, predicate offences and TF, nevertheless UCREF has demonstrated that this is occurring. (b) There are no measures explicitly ascribing strategic analysis function to UCREF. Nevertheless, Art. 3 (a) of the organic law of UCREF makes provision for UCREF to conduct periodic studies on the trend and development of techniques used for ML/TF nationwide.
215. **Criterion 29.5:** UCFEF is only limited to disseminate the results of its analysis only in cases where serious clues relating to ML/TF are obtained to the Government Prosecutor (*Art.35 of the LSMLTF, 2013*)- (*see criterion 29.1*). Further, there are no measures that permit UCREF to

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<sup>51</sup> Section B (c) (4) The FIU should disseminate information and the results of its analysis to competent authorities when there is grounds to suspect ML, predicate offences or TF- page 98- Taken from the FATF Recommendation: International Standards for combatting ML/FT and Proliferation 2016- [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

disseminate the results of its analysis to other competent authorities upon request or spontaneously. Moreover, there is no dedicated and protected channel utilised for dissemination.

216. **Criterion 29.6:** (a) The board of directors, members and staff of UCREF are subject to professional secrecy and are prevented from divulging information to anyone or any authority who has not been vetted to receive confidential information (Art. 24 of the Organic Law of UCREF). No employee can be recruited unless prior investigation has been conducted on the morality of the applicant (Art. 23 of the Organic Law of UCREF). Employees are required to sign a declaration whereby they undertake not to disclose UCREF's operations or to provide information as to its operation unless they are so required by a court of law. Nevertheless, there is no procedure in place for handling, storing and dissemination of information. (b) There are no measures to address this criterion. (c) Following inspection of the facility and security system by the assessment team, the security measures at the UCREF including its IT system appear to be adequate and appropriate and are only accessible to staff who have different levels of security clearance (such measures would not be disclosed for security purposes).
217. **Criterion 29.7:** (a) The Director General of UCREF is designated by Presidential Decree taken by the Council of Ministers, upon the recommendation of the MJPS and is appointed on a four years contract renewable once. The Director General is responsible for the internal administration of UCREF (Art. 13 of the Organic Law of UCREF). UCREF operates under the administration and control of a board of directors which has certain designated powers including the power to approve UCREF's procedures manual that comprises the Unit's operating norms; approve the plans of action, programs, and annual budget (which is provided from the public treasury), and to decide on the corrective measures judged necessary within the framework of scheduled activities of the UCREF. Based on the foregoing structure including the power allocated to the board, it is unclear whether UCREF has the authority to carry out its functions freely. (b) UCREF is authorised to share information with its foreign counterparts. However, this is limited to only ML/TF (Art. 3 (d) of the Organic Law of UCREF). UCREF can make arrangement and engage independently with the PPO and other competent authorities responsible for enforcing disciplinary actions (*Art.35 of the LSMLTF, 2013*) (*Art. 28 of the Organic Law*). However, the foregoing does not apply to all domestic competent authority including law enforcement officials. (c) UCREF falls under the MJPS, nevertheless, its functions are stipulated in law and are different from those of the parent body. (d) UCREF is an autonomous organisation with its own legal personality and enjoys its own administrative and financial autonomy (Art.1 of the Organic Law of UCREF). The assessment team believes that by virtue of having its own autonomy, it can be interpreted that UCREF can deploy its resources free from undue political and industry influence upon the receipt of its budget allocation from the Central Government in its current disposition. However, the assessment team has serious concerns that the wide range of powers bestowed on the Board under Art. 8 of the Organic Law of UCREF, including the power to fulfil all other duties within the existing law, will pose a risk to the operational independence and autonomy of the UCREF once the board is constituted and operationalised.
218. **Criterion 29.8:** UCREF has applied for Membership with the Egmont Group. However, there is no evidence that such application is unconditional, or that UCREF has fully engaged itself in the application process.

***Weighting and conclusions:***

219. UCREF is the national centre for the receipt, analysis and processing of declarations/STRs relative to ML/TF and the proceeds of crime. UCREF does not have the authority to receive, analyse and process declarations relative to STRs that may have a nexus solely to those offences that are not captured in R. 3. UCREF has access to a wide range of public and legal databases but not commercial databases. There are no measures authorising UCREF to disseminate information to relevant competent authorities spontaneously or upon request utilising dedicated, secure and protected channels. Although, the Board of Directors, members and staff are subjected to background checks/vetting prior to their employment and they are required to sign a declaration not to disclose the operation of UCREF, there is still significant shortcomings regarding the protection, security and confidentiality of information. Moreover, it is unclear whether the Director General of UCREF is autonomous to make independent decisions regarding the operations of UCREF as approval of its operational plan and governance of operation is controlled by the board of directors. UCREF is not a member of the Egmont Group. **Recommendation 29 is rated PC**

***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

220. Haiti was rated as “PC” for Rec. 30 (formerly Rec. 27) in the 3<sup>rd</sup> round MER. The deficiencies identified were; (i) lack of mobilisation of the police services in the criminal investigations of ML, (ii) lack of implementation of specific investigative techniques to fight ML and (iii) the absence of a group devoted to the investigation of personal property or assets suspected to be from criminal conduct.

221. **Criterion 30.1:** Haiti’s legal framework allows for a network of LEAs and investigative authorities to ensure that ML/TF and associated predicate offences are properly investigated. However, the jurisdiction does not have any AML/CFT policies. The LEAs and investigative authorities are as follows:

- (i) ***The PPO/government commissioners:*** Responsible for judicial investigations and prosecutions of ML/TF and other associated predicate offences. Substitute government commissioners specialised in financial crimes appointed by the MJPS are required to be appointed to each of the Public Prosecutors Office (PPO). They are summoned by denunciation, complaint, by request of the UCREF or by any public or private organisation or by any individual or legal entity, pursuant to the criminal code (*Art. 70-73 LSMLTF, 2013*).
- (ii) ***Magistrates (Investigating Magistrates):*** Responsible for conducting criminal investigations and issuing formal charges. Those specialised in financial crimes are required to be delegated to all civil courts and are required to conduct due diligence to obtain the truth and proceed by means of an investigation in a manner specified by the Criminal Procedure Code (CPC) (*Art. 74-75 of the LSMLTF*).
- (iii) ***Haiti National Police (HNP)/BAFE:*** Mandated to fight all crimes within Haiti. Through, the BAFE, an agency with the judiciary police (DCPJ- the detective arm of the HNP),

economic crimes, including ML are investigated. The police service is an auxiliary of the justice system and is mandated to investigate violations, offences and crimes committed, in order to discover and arrest the perpetrators of them (Art. 273 of Haiti's Constitution). Therefore, with ML/TF being a crime in Haiti, the Police is mandated to investigate such. Nevertheless, no measures were cited that allows for BAFE to conduct investigations into ML/TF.

222. **Criterion 30.2:** Although not documented, BAFE has the responsibility of conducting ML investigations during a parallel financial investigation into an associated predicate offence that was undertaken by any of the agencies within the DCPJ- for example during drug trafficking investigations by the BLTS. However, there is no indication that the other investigative agencies can conduct ML investigations or refer such cases to another agency upon their discovery during a parallel financial investigation.

223. **Criterion 30.3:** An investigating magistrate is permitted by law to impose preventive measures (such as freezing) on funds and goods concerning the offence or offences subject to the investigation (*Art 46 of the LSMLTF, 2013*). However, this is not applicable to benefits or property of corresponding value that can be used to satisfy or enforce a confiscation order (see R.4) Further, the competent judicial authority is responsible for implementing protective measures (including freezing) automatically or upon request of the PPO or a competent administration relative to ML (*Art 4.1.2 of the law on the laundering of assets*). However, this is only applicable to ML and not all associated predicate offences and TF. The authorities did not provide any time -period for freezing, therefore, the assessment team is unable to state whether this can be done expeditiously.

224. **Criterion 30.4:** In Haiti financial investigations of predicate offences are conducted by LEAs and investigative authorities cited in criterion 30.1.

225. **Criterion 30.5:** The powers available in c.30.3 are also applicable to ML/TF offences arising from corruption (Art.19 LPPC). However, the deficiencies that exist in c.30.3 has a cascading effect on this criterion.

### ***Weighting and Conclusion:***

226. There is a network of LEAs and investigative authorities within the jurisdiction that is responsible for ensuring that ML/TF and associated predicate offences are properly investigated and prosecuted. BAFE works in collaboration with the other agencies of the DCPJ to ensure that potential ML cases arising from a parallel financial investigation are identified and properly investigated. There is a joint effort between several competent authorities to ensure that assets are traced, identified and frozen. However, the assessment team is unsure as to whether this is done expeditiously. ULCC officials are authorised to utilise the powers in c. 30.3 to pursue ML/TF cases arising from or relating to corruption offences, however the shortcomings that applied to LEAs and investigative authorities also applies to ULCC officials. **Recommendation 30 is rated PC**

### ***Recommendation 31 - Powers of law enforcement and investigative authorities***

227. Haiti was rated 'PC' for R. 31 (formerly R. 28) in the 3<sup>rd</sup> round MER. The deficiencies identified were related to effectiveness and vagueness with respect to the procedures for submitting matters other than crimes *in flagrante delicto* to the police for investigation, and with respect to providing support to cases being investigated by the investigative magistrate. R.31 expands the powers of LEAs and Investigative Authorities (IAs). Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and be able to request information from FIU when conducting relevant investigations.
228. **Criterion 31.1:** (a) The relevant judicial authorities; officials responsible for the detection and punishment of offences relating to ML and TF, based on a warrant and to UCREF and the BRH within the scope of their respective powers have the authority to request information and documents to conduct their functions. The information and documents that can be obtained are only limited to an active investigation that is being conducted by FIs, commercial and industrial enterprise (Art.11), STRs (Art.31) and transactions that are equal or greater than the regulatory threshold (Art.33). The foregoing is nevertheless limited, in that the provision does not apply to the production of all records that may be needed for investigations and prosecutions and it does not apply to associated predicate offences. Further, the requirement does not apply to DNFBPs in all instances, neither does it apply to natural and legal persons. (b) (c) & (d) There are no measures to address these sub-criteria.
229. **Criterion 31.2:** (a) There are no measures permitting competent authorities to utilise undercover operations in cases involving ML, associated predicate offences and TF. (b) For the purpose of obtaining evidence of ML/TF in the course of an investigation for a determined time period a Judge hearing a case may order audio and video recording or photography of acts and behaviors or conversations where there is serious evidence that the telephone lines are being used by persons suspected of taking part in ML/TF (*Art. 38 (c) of the LSMLTF, 2013*). This provision does not apply to associated predicate offences. (c) A Judge hearing the case of ML/TF may order access to network and servers where there is serious evidence that the computer system or network are being used by persons suspected of taking part in ML/TF (*Art. 38 (b) of the LSMLTF, 2013*). This provision does not apply to associated predicate offences. (d) There are no measures to address this criterion.
230. **Criterion 31.3:** (a) & (b) There are no measures to address this criterion.
231. **Criterion 31.4:** There are no measures for LEAs and investigating authorities who are investigating ML, predicate offences and TF to request/ask UCREF for all relevant information held in their possession.

### ***Weighting and conclusions:***

232. There are some measures in place for LEAs and investigative authorities to request the production of certain types of information from some reporting entities in certain circumstances relative to the investigations and prosecutions of ML and TF offences. The range of investigative

powers available to LEAs and investigative authorities is also limited as there are no provisions for the execution of search and seizure warrants or taking of witness statements relative to ML and TF. LEAs and investigative authorities can intercept communication and access computer systems to obtain evidence relative to offences of ML/TF on the granting of an order by a judge. However, same is not applicable to associated predicate offences. There is no indication that competent authorities can identify in a timely manner whether a natural or legal person holds or controls accounts and if such measures exist, whether same can be done without prior notification to the owner. There is no indication that competent authorities investigating ML, associate predicate offences and TF can ask for relevant information that is held by UCREF. **Recommendation 31 is rated NC**

### *Recommendation 32 – Cash Couriers*

233. The Republic of Haiti was rated as “PC” for Rec. 32 (formerly SR. IX) in the 3<sup>rd</sup> Mer. The deficiencies identified included; (i) the ineffectiveness of the system due to its unsuitability to the jurisdiction’s context, resulting in difficulty to implementation; (ii) absence of proportionate, deterrent, and effective penalties; and (iii) lack of coordination among authorities responsible for implementing the mechanism currently in place. Haiti sought to address some of the deficiencies through enactment of the LSMLTF. The new requirements for the revised R.32 are found in criteria 32.2 and 32.10.
234. **Criterion 32.1:** Any person entering or leaving Haiti is required to make a declaration of the cash in their possession, when the amount is equal to or greater than the amount established by ruling of the BRH. This declaration must be submitted to the customs officer at the point of entry and exit (*Art. 10 of the LSMLTF 2013*). However, the declaration system is not applicable to the cross-border transportation of cash through mail and cargo, neither is it applicable to BNIs.
235. **Criterion 32.2:** The declaration system referred to in Art.10 must be in writing, signed and dated by the traveller (*Art. 50 of the LSMLTF 2013*). However, no information was provided as to whether the threshold amount has been established by the BRH. Therefore, the value for which a truthful declaration is required is unknown.
236. **Criterion 32.3:** Haiti has a declaration system and not a disclosure system.
237. **Criteria 32.4-32.5:** There are no measures for addressing these criteria
238. **Criterion 32.6:** All declarations of cash are required to be transmitted to UCREF by the AGD within five days (*Art.10 of the LSMLTF 2013*). The process of transmission has not been cited by the authorities.
239. **Criterion 32.7:** Haiti has not provided any information regarding co-ordination among AGD, immigration and other relevant authorities on issues related to the implementation of R. 32.
240. **Criterion 32.8:** AGD’s authorities are authorised to seize cash in cases involving false declaration, non-declaration and where there is a suspicion of ML/TF (*Art.10 of the LSMLTF 2013*). However,

the foregoing measure does not apply to cash suspected to be derived from the commission of a predicate offences or BNIs. Moreover, there is no timeframe for the retention of any cash so seized.

241. **Criterion 32.9- 32.11:** There are no measures to address these criteria.

***Weighting and Conclusion:***

242. There is a legal provision mandating all persons entering or leaving Haiti to declare all cash which is equivalent or greater to the amount established by the BRH. However, no information was provided on the amount prescribed by the BRH. The declaration system does not apply to BNIs neither is it applicable to cash and BNIs that are transported via mail and cargo or which are derived from the commission of a predicate offence. AGD's officials are mandated to report all cash declarations to UCREF. However, no process for transmission of such reports was provided. There is some provision for the seizure of cash that is suspected to have a nexus to ML/TF but not that which has a nexus to associated predicate offences. There is a significant absence of measures to address the requirements of several of the criteria. **Recommendation 32 is rated NC**

***Recommendation 33 – Statistics***

243. This Recommendation (formerly R.32) was rated 'NC' in the 3<sup>rd</sup> MER due to the absence of a reliable mechanism for collecting statistical data.

244. **Criterion 33.1:** (a) The authorities have indicated that UCREF is by law in charge of statistics linked to STRs. However, no provision was cited. Nevertheless, UCREF is mandated to prepare annual and quarterly reports of its activities, for which statistics are required. UCREF has also demonstrated from the onsite that it maintains statistics relative to STRs received and reports disseminated. (b-d) The authorities noted that MJPS is responsible for maintaining statistics relevant to 33.1 (b-d). However, no measures were cited by the authorities authorizing the MJPS to maintain such statistics. Further, based on the information gathered from the on-site visit and the inability of competent authorities, with the exception of UCREF, to provide samples of the comprehensive statistics they are required to maintained, it is apparent that comprehensive statistics relative to the effectiveness and efficiency of the AML/CFT system are not maintained.

***Weighting and conclusion***

245. With the exception UCREF there is no indication that comprehensive statistics are maintained by Haiti in relation to the effectiveness and efficiency of their AML system particularly: ML investigations, prosecutions and convictions; property frozen; seized and confiscated; and mutual legal assistance, extradition and other requests for international cooperation made and received by supervisors and LEAs. **Recommendation 33 is rated NC**

***Recommendation 34 – Guidance and feedback***

246. Haiti was rated "NC" for R.34 (formerly R. 25) in the 3<sup>rd</sup> round MER conducted due to the following deficiencies; absence of guidelines for DNFBPs and no mechanisms for feedback from

the FIU (UCREF). The 12<sup>th</sup> FUR notes that UCREF has issued guidelines for reporting financial institutions and DNFBPs on the date of September 20<sup>th</sup>, 2016 concerning the filing of STRs.

**Criterion 34.1:** The authorities and the BRH have issued a total of four guidelines and circulars to assist banks, CECs, foreign exchange agents and funds transfer companies in applying national AML/CFT measures and assist in detecting and reporting STRs (circular 107- Funds transfer companies, circular 99-2 banks, guidelines for foreign exchange agents and guidelines for CECs). However, based on the foregoing not all FIs are subject to guidance. Moreover, the entire DNFBP sector lacks guidance despite the perceived ML/TF risks, especially for sectors such as casinos and real estate

247. UCREF has issued guidelines concerning the filing of STRs and has also published these guidelines on its website (<http://ucref.gouv.ht/lignedirectrice.php>). However, these guidelines are not descriptive, but nevertheless reinforced the obligations to FIs and DNFBPs to file STRs. UCREF does not have any measures for providing feedback to FIs and DNFBPs and no evidence was presented to demonstrate that this is being done.

### ***Weighting and conclusion***

248. The BRH and other authorities have provided guidelines and circulars to some the major FIs including those that may be most at risk for ML/TF such as MVTS (based on the volume of their transaction which is cross-border in nature) to assist them in their functions. However, several other FIs remains absent of guidelines. The DNFBP sector has no guidelines despite the perceived risks that exists within this sector. Although UCREF has provided some guidance to FIs and DNFBPs, these guidance are not detail. There are no measures to provide feedback to FIs and DNFBPs and no evidence was provided that this is being done. **Recommendation 34 is rated PC**

### ***Recommendation 35 – Sanctions***

249. The Republic of Haiti was rated as “NC” for Rec. 35 (formerly R.17) in the 3<sup>rd</sup> Mer. The deficiencies identified were; (i) the absence of a dissuasive, proportionate system of sanctions and (ii) lack of implementation of the current system of sanctions. The deficiency regarding sanctions was addressed by the enactment of the LSMLTF, 2013 and its amendment.

250. **Criterion 35.1:** FIs, except for those stated at C.27.1 are subject to administrative sanctions ranging from warning letters to revocation of licence (see c.27.4). The BRH can enforced such sanctions without prejudice by law with civil and penal penalties applicable based on the violation. Further, the BRH may enforce two or more sanctions for the same violation depending on the seriousness of the breach. Administrative sanctions are also applicable separately for banks (*s.9-circular 99-2*). These sanctions ranged from written notice to withdrawal of license. Financial penalties are also applicable with fines of up to HTG500,000.00 (US\$5,922.00) per violation to HTG300,000.00 (US\$3,553.00) per day of the violation for a period of thirty days after corrective measures were ordered. The sanctions are applicable to breaches of measures required under R.10,

R.12 and R.15. Other administrative penalties are contained in the guidelines for CECs and guidelines for currency exchange companies and range from warning letters to withdrawal of license. Administrative sanctions appear to be proportionate and dissuasive.

251. Criminal sanctions are available for FIs and DBFBPs who commit breaches (*R's.10, 11 16, 20, 21*). These sanctions range from 3 to 15 years imprisonment with fines ranging from HTG20,000,000.00 (US\$236,880.00) to HTG100,000,000.00 (US\$1,184,400.00) depending on the nature of breach (*Art. 61 of the LSMLTF, 2013*). The criminal sanctions for breaches of the highlighted recommendations appear to be proportionate and dissuasive. Criminal and administrative sanctions are not available for violation for the following Recommendations; 6, 8, 9 and 19. Further sanctions do not apply to all breaches by DNFBPs (see R.22 and 23) as some of the recommendations are not being applied to this sector.

252. **Criterion 35.2:** Directors and Managers of FIs except for those stated in c.27.1 can be held accountable and are subject to both administrative and criminal sanctions for breaches. The sanctions available for CECs are however not applicable to managers. Directors and managers of DNFBPs and NPOs are not subject to any sanctioning measures.

**Weighting and conclusion:**

253. The administrative and criminal sanctions that are in place for breaches of the violations of the cited recommendations are proportionate and dissuasive. The sanctions in place apply to both natural and legal persons including directors and management of FIs. The administrative and criminal sanctions in place do not apply to the DNFBPs sector in most instances. Further, there are no sanctions for breaches to requirements of Recommendations 6,8,9 and 19. **Recommendation 35 is rated PC**

**Recommendation 36 – International instruments**

254. Haiti was rated as “NC” for Rec. 36 (Previously R.35 & SR. I) in the 3<sup>rd</sup> Mer. The deficiencies identified were; (i) No implementation of the Vienna, Merida and Palermo Conventions; and (ii) Not being a signatory to the United Nations International Convention for the suppression of the financing of terrorism. The new requirement to R.37 for assessment of the 4<sup>th</sup> round MER saw the addition of a new UN Convention, namely UNCAC (Merida) and the need for Countries to become a party and fully implement the said Convention.

**Criterion 36.1:** Table 33 shows that the authorities in the Republic of Haiti have either signed, assented or ratified the following conventions and is therefore a party to them.

255. *Table # 33: Conventions and dates of ratification*

Conventions	Date of Signature	Date of Accession	Date of Ratification
1988 UN Convention against Illicit Traffic in Narcotic Drugs and		18 <sup>th</sup> September, 1995	

Psychotropic Substances (Vienna Convention)			
2000 UN Convention against Transnational Organised Crime (Palermo Convention)	13 <sup>th</sup> December, 2000		19 <sup>th</sup> April, 2011
United Nations Convention against Corruption (Merida Convention)	10 <sup>th</sup> December, 2003		14 <sup>th</sup> September, 2009
1999 UN Convention for the Suppression of the Financing of Terrorism		10 <sup>th</sup> December, 2010	

256. **Criterion 36.2:** The relevant articles of Vienna Convention have been implemented through the enactment of the Law of February 21, 2001- bearing on the control and suppression of illicit drug trafficking), the law of 2001 and the LSMLTF 2013, as amended. The Palermo Convention through the Law of February 21,2001 (bearing on the laundering of assets from serious crimes) and the LSMLT, 2013, as amended. However, articles 5, 24 and 25 have not been implemented into domestic law. Nevertheless, by virtue to ratification of this convention and the provision of Art. 276- 2 of Haiti’s Constitution that mandate that the all treaties approved and ratified in the manner stipulated by the Constitution are part of the legislation of the country, it therefore means that Haiti is in compliant and has implemented the missing articles despite them being missing from laws cited previously. Some of the relevant articles of the Convention for the Suppression of the Financing of Terrorism have been implemented through the LSMLTF, 2013, as amended and the Executive Order of August 22<sup>nd</sup>, 2016. However, several elements of the conventions are not incorporated into domestic law (see R.6). Some of the relevant articles of the Merida Convention have been implemented through the enactment of the Law of March 12<sup>th</sup>, 2014 (the prevention and repression of corruption). However, Arts.43,44 and 46 are not implemented in the domestic law.

**Weighting and Conclusion**

257. Haiti has signed and is a party to the Vienna, Palermo and TF conventions along with the UNCAC. The officials indicated that the relevant articles of conventions are implemented into domestic laws. Most of the relevant Articles in the convention have been implemented into domestic law with others remaining outstanding. **Recommendation 36 is rated LC**

**Recommendation 37 - Mutual legal assistance**

258. Haiti was rated as “LC” for former R.36 and “NC” for former SR. V in the 3<sup>rd</sup> Mer due to; (i) ineffectiveness of the system, (ii) absence in the criminalising of TF and (iii) restriction on international cooperation due to excessive requirement for lifting bank secrecy. These deficiencies were considered as being addressed by the enactment of the LSMLTF, 2013, as amended. The revised R.37 requires that countries have an adequate legal basis to provide cooperation and have

in place all the needed mechanisms to enhance cooperation. Countries are also required to provide non-coercive assistance regardless of dual criminality provisions.

259. **Criterion 37.1:** Haitian authorities at the request of a foreign State can provide mutual legal assistance (MLA) relative to different acts of ML during investigative, prosecutorial and judicial proceedings (*Art. 5.2.1 of the Law of February 21, 2001*). The authorities can also render MLA relative to both TF and ML in compliance with the principles laid down in the title of the law, while respecting constitutional guarantees (*Art.79 of the LSMLTF 2013*). Haitian authorities can render MLA relative to drug trafficking offences (*Art. 104 of the law of October 4, 2001- illicit drug trafficking*). By virtue of the ratifications of Palermo and in keeping with the Art 276-2 of the Constitution, Haitian authorities can render MLA for the offences of ML, corruption and all serious crimes in Haiti that are punishable by imprisonment of four years under the Haitian penal code but only in circumstances where such involves an organised criminal group<sup>52</sup>. Further, not all offences that are associated predicate offences for ML carries a penalty of four years imprisonment (for example, some types of theft and some type of corruption offences). Further not all offences are predicate offences for ML (see R.3). Therefore, in such circumstance, Haiti cannot render MLA request in accordance with the Conventions for those offences and where such offence does not involve three or more persons<sup>53</sup>. There is provision for rapidly providing MLA requests, but this is only applicable to ML, whereby the request can be submitted via the International Organisation of Criminal Police (Interpol) (*Art. 5.4.2 of the law of February 21, 2001*).
260. **Criterion 37.2:** The MJPS is responsible for the execution of MLA requests that are received through the Ministry of Foreign Affairs (MFA) who is the central authority responsible for transmitting same. However, the authorities did not provide any information regarding the process for the timely prioritisation and execution of MLA requests or a process to monitor the progress of requests or whether a case management system is maintained. The absence of case management system is considered as minor in Haiti circumstances due to the limited number of requests received.
261. **Criterion 37.3:** Haitian authorities upon the request of a foreign State's application for assistance relating to ML/TF, are required to fulfil same, in compliance with the principles laid down in the title of the law, whilst respecting constitutional guarantees (*Art.79 of the LSMLTF 2013*). MLA is also not prohibited in accordance with UN conventions ratified by Haiti, except in cases where the offences are classified as serious crimes and predicate offences carries a penalty of less than four years and same must involves an organised criminal group. Further, there is a requirement for the investigative measures and enquiries used to render assistance to be done in accordance with Haitian law (*Art.80 of the LSMLTF 2013*). Although, the foregoing provisions do not explicitly identify any restrictive and unreasonable conditions, the principles laid down in the title of the law and the constitutional guarantees are unknown and were not provided by competent authorities.

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<sup>52</sup> See Art. 3 of the Palermo Convention- Scope of application

<sup>53</sup> Article 2 (a) of the Palermo Convention- Use of terms.

Therefore, the assessment team was unable to analyse same to determine if they are unreasonable and restrictive.

262. **Criterion 37.4:** The grounds for refusal of an MLA request relative to ML do not include; (a) fiscal matters and (b) on the grounds of secrecy or confidentiality requirements on FIs and DNFBPs (*Art. 5.2.2 of the Law of February 21, 2001*). By virtue of the ratifications of the Conventions (Palermo and UNCAC) and these having force of law, MLA requests cannot be refused on the foregoing grounds for ML and those associated predicate offences that carries a penalty of four years or does not involves organised criminal group.
263. **Criterion 37.5:** Where the requesting State requests the confidentiality of the existence and content of the petition, the authorities are required to do so, except to the extent necessary to give effect to it. Should the foregoing be impossible, the requesting State is required to be notified without delay (*Art. 5.4.6 Law of February 21, 2001*). Further, the unauthorised communication or use of evidence in investigations or proceedings other than those provided by the foreign application is prohibited (*Art. 5.4.9 of the law of February 21, 2001*). The foregoing provisions are only applicable to ML and not to associated predicated offences and TF.
264. **Criterion 37.6:** Haiti legislation does call for the requirement of dual criminality to execute MLA request, including in circumstances where this involves non-coercive actions.
265. **Criterion: 37.7:** There is no requirement for dual criminality in Haiti's legal framework or other measures.
266. **Criterion: 37.8:** (a) Investigative measures and enquiries relative to ML/TF are required to be conducted in accordance with Haitian law in response to a request for MLA (*Art. 80 of the LSMTF, 2013*). However, the weaknesses identified in criterion 31.1 have a cascading effect on the investigative measures that are available to render MLA to foreign counterparts. Nevertheless, the law of February 2001 relative to the laundering of assets obtained from unlawful trafficking of drugs and other serious crimes (*Art 5.2.1*) makes provision for broader investigative measures relative to rendering MLA. However, these are only applicable to ML. The assistance that can be rendered includes; (i) Making persons detained or otherwise available for the purpose of testimony or to assist in an investigation, (ii) delivery of judicial documents, (iii) searches and seizures, (iv) the provision of objects and articles as evidence and (v) certified copies of financial, accounting and company records. Further, by virtue of the convention having force of law, Haiti can rely on Art 18 (3) of the Palermo Convention which provides for a range of investigative techniques to render MLA, with the exception of those offences that do not carry a minimum penalty of four years and are required to be predicate for ML and in circumstances involving organised criminal groups. (b) Competent authorities investigating ML/TF can render assistance to foreign counterparts upon request of MLA with regards to accessing computer systems, along with conducting surveillance and interception of communication through the audio and video recording of conversations and photographs of behaviours solely for the purpose of ML/TF and not associated predicate offences (see R.31). There is no provision within the law for competent authorities to use other powers and investigative techniques outside of those of criterion 31.2.

### ***Weighting and Conclusion:***

267. The MJPS acting on the behalf of the Ministry of International Affairs has been designated with the authority for executing MLA. However, there is no indication MLA is prioritised, neither is there a system for monitoring the progress of requests or a case management system maintained by competent authorities. Haiti has some aspects of the legal framework, albeit with weaknesses, which enables competent authorities to render MLA relative to ML/TF and associated predicate offences in some instances. The investigative mechanisms available to LEAs and other investigative agencies to conduct investigations, are also available for conducting investigations upon the receipt of an MLA request. However, LEAs and investigative authorities are limited in the type and scope of investigative assistance they can render, as is highlighted in R.31 and those specified in the law relative to the laundering of assets which is only applicable to ML. Nevertheless, the Palermo Convention by having force of law does allow for some investigative measures to be use in ML and associated predicate offences that carry a penalty of four years, albeit in circumstances involving organised criminal groups. There is no provision for the maintenance of confidentiality by competent authorities regarding MLA requests and the information contained therein. **Recommendation 37 is rated PC**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

268. Haiti was rated ‘PC’ for R.38 in its 3<sup>rd</sup> MER due to an absence of effective implementation of legal provisions and lack of a mechanism to coordinate seizure and confiscation actions with foreign jurisdictions. These deficiencies remain outstanding. The new FATF requirements are at 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration.

269. **Criterion 38.1:** There is no provision for competent authorities to render MLA relative to the identification of property, proceeds and instrumentalities derived from or intended for use in ML, associated predicate offences and TF. However; sub-criterion (a) A judge hearing an MLA request for interim seizure measures is required to order those measures, following the current legislation. He may also take actions, the effect of which correspond most closely to the requested action (*Art.81 of the LSMLTF. 2013*). Further, there are measures for judicial authorities to make provisional measures such as freezing on their own volition or on application of the PPO (*Art 4.1.2 of the law of 2001*). Sub-criterion (c) Confiscation proceeding does not apply to instrumentalities intended for use in ML, associated predicate offences and TF (*see R.4*). sub-criteria (e) The confiscation order must be for an asset that is a constituent element of an offence and is located in Haiti or an obligation to pay a sum of money of a corresponding value of the asset in question (*Art.82 of the LSMLTF. 2013*). The foregoing provisions cited at a-e are applicable to property laundered, proceeds from instrumentalities used in and property of corresponding value relative to ML/TF and some associated predicate offences, as some offences are not predicates for ML (*See R.3/R.4*). Further, there is no information to suggest the process/actions to be taken is expeditious.

270. **Criterion 38.2:** Although Haitian laws make provisions for non-conviction-based confiscation proceedings in Haiti (*Art.4.2.9 (1) of the law of February 21, 2001*), (*Art.4.2.10 of the law of February 21, 2001*) and (*Art 65 (b) of LSMLTF*). Art 82 of the LSMLTF, 2013 governs MLA requests relative to confiscation and does not make a distinction between conviction based and non-conviction-based confiscation. The law merely mandates that the confiscation must be for an asset that is constituent element of an offence and is located in Haiti. Confiscation in Haiti applies to post conviction asset recovery proceedings and proceedings for the recovery of assets when there is not sufficient evidence to prosecute the offenders

271. **Criterion 38.3:** (a) No measures were cited by the Haitian authorities. (b) There exist no measures for the management of assets frozen as a result of MLA request. However, the Haitian state has the power to dispose of any property confiscated on its territory at the request of foreign authorities (*Art 5.2.6 of the Law of February 21, 2001*). The foregoing is not applicable to associated predicate offences and TF.

272. **Criterion 38.4:** There are no measures permitting Haitian authorities to share confiscated property with other countries.

#### **Weighting and conclusions:**

273. Haiti's compliance with R.38 is limited to providing MLA relative to the freezing, seizing and confiscation of assets laundered, proceeds from and instrumentalities used in ML/TF and some associated predicate offences. Haiti's law does allow for rendering of MLA in all instances of confiscation including non- conviction based. A considerable amount of the criteria has not been addressed, leading to significant deficiencies. **Recommendation 38 is rated PC.**

#### **Recommendation 39 – Extradition**

274. Haiti was rated "LC" and "NC" for former R.37 and SR. V respectively in the 3<sup>rd</sup> round MER due to the following deficiencies: (i) dual criminality required but similar offences taken into account, (ii) absence of data on effective implementation and insufficient effectiveness of the legal mechanism in place and (iii) absence of criminalisation of TF. The deficiencies were addressed by the enactment of the LSMLTF, 2013, as amended. The revised FATF Standards require countries to have an adequate framework for ensuring that extradition is rendered without no unreasonable or restrictive conditions. Further, countries should have clear and efficient processes to facilitate the timely execution of extradition requests and have a case management system.

275. **Criterion 39.1:** (a) ML and TF are extraditable offences (*Art. 84 of the LSMLTF 2013*) in Haiti. ML and other serious offences that carry a penalty of four years and more are also extraditable offences under Art. 16 of the Palermo Convention by virtue of this having force of law as result of its ratification by Haiti and the provision of Art 276-2 of Haiti's Constitution in circumstances involving organised criminal groups. (b) Extradition requests are generally received by the Ministry of Foreign Affairs through the diplomatic channels, forwarded to the MJPS for onward transmission to the PPO. Art. 10 to 15 of the Extradition law of 2012 outlines the procedure for

extradition, including the requirement for the request to be transmitted through diplomatic channels and the transmission process. However, there is no case management system in place, neither does the process makes provision for the timely execution of extradition requests including prioritisation where appropriate. (c) Extradition requests are governed by the procedures and principles set out in extradition treaties in force between Haiti and the requesting State and the legal and constitutional guarantees protecting the rights of Haitian nationals. The procedures, principles, legal and constitutional guarantees are unknown to the assessment team, therefore, the assessment team was unable to examine same to determine whether they are unduly restrictive. Nevertheless, some of the conditions placed on extradition for ML within the Law of February 21, 2001 appear to be unduly restrictive. They include; but are not limited to;

- (i) If the person whose extradition can no longer be prosecuted under the law either because of the passage of time or an amnesty or some other reason (these other reasons are not stated in the law) (*Art.5.3.3 (d) of the law of February 21, 2001*)-(taking into consideration the jurisdiction's perceived high level and history of corruption, this remains a concern for the assessment team); and
- (ii) If the competent Haitian authorities decide not to engage in proceedings against the interested person in reason of the infraction for which extradition is requested, or to put an end to the engaged proceedings against the said person in reason of the said infraction (*Art.5.3.4 (a) of the law of February 21, 2001*).

276. **Criterion 39.2:** (a) Haitian authorities are not permitted to extradite their nationals based on the Constitution and the Law governing Extradition (*Art. 41 Haitian Constitution 1987/Rev 2012 & Art.4- Extradition Law 1912*). Nevertheless, (b) Haitian authorities at the behest of the requesting State, are required to submit a case to the relevant competent authorities to bring proceedings against the individual(s) concerned in cases where extradition was refused (*Art. 5.3.5 of the of law 2001*). However, this provision is not applicable to all predicate offences and TF.

277. **Criterion 39.3:** Dual criminality is a requirement for extradition. However, extradition can be satisfied if the offence mentioned or a similar offense is provided for in the law of requesting State and Haiti (*Art.5.3.2 of the law of February 21, 2001*). The foregoing is only applicable to ML offences and not associated predicate offences and TF as Art. 5.3.1 specifically identifies the offences for which extradition can be granted. Further, the fact that law of February 21, 2001 is only applicable to ML and not associated predicate offences and TF creates a gap in the report where this is the only measure cited.

278. **Criterion 39.4:** There are simplified mechanisms to facilitate extradition in Haiti. However, this is only applicable to ML offences. Where the person whose extradition is requested, explicitly consents to their extradition, the competent authority is required to grant the extradition after receipt of a provisional arrest warrant (*Art 5.4.8 of law of February 21, 2001*). Further, apart from the diplomatic channels, extradition requests may be communicated through Interpol, direct communications by foreign authorities to Haitian judicial authorities, postal mail or by any other means of rapid transmission (*Art 5.4.2 of law of February 21,2001*).

### ***Weighting and Conclusion:***

279. Haitian laws do not permit competent authorities to extradite nationals of Haiti for the offences of ML/TF. Nevertheless, Haitian authorities can bring action at the request of the foreign State against the individual whose extradition is sought, but only in cases relative to ML. There are provisions for simplified extradition measures, but these are only applicable for ML offences. There is a process for communicating of extradition requests. Nevertheless, there is no case management system in place. Competent authorities did not provide evidence to show that the measures provided for in the legislation in some instances are not unduly restrictive. Taking into consideration the nature of the jurisdiction and the perceived high risk of corruption, some of the restrictive measures in place that can prevent extradition are of concern to the assessment team. The jurisdiction at the request of the requesting State can consider prosecuting the individual, should the extradition be refused. **Recommendation 39 is rated PC**

### ***Recommendation 40 – Other forms of international cooperation***

280. Haiti was rated “NC” for R.40 in the 3<sup>rd</sup> MER. The deficiencies identified were (i) restrictions on international cooperation due to excessive requirements for lifting bank secrecy, (ii) incapacity of financial sector supervisory bodies to participate in international cooperation and (iii) absence of strict oversight of the exchange of financial information reserved for foreign counterparts’ intelligence Unit. Haiti in its 12<sup>th</sup> FUR, took corrective measures to address the deficiencies identified.

### ***General Principles***

281. **Criterion 40.1:** UCREF is authorised to provide the widest range of international co-operation in relation to ML and TF within the framework of conventions or on the principle of reciprocity. However, there is no explicit provision for UCREF to share information spontaneously or upon request. Nevertheless, the provisions are broad enough to facilitate the sharing and exchange of information spontaneously or upon request. UCREF is also a member of the Asset Recovery Inter-Agency Network of the Caribbean (ARIN-CARIB) and is authorised to share information through this informal mechanism relative to the recovery of assets. The BRH can cooperate with foreign supervision institutions with the view to exchange information. The HNP is a member of Interpol and shares information with its foreign counterpart via this medium and by virtue of being a member of WCO, the AGD can share information with its foreign counterparts.

282. **Criterion 40.2:** (a) Arts. 3 and 27 of the organic law of UCREF provides the legal basis for that competent authority to provide co-operation. The BRH can exchange information with foreign supervisory institutions in accordance with Arts. 98 and 180 of the Law Governing Banks and other FIs. Apart, from UCREF and the BRH no measures were provided by the authorities to show that other competent authorities have legal basis for providing co-operation. (b) Measures cited by the authorities do not address this sub-criterion. (c) The DCPJ and the AGD can use the secure mechanism afforded by being members of Interpol and the WCO to transmit and exchange information. There is no secure gateways and mechanism for UCREF and the BRH to exchange

information. (d) No measures were cited by the authorities to address the requirements of this sub-criterion. (e) No measure was cited to address this sub-criterion.

283. **Criterion 40.3:** With the exception of UCREF who has signed a mere two MOUs (St. Maarten and Dominican Republic), no information was provided showing other competent authorities having a wide range of bilateral and multilateral agreements in place to share information.

284. **Criteria 40.4- 40.6:** There are no measures to address these criteria

285. **Criterion 40.7:** The Board of Directors, members and staff of UCREF are subject to professional secrecy and are not required to divulge to anyone or to any authority whatsoever who has not been vetted to receive confidential information (*Art. 24 of the organic law*). The BRH may communicate information with authorities in other countries which are bonded by professional secrecy, with the same guarantee as in Haiti (*Art. 180 of the Law governing Banks and other FIs*). There is however no provision for UCREF to refuse the production of information, if there are no guarantee that the requesting authority can protect the information effectively. No measures were cited for LEAs to comply with the requirement of this criterion

286. **Criterion 40.8:** UCREF is authorised to conduct enquiries on behalf of their foreign counterparts and exchange information with them. (*Art. 3 and 27 of the Organic Law of UCREF*). No measures were provided to show that the other competent authorities are authorised to conduct enquiries on the behalf of foreign counterparts and exchange with them all information that would be obtainable by them if such enquiries were carried out domestically.

#### ***Exchange of Information between FIUs***

287. **Criterion 40.9:** UCREF is permitted to provide co-operation on ML and TF in accordance with Art. 3(d) of the organic law of UCREF. The foregoing allows UCREF to exchange financial information, relative only to ML and TF and not associated predicate offences with its foreign counterparts within the framework of conventions or in enforcement of the principle of reciprocity. Further, UCREF is permitted to exchange information with foreign services in charge of receiving and processing declarations of suspicious transactions, when these entities are subject to similar secrecy requirements, regardless of the nature of these services (*Art. 27 of the organic law of UCREF*).

288. **Criterion 40.10:** There are no measures to address this criterion.

289. **Criterion 40.11:** (a) UCREF has the powers to exchange financial information in accordance with Arts. 3 and 27 of the organic law of UCREF. Therefore, other relevant information accessible or obtainable directly or indirectly by UCREF, under R. 29 (a) and (b), cannot be exchanged with their foreign counterparts (also the limitation that exist in R.29 has an impact here). (b) Outside of the information that UCREF is authorised to obtained under R.29, there is no provision to obtain information otherwise. Therefore, this sub-criterion is not applicable to UCREF.

#### ***Exchange of information between financial supervisors***

290. **Criterion 40.12:** The BRH is authorised to communicate information to its foreign counterparts that is responsible for licensing or monitoring of banks and FIs, subject to reciprocity and

confidentiality (*Art.180 of the law governing banks and other FIs*). There is no limit to the type of information that can be shared by the BRH.

291. **Criterion 40.13:** The BRH can communicate information to the competent authorities in other countries for the granting of licenses or for the oversight of banks and financial institutions on condition of reciprocity, and on the condition that these authorities themselves observe professional secrecy. The BRH can also receive this information, which would be limited to that needed to carry out its mandate, and provided that the beneficiaries observe professional secrecy with the same guarantees as in Haiti. There is no limit to the type of information that can be exchanged by the BRH (*Art. 180 of the law governing banks and other FIs*)

292. **Criterion 40.14:** (a-c) There is no differentiation to the types of information that can be provided by the BRH who is the prudential supervisor for banks and other FIs contained in the law governing banks and other FIs. Therefore, it can be interpreted that the BRH as a supervisor can provide regulatory, prudential and AML/CFT information to their foreign counterparts (*Art. 180 of the law governing banks and other FIs*)

293. **Criterion 40.15:** Article 98 of the law governing banks and other financial institutions, gives broad powers for the BRH to exchange information with foreign counterparts. Further, Art. 180 of the foregoing law also provides for the BRH to exchange information on the basis of reciprocity. Therefore, the BRH can conduct enquiries on the behalf of foreign counterparts, including for group supervision. However, there is no provision that allows foreign counterparts to conduct enquiries themselves in the jurisdiction.

294. **Criterion 40.16:** There are no measures to address this criterion.

#### ***Exchange of information between law enforcement authorities***

295. **Criterion 40.17:** There are no measures to address this criterion.

296. **Criterion 40.18:** The HNP is a member of Interpol and is thereby governed by the practices and regime established by Interpol regarding law enforcement cooperation. However, there is no provision for law enforcement to use their powers including investigative techniques available in accordance with domestic law to conduct enquiries and obtain information on the behalf of foreign counterparts.

297. **Criterion 40.19:** There are no measures to address this criterion.

#### ***Exchange of information between non-counter-parts***

298. **Criterion 40.20:** There are no measures to address this criterion.

#### ***Weighting and conclusion***

299. UCREF and the BRH as competent authorities can exchange information with their foreign counterparts, spontaneously and upon request, subject to reciprocity based on the provisions that governed these competent authorities. Except for the HNP which can share information via

Interpol, there are no secure gateways for competent authorities to share information. There are no clear processes for the security of information received by competent authorities. However, both UCREF and the BRH have some level of measures for ensuring that they and requesting authorities are bonded by confidentiality to some extent to ensure privacy and protection of the information. There are no measures for competent authorities to provide feedback as to the usefulness of the information they received. Further, there is no requirement to ensure that authorisation is received prior to the dissemination of information exchanged. UCREF can only exchange information strictly of a financial nature that relates to ML and TF. There is no provision for law enforcement to form joint investigative teams and no mechanism for them to share information relative to AML/CFT with their foreign counterparts. There are also no clear processes for prioritisation and timely execution of requests or for safeguarding of the information. There are no measures in place to address several of the criteria, specifically those relative to LEAs. ***Recommendation 40 is rated NC***

## 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	NC	<ul style="list-style-type: none"> <li>• The country has not undertaken any type of ML/TF risk assessment to identify, assess and understand its risks.</li> <li>• No measures requiring all FIs and DNFBPs to manage mitigate risk.</li> <li>• No measures requiring FIs and DNFBPs to take measures that are commensurate with the jurisdiction's risk assessment.</li> <li>• Absence of the requirement for all supervisors to ensure that FIs and DNFBPs are implementing the objectives as required by the recommendation.</li> <li>• The requirement to identify, assess, understand and document ML/TF risks are not applicable to all FIs and DNFBPs.</li> <li>• All FIs and DNFBPs are not required to have senior management approved policies to mitigate risk identified, monitor implementation of controls and enhance them when necessary.</li> <li>• FIs and DNFBPs are not required to take simplified measures to manage and mitigate risk, if lower risk is identified.</li> </ul>
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> <li>• Absence of national AML/CFT policies that are informed by risk identified.</li> <li>• No measure/mechanism to facilitate cooperation at the operational level.</li> <li>• No measure for co-operation and co-ordination to combat PF of WMD.</li> </ul>
3. Money laundering offence	PC	<ul style="list-style-type: none"> <li>• Not all predicate offences for ML are not covered.</li> <li>• No provision for standalone ML</li> <li>• No provision for self-laundering</li> <li>• The ancillary offenses of abetting and facilitating are missing from the law.</li> </ul>
4. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>• Confiscation proceeding is not applicable to the benefits derived from predicate offences or the proceeds or instrumentalities used in ML and associated predicate offences.</li> <li>• Confiscation is not applicable to property intended or allocated to be use in TF, terrorist act or terrorist organisation.</li> </ul>

		<ul style="list-style-type: none"> <li>• Absence of provision allowing competent authorities to identify, trace property subject to confiscation.</li> <li>• No measures to take steps that will prevent or void actions that will prejudice the jurisdiction's ability to freeze, seized or recover property subject to confiscation.</li> <li>• No measures to take appropriate investigative measures.</li> <li>• No provision for the management and disposal of assets frozen or seized.</li> </ul>
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> <li>• The criminalising of the offence of TF does not incorporate all the elements of the UN Convention.</li> <li>• All criminal conduct of TF is not incorporated into domestic law as required by the convention.</li> <li>• TF offences does not apply to the financing of the travels of FTFs.</li> <li>• The offences of organising, directing others and contributing to the commission of an offence are missing from the legislation.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	NC	<ul style="list-style-type: none"> <li>• There is no competent authority/court explicitly identified as having the responsibility for proposing persons and entities to the relevant UN Security Committees.</li> <li>• No mechanism stated for identifying targets based on the designation criteria that are set out in the relevant UNSCRs.</li> <li>• No mechanism(s) for addressing the requirements of c 6.1 (d) and (e).</li> <li>• No mechanism(s) for addressing the requirements of c 6.2 (c) and (e).</li> <li>• Competent authorities do not have the power to obtain the widest range of information to identify persons/entities for designation.</li> <li>• There is no provision for designation to be conducted ex-parte.</li> <li>• No indication that TFS is implemented without delay.</li> <li>• No Competent Authority for enforcing sanctions relative to TFS.</li> <li>• No requirement(s) for FIs and other persons holding funds to freeze same without prior notice.</li> <li>• No measures to address the requirement of c.6.5(c) (d) (f).</li> <li>• No requirement for FIs to report attempted transactions.</li> <li>• No measure(s) to address c.6.6 (d) (e) (f) and (g)</li> </ul>

7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>• No measures in place to address the requirements of R.7</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• Haiti has not identified the number of NPOs that fall within the definition of NPOs.</li> <li>• No requirement for the identification of threat(s) posed by terrorist entities to NPOs</li> <li>• There is no requirement for periodic assessment of NPOs vulnerabilities to terrorist activities and implementing measures to mitigate such threats.</li> <li>• There is no requirement to conduct outreach and educational programs to raise awareness on the potential vulnerabilities of NPOs to TF abuse and risk.</li> <li>• No measures in place to address the requirements of c 8.2 (b) (c) and (d).</li> <li>• The rules for ensuring that funds allocated to NPOs are not used for TF have not been drafted and announced.</li> <li>• NPOs are not monitored and supervised for TF purposes. Further, there is no risk-based supervision of this sector.</li> <li>• No measures for addressing the requirements c 8.4-c.8.6</li> </ul>
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> <li>• The prohibition of financial secrecy is not applicable to all FIs</li> <li>• The BRH is only limited to share information with foreign counterparts and not domestic competent authorities.</li> <li>• Sharing of information is limited by shortcomings identified in R. 13,16 and 17.</li> </ul>
10.Customer due diligence	PC	<ul style="list-style-type: none"> <li>• Although some CDD measures apply to banks, CECs and funds transfer companies in several instances, the measures that exist, do not apply to all FIs.</li> <li>• No mechanism for FIs to verify that an individual is authorised to act on the behalf of the customer.</li> <li>• Banks are only mandated to identify the identity of the individual acting on behalf of the customer in circumstances of uncertainty and not in all circumstances. There is no requirement for the other FIs in Haiti to comply with the requirement of c.10.14</li> </ul>

		<ul style="list-style-type: none"> <li>• Banks are only required to update and verify the identity of their customers when there is doubt surrounding the veracity of the information previously obtained and not in all circumstances, including for higher-risk customers. There is no requirement for other FIs in Haiti to comply with this requirement (see c.10.7 (b))</li> <li>• There is no provision for banks and CECs to understand the ownership structure for customers who are legal persons or legal arrangements. Banks are also not required to understand the nature of their customers' business. There are no provisions for FIs operating in Haiti to comply with the requirement of c.10.8.</li> <li>• Banks and CECs are not required to identify names and relevant persons having senior management positions in legal persons. There is no requirement for all FIs to identify and verify customers who are legal arrangements through the measures set out at c.10.9. Apart from banks and CECs that have some measures in place though limited, other FIs that are operational in Haiti do not have measures in place to address the requirement of c.10.9</li> <li>• Apart from those available for banks and CECs there are no measures requiring other FIs operational in Haiti to identify who has controlling ownership interest in legal person. Further, there are no measures for all FIs to comply with the requirement to identify and take reasonable measures to identify and verify the BO through the requirement set out in criterion 10.10 (b).</li> <li>• No measures for addressing the requirements of criteria 10.12 and 10.13.</li> <li>• Apart from those available to banks, fund transfer companies and CECs there is no indication as to when CDD measures should be applied when FIs are conducting a business relationship with customer or an occasional transaction.</li> <li>• Banks are required to have risk management procedures in place stipulating the conditions to conduct business prior verification but only in circumstances where the customer is not present and therefore does not fully conform with the requirement of c.10.15. No measures for the other FIs operating in Haiti to comply with this criterion.</li> <li>• No measure for FIs to include materiality as a factor for due diligence on existing account nor are they</li> </ul>
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		<p>required to ensure that measures are applied at appropriate time, taking into consideration whether and when CDD measures have previously been undertaken and adequacy of the information obtained.</p> <ul style="list-style-type: none"> <li>• No provision permitting FIs when suspecting ML/TF is involved to cease the CDD process, due to reasonable belief that the process will tip-off the customer and instead file a STR.</li> <li>• Apart from those available to banks, CECs and funds transfer companies there are no requirements for the other FIs operational in Haiti to perform EDD when ML/TF risk are higher.</li> <li>• Apart from those available to banks and CECs there are no requirements mandating the other FIs operating in Haiti to not commence business relationship or the transaction when they are unable to perform CDD.</li> </ul>
11. Record keeping	PC	<ul style="list-style-type: none"> <li>• There are no measures requiring FIs to keep all records (records obtained through account opening, business correspondence and result of analysis undertaken).</li> <li>• No requirement(s) for the retention of records following the termination of the business relationship or after the date of an occasional transaction.</li> <li>• No requirement(s) for documents including all CDD and transaction records to be provided swiftly to the authorities upon request</li> </ul>
12. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>• There is no requirement for FIs to determine whether a BO is a PEP.</li> <li>• Apart from provisions applicable banks and CECs, there is no requirement for other FIs operating in Haiti to seek the approval of senior management to continue the business relationship with a customer who is identified as a PEP.</li> <li>• There are no provisions for addressing the requirements of c.12.4 relative to life insurance policies and PEPs.</li> <li>• There is no requirement to identify BO who is may be identified as a PEP.</li> </ul>

		<ul style="list-style-type: none"> <li>• Apart from banks, there is no requirement for other FIs operating in Haiti to identify the source of wealth of PEPs (foreign) source of wealth and funds of persons identified as PEPs. Further, there is no requirement for no FIs to identify the foregoing when it applies to BO who are identified as PEPs</li> </ul>
13. Correspondent banking	PC	<ul style="list-style-type: none"> <li>• No provision requiring FIs to clearly understand the respective AML/CFT responsibilities of each institution.</li> <li>• The measures in place does not fully allow for FIs to fully address the quality of supervision, including determining whether the respondent's institution is the subject of ML/TF investigation or regulatory action.</li> <li>• Although there is a requirement for the respondent bank to provide identification information with respect to "<i>payable-through accounts</i>" this does not fully conform with the requirement of criterion 13.2 (b) as CDD information is more detail than identification information.</li> <li>• No requirement that prohibits the continuing relationship with shell banks.</li> <li>• The measures in place are only limited to the establishing or maintaining of relationship correspondent relationship with <i>banks</i> that allow their accounts to be use by shell banks rather than to all respondent FIs as required by the FATF (see-criterion 13.3)</li> </ul>
14. Money or value transfer services	PC	<ul style="list-style-type: none"> <li>• The definition of MVTS is limited and not in keeping with the FATF Standards.</li> <li>• No measure(s) for ensuring that MVTS that use agents include them in their AML/CFT programmes and monitor their activities.</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>• No requirement for the jurisdiction and FIs to identify, assess and understand the TF risk associated with new technologies.</li> </ul>

		<ul style="list-style-type: none"> <li>The requirement for FIs to conduct ML risk assessment associated with new technology does not apply to all FIs</li> </ul>
16.Wire transfers	NC	<ul style="list-style-type: none"> <li>Not all FIs are required to obtain all information of wire transfers of a particular amount.</li> <li>There is provision detailing the information on the beneficiary that banks and other FIs are required to obtain.</li> <li>There is no requirement for cross-border wire transfer in batch files to contain required originator and beneficiary information.</li> <li>There are no measures for addressing the requirements of c. 16.9 to c 16.17</li> <li>The deficiencies identified in R.6 primarily the inability to freeze without delay and without prior notification are applicable to this recommendation.</li> </ul>
17.Reliance on third parties	NC	<ul style="list-style-type: none"> <li>Although there is a requirement for FIs to ensure that 3<sup>rd</sup> parties have due diligence records and record keeping procedures, these are not in compliance with the requirements of R.10 and R.11.</li> <li>No measures for addressing the requirements of c.17.2 and 17.3</li> </ul>
18.Internal controls and foreign branches and subsidiaries	NC	<ul style="list-style-type: none"> <li>No obligation for the compliance officer to be employed at the management level.</li> <li>No requirement for internal audit functions to be independent.</li> <li>No provision for the sharing of information within the group relative to a STRs, its underlying information or whether such was submitted to the competent authorities.</li> <li>No requirement for safeguarding and confidentiality of information exchanged.</li> <li>No obligation pertaining to the application of additional measures to manage ML/TF risks and informing the home branch where it does not permit proper implementation of AML/CFT measures.</li> </ul>
19. Higher-risk countries	NC	<ul style="list-style-type: none"> <li>No requirement(s) for FIs to apply EDD, proportionate to the risk, business relationships and transactions with legal and natural persons from countries for which this is called for by the FATF.</li> </ul>

		<ul style="list-style-type: none"> <li>• No provision for the application of countermeasures, that are proportionate with risk identified either by a call from the FATF or independently of the FATF.</li> <li>• No measure(s) in place for ensuring that FIs are advised of concerns about the weakness(es) in the AML/CFT systems of other countries.</li> </ul>
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> <li>• Reporting of STRs are not mandatory for all categories of offences that are predicate to ML/TF.</li> <li>• There is no requirement to file STRs on attempted transactions.</li> </ul>
21. Tipping-off and confidentiality	PC	<ul style="list-style-type: none"> <li>• No protection for FIs against criminal, civil or administrative actions that have filed a STR/disclosure in good faith.</li> <li>• Tipping off provisions are not applicable to FIs, directors, officers and employees who disclose that a STR that has a nexus to criminal conduct outside of ML/TF has been filed or is being filed with the UCREF.</li> </ul>
22. DNFBPs: Customer due diligence	NC	<ul style="list-style-type: none"> <li>• All CDD requirements (R.10) are not applicable to DNFBPs</li> <li>• There is no information as to when the five years' time-period for record keeping by casinos begins.</li> <li>• The threshold that should be established by the Ministry of Finance and Economy has not been set.</li> <li>• No measures for addressing the requirements of c.22.3 to c.22.5</li> </ul>
23. DNFBPs: Other measures	NC	<ul style="list-style-type: none"> <li>• The definition of lawyers does not incorporate all aspect of the activities/definition of lawyers in the FATF glossary. Therefore, not all lawyers are required to file STRs with UCREF.</li> <li>• There is no requirement for DNFBPs to file STRs relative to attempted transactions.</li> <li>• DNFBPs are not required to file STRs that are connected to the associated predicate offences missing under R.3.</li> <li>• Tipping Off provisions are not applicable to FIs, directors, officers and employees who disclose that a report is filed or is being filed with UCREF that has a nexus to criminal conduct or an associated predicate offence.</li> <li>• Protection against criminal, civil and administrative sanctions are not applicable to the institutions themselves.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no requirements for DNFBPs to apply either EDD or other countermeasures that are proportionate to risk when called upon to do so by the FATF or independent of such call.</li> <li>• No measure(s) for ensuring for advising DNFBPs of concerns and weaknesses in the AML/CFT systems of other countries.</li> </ul>
24. Transparency and beneficial ownership of legal persons	NC	<ul style="list-style-type: none"> <li>• There is no provision in place for the obtaining and recording of BO information.</li> <li>• No provision for company to disclose the identity of members of the board, shareholders and main leaders of legal persons.</li> <li>• Inability of the assessment team to determine whether sanctions are proportionate or dissuasive as this was not provided by authorities.</li> <li>• No measures exist for addressing the requirements of most of the criteria (24.2- 24.15)</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	NC	<ul style="list-style-type: none"> <li>• There are measures available for addressing legal arrangements. However, the authorities indicated that no legal arrangements nor any of its components are available and operating within the jurisdiction.</li> </ul>
26. Regulation and supervision of financial institutions	NC	<ul style="list-style-type: none"> <li>• The requirements of R.26 is not applicable to all FIs.</li> <li>• No measures to prevent the continuous operation of shell banks.</li> <li>• Fitness and propriety do not apply when there is a change in shareholders.</li> <li>• No measures for addressing the requirements of c.26.4 to 26.6.</li> </ul>
27. Powers of supervisors	PC	<ul style="list-style-type: none"> <li>• All FIs are not subject to supervision, monitoring and the requirements of R. 27</li> </ul>
28. Regulation and supervision of DNFBPs	NC	<ul style="list-style-type: none"> <li>• DNFBP sector is not regulated and supervised.</li> </ul>
29. Financial intelligence units	PC	<ul style="list-style-type: none"> <li>• No provision authorising UCREF to disseminate the result of its analysis that involves suspicion of predicate offences.</li> <li>• UCREF is allowed to disseminate in cases involving serious evidence of ML/TF which is greater threshold than the requirement to disseminate on the basis of suspicion.</li> <li>• UCREF does not have the authority to access non-public and commercial databases.</li> </ul>

		<ul style="list-style-type: none"> <li>• There is no requirement for UCREF to disseminate information and its analysis spontaneously or upon request, except for cases of ML/TF.</li> <li>• There is no procedure in place for the handling, storing and dissemination of information.</li> <li>• There are no procedures in place to ensure that UCREF employees have the necessary security clearance and understand their responsibilities in the handling of information.</li> <li>• The overarching powers of the board of directors can have implications on the ability of UCREF to conduct its functions independently.</li> <li>• UCREF is not permitted to enter into agreement and arrangement with all domestic competent authorities.</li> <li>• There is no provision for UCREF deploy its resources freely from undue influence in an effort to conduct its functions.</li> <li>• There are no dedicated or protected channels for the dissemination of information.</li> <li>• UCREF has not submitted an unconditional application for membership into the Egmont Group, neither is there any evidence of the organisation being fully engaged in the application process.</li> </ul>
30.Responsibilities of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> <li>• There are no measures for ensuring that LEAs and Anti-corruption officials can identify, trace and freeze property that can be confiscated or are the proceeds of crime in an expeditious manner.</li> </ul>
31.Powers of law enforcement and investigative authorities	NC	<ul style="list-style-type: none"> <li>• There are no provisions authorising competent authorities to request the production of records from FIs, DNFBPs and legal and natural persons.</li> <li>• There are no provisions for the taking of witness statements.</li> <li>• There are no provisions for the searching of persons and properties and the seizing of evidence.</li> <li>• There are no provisions for LEAs to conduct undercover operations.</li> <li>• There are no provisions authorising LEAs to conduct controlled delivery.</li> <li>• The ordering of audio and video recording along with photographs, coupled with access to computer systems and servers are not applicable when investigating associated predicate offences.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no measures authorising LEAs to identify within a timely manner whether natural or legal persons control accounts.</li> <li>• There are no provision(s) to identify assets without prior notification of the owner.</li> <li>• There are no provisions authorising competent authorities investigating ML, associated predicate offences and TF to request all information held by UCREF.</li> </ul>
32.Cash couriers	NC	<ul style="list-style-type: none"> <li>• The declaration system is not applicable to cross-border transportation of cash through mail and cargo neither is it applicable to BNIs</li> <li>• The threshold amount for declaration has not been established by the BRH.</li> <li>• There is no measure for a traveller to give truthful information and provide information to AGD officials upon request regarding the origin and intended purpose the currency or BNIs.</li> <li>• There are no sanctions for persons who make a false declaration or disclosure.</li> <li>• The process for transmission of declaration of cash and BNIs to UCREF is unknown.</li> <li>• There is no measure(s) for ensuring domestic cooperation and coordination among AGD, immigration and other authorities regarding the implementation of R.32.</li> <li>• There is no measure(s) authorising the seizure of BNI when that are connected to ML/TF. Further, there is no measure authorising the seizure of cash and BNI that have a nexus to predicate offences.</li> <li>• No timeframe for the retention of cash seized.</li> <li>• No measures for addressing the requirements of c.32.9 to 32.11.</li> </ul>
33.Statistics	NC	<ul style="list-style-type: none"> <li>• Competent authorities are not maintaining comprehensive statistics on ML investigations, prosecutions and property frozen and seized.</li> </ul>
34.Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• Not all FIs are provided with guidelines.</li> <li>• The DNFBPs sector despite its vulnerability to ML has not been provided with any guidelines.</li> <li>• No measures for UCREF to provide feedback and no indication that such is provided to FIs and DNFBPs.</li> </ul>
35.Sanctions	PC	<ul style="list-style-type: none"> <li>• There are no criminal and administrative sanctions available for breaches to R.6, 8, 9 and 19.</li> </ul>

		<ul style="list-style-type: none"> <li>• Sanctions are not applicable to all breaches committed by the DNFBPs and FIs</li> <li>• Directors and Managers of some FIs, DNFBPs and NPOs are not subjected to sanctions.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• Some of the Articles of the Terrorist financing and the Merida conventions not implemented in the domestic legal framework.</li> </ul>
37. Mutual Legal Assistance	PC	<ul style="list-style-type: none"> <li>• No measures for rendering MLA relative to all associated predicate offences, specifically those that are not associated predicate for ML and does not carry a minimum penalty of four years and for associated predicate offence that were not committed by an organised crime group.</li> <li>• No indication that assistance can be rendered rapidly.</li> <li>• There is no documented case management system in place relative to MLA requests.</li> <li>• No clear process for timely prioritisation and execution of MLA request.</li> <li>• Inability of the competent authorities to clearly states and demonstrates that the grounds for rendering assistance are not subjected to unduly or unrestrictive conditions.</li> <li>• The grounds for refusal of request do not apply to associated predicate offences and TF.</li> <li>• Confidentiality of MLA request is not applicable to associated predicate offences and TF.</li> <li>• The investigative measures available to render assistance for MLA requests are limited and do not apply in all circumstances to associated predicate offences and TF.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• No measures for arranging and co-ordinating seizure and confiscation with other countries.</li> <li>• There are no asset sharing provisions</li> </ul>
39. Extradition	PC	<ul style="list-style-type: none"> <li>• There is no documented case management system for extradition.</li> <li>• Some of the measures for rendering extradition are seemingly unduly restrictive, whilst others are not provided for in the legislation.</li> <li>• There is no indication that cases where extradition requests were not granted can be submitted to the relevant competent authorities for action without delay.</li> </ul>

		<ul style="list-style-type: none"> <li>• Extradition is not possible in all cases where dual criminality is missing (See R.3- e.g. tax evasion not criminalised)</li> <li>• Simplified measures are not applicable to predicate offences and TF.</li> </ul>
40. Other forms of international cooperation	NC	<ul style="list-style-type: none"> <li>• LEAs do not have legal basis to facilitate the sharing of information relative to ML, associated predicate offences and TF.</li> <li>• There are no secure mechanisms in place to facilitate the sharing of information by UCREF and the BRH.</li> <li>• There are no clear processes in place for competent authorities to prioritise and execute request.</li> <li>• There are no processes for ensuring the safeguard of information by competent authorities.</li> <li>• Competent authorities have no signed any bilateral and multilateral agreements with their foreign counterparts (outside of UCREF who has sign a mere two.</li> <li>• There are no measures to address criteria 40.4 - 40.6.</li> <li>• There are no measures to ensure that LEAs maintain confidentiality of information exchanged or requested.</li> <li>• Besides UCREF, there are no provisions for competent authorities to conduct enquiries on the behalf of their foreign counterparts.</li> <li>• No provision for UCREF to share all relevant information outside of financial information with its foreign counterparts.</li> <li>• No provision for UCREF to provide feedback to foreign counterparts upon request or whenever possible on the usefulness of the information provided, as well as the outcome of the analysis conducted.</li> <li>• No measures to address criteria 40.16 - 40.20.</li> </ul>

**GLOSSARY OF ACRONYMS**

<b>Abbreviation</b>	<b>Full name in English</b>
<b>AML</b>	Anti- Money Laundering
<b>AFI</b>	Alliance of Financial Inclusion
<b>AGD</b>	General Administration of Customs
<b>ARIN-CARIB</b>	Asset Recovery Inter-Agency Task Force in the Caribbean
<b>ASBA</b>	Association of Banking Supervision of America
<b>ATNB</b>	National Association of Borlottes
<b>BAFE</b>	Bureau of Economic and Financial Crimes
<b>BAC</b>	Criminal Affairs Bureau
<b>BAFOS</b>	Bureau of Special Fund Administration Office
<b>BLTS</b>	The Controlling of Narcotics Crimes Brigade
<b>BRH</b>	Central Bank of Haiti
<b>CDD</b>	Customer Due Diligence
<b>CEC</b>	Savings and Loans Co-operatives
<b>CFT</b>	Counter-Terrorism Financing
<b>CNLBA</b>	Anti-Money Laundering Committee
<b>CONALD</b>	National Commission for the fight against Drug Trafficking
<b>CPC</b>	Civil Procedure Code
<b>CTRs</b>	Currency Transactions Reports
<b>DEA</b>	Drug Enforcement Administration
<b>DG</b>	Director General
<b>DNFBPs</b>	Designated Non- Financial Businesses and Professions
<b>DCPJ</b>	Central Directorate of the Judicial Police
<b>EDD</b>	Enhanced Due Diligence
<b>FATF</b>	Financial Action Task Force
<b>FBH</b>	Federation of Bars of Haiti
<b>FEAs</b>	Foreign Exchange Agents
<b>FIs</b>	Financial Institutions

<b>FIU</b>	Financial Intelligence Unit
<b>GDP</b>	Gross Domestic Product
<b>HNP</b>	Haitian National Police
<b>HTG</b>	Haitian Gourdes (Haitian currency)
<b>INTERPOL</b>	International Police
<b>LEH</b>	Lottery of the Haitian State
<b>LPPC</b>	Law on the Punishment and Prevention of Corruption
<b>LSMLTF</b>	Law Suppressing Money Laundering and Terrorist Financing
<b>MCI</b>	Ministry of Commerce and Industry
<b>MFA</b>	Ministry of Foreign Affairs
<b>MJPS</b>	Ministry of Justice and Public Security
<b>ML</b>	Money Laundering
<b>MLA</b>	Mutual Legal Assistance
<b>MPEC</b>	Ministry of Planning and Commerce
<b>MVTS</b>	Money Value Transfer Service
<b>NIO</b>	National Identification Office
<b>OCPAH</b>	Order of Chartered Professional Accountants
<b>OVACT</b>	Office of Insurance of Vehicles
<b>NPOs</b>	Non-Profit Organisations
<b>NGOs</b>	Non-Government Organisations
<b>NRA</b>	National Risk Assessment
<b>PEP</b>	Political Exposed Person
<b>PF</b>	Proliferation Financing
<b>PPO</b>	Public Prosecutor Office
<b>SNJH</b>	Union of Notaries of the Courts of Haiti
<b>STR</b>	Suspicious Transaction Report
<b>WMD</b>	Weapon of Mass Destruction
<b>ULCC</b>	Anti-Corruption Unit
<b>UCREF</b>	Central Financial Intelligence Unit

<b>UN</b>	United Nations
<b>UNCAC</b>	United Nation Convention against Corruption
<b>UNSCRs</b>	United Nation Security Council Resolutions



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July 2019

## Anti-money laundering and counter-terrorist financing measures – Republic of Haiti

### *Fourth Round Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in the Republic of Haiti as at the date of the on-site visit June 25 to July 6, 2018. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Republic of Haiti's AML/CTF system and provides recommendations on how the system could be strengthened.