INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

MUTUAL EVALUATION REPORT

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SÃO TOMÉ AND PRÍNCIPE

MAY 10 2013

São Tomé and Príncipe is a member of GIABA. This evaluation was conducted by GIABA and was adopted as a 16th evaluation by the GIABA Plenary on 10th May 2013.

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LIST OF ABBREVIATIONS AND ACRONYMS

A-G	Attorney-General
AML	Anti-Money Laundering
AU	African Union
BISTP	International Bank of Sao Tomé and Príncipe
C	Compliant
CA	Court of Auditors
CC	Civil Code
CBSTP	Central Bank of Sao Tome and Principe
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CPC	Civil Procedure Code
CPIA	Country Policy and Institutional Assessment
CPLP	Community of Portuguese Speaking Countries
Db	Dobra
DNFBPs	Designated Non-Financial Businesses and Professions
EEZ	Exclusive Economic Zone
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FONG	Federation of Non-Governmental Organizations
FT	Financing of Terrorism
GDP	Gross Domestic Product
GIABA	Groupe intergouvernemental d'action contre le blanchiment d'argent en afrique) (Inter Governmental Action Group against Money Laundering in West Africa)
HIPC	Highly Indebted Poor Countries
ICRG	International Cooperation Review Group
IMF	International Monetary Fund
JDZ	Joint Development Zone
INTERPOL	International Police
KYC	Know Your Customer
LC	Largely Compliant
MDAs	Ministries, Departments, Agencies
MEQ	Mutual Evaluation Questionnaire
MFIC	Ministry of Finance and International Cooperation
ML	Money Laundering
MLSTP	Movimento Popular de Libertação de São Tomé e Principe
MOJ/A-Gs	Ministry of Justice and Attorney-General's Office

MSC	Multi-sectoral Commission
MVTs	Money Value Transfer services
NA	National Assembly
NBI	National Bureau of Interpol
NC	Non compliant
NCCT	Non- Cooperating Country and Territory
NGO	Non-Governmental Organisation
PC	Partially Compliant
PEP	Politically Exposed Person
PIC	Criminal Investigation Police
PN	National Police
PP	Public Prosecutor
PPC	Penal Procedure Code
R.	Recommendation
RRG	Regional Review Group
SR	Special Recommendation
SRO	Supervisory Regulator Organization
SSU	Specialized Services Unit
STP	Sao Tome and Principe
STRs	Suspicious Transaction Reports
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNSCR	United Nations Security Council Resolution
USD	United States Dollars
W.C.O	World Customs Organization

PREFACE

1. The evaluation of the Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) regime of the Republic of Sao Tome and Principe was based on the Forty Recommendations, 2003 (updated in February, 2009) and the Nine Special Recommendations on Terrorist Financing, 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Assessment Methodology, 2004 (updated in February, 2009). The evaluation was based on the laws, regulations and other materials supplied by the authorities of the Republic of Sao Tome and Principe, and information obtained by the evaluation team during its onsite visit to Sao Tome and Principe from 5 to 14 December, 2012 and subsequently. During the on-site, the evaluation team met with officials and representatives of all relevant government agencies and the private sector of Sao Tome and Principe. A list of the bodies met is set out in Annex II to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of staff of the GIABA Secretariat, GIABA regional and International experts in criminal law, law enforcement and regulatory issues. The assessment team consisted of Madam Margarida M. P. Godhino Dias, Technical Consultant and Senior Advisor, Banking Supervision Department, Bank of Portugal as Financial Sector Expert; Mr. Samuel Thompson Essel, Chief Executive Officer, Financial Intelligence Centre, Ghana as Legal Sector and Law Enforcement Sector Expert; and Dr. Antonio Varela, Former Director of Financial Intelligence Unit, Cape Verde as Financial Intelligence Unit and Designated Non-Financial Businesses and Professions (DNFBPs) Sector Expert. The On-Site visit was coordinated by Mrs. Gina Wood, Legal Officer and Ms. Naponcia Gomes, Secretary from the GIABA Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines, other requirements, the regulatory and other systems in place to prevent money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs). They also examined the capacity, implementation, and effectiveness of these systems. This report provides a summary of the AML/CFT measures in place in Sao Tome and Principe as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Sao Tome and Principe's level of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

3. The assessment team would like to express its appreciation to the authorities of STP for their cooperation throughout the on-site visit.

1 General

1.1 General information on the country and its economy

1. The Democratic Republic of São Tomé and Príncipe (STP) is a small island State located in the Gulf of Guinea. It consists of two main islands, the island of São Tomé with a surface area of eight hundred and fifty nine square kilometers (859 km²) and the island of Principe with approximately 142 km². The country does not have land borders and is located relatively near the coast of Nigeria, Cameroon, Equatorial Guinea and Gabon. Its Exclusive Economic Zone (EEZ) covers about one hundred and seventy thousand square kilometres (170,000 km^2).

2. STP is one of the smallest independent States in the world and the second smallest in Africa, after the Seychelles. STP became independent in 1975. Of volcanic activity in origin, the archipelago is characterized by its extremely varied terrain, high levels of rainfall and soils of medium fertility.

Economy and Agriculture

3. The economy of São Tomé and Príncipe is principally agriculture-based. At independence, Portuguese-owned plantations occupied 90% of the cultivated area. After independence, control of these plantations passed to various state-owned agricultural enterprises. The main crop of São Tomé is cocoa, representing about 95% of exports. Other export crops include copra, palm kernels, and coffee. However, a land distribution system dominated by large plantations failed to assure diversification of agriculture or reduce the country's dependence on the outside world. With a Gross Domestic Product (GDP) estimated at one hundred and fifty one million Euros (€151,000,000.00) in 2010 and a population of approximately one hundred and sixty three thousand (163,000), STP remains a poor country with a relatively undiversified economy. The per capita income is approximately 926 Euros, and the country is thus is classified among low income countries or Least Advanced Countries (LACs).

4. In the early 1980s, the lack of monitoring of agricultural enterprises by the State and the absence of conditions favourable to agricultural workers contributed towards feeding an irreversible urban migration. The imbalances in the São Tomean economy resulted in reduction in crop production, drop in exports, increase in imports, resulting in a negative impact on the country's balance of payments. In 1987, the country began its first Structural Adjustment Program (SAP) with the technical assistance by the International Monetary Fund (IMF) and the World Bank. A considerable portion of the financial resources coming from this program was used in the rehabilitation of cocoa plantations which did not yield positive results.

5. The population growth rate of STP is approximately 1.6% (2011 estimate) and the proportion of the population living in urban centres approaches 60%, with the majority residing in the capital (São Tomé). With regard to human development, the country is ranked 144th among the group of 187 countries with low human development. The country is classified among the group of countries showing mid-level development, ranking 127th out 169 countries in the

2010 HDI report, which highlights its growth in the areas of health and education, while family incomes are low.

6. The performance of STP's economy over the years has been strongly affected by obstacles that are circumstantial in nature, to a large degree resulting from a persistently unfavourable international environment with repercussions on the domestic plane. These repercussions are felt mainly at the level of investment and economic growth, macroeconomic stability, in particular with regards to inflation, and the foreign balance of the country's economy, which necessarily affects the living standards of its citizens.

7. After a lengthy economic crisis during the 1990s, a series of economic reforms were implemented starting in 1999. The country reached the Highly Indebted Poor Countries (HIPC) decision point in December 2000 and Completion Point in March 2007, at which time the International Monetary Fund (IMF) and the World Bank Group's International Development Association (IDA) agreed to provide US$314 million in debt relief under the Enhanced HIPC Initiative. Notwithstanding the HIPC relief, the debt burden is still high: São Tomé and Príncipe's debt ratios to exports and government revenues remain among the highest in the world. São Tomé and Príncipe is vulnerable to exogenous shocks and was hit hard by the global increase in prices of food and crude oil in 2008. The global economic downturn resulted in a significant decrease in fiscal revenues, including lower than expected tourism receipts and donor assistance, lower remittances, and consequently, the postponement of foreign direct investment.

8. Economic growth was estimated at 4.5% in 2012, marking a gradual recovery. The annual average rate of inflation has trended down from 26% in 2008 to 14% in 2010, to a single digit percentage of 9.6 in 2012. The deceleration in inflation was also the result of tighter fiscal and monetary policies since 2008, which stabilized the exchange rate. Poverty remains widespread affecting more than 50% of the population (2010). The country is rated "Fragile State" as assessed using the Multilateral Development Bank's indices based mainly on economic vulnerability and insularity. The country has a harmonized WB/AfDB Country Policy and Institutional Assessment (CPIA) rating of 3.154 in 2010, which falls below the cut-off score of 3.2 or more for non-fragile states. The economic sectors that were determining factors in driving this growth were those of commerce, as a result of the strong dynamics that exist in the commercial sector, construction, transportation and services, including tourism.

9. STP recently discovered petroleum deposits that promise good prospects of development and is putting in place strong macro-economic policies to prepare for the exploration of oil resources within its territorial waters and in the shared zone with Nigeria. Reforms have been initiated that lay the foundations for managing future oil revenues into the budget; and the country has recently launched a competitive bidding process on exploration of its petroleum blocks located in its territorial waters. STP has received considerable support through a series of Bank projects (development policy operations (DPOs) and Technical Assistance), to develop the institutional and legislative reforms that are critical to govern STP's offshore petroleum deposits, located in both the Joint Development Zone (JDZ) shared with Nigeria and STPs own EEZ.

10. The country was recently admitted by the Board of the Extractive Industries Transparency Initiative (EITI) as an EITI Candidate Country and has been making considerable

strides to improve transparency in the oil sector. Such efforts include capacity building of the National Petroleum Agency, Petroleum Oversight Committee and the Public Registration and Transparency Information Office. Also, legislation governing the EEZ has been developed in line with best international standards, and STP has recently launched a competitive bidding process for prospecting petroleum blocks located in its EEZ. With the arrival of the petroleum era, it is hoped that production will provide the country with an unprecedented opportunity to obtain the resources needed to escape the poverty trap in which it is currently mired, generating resources that would propel human development and basic infrastructure including the improvement of access to remote rural areas.[1] The following table provides some economic indicators relating to STP from 2007-2012:

Sao Tome and Principe Selected Economic Indicators 2007-2012

	2007	2008	2009	2010	2011(e)	2012(e)
GDP at constant prices (%)	6.0	5.8	4.0	4.5	5.0	6.0
Fiscal balance including grant (% of GDP)	121.6	14.9	-19.2	-7.9	-7.4	-10.9
Reserves (end Dec - in months of imports)	4.1	6.4	5.8	3.7	5.4	5.1
Trade Balance (% of GDP)	-41.8	-47.6	-39.6	-44.2	-50.3	-58.6
Consumer Prices annual average (%)	18.5	26.0	17.0	14.4	10.6	6.7

Source: IMF Regional Economic Outlook – Sub Saharan Africa, April 2011 (São Tomé and Príncipe – Maximizing Oil Wealth for Equitable Growth and Sustainable Socio-Economic Development. African Development Fund)

System of Government

National Government

[1] The World Bank

11. STP's first Constitution was approved in a joint session of the Politburo of the *Movimento popular de libertação de São Tomé e Principe* (MLSTP) and the Constituent Assembly on 5 November, 1975 and was passed by the Constituent Assembly on 12 December, 1975. The Constitution was revised on 30 December, 1980 (Constitutional law n° 1/80), 31 December 1982 (law n° 2/82), amended on 31 December 1987 (*Lei de emendaconstitucional n° 1/87*) and revised again on 28 March, 1990 (pluralism). The new Constitution adopted in March 1990 was approved by a referendum of 22 August, 1990 and entered into force on 10 September, 1990. It established a lay, independent, unitary and democratic State, whose sovereignty resides in universal, secret, direct ballots. It created a quasi-presidential regime but with a strong Parliament.

12. São Tomé has been operating a multiparty system since 1990. Under Article 78 of the Constitution, the President is elected by universal, direct and secret ballot. A person can only be elected President of STP if that person is a citizen of origin, one of the parents is from STP, is more than thirty five (35) years, has no other nationality and that within three years immediately preceding the application date and has permanent residence in the national territory. The President-elect takes office before the National Assembly (NA) on the last day of the term of the outgoing President or, in case of vacancy by election on the eighth day after the day of publication of the election results. The mandate of the President as provided by Article 79 is for five years. Where there is a vacancy, the election of the new President of the Republic will be held within ninety days and new President is to begin a new mandate. Article 79(3) prohibits the re-election of the President for a third consecutive term, or during the years immediately following the end of the second consecutive term. Thus, the President can hold office for only two terms at a time.

13. The President is the Supreme Commander of the armed forces and reports to the National Assembly. The Prime Minister is appointed by the President after consultation with political parties represented in the National Assembly. The Prime Minister chooses the fourteen members of cabinet. He reports to the President and the National Assembly. Article 84 of the Constitution empowers the President to exercise powers and jurisdiction through presidential decrees. The President of the Republic may dissolve the National Assembly in case of serious crises. In such respects, the regime is a quasi-presidential one.

14. The single-chamber Parliament of 55 members is elected for a term of four years by universal adult suffrage and by proportional representation by constituency. It sits for ordinary sessions twice a year or in an extraordinary session on proposal of the President, the cabinet or two-thirds of its members. The Assembly elects its own Speaker and a permanent commission. The Constitution may only be revised by a three-quarter majority of the Assembly on the basis of the amendments presented by a two-thirds majority. This revision may be ratified by referendum. The National Assembly may pass a vote of no confidence against the government.

15. Since independence in 1975, STP has evolved from a one party, socialist state to a liberal, multi-party democratic society. The political scene has been marked by frequent changes in Government, including two short-lived and bloodless military uprisings. After 2006, STP became politically more stable following the formation of a coalition Government composed of

the Liberation Movement Social Democratic Party, the Force of Change Democratic Movement Liberal Party and the Democratic Convergence Party Reflection Group, with a majority of 43 out of 55 seats in parliament. Thus, STP is now among the African countries implementing democratic reforms, including the legalization of political parties.

16. The Independent Democratic Action (ADI) party won the legislative elections held in August 2010 by obtaining 26 out of 55 parliament seats. The presidential elections of July/August 2011 were won by former President Manuel Pinto da Costa, who had ruled the country between 1975 and 1991. Incumbent President de Menezes completed his tenure and stepped down in accordance with the Constitution. According to the Freedom House report 'Freedom in the World 2012', STP achieved a score of 2 out of 7 in both areas assessed by the Report, i.e. 'political rights' and 'civil liberties.

Local government

17. Administratively, the country is divided into seven municipal districts, six in Sao Tome and one comprising Principe. Governing councils in each district maintain a limited number of autonomous decision-making powers, and are re-elected every five years.[2] An element of decentralization is guaranteed by the autonomous status of the second island, Principe, which has its own local government and regional assembly (parliament), and autonomous administrations including freely elected district assemblies in the main island's six districts.[3] The district assemblies elect district councils (Câmarasdistritais). Only officially recognized parties may contest for election, either individually or in coalition.[4]

18. Thus, the Government of STP is structured into five categories of institutions as summarized as follows:

- 7 sovereign entities - The Presidency of the Republic, the NA, the Prime Minister's Office (Gabinete do Primer Ministro), the Supreme Court (Supremo Tribunal de Justiça) and its subordinate courts at regional and district levels, the Office of the Attorney General of the Republic (Procurador-Geral da República), the Court of Accounts (Tribunal de Contas) and the Constitutional Court (Tribunal Constitucional);
- 13 Ministries;
- 1 Regional Assembly for the Special Autonomous Region (Autarquía Especial) of Príncipe;
- 6 District Councils (cámaras distritais) in São Tomé (Agua Grande, Cantagalo, Caue, Lemba, Lobata and Mezochi) and
- 8 parastatal enterprises, which operate as self-funding commercial entities – the telecommunications company (CST), the post office (Empresa dos Correios) the airports authority (ENASA), the ports authority (ENAPORT), the water and electricity company (EMAE), the vegetable oil company (EMOLVE – Empresa de Óleos Vegetais), the

[2] Source: U.S. Department of State (Background Notes) - Sao Tome and Principe
[3] Source: Federal Foreign Office (Germany) - Sao Tome and Principe: Government and Politics
[4] Source: Centre d'étude d'Afrique noire (CEAN) - Sao Tome and Principe

MonteCafé coffee company and the public bus company (Agência de Transportes Colectivos).

19. The Sovereign entities and the ministries comprise the Central Government, while the Special Autonomous Region of Príncipe and the six District Councils comprise the Regional and Local Governments.

Legal System and Hierarchy of Laws

20. The legal system of São Tomé and Principe is practically similar to that of the Portuguese legal system. The one jurisdiction that differs, the Tribunal Contra-revolucionario, was abolished in February 1989. The agreement signed on 26 November 1974 between the Portuguese government and the MLSTP served as the legal code in the islands until 12 December, 1975, when the new Constitution was formally implemented. Judicial power is exercised by the Supreme Court and the other tribunals. The Supreme Court, the highest jurisdiction in the land, is answerable to the NA and its members are appointed by the NA.

21. Article 120 of the 2003 Constitution designates the courts as sovereign bodies with power to administer justice in the name of the people. In this regard, the courts are empowered to administer justice to ensure the rights and legally protected interests of citizens, resolve conflicts of public and private interests and suppress violations of laws. Article 121 provides for an operationally independent judiciary that is only subject to the laws of the country. Under Article 122, the decisions of the courts are to be in accordance with law and are binding on all public and private entities and prevail over any other authorities in the country.

22. Article 131 of STP's Constitution establishes the Constitutional Court with specific power to administer justice in matters of legal and constitutional nature. The Court is to sit to judge when there is a matter. Article 132 provides that the Constitutional Court is composed of five judges, appointed by the National Assembly. Three of the judges designated are to be selected from among judges and others from among jurists. The mandate of the judges of the Constitutional Court is for five years. The President of the Constitutional Court is elected by the Judges. Judges of the Constitutional Court enjoy the guarantees of independence, tenure and impartiality.

23. Article 133 of the Constitution empowers the Constitutional Court to determine the unconstitutionality and illegality of rules that contravene the Constitution or the principles enshrined in the Constitution as provided under Article 144.

24. The Constitutional Court is also empowered to:

a. Ascertain the death and permanent physical incapacity of the President, as well as the temporary inability from performing their duties;

b. Check loss of office of the President, as provided in Article 85(3) and Article 86(3);

c. Give final rulings on the legality and validity of the acts of the electoral process, in accordance with law;

d. Verify the death and declare the inability to exercise the function of any candidate for President of the Republic for the purposes of Article 78(2);

e. Check the legality of the formation of political parties and their coalitions, as well as assess the legality of their names, initials and symbols, and their extinction, according to the Constitution and the law;

f. Ascertain in advance, the constitutionality and legality of referenda through national, regional and local authorities, including the assessment of the requirements for their electorate;

g. Determine the application of Representatives, under the law, the appeals relating to the disqualification and the elections held in the NA and the Regional and Local Assemblies;

h. Judge the actions of contesting elections and decisions of organs of political parties, under the law, are subject to appeal; and

i. Exercise such other functions as are conferred by the Constitution and the law.

25. **Sources of Law**: STP subscribes to the rules and principles of general international law or common law. Sources of Law in STP are the Constitution, Statutes, Customary Law, Court Precedents and STP Law Reports. Under Article 13 of the Constitution, rules provided for in international conventions, treaties and international agreements validly adopted and ratified by the respective bodies prevail in the legal system of Sao Tome and Principe after its official publication, while internationally binding on Sao Tome and Principe. They take precedence over all legislation and internal regulations of equal value after their entry into force at both the international and domestic levels.

26. **The Constitution:** The Constitution is the supreme law of STP. Under Article 144 of the Constitution, rules that contravene the Constitution or the principles enshrined in the Constitution are considered unconstitutional. However, the unconstitutionality of organic or formal international treaties regularly ratified by STP does not prevent the application of the standards of the treaties in STP, provided that such standards are applied in the legal system of other parties to the treaties, unless such unconstitutionality result in the violation of a fundamental provision. A declaration of unconstitutionality or illegality generally has binding effect from the entry into force of the rule declaring the unconstitutionality or illegality.

27. **Legislation**: Legislation in STP consist of laws, decree-laws, decrees and regional executive decrees (Article 70 of the Constitution). The laws and decree-laws have concurrent persuasion and subject to the corresponding laws of decree-laws published by legislative authorization and those who develop the basic principles of legal regimes. The regional decrees and regional executive decrees deal with matters of specific interest to the Autonomous Region of Príncipe and are not exclusive to the NA or the Government may not have the fundamental principles of the general laws of the Republic. The decree-laws and decrees deal with matters concerning the organization and functioning of the Government. The laws and decree-laws,

whose purpose involves unreserved nationwide application, are considered as general laws of the Republic. Article 70(6) prohibits any law from creating other categories of legislation or granting nature's power to other acts, to effectively interpret, integrate, modify, suspend or revoke any of its principles. The Regulations are to specify the laws that seek to regulate or determine the subjective competence and objective for their issuance. The Court has also the competence to control the conformity of normative (legislative) acts of State organs to the Constitutional provision.

28. The President is required to assent to the Bills approved by the NA and submitted to the President within 15 days from the date of their receipt. If there is no assent, the NA will reconsider the legislation, and if it obtains a favourable vote of a qualified majority of Representatives, the President has to assent to the Bill within eight days.

29. **Delegated Legislation**: A number of institutions, including government departments, local authorities, public corporations and private corporations are empowered by the legislature to implement and administer the requirements of laws in STP.

30. **Statutes**: The Primary Statutes are the Penal Code, the Penal Procedure Code (PPC) and the Civil Code (CC).

31. **Court Precedents:** Court decisions can serve as a source of law or aid interpretation of laws. Under Article 122 of the Constitution, Court decisions are binding on all public and private entities and prevail over any other authorities in STP. Furthermore, Article 129(4) of the Constitution provides that decisions taken by the Constitutional Court are generally binding and will be published in the Official Gazette. Additionally, Article 156(2) provides that the judgments of the Supreme Court, on legal and constitutional nature, are not appealable and are published in the Official Gazette. They are generally binding in cases of abstract and concrete monitoring involving unconstitutionalities.

32. **Legal Education**: A person who completes a course of study in law is required to undergo one year internship before qualifying to practice as a lawyer.

33. **Treaties**: STP has signed, ratified or is otherwise party to the following International Conventions:

SN.	INTERNATIONAL INSTRUMENT	DATE OF ADOPTION	ENTRY INTO FORCE	DATE OF SIGNATURE(S)/ RATIFICATION (R) /ACCESSION (a)
1.	United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention)	1988	11 November 1990	20 June, 1996 a

SN.	INTERNATIONAL INSTRUMENT	DATE OF ADOPTION	ENTRY INTO FORCE	DATE OF SIGNATURE(S)/ RATIFICATION (R) /ACCESSION (a)
2.	International Convention for the Suppression of the Financing of Terrorism (CFT Convention)	9 December 1999	10 April 2002	12 April, 2006 a
3.	United Nations Convention against Transnational Organized Crime (the Palermo Convention)	15 November 2000	29 September 2003	12 April, 2006 a
4.	Convention on Offences and Certain Other Acts Committed on Board Aircraft	1963		4 May, 2006
5.	United Nations Convention against Corruption (Merida Convention)	31 October 2003	14 December , 2005	12 April, 2006 R
6.	Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	15 November 2000	25 December 2003	23 August, 2006 a
7.	Convention for the Suppression of Unlawful Seizure of Aircraft	16 December, 1970.		8 May, 2006
8.	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	15 November 2000	28 January 2004	12 Apr 2006 a
9.	Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime	31 May 2001	3 July 2005	12 April, 2006 a

SN.	INTERNATIONAL INSTRUMENT	DATE OF ADOPTION	ENTRY INTO FORCE	DATE OF SIGNATURE(S)/ RATIFICATION (R) /ACCESSION (a)
10.	International Convention for the Suppression of Acts of Nuclear Terrorism	13 April 2005	7 July 2007	21 Sep 2005 s
11.	International Convention for the Suppression of Terrorist Bombings	15 December, 1997	23 May 2001	12 April, 2006 a
12.	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	23 September, 1971		8 May, 2006
13.	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents	14 December, 1973	20 February, 1977	12 April, 2006 a
14.	International Convention against the Taking of Hostages	17 December, 1979	3 June 1983	23 Aug 2006 a
15.	Convention on the Physical Protection of Nuclear Material,	3 March, 1980		
16.	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	24 February, 1988	6 August,1989	8 May, 2006
17.	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	10 March, 1988	1 March, 1992	5 May, 2006

SN.	INTERNATIONAL INSTRUMENT	DATE OF ADOPTION	ENTRY INTO FORCE	DATE OF SIGNATURE(S)/ RATIFICATION (R) /ACCESSION (a)
18.	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf	10 March, 1988	1 March, 1992	5 May, 2006
19.	Convention on the Marking of Plastic Explosives for the purpose of Detection	1 March, 1991		
20.	International Convention for the Suppression of Acts of Unlawful Acts of Nuclear Terrorism	2005		
21.	Amendment to the Convention on Physical Protection of Nuclear Material	2005		
22.	Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	2005		
23.	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf	2005		
24.	OAU Convention on the Prevention and Combating of Terrorism,	1999		
25.	The Plan of Action for the Prevention and Combating of Terrorism adopted by OAU	2002		

34. STP is a member of the African Union (AU), African Economic Community (AEC) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).

a. Transparency and good governance

35. STP has made great strides toward developing its democratic institutions and further guaranteeing the civil and human rights of its citizens. Debates in the NA have been carried out in an open, democratic, and legal manner, and the Sao Tomean law has been properly applied. A

number of political parties actively participate in government and openly express their views. Overall, respect for human rights is strong. Freedom of the press is respected, and there are several independent newspapers in addition to the government bulletin. Further, there is no evidence of the government engaging in repressive measures against its citizens, and respect for individuals' rights to due process and protection from government abuses is widely honored. Freedom of expression is accepted. The 2010 edition of the Ibrahim index of African Governance ranked STP 11th out of 53 countries in terms of civil liberties and political rights.[5]

*b. Culture of AML/CFT compliance *

36. STP is yet to institutionalize a proper culture of AML/CFT compliance. Amongst the banks and insurance sectors, there is a high level of understanding of the risk posed by criminals, but this is not the case for other institutions and the DNFBPs despite the wide coverage of the legal framework of DNFBPs and their roles specified in the AML/CFT Law. Overall, there is a limited understanding by the private sector of the laundering risks presented by white collar criminals (e.g., high-level corruption, tax crimes, and professional money launderers). The compliance culture is also impaired by fear of victimization for providing information due to the size of the population. Nevertheless, the authorities are intensifying efforts to ensure compliance with AML/CFT requirements.

c. Measures to combat corruption

37. Sao Tome and Principe has ratified the UN Convention against Corruption and has signed the African Union (AU) Convention on the Prevention and Combating of Corruption. STP was ranked 72 out of one hundred and seventy four (174) countries in 2012 Corruption Perception Index (CPI) by Transparency International with a score of **42** out of a survey of 3 used and ahead of most countries in West Africa. Its lower and upper Confidence Intervals were 34 and 50, respectively.[6] STP's current position on the CPI is an improvement on its 2011 and 2010 rankings of 100 out of one hundred and eighty two (182) countries with a score of 3. The Corruption Perceptions Index scores countries on a scale from 0 (highly corrupt) to 100 (very clean). While no country has a perfect score, two-thirds of countries score below 50, indicating a serious corruption problem.[7] This means that corruption is still a serious problem in STP. During the on-site visit, Assessors visited two institutions, the Court of Accounts (CA) and the Financial Court, mandated to fight corruption in STP. However, interactions with these institutions revealed that corruption is endemic but existing institutions are not adequately empowered and resourced to fight corruption in a more effective manner.

38. The CA was established by Law no3-9/1999 (Lei Orgânica do Tribunal de Contas) as a fully independent entity, separate from the Supreme Court (Supremo Tribunal de Justiça), with

[5] São Tomé and Príncipe – Maximizing Oil Wealth for Equitable Growth and Sustainable SocioEconomic Development, African Development Bank (AfDB),

[6] The confidence interval reflects some of the uncertainty associated with a country's CPI score. It is calculated by looking at the range of scores given by all the data used to calculate that country's score, such that a wider interval reflects a wider variation in the data for that country.

[7] Transparency International on 2012 CPI

the responsibilities of the Supreme Audit Institution of the State. Its findings are taken into consideration by the NA and the Government in making policies and legislation. According to officials of the CA, the CA used to prevent the execution of contracts when there were evidence of corruption, but it is no longer empowered to take such actions. Series of prosecutions were undertaken in 2010 after which a law was passed transferring the anti-corruption powers of the CA to the MOF and its budget reduced by two-thirds.

39. Law 3/2007 on the System of Financial Administration of the State (Lei sobre o Sistema de Administração Financeira do Estado) – commonly known as the Lei SAFE establishes the principles and the general rules for the formulation and execution of the budgets of administrative entities. These are applicable to the whole Public Administration and comprise rules and procedures for the organisation, formulation, presentation, discussion, approval, amendment and execution of the budget. It also provides for rules on the formulation, presentation, discussion and approval of the annual accounts of the State Budget and specifies the roles and modes of functioning of the five sub-components (subsistemas) of the SAFE system – namely, the subsistemas for Budget, Treasury (Tesouro Público), Public Accounting, State Assets (Património do Estado) and Internal Control.

40. Law no.8/2009 (Regulamento de Licitações e Contratações Públicas) approves the regulations, governing public tenders and contracts. It covers public purchases which are managed by contract either for the contracting of public works, the procurement of goods, the procurement of services, the licensing of public works or the licensing of public services. Following the directions lay out in the Lei SAFE, this Law confirms the direct responsibility of the ministries, departments and agencies of the State for their own procurement processes and specifies the procedures to be followed. It also establishes within the Ministry of Planning and Finance the Gabinete de Coordenação e Seguimeinto do Sistema de Licitações e Contratações Públicas (COSSIL) as the entity responsible for coordination of the procurement process, definition of operating policies, capacity development and maintenance of a procurement data base.

41. São Tomé and Príncipe is focusing on building institutional and legal capacity to improve economic management and to strengthen accountability of public and natural resources. Support from World Bank has resulted in improved legislation on Public Finance Management, including a new Procurement Law, new tax laws, strengthened institutional capacity and key tools such as a computerized integrated financial management information system. A new operation is under preparation to continue Bank assistance in the public sector and ensure that the Public Accounts of the State are prepared for the first time, making the government more accountable to the National Assembly.[8]

1.2 General Situation of Money Laundering and Financing of Terrorism

42. The AML / CFT regime of STP is still at its nascent stage. The intention of the government of STP to make the country a financial and commercial center of the region will require robust AML / CFT controls. There are eight banks operating in the country. The first

[8] The World Bank

bank to be licensed, the International Bank of St. Tomé and Príncipe (BISTP), the largest bank in the country accounts for 49% of the market.

43. Although the authorities of the country do not appear to have a clear understanding of the threats and vulnerabilities of money laundering and terrorist financing, some facts cause concern and could be unduly exploited by money launderers. With regard to terrorist financing, the authorities indicated that this crime is not yet a concern and that, to the best of their knowledge, there have been no acts of terrorism or emergence of terrorist group in the territory of Sao Tome.

44. In 2007, the FATF expressed concern about significant deficiencies in the AML/CFT regime of STP. The deficiencies included inadequacy of the AML law in relation to international standards- the law does not cover ancillary offences and a significant number of predicate offences of money laundering. The FATF also identified the absence of an operational Financial Intelligence Unit (FIU), lack of criminalisation of terrorist financing, absence of mechanism to implement obligations relating to the freezing and confiscation of terrorist funds under United Nations Security Council Resolutions (UNSCRs)1267 and 1373 and their successor resolutions, lack of capacity of the enforcement agencies to effectively undertake their roles and potential weaknesses in supervision of the financial sector, particularly in relation to AML/CFT regulatory framework and controls, as some of the strategic AML/CFT deficiencies in STP. Consequently, the FATF placed STP on the list of Non-Cooperating Countries and Territories (NCCT)[9].

45. In collaboration with the FATF and support by GIABA, STP agreed on a National Plan for the Fight against Money Laundering and Terrorism Financing and published it in the Daily Bulletin of the Republic through Decree nº 44/2009 of 17 December, 2009. The adoption of the Action Plan necessitated the establishment of an institutional framework for the realization of the actions and targets outlined in the National Plan. Additionally, the country recently published the Rules of the Financial Intelligence Unit of the Democratic Republic of Sao Tome and Principe in the Official Gazette no. 104, through Decree n. º 25/2012, thus setting up an institutional framework for achieving the planned goals and actions in the Action Plan.

46. With the support of GIABA and other development partners, the government of STP has made significant efforts to create legal and institutional frameworks aimed at combating money laundering and the financing of terrorism.

47. Consequently, one major progress is the approval of Law nº 15/2008 of November 14, the Law to Prevent and Combat Money Laundering and Terrorism Financing. The Law was subject to amendments having been approved by the National Assembly on 22 June, 2010, and published in the Daily Bulletin of the Republic nº 84 on September 27, 2010. However, there still exist some deficiencies in the AML/CFT Law as it does not provide adequately for the criminalization of money laundering and terrorist financing, and reverts to the Penal Code to sanction all crimes of this type. The AML/CFT Law require reporting entities to submit suspicious transaction reports (STRs) to the Attorney-General. The Central Bank has issued Guidelines which require financial institutions to submit STRs to the FIU, but the Guidelines apply to only banks and insurance companies.

[9]The NCCT list has been replaced by the FATF's International Cooperation Review Group (ICRG) Process.

48. In February 2010, the FATF placed STP on a targeted review to further examine the most significant deficiencies in the country's AML/CFT system that pose risk to the international financial system and to identify actions that should be taken to address those deficiencies. The targeted review also identified important strategic deficiencies in STP's AML/CFT system and sought confirmation of the government's commitment at a high political level to adequately address the deficiencies as quickly as possible, including implementing an action plan agreed with the Regional Review Group (RRG) of the International Cooperation Review Group (ICRG). Due to STP's proximity to West Africa, the FATF directed GIABA to assist the country to improve its AML/CFT regime. STP has been cooperating with the RRG and has submitted six follow-up reports to the RRG. In furtherance of this, STP applied for and was granted membership of GIABA.

49. A draft Penal Code was promulgated by the President and published in the Official Gazette no. 95 as Law n. º 6/2012 of 6 August 2012. The Code incorporates elements from the following conventions and protocols which STP has signed, ratified or is otherwise a party to.

50. The country is yet to adopt a declaration system which will require every individual entering or leaving the territory of STP to declare currency or bearer negotiable instruments or electronic currencies whenever they carrying amount equal to or exceeding two hundred and forty-five million (Dbs 245,000,000.00[10]). The information in these declarations will be forwarded to the FIU. Whenever there is a suspicion of money laundering or terrorist financing or when false declarations are filed to the customs authorities, the customs official in charge will be empowered to seize or retain part or all the amount of currency or bearer negotiable instruments that were not declared. On the other hand, the Council of Ministers recently approved *Venerando Model Values Statement* presented by the Directorate of Customs to be used by all persons entering and leaving the country.

51. In June 2012, the FATF cited STP in its public statement as a jurisdiction with strategic deficiencies in the AML / CFT regime, which had not made sufficient progress in remedying these deficiencies. The FATF called on its members to consider the risks associated with these deficiencies. In October 2012, the FATF issued the following Public Statement in respect of STP's progress under the ICRG Review process:

> *Despite São Tomé and Príncipe's high-level political commitment to work with the FATF and GIABA to address its strategic AML/CFT deficiencies, São Tomé and Príncipe has not made sufficient progress in implementing its action plan, and certain strategic deficiencies remain. São Tomé and Príncipe should continue to work on implementing its action plan to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing a fully operational and effectively functioning Financial Intelligence Unit; (3) ensuring that financial institutions and DNFBPs are subject to adequate AML/CFT regulation and supervision; and (4) implementing effective, proportionate and dissuasive sanctions in order to deal with*

[10] More than or equivalent ten thousand Euros

natural or legal persons that do not comply with the national AML/CFT requirements. The FATF encourages São Tomé and Príncipe to address its remaining deficiencies and continue the process of implementing its action plan.

Other risk factors

52. In addition to the money laundering and terrorist financing offences, the implementation of robust AML/CFT regime in STP are affected by other risk factors such as limited capacity of the authorities to effectively respond to the risks and threats of money laundering and terrorist financing. There are two international weekly flights out of Sao Tome and Principe, but there is no customs presence on the route of Principe. Three customs officials are deployed to Principe when there is a scheduled landing. The only permanent police presence in Principe airport comes down to 13 officers of the National Police (PN) and two officers of the Criminal Investigation Policy (PIC). The Fiscal Guard, which seems to duplicate much of the work done by customs, but has police authority does not seem to exercise this authority. STP Customs has fifty 52 staff, forty eight in active service in Sao Tome and four permanent staff in the Autonomous Region of Principe, and there is a delegation where customs officials have a daily service.

53. The FIU has a number of difficulties in undertaking the scheduled actions due to the low budget made available by the government to the FIU for the year 2011 In addition, country has not received favourable response to any of the various requests for technical assistance made to various development partners, mainly in relation to human capacity building and the operationalization of the Unit.

54. Within the context of the country's preparation for self-evaluation, the FIU very recently held meetings with the Minister of Justice, the Governor of the Central Bank, the Attorney General, the President of the Supreme Court of Justice and the General Commander of the Police, during which the FIU presented the technical and operational challenges confronting it since its establishment, especially the moroseness of the law approval process and the gaps that exist in these laws. Some suspected cases of money laundering crimes investigated thus far had been prosecuted as first-degree fraud, while others had shown no evidence of the commission of the crime of money laundering.

55. The FIU has carried out awareness-raising activities on the legal and institutional system of the fight against money laundering and terrorist financing for officials of financial and non-financial institutions, within the framework of the roles and responsibilities of each of these institutions, as well as sector-based work meetings with credit institutions. Guidelines are being developed for the regulation of cross-border movement of cash through the airports and seaports in São Tomé and Príncipe. Also, a Permanent Application reporting format has been developed to guide reporting entities on how to properly submit suspicious transactions reports in accordance with the AML/CFT Law.

56. As a result of the difficulties and constraints encountered in the development and implementation of laws, regulations, policies and procedures by AML/CFT stakeholders in STP,

the government has seen the need to engage with international partners for technical assistance (training, financial aid, consultancy) to address the capacity constraints.

1.3 Overview of the Financial Sector

1.3.1 – Description of the financial institutions making up the São Tome and Principe financial system and their respective corporate purposes

Overview of the Financial Sector and DNFBPs

Overview of the financial sector of STP

57. The Organic Law of the Central Bank of STP and the Financial Institutions Law n.º 9/92 constitute the legal framework for the financial sector of STP. Article 1 of the Financial Institutions Law considers companies incorporated in the country or branches of foreign institutions whose business is intermediation in money and capital markets by raising funds from the public to apply for their own credit operations in debt securities and government bonds, securities, or other financial activities permitted, as financial institutions for the purposes of the law. Under Article 2, the operation of any financial institution whether state enterprise, joint venture, or private enterprise, depends on authorization from the Central Bank.

58. The following financial institutions and services are permitted under Article 3 of the Financial Institutions Law:

a. Special credit institutions, which will have the capacity defined in its Organic Law;

b. Commercial banks, whose principal activity is carry out current bank operations, including the granting of loans and attracting deposits managed through chequeing system and fixed-term deposits of less than one year. The banks also undertake other short-term operations permitted its statute;

c. Investment or development banks, whose activities include the receipt of fixed-term deposits of over one year and the practice of financing operations of fixed and working capital for periods consistent with those applied in raising funds, including funds allocated by the Government;

d. Finance company, whose principal activity is the financing for the purchase of goods or services, with funding from accepted on bills and other sources, such as deposits from the public, according to the constraints that are set by the Central Bank ;

e. Credit Unions, whose principal activity is the provision of funding to individuals for particularly associated for the purpose of purchasing goods;

f. Company or thrifts or credit estate, whose business is the financing for the acquisition, construction or renovation of buildings, granted to individuals or corporations, by using funds raised through savings accounts;

g. Other credit institutions other than those mentioned in the preceding paragraphs and, at the discretion of the Central Bank, are classified as financial institutions as a result of activities in the financial and capital markets.

59. Article 2(1) of the AML/CFT Law provides that the Law applies to the following entities headquartered inside or outside the territory of São Tomé and Príncipe:

a. Credit institutions;
b. Investment companies and other financial corporations;
c. Pension fund management corporations;
d. Insurance companies;
e. Credit securitization corporations;
f. Risk capital corporations;
g. Foreign Currency Exchange agencies;
h. Entities responsible for the management or commercialization of risk capital funds; and
i. Collective investment entities that commercialize their participation units.

60. Article 2(4) of the AML/CFT Law designates the listed entities as financial entities for the purposes of the Law. The Law applies to the subsidiaries, branches and affiliates located in São Tomean territory of the entities referred to in Article 2(1) that have their headquarters abroad, as well as their financial branches abroad. It also applies to those entities exploring public services, as long as they provide financial services [Article 2(3)].

61. There were 9 financial institutions and 5 Foreign Exchange Bureaux in STP at the end of 2011. Financial services accounted for 3% of GDP in 2011. Table A below shows the types of financial institutions in STP.

Table A: Relationship of financial institutions in STP

Type of Institution	Number of institutions authorized / registered on September 30, 2011	Size of the financial contribution (asset, prize, billing) in Db and USD	Description of the main activities and products offered	Number of branches in STP
Commercial Banks	8 (7 in operation and a new authorization issued to an investment bank)	Total assets mm DBs 2928.33	Receipt of deposits Granting of loans Cash transfer services	22

			Issuing payment instruments Issuing guarantees Processing operations of monetary and non-monetary settlement electronic banking	
Insurance Companies	2	Prize Money mm DBS 35.6	Non life	2
Money transfer services	Associated with banks	[?]	Money transfer services as agents or sub-agents	4 agents[11]
Exchange bureau	5	[not available?]	Foreign Exchange Services	[tbc]
Total	15	[?]		

62. An overview of the financial sector of STP is provided below:

Banking sector

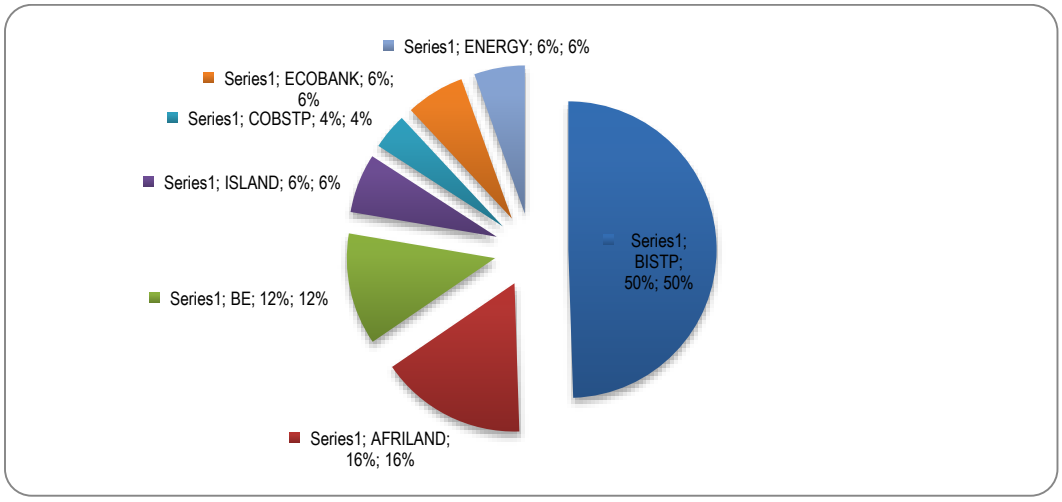
63. The financial system of STP is dominated by commercial banks that provide internal and external financial intermediation. The assets of the banking system amounted to almost 67% of the country's GDP at the end of 2011. There are eight authorized commercial banks. Seven of the eight banks are under foreign control and their major shareholders are mostly from Angola, Nigeria and Cameroon. The banks are:

- International Bank of Sao Tome and Principe;
- Bank Ecuador;
- Energy Bank of STP;
- Island Bank S.A.;
- AFriland F.B. STP;
- Commercial Bank STP (COBSTP);
- ECOBANK STP; and
- BGFI Bank.

64. The country's largest bank, the International Bank of (BISTP) is mostly owned by investors from Portugal. Other shareholders of BISTP include the state of Sao Tome and African Investment Bank. As shown in the chart below, the BISTP accounts for 50% of the market share, followed by Afriland First Bank (16%) and Banco Ecuador (12%). In terms of deposits, BISTP

[11] At present, all services of remittances are always associated with a banking institution.

controls 74% of the deposit base, while the Banco Ecuador, which holds the second largest market share, lags far behind with 9% of deposits. The other five banks hold the remaining 17%.

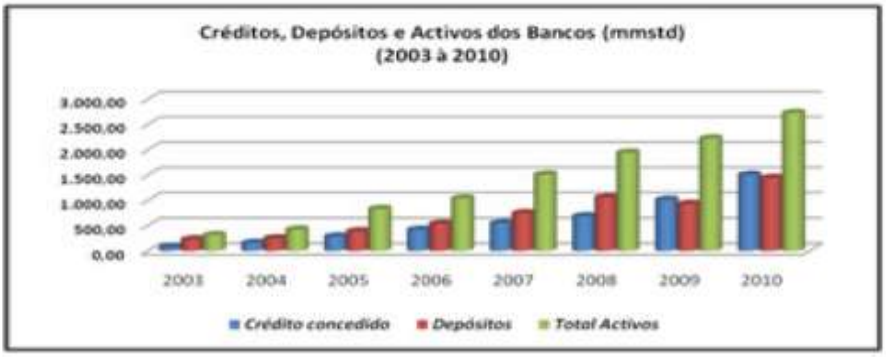


65. The authorities informed Assessors that, the number of banks in STP increased between 2003 and 2008 in anticipation of possible oil exploration. The sector recorded a deposit growth of 22% from 2008-2009 and 10.8% from 2009-2010, especially in foreign currency (75% of total deposits are in foreign currency). There was also significant expansion of credit, 45% in 2008-2009 and 48% in 2009-2010, again mostly in foreign currency (79%), with emphasis on the following sectors:

- In 2009: Credit to the construction (34%), commercial loans (29%) and consumer credit (22%), others (15%).
- In 2010: credit to construction (25%) was upturned by trade credit (32%), followed by consumer credit (19%) and industrial credit (12%).

66. Deposits grew by 22% in 2008-2009 and 10.8% in 2009-2010, especially in foreign currency. The chart below shows the deposits, loans and total assets of banks:

Chart X - Loans, deposits and total assets (2003 to 2010)



Source: BCSTP.

67. Almost all banks received their authorization to operate between 2003 and 2004.

	2007	2008	2009	2010	2011
Number of banks	7	8	8	8	7
Bank with foreign capital	6	7	7	7	6
Branches	13	17	20	23	22

68. The banking sector of STP has been recording increase in activities since 2007 as indicated in the table below:

69. Banking sector - annual interest rate on loans and deposit (weighted average, expressed in%):

Interest rate on:	2007	2008	2009	2010	2011
Credits in national currency (%)	32,40	29,40	29,30	26,82	27,60
Deposits in national currency (%)	12,75	10,76	10,76	12,89	9,80
Credits in foreign currency (%)	18,00	17,00	18,00	22,00	22,00
Deposits in foreign currency (%)	1.75	2.00	3.00	2.00	1.75

Source: BCSTP.

70. The Central Bank of STP (BCSTP) is the supervisor of the financial system. The activities of the BCSTP are governed by the Organic Law of the Central Bank of São Tome and Principe (Law 8/1992), the National Statistics System Law (Law 5/1998), the Exchange Law (Law 32/1999) and the Financial Institutions Law (9/1999). Pursuant to Article 8 (2)(j) of the Organic Law of the Central Bank of São Tome and Principe dated July 28, 1992, the BCSTP is empowered to ensure the collection, centralization, and processing of data and the preparation of monetary, financial and exchange statistics deemed necessary for adequate information, oversight, control of policies to be developed. Article 32 (a) of the Organic Law of the BCSTP confers responsibility on the BCSTP to regulate the operations of the monetary, financial, and exchange markets of the country. The BCSTP exercises its supervisory functions through the Supervision Department which has seven employees, two of which deal with issues relating to taxation. The BCSTP plans to undertake on-site inspection of financial institutions in conjunction with the FIU to assess the compliance of FIs with AML/CTF measures.

Insurance market

71. The legal framework for the insurance industry in STP is Law No. 48/98 and Law 30/2000, and is supervised by the BCSTP. On December 31, 2011, the STP insurance market covered two licensed insurers(SAT Insurance and Nicon Seguros), their principal focus are general insurance and reinsurance activities such as non-life insurance (general) business

targeted at real estate and vehicles insurance policies. In 2010, the number of premium amounted to 33.132 million Dobra, a much higher level than in 2009.

a) Authorized non-bank financial institutions

72. Non-financial institutions comprise foreign exchange bureaus (Irmãos Monteiro, Adac ; L.L. BemEstar; Pereira e Helena Ldª and C.G. Câmbio), the exclusive activity of which is to carry out purchase and sale operations of foreign currencies, including other means of cash payments related to travel..

b) Non-authorised Financial Activities

73. The non-authorised financial activities comprise informal currency exchange bureaus (money changers), whose activities are limited to the purchase and sale of foreign currencies. The Central Bank is putting measures in place to regulate the activities of these "money changers".

1.3.2 Overview of Designated Non-Financial Businesses and Professions (DNFBPs)

74. Article 2 of the AML/CFT Law lists the following as non-financial entities (DNFBPs) in STP:

a) Concessionary gambling companies;

b) Companies carrying out real-estate mediation activities and those that carry out activities in the purchase and re-sale of real estate;

c) Entities that engage in the payment of betting and lottery prizes;

d) Traders of goods of high unitary value;

e) Official accountants, official accounting technicians and external auditors, as well fund managers and tax consultants;

f) Corporations, notaries, registry officials, lawyers, solicitors and other independent professionals who intervene on the part of or assist a client in operations or other circumstances;

g) Of the purchase and sale of real-estate, commercial establishments and share participations;

h) Of the management of funds, securities or other assets belonging to clients;

i) Of the opening and management of bank accounts, savings accounts and security accounts;

j) Of the creation, exploration and management of companies, fiduciary funds or analogous structures;

k) Financial or real-estate enterprises, in representation of a client;

l) Of the sale and acquisition of rights over practitioners of professional sporting activities.

a. Casino

75. There is only one casino in STP operated by the Pestana Group, a Portuguese business group that operates in the tourism sector. The casino is registered by the Gaming Authority in STP. It receives information, including the UN Sanctions List, from the Portuguese FIU through its counterpart in Madeira and prevents identified criminals from gambling at the casino. In terms of AML/CFT obligations, the casino applies the same measures as Madeira casino since it is under the control of Madeira casino. The casino has a video surveillance system for monitoring behaviours and operations and strives to function on the same level as European casinos. Images from the video surveillance are forwarded to the police where there is suspicion of a crime. Operators also observe persons who purchase large numbers of chips to ensure that they are not criminals. Customers are required to complete forms before engaging in any transactions. They approach and question a customer who purchases a large number of chips but refuses to play to ensure that that customer does not intend to commit a crime. Customers of the casino do not normally engage in transactions involving large sums of money. Payment of winning is made directly to the person who was physically at the casino to gamble. The last largest win was ten thousand Euros (€10,000). The casino maintains records of transactions but has not submitted any STR because it has not detected any suspicious transaction.

b. Dealers in Precious Metals, Stones and Jewelery

76. According to the Directorate General of Commerce, it is not possible to compile the list of all of the businesses operating in this sector on which make a description of each company. To carry out this type of activity, prospective firms request for a general commerce license from the Directorate General of Commerce, stating that, in addition to jewellery and gold derivatives, they also engage in other commercial merchandise.

c. Commerce in high-value goods

77. It is not possible to have a listing of all businesses operating in the sector that will provide the basis to make description of each company. Firms that intend to carry out this activity request a license for general commerce from the Directorate General of Commerce, which allows them to effect sales of different types of merchandise.

d. Real-Estate Agents

78. There are two real estate agents in STP. Business in the real estate sector is generally conducted on an informal basis and not through real estate agents. Most businesses in this sector are for rental of private accommodation. Payments for services rendered by the agents are done through bank transfers. The agents facilitate the establishment of relationship between the prospective clients and owners of real estate. The real estate agents have a transaction plan under which parties to transactions are duly registered. Information on registered clients is available on request. The authorities also provided the following information in respect of the real estate sector:

- José António Alves
  Civil construction company headquartered in the city of São Tomé, Fiscal Identification Number 125415, registered in the 4th class category;

- Soares da Costa
  Civil construction company headquartered in the city of São Tomé, Fiscal Identification Number 329908, registered in the 4th class category.
  Major Constructions

- Civil construction company headquartered in the city of São Tomé, Fiscal Identification Number 284491, registered in the 4th class category;

- Jovens Construtores de Santo António

  Civil construction company headquartered in the city of Santo António, on the island of Príncipe, Fiscal Identification Number 216418, registered in the 4th class category.

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

79. The Commercial Code (law charter from June 28, 1888) is the main legal framework governing legal persons in STP. The company law identifies four types of companies, but the following three are the most prevalent in the country:

Sociedadepor quotas (limited Liability Company)

80. A limited liability company must have a minimum of two members (individuals or companies). This form is most commonly used for incorporating small or medium-sized enterprises. There is no minimum capital requirement to incorporate this kind of company, although the notary public may refuse to execute the deed of incorporation if the members' share capital is deemed insufficient for the planned business activity. As a rule, USD 1,000 is sufficient to incorporate this type of company.

Sociedadeanónima (Quoted Companies)

81. A stock corporation (quoted company) must have a minimum of ten members (individuals or companies). Such companies may be public stock corporations (where share capital is offered for public subscription) or private stock corporations (where share capital is privately held). Again, there is no minimum capital requirement but current practice is to incorporate the company with a minimum of USD 5,000 represented in share capital.

Sociedade unipessoal (single member private limited company)

82. A single member private limited company is basically a limited liability company, which can be established by one sole member, (individual or legal entity) who will hold the entire share capital.

Incorporation of legal persons

83. In general terms, the following steps are required to establish a company:

- Verification of whether the proposed company name is available;
- Execution before a notary public of the company's deed of incorporation, including the company's memorandum and
- Articles of association;
- Deposit of required initial share capital at a bank, with evidence of deposit;
- Publication of the company's memorandum and articles of association in the official gazette (diário da república);
- Publication of the company's memorandum and articles of association in one of the country's newspapers;
- Registration of the company at the commercial registry office;
- Request for authorisation to conduct commercial activities (decree law 7/2004 of 30 june);
- Power of attorney, in the case of solicitors, or notarized photocopy of the power of attorney document;
- Request for a corporate tax identification number (decree law 12/93 of 5 march);
- Statement of commencement of business to be filed with the tax directorate; and
- Registration of employees at the social security office.

84. Law 37/2009 establishes a single portal (Guichet Único) for company formation. This is to enable the setting up of a company within five days. It is also intended to speed up the administrative procedures for other company and business related administrative activities, including completeness of required information and ensuring that companies are not established for criminal purposes or owned by criminals. Specifically, the one-stop shop is responsible for:

a) Verifying the admissibility of a company name and issuing the certificate of admissibility;

b) Proceeding with the statistical registration of the business or firm;

c) Proceeding with its registration on the commercial registry;

d) Attributing a taxpayer number (Fiscal Identification Number);

e) Registering taxpayers and social security beneficiaries from the business created under the auspices of the present registration certification;

f) Proceeding with the constitution, alteration or extinction of businesses and related acts;

g) Issuing registration certificates.

85. Under the Commercial Code, properties are registered in the name of the business, with the Registrar and Notary Services having control over these registries and the Directorate General of Taxes having control for fiscal terms. In the course of commercial registration, the business is only required to have a taxpayer card (Fiscal Identification Number, NIF) and proof of the publication of the business's constitution in the Daily Bulletin of the Republic. The documents to be kept in the Registrar and Notary Services are: commercial names, registration, identification of the parties and information concerning the entity itself. In case of litigation, only the Court may have access to information concerning the entities.

86. Within the legal framework of the registrar and notary, no information is required from the subsidiaries and affiliates of São Tomean multinational firms operating abroad. Subsidiaries and affiliates of foreign multinational firms operating in São Tomé and Príncipe are to be registered with the Registrar and Notary Service.

Incentives available to investors

87. The Investment Code of 1992 created a three-incentive scheme: the Simplified Scheme, the General Scheme and the Contractual Scheme. Of these, only the Contractual Scheme is available to foreign investors, irrespective of the amount of their investment. The new investment code, approved by the National Assembly repealed the investment code of 1992 and consequently the three-incentive scheme that existed before the enactment of the Investment Code. The investments covered by the provisions of the Code consist of the installation, rehabilitation and expansion of economic activities that contribute to the development of Sao Tome and Principe. The provisions of the Code do not apply to investment projects undertaken in the field of exploration and extraction of hydrocarbons upstream oil industry and Free Zones, which are subject to special regulation. Eligible areas for private investment are the economic activities which by their nature or by express determination of the law, are not reserved for exclusive use by the State (Article 4). For the purposes of the Code, investment is permitted in the form of domestic direct investment and Foreign Direct Investment (article 6). The minimum capital for investment is two hundred and fifty thousand Euros (250,000.00 EUR).

88. The investment projects carried out under the Code benefit from tax incentives for in the tax law. They also benefit from administrative facilities such as the granting of land for construction and, if applicable, provision of exploration of urban or rural buildings owned by the state and deemed appropriate to the project, for the duration of the project. The incentives are not revocable during the period of the investment, except in cases where offenses have been committed under the Code.

Conditions for incentives

89. In order to be eligible for the incentives, investors are required to submit the following to Ministry of Planning for approval:

a) Completed Model form;
b) Investment plan and feasibility study of the project;
c) Environmental impact assessment, in relation to projects likely to produce environmental risks.

90. Although STP does not have a large commercial sector, the absence of robust AML/CFT requirements makes its economy vulnerable to money laundering and terrorist financing as criminals could take advantage of the speed of completing the establishment of companies to carry out illicit activities.

Entities without legal personality (Legal arrangements)

91. A person who intends to operate an entity without legal personality is required to submit a request addressed to the Director of Commerce/Industry/Tourism/DOPU. The person is to have a physical location, a declaration from the owner of the property and copy of valid Identity Card**.** A prior inspection of the locale is carried out in order to confirm the conditions of the premises, and a license is granted for carrying out the activity concerned. Information for registration and control include name of owner, location, district, registration in budget items 47, 62 and 53 – mixed import/export trade; bulk trade; provision of services.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a) Anti-Money Laundering/Terrorism Financing Strategies and Priorities

92. In the context of strategic policies and priorities of the fight against money laundering and terrorist financing, the Government has put in place programs to facilitate the implementation of measures aimed at combating fraud, contraband and money laundering in line with acceptable internationally standards.

93. Consequently, the establishment of a FIU and its operationalization is a basic requirement in the coordination of efforts at combating money laundering and terrorist financing. The existence of a FIU is also a fundamental prerequisite for São Tomé and Príncipe's participation in international mechanisms aimed at combating illegal trans-border financial practices.

b) Institutional framework for combating money laundering and terrorism financing

Ministries

94. **Ministry of Finance and International Cooperation:** The Ministry of Finance and International Cooperation (MFIC), is the central administrative State organ whose mission is to define and conduct the country's international cooperation and financial policy. It is also responsible for promoting the prudent management of public resources, ensures an increase in efficiency in revenue collection and equity in their management, and improvement of their organizational systems and processes. The Ministry has oversight responsibilities for the FIU, and is responsible for the design of the financial and operational standards for the FIU. The MFIC is the link between the FIU, the Government, the Central Bank and development partners.

95. **Ministry of Justice, including the central authorities for international cooperation, "Registrar and Notary Service":** Responsible for adequate functioning of the justice administration system, legal transit security, litigiousness prevention and non-jurisdictional conflict resolution. It is also responsible for the development, revision and enactment of Anti-Money Laundering and combating the financing of terrorism (AML/CFT)laws, development of law-decrees and decrees, and their submission to the National Assembly or to the Government for approval. The Ministry enters into partnership with development partners to ratify international agreements, protocols and conventions, and coordinates policy. It also directs, guides and coordinates marital and nationality status, civil identification, land registration, commercial registration, mobile assets registration and notary services. The Ministry promotes cooperation with government organs and non-governmental institutions for the improved execution of their respective tasks. It also collaborates, within the context of its responsibilities, with São Tomean or foreign public and private entities. It is the link between the Criminal Investigation Police and the Public Ministry in terms of Anti-Money Laundering and combating the financing of Terrorism measures.

96. **Ministry of Internal Administration (Fiscal Police):** This Ministry **c**onstitutes the armed branch of the Customs Department. It carries out customs surveillance, ensures the enforcement/implementation of trans-border transportation protection law, implements and enforces airport service laws and regulations, controls the entry and exit of ships and carries out inspections on vessels. In the performance of its functions, the Customs benefits from the support of the Fiscal Police (FP) which is considered to be the armed branch of the Customs. In past, the FP was part of the Customs, but a few years ago it was integrated in the Ministry of Defence and Internal Order, thus enjoying the Organic Status similar to the police, being directly under the Ministry of Defence in respect of management, weapons, equipment, uniforms, instruction and personnel discipline.

97. The FP's functions relate to maritime and fluvial control in territorial waters, ports and creeks, surveillance over vessels and merchandise subject to rights and further taxes charged by the Customs. It is also in charge of the defence of the State's interests; protecting the national industries against illicit trade in arts, render the necessary support for the good enforcement of laws, regulations, provisions and determinations regarding the good management of the National Treasury, thus acting under the guidance of the Customs. The FP does not carry out the control

services alone but always in the presence of a Customs official, both of whom are qualified for that purpose. The competence of the FP at the port and airport is to undertake the follow-ups, control and surveillance of vessels, control of discharge sheets accompanying the containers, supervision of unloading and transfer of merchandise and perform other functions that are entrusted to them pursuant to Dispatch n.º1/2000.

98. Other institutions such as the FP, ENASA, ENAPORT, whose functions are regulated pursuant to Dispatch no. 01/2010 relating to distribution of tasks and responsibilities, also contribute to the daily activities and procedures of customs. Customs also has connections with financial entities, particularly the BISTP, which is the receiving bank for payments of revenues resulting from charges of custom dispatch through agencies within the Customs, and the CBSTP which manages the State account. Customs also relate to the PIC and Attorney-General's Office in accordance with Customs procedures and internal laws of the country. In this regard, whenever the Customs observe a situation that may be susceptible of a criminal proceeding, it refers such matters to these institutions for investigation.

99. **Ministry of Foreign Affairs:** The Ministry of Foreign Affairs and Communities is the central State administrative organism responsible for the development, implementation and coordination of the São Tomean state's foreign policy, specifically in the political-diplomatic and consular domain. It is also responsible for international negotiations, regional integration and the promotion and defence of STP's interests abroad. It constitutes the link for STP's adherence to various international conventions and protocols, including those relating to the criminalization of Money Laundering and Terrorist Financing. The Ministry is responsible for legislation regarding legal persons and legal arrangements.

Criminal justice and operational agencies

100. **Financial Intelligence Unit (FIU):** Article 1 of Decree nº 60/2009 (FIU Decree) of 31 December, 2009 establishes the Financial Intelligence Unit (FIU). The FIU is designated by Article 2 to be of administrative type with perpetuity and permanent functioning. The Coordinator and Deputy Coordinator have a four-year mandate. The FIU is under the charge of the Ministry of Finance as provided in Article 11 of the Decree establishing the FIU.

101. The FIU, as provided by Article 3 of Law 60, is a central agency responsible for collecting, analyzing and disseminating information relating to the crime of money laundering and financing of terrorism to relevant domestic and foreign entities listed in Article 4 of the Law. Under Article 5 of the Decree, the the FIU is composed of the Ministry of Planning and Finance (now Ministry of Finance and International Cooperation), the Central Bank, the Ministry of Justice and Administrative Reform and the Ministry of Commerce, represented by the Department of Commerce and Investments and the Department of Inspection of Games of Chance. The MFIC is responsible for policies relating to the prevention and combating money laundering and terrorist financing; the Central Bank is responsible for providing guidelines on compliance with anti-money laundering and combating the financing of terrorism measures to financial institutions, and insurance involving high sums of money. Under Article 3 of the FIU Decree, the functions of the FIU as a central agency are to collect, analyze and disseminate information regarding of money laundering and terrorist financing to the criminal police and

judicial authorities (both local and international), and other entities with responsibilities for the prevention or prosecution of money laundering and terrorist financing offenses.

102. The Coordinator and Deputy Coordinator of the FIU were appointed through Dispatch nº 18/2010 from the Office of the Prime Minister and Head of Government of April 7, 2010, which was published in the Daily Bulletin of the Republic nº 55. The Deputy Coordinator was not at post at the time of the on-site visit. The FIU is operating from temporary facilities provided by the MFIC. Article 16 of the AML/CFT Law requires competent authorities and reporting entities to submit suspicious transaction reports to the Attorney-General. However, following the issuance of the CBSTP directive on STRs and a general understanding of the core function of an FIU, FIs have started submitting STRs to the FIU. No STRs from DNFBPs yet. STRs are submitted manually to the Coordinator of the FIU, in sealed envelopes and marked confidential. The STRs are kept in a secure cabinet to which only the Coordinator has access. Exchange of information with foreign parties is possible under article 4 (d) of the FIU Decree, but none has been exchanged yet. The FIU has carried out awareness-raising activities on the legal and institutional requirements for the fight against money laundering and terrorist financing for officials of financial and non-financial institutions, within the framework of the roles and responsibilities of each of these institutions.

103. Law enforcement authorities, including the police and other relevant investigative authorities work towards the domestic and trans-border security of the national territory. They maintain public order, prevent and combat crimes, control the entry and exit of persons and goods, as well as execute sentences handed down by the Courts.

Public Ministry, including agencies responsible for confiscation of proceeds of crime

104. **Public Ministry:** The Public Ministry opens investigations on information received regarding suspected unlawful activities, including offence of money laundering and terrorist financing and, submit it to Courts if there is substantive evidence that there is a public crime.

105. **Criminal Investigation Police:** The Criminal Investigation Police (PIC) is a subsidiary of the administration of justice. It is responsible for the investigation of crimes committed throughout the nation's territory, irrespective of the applicable punishment. The PIC exercises its functions in the defence of democratic legality and respect for citizens' rights. Actions taken by the PIC are subject to review by the Public Ministry in accordance with Law no. 2/2008, the Organic Law of PIC. Article 3 of Law no. 2/2008 empowers the PIC to investigate crimes committed in the country, including:

a. Crimes punishable by up to three years;
b. Crimes of murder and grievous bodily harm or aggravated by the result;
c. Theft and robbery, committed in public buildings, banks or post offices;
d. Terrorism, organized crime and criminal organizations or associations committed by criminals;

e. Corruption and embezzlement, economic participation in business and influence peddling;

f. Money laundering, smuggling of goods and other products;

g. Fraud in obtaining or misuse of subsidies or grants and even fraud in obtaining soft loans;

h. Economic and financial crimes committed in an organized form or using information technology;

i. Cyber crimes;

j. Against internal and external security of the state;

k. Counterfeiting of currency,;

l. Execution with prohibited firearms, bombs or other explosive devices;

m. Trafficking, cultivation, production, manufacture, preparation or processing of narcotic substances, including related consumption, transportation, storage or simple possession of such substances;

n. Against peace and humanity; and

o. Human trafficking, abduction and kidnapping or hostage taking.

106. At the time of the on-site, the PIC had neither investigated nor prosecuted any case relating to money laundering or terrorist financing.

Customs authorities

107. The STP Customs is responsible for inspecting and overseeing all customs services, namely ports and airports, with the special collaboration and support of the Fiscal Police, in the combat against customs fraud and evasion, the illegal traffic of merchandise and the control of related activities within the context of the fight against money laundering and terrorist financing. The functions of the STP Customs are provided for in Law no. 55/2006 while its relationship, customs, importers and other legal provisions relating to customs are provided for in Law no. 39/2009. The STP Customs has established cooperation on issues relating to illicit traffic in narcotic drugs with Customs authorities in all Portuguese speaking countries. It has been a member of the World Customs Organisation since September 2009. The Customs also has connections with financial entities, particularly the BISTP, which is the bank where payments of revenues resulting from charges of custom dispatch through agencies within the customs are made and receives the charges made from the dispatches and the Central Bank which is the entity that manages the State account. They also relate to the PIC and Attorney-General's Office in accordance with customs procedures and internal laws of the country, so whenever the Customs notice a situation that is susceptible of criminal proceedings, it is submitted to these institutions for investigation.

Financial sector entities

108. The following Ministries or agencies are responsible for licensing, registration or any other authorizations for financial institutions:

a. The role and responsibility of the Central Bank in the detection, prevention and combating money laundering and terrorist financing

109. The Central Bank's role is implicitly provided for in ***Law 15/2008:*** The Law to prevent and combat money laundering and terrorist financing (the AML/CFT) Law. Specifically Article 28 entrusts the Central Bank with supervisory authorities over the respective financial sectors including responsibility for monitoring compliance with the duties outlined in their respective legislation.

110. Article 28(2) requires the authorities charged with the supervision of financial entities to report to the Attorney-General's Office whenever, in conduct of inspection of entities, they obtain knowledge or have reasonable ground to suspect the commission of money laundering or terrorist financing offence.

111. Other provisions are found in the following articles of ***Law 8/92, the Central Bank Organic Law,***:

- Article 8 (2)(f) empowers the Central Bank to exercise the functions of supervision and inspection of the national financial system.
- Article 31(2) empowers the Bank to require the presentation of and proceed with the examination of accounts, accounting records or other documents from any business the Bank has reason to presume may be granting credit to or accepting deposits from the public.
- Article 32 (g) requires the bank to carry out the supervision of the institutions referred to in line b), that is, establishing directives for their actions, promoting forms of cooperation among the above-mentioned institutions with the aim of improving the operating conditions of the markets in question and assuring the services for the centralization of credit information and risks.")
- Under Article 38 (f), the Bank is to establish directives for the actions to be carried out by the institutions, namely with regards to their financial management and internal control system.
- Article 40: Carry out inspections in the financial institutions subject to its supervision and proceed with verifications alongside any entity or wherever there are founded suspicions of the irregular practicing of monetary, financial or exchange activities;
- Begin adequate processes for the verification of infractions committed that are not criminal in nature, applying the respective sanctions.
- Submit to the proper judiciary and police authorities any irregular acts or facts of which it learns and which fall beyond the scope of its authority of intervention.

b. DNFBPs and other matters

112. Article 41 of the AML/CFT Law provides for a range of services that have responsibilities within supervisory framework, namely:

- Inspectorate General of Games, which supervises casinos;
- Inspectorate General of Economic Activities, in relation to the identification of clients and other duties of real-estate mediation, traders of goods of high-valued goods and similar entities, fund managers, tax consultants, external auditors, corporations and other independent entities, which are not subject to supervision by an authority referred to in article 41;
- Directorate General of Registrars and Notaries - notaries and record keepers;
- Order of Official Accounting Reviewers - official accounting technicians;
- Order of Lawyers - lawyers;
- Chambers of Official Accounting Technicians and Solicitors.

113. Article 41(2) of the AML/CFT Law requires the Inspectorate General of Games (IGG) and the Directorate General of Registrars and Notaries (DGRN) (listed in sub-paragraphs (a) and (c)) to, immediately inform the Attorney-General's (A-G) Office when, in carrying out supervision through other means, they become aware of facts that indicate the practice of money laundering and terrorist financing offences.

c. Overview of policies and procedures

114. The mechanisms adopted by the Government of STP to control the risks of money laundering and terrorist financing to prevent criminals from misusing the financial system of the country are the legal frameworks that regulate these risks (Law 15/2008 to prevent and combat money laundering and terrorist financing, Decree 60/2009, which creates the Financial Intelligence Unit and the Internal Regulations of the FIU. These will be reinforced by the Law-Decree proposal on the trans-border movement of cash, the "Know Your Customer" Permanent Application Guideline, the proposal for the "Submission of Suspicious Transactions Reports" Permanent Application Guideline, the "Movement of currency from national territory" Permanent Application Guideline).

2. LEGAL SYSTEM AND INSTITUTIONAL MEASURES

2.1 Criminalization of Money Laundering (R1 & R2)

2.1.1 Description and Analysis

115. Money laundering (ML) and most of the underlying or predicate offences of ML are contained in the Penal Code approved by Decree-Law n° 6/2012 in accordance with article 97 of the Constitution of STP. Article 2(2) of Law 6/2012 provides that the provisions of Law No 9/2010, published in the Republic Gazette as number 83, September 27, 2010 and the alternative Article 272 of the Penal Code apply to questions concerning money laundering and economic crimes. Article 4 of Law 15/2010 expands the list of predicate offences of money laundering provided in Article 272(1) of the Penal Code.

116. Similarly, Article 292 of the Penal Code deals with the laundering of proceeds relating to narcotic drugs and other illicit activities[12]. Article 272 of the Penal Code criminalises the offence of money laundering relating to some specific offences[13]. Article 272 of the Penal Code provides for punishment against both natural and legal persons who commit the offence of ML.

117. STP has not criminalised piracy and counterfeiting of products, and insider trading and market manipulation. However, the authorities provided the Assessors with a draft legislation which seeks to include piracy, counterfeiting of products, and insider trading and market manipulation, in the list of predicate offences of money laundering.

RECOMMENDATION 1

Criminalization of money laundering, physical and material elements of the offence (c. 1.1)

118. Money laundering has been a stand-alone criminal offence in STP since 2008. Article 272 of the Penal Code criminalises the conversion, transfer, aiding or facilitation of any operation for the conversion or transfer of goods or products derived from the commission of any of the crimes of drug trafficking, terrorism, trafficking in nuclear materials or weapons, human trafficking, pornography involving minors, corruption or extortion, tax evasion or fraud in obtaining or embezzlement of subsidies, in the context of economic and financial violations of international or transnational trafficking in protected species and trafficking of human organs or tissues or other crimes of which the maximum punishment is more than 10 years in prison.

119. Article 5 of the AML/CFT Law criminalises the same offences under article 272 of the Penal Code, as well as the purchase (acquisition), receipt or use of proceeds of crime knowing

12 Articles 279, 280, 281 and 285 of the Penal Code

13 Drug trafficking, terrorism, trafficking in nuclear materials or weapons, human trafficking, pornography involving minors, corruption or extortion, tax evasion or fraud in obtaining or embezzlement of subsidies, in the context of economic and financial violations of international or transnational trafficking in protected species and trafficking of human organs or tissues or other crimes of which the ceiling is worth more than 10 years

that the property or proceeds were derived from the commission of any of the afore-mentioned crimes. Conversion or transfer of property under Article 5 applies if the act is for the purpose of concealing or disguising the illicit origin or of assisting a person involved in the commission of any of these offenses to evade the legal consequences of their actions. These actions are also criminalised by Article 292 of the Penal Code, but only cover issues relating to drug trafficking.

120. Goods or proceeds may be laundered in whole or in part, directly or indirectly, for the purpose of concealing or disguising their illicit origin or of assisting a person involved in the practice of any of the offences to evade the legal consequences of that person's actions. It also criminalizes the concealment or disguise of the true nature, source, location, disposition, movement or ownership of the goods or proceed or rights related thereto.

121. For the prosecution to secure a conviction under Article 272 of the Penal Code and Article 5 of the AML/CFT Law, there should be a proof that the accused person knew that property was derived from the commission of any of the offences listed in or covered by the provisions of the law.

122. STP has covered all the physical and material elements of money laundering as contained in Article 3(1) (b) and (c) of the Vienna Convention and Article 6(1) of the Palermo Convention.

Types of property to which money laundering offence is applicable (c. 1.2)

123. The ML offence extends to any type of property (assets or products) … which is obtained directly or indirectly and regardless of its value represents the proceeds of crime. Article 3 (a) of the AML/CFT Law defines "goods" to include *assets of any nature, corporeal or incorporeal, movable or immovable, tangible or intangible, as well as legal instruments or documents evidencing ownership or other rights over the assets in question*. Article 272(1) specifically refers to the conversion, transfer, concealment, disguise… of goods or products that are derived from the commission of the offences listed. Such products, goods, objects etc are subject to confiscation under Chapter IV of the AML/CFT Law.

Proving that property is the proceeds of crime (c. 1.2.1)

124. There is no express provision to the effect that it should not be necessary that a person be convicted of a predicate offence when proving that property is the proceeds of crime. However, Article 104 (1) of the Penal Code provides for the confiscation of *objects that were produced* from the commission of crime where, by their nature or the circumstances of the case, they would jeopardise the safety of the persons, moral or public order or pose serious risk of being used to commit new crimes. Article 104(2) of the Penal Code provides that the provision in Article 104(1) applies even if no particular person can be criminally prosecuted or convicted. The authorities also relied on Article 6 of the AML/CFT Law which provides for the forfeiture of instrumentalities intended to be used in the commission of the money laundering offence even if no individual person is punished for the offence. It will be possible to apply these two provisions at any stage of the proceedings, including when a decision is being made whether to initiate proceedings. However, article 104 of the Penal Code and Article 6 of the AML/CFT Law are

limited in scope because application of Article 104 depends on the nature of the objects produced or the circumstances of the case....., while Article 6 of the AML/CFT Law only applies to instrumentalities used in or intended for the commission of an offence. The objects will not cover property envisaged under R. 1.2.1 which encompasses property within the meaning of the FATF Recommendations, being *assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets*. Furthermore, these provisions have not been applied. In this absence of any judicial interpretation to the extent of these provisions, it will not be possible to determine whether they apply to all property within the meaning of the FATF Recommendations.

The scope of predicate offence (c. 1.3)

125. Article 2(b) of the Palermo Convention defines serious crime to mean conduct constituting an offence punishable by a **maximum deprivation of liberty of at least four years** or a more serious penalty. STP has adopted a combination of listing and threshold approaches in determining the scope of predicate offences. Article 272 of the Penal Code lists drug trafficking, terrorism, trafficking in nuclear materials or weapons, human trafficking, pornography involving minors, corruption or extortion, tax evasion or fraud in obtaining or embezzlement of subsidies, in the context of economic and financial violations of international or transnational trafficking in protected species and trafficking of human organs or tissues or other crimes for which the **maximum term is more than ten years in prison**. The scope of underlying predicate offences of money laundering as provided by Article 272 is expanded by Article 4 of Law 15/2008 of 14 November 2008 as follows:

> *In addition to the crimes described in article 272(1) of the Penal Code, the following types of crimes are also to be considered as categories of main infractions related to money laundering activities:*
>
> *a) terrorist financing;*
> *b) migrant trafficking;*
> *c) sexual exploitation, including the sexual exploitation of children;*
> *d) child solicitation or trafficking;*
> *e) trafficking of psychotropic substances;*
> *f) participation in a criminal association;*
> *g) trafficking in stolen and other goods;*
> *h) contraband;*
> *i) environmental crimes;*
> *j) bribery;*
> *k) forgery of currency and currency-equated bonds;*
> *l) forgery and piracy of products;*
> *m) murder and grievous bodily harm;*
> *n) kidnapping, illegal restraint and hostage taking;*
> *o) robbery and theft;*
> *p) counterfeiting;*
> *q) embezzlement;*

r) harmful management of a public-sector economic unit.

126. The combined approach (list and maximum ten year prison term) has enabled the STP Laws to cover a significant number of the 20 designated categories of offences. One may also have recourse to Article 42 of the Penal Code to understand the rules governing the duration of prison terms in STP. Under Article 42, the minimum duration of a prison term is one (01) month while the maximum is twenty (20) years. Exceptions are cases of detention during weekends and those relating to: genocide; war crimes against civilians, the wounded, the sick and prisoners of war; promotion, funding of terrorist group or association and treason. A higher maximum limit exceeding twenty five (25) years may be prescribed by Law. The details of the scope of the underlying predicate offences are provided in Table 1 below.

Table 1: Predicate Offences

SN	Predicate Offence	Legislation	Sanction	Status
1.	Participation In An Organized Criminal Group Or Racketeering	Article 358 of the Penal Code	1-8 years	Qualifies as a predicate offence
2.	Terrorism	Article 360 of the Penal Code	3-15 years	Qualifies as a predicate offence
	Terrorist Financing	Article 359 of the Penal Code	3-15 years	Qualifies as a predicate offence
3.	Trafficking of Human Beings	Article 160 of the Penal Code	2-8 years	Qualifies as predicate offence
	Migrant Smuggling	Article 93 (2) of Law 5/2008 on Legal Regime on Foreign Citizens	1 to 4 years	Qualifies
4.	Sexual exploitation, including	Article 174(3)	Up to 5 years	Qualifies as a predicate offence
	Sexual exploitation of children	Article 175(5)	1-5 years	Qualifies as a predicate offence
5.	Illicit Trafficking in Drugs and Psychotropic Substances	Article 279	2-12 years	Qualifies as predicate offence

SN	Predicate Offence	Legislation	Sanction	Status
6.	Illicit Arms Trafficking	Article 325	1- 4 years	Qualifies as a predicate offence
7.	Illicit Trafficking in Stolen and Other Goods	Article 274	1- 5 years	Qualifies as a predicate
8.	Corruption	Article 452	2-6 years	Qualifies as predicate offence
	Bribery	Article 439	Up to 1 year or a fine of up to 100 days	Qualifies as a predicate
9.	Fraud	Article 235	3 years or a fine of 300 days	Qualifies as predicate offence
10.	Counterfeiting and Piracy Of Products	NIL	NIL	NIL
11.	Counterfeiting Currency	Article 304	2 – 15 years	Qualifies as predicate offence
12.	Environmental Crime	Article 318 to 336	2 – 6 years	Qualifies as a predicate offence
13.	Murder	Article 129	14 – 20 years	Qualifies as predicate offence
14.	Kidnapping / Illegal Restraint	Article 158,162,	2 – 10 years	Qualifies as predicate offence
15	Hostage Taking	Articles 163 and 164	2 – 10 years	Qualifies as predicate offence
16.	Robbery	Article 229	1-10 years	Qualifies as predicate offence
17	Theft	Article 220	3 years or fine of 300 days	Qualifies as a predicate offence

SN	Predicate Offence	Legislation	Sanction	Status
18.	Smuggling	Article 274	1-5 years	Qualifies as a predicate offence
19.	Extortion	Article 243	1-5 years	Qualifies as a predicate offence
20.	Forgery	Article 298	3 years or a fine of 300 days	Qualifies as a predicate offence
21.	Piracy	Article 386	16-20 years	Qualifies as a predicate offence
22.	Insider Trading and Market Manipulation	NIL	NIL	NIL

127. Article 272 of the Penal Code and article 4 of the AML/CFT Law cover seventeen (17) out of the twenty (20) designated categories of predicate offences provided under the Vienna and Palermo Conventions. STP has not criminalized counterfeiting and piracy of products, and insider trading and market manipulation. The authorities of the STP have initiated a review of the AML/CFT Law to criminalize the remaining predicate offences.

Threshold Approach for predicate offences (c. 1.4)

128. As noted above, STP has adopted a combined approach in determining the underlying predicate offences of ML by reference to a list of predicate offences and a threshold linked to the penalty imprisonment applicable to the predicate offence under Article 272 (1) of the Penal Code. This approach meets the requirement of Article 2 of the Palermo Convention which defines a serious crime to mean "*conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty"* and more than one year as required by FATF Recommendation 1. Article 272 of the Penal Code is complemented by Article 4 of the AML/CFT Law. The two provisions enable STP to cover 17 out of the 20 designated categories of offences of ML.

Extraterritorially committed Predicate Offences (c. 1.5)

129. Article 5 of the Penal Code provides, among others things, that the criminal law of STP is applicable to the following unless there is a treaty or convention to the contrary:

a. acts committed outside STP where those acts constitute crimes like computer and communication fraud; laundering of proceeds of drug trafficking, counterfeiting of currency; preparatory acts towards counterfeiting of currency, falsification or alteration of the facial value of legitimate currency, depreciation of currency; forgery of stamps;

counterfeiting or forgery of seals, falsification of weights and measures; promotion and financing of terrorist organization; terrorism; treason;

b. *acts committed outside the national territory, provided the perpetrator is found within STP and cannot be extradited where those acts constitute slavery, kidnapping of a minor; trafficking in persons for purposes of prostitution; sexual abuse; sexual abuse of adolescents and dependants; prostitution of minors; pornography involving minors; incitement of war; war crimes against civilians, the wounded, the sick prisoners of war, destruction of cultural and historical monuments; racial or religious discrimination; and torture and other cruel, severe inhuman or degrading treatments;*

c. *acts committed outside the territory of STP, or by foreigners against STP where:*
    i. *the perpetrators are found in STP,*
    ii. *the acts are punishable by law of the place where they occurred, except where that place is not exercising punitive power,*
    iii. *where it constitutes an extraditable crime and STP cannot grant an extradition request; and*

d. *the act was committed outside the national territory of STP by a person who is found to be ordinarily resident at the time of the offence.*

130. Article 5(2) extends the criminal law of STP to any acts committed outside STP that STP is obliged by international treaty or convention to judge. Under Article 6 (1) of the Penal Code, STP criminal law will apply to acts committed outside the country only when the offender has not been tried in the country in which the offence was committed or if there is or there has been total or partial fulfilment of prison sentence. Under these circumstances, STP will consider its laws to be the laws of the country in which the offence was committed if the laws of STP are considered to be more favourable to the offender and the penalty will be converted to that of STP if there is no direct correlation between the provisions in the laws of STP and the laws of the foreign country (article 6(2). Article 6(2) does not apply to the offences listed in Article 5(a)[14] of the Penal Code. The country will take into consideration the penalty applied to an offender or sentence served by an offender who has been tried in a foreign country for the same act.

131. In addition to the provisions of Articles 5 and 6 of the Penal Code, Article 5(1) of the AML/CFT Law provides that punishment for the crimes described in lines (a) and (c) of Article 272(1) (money laundering) and Article 292 (laundering the proceeds of illicit traffic in narcotic drugs and psychotropic substances, as well as related criminal activities) of the Penal Code will apply even if the facts constituting the main offence took place outside the territories of STP or even if the place where the offence was committed or the identity of the offenders were unknown.

[14] Computer fraud, laundering of the proceeds of drug trafficking, offences relating to counterfeiting of currency, promotion or establishment of terrorist organisations, terrorism, treason and related offences, voter fraud and corruption, etc

132. The provisions in the Penal Code and the AML/CFT Law partly satisfy the requirement of Recommendation 1.5 of the FATF having regard to the fact that STP has not criminalized counterfeiting and piracy of products and insider trading and market manipulation. The non-criminalization of the remaining offences will impede the application of the provisions of Articles 5 and 6 of the Penal Code and Article 5(1) of the AML/CFT Law to those offences, unless STP effectively invokes.

Application of the money laundering offence to Self-launderers (c. 1.6)

133. In STP, a person who launders the proceeds of a crime committed by that person may be prosecuted for money laundering. This is supported by Articles 272(1) and 292(1) of Penal Code which provide that "a person knowing that the property is derived from the commission in any form of crimes involving drug trafficking…, and converts, transfers, assists or facilitates and process of conversion of transfer of such property, in whole or in part, directly or indirectly, for the purpose of concealing or disguising the illicit origin ….". Article 5 of the AML/CFT Law provides in its opening statement that *"whoever, knowing that the property or proceeds derived from the commission are under any form of participation in crimes listed in the previous article…"*.Furthermore, Article 26 of the Penal Code considers an "author" to be the person who implements an act by himself or through others, or directly participates in the execution; who by tacit or express agreement with another or others, participates directly in the execution or acts together in joint effort for the same crime; who, since during the execution or at the commencement of the execution, directly and deceitfully determines the commission of the crime. **There are no decided cases on self-laundering to enable the Assessors to ascertain the applicability of these provisions to a person who launders the proceeds of his own crime.**

Ancillary Offences (c. 1.7)

134. In accordance with provision of general application of the Penal Code of STP, a broad range of ancillary offences are attached to criminal offences in STP, including money laundering offences. The ancillary offences are as follows:

- ***Attempt***: Article 22 of the Penal Code provides that there is attempt when a person takes an action to commit a crime without actually executing the act. This occurs where a person completes a constituent element of a type of crime, takes an action that is capable of producing a specific result or that, according to common experience, and unless unforeseen circumstances are such as to expect them to result in specific acts. Article 23 of the Penal Code provides that unless otherwise stated, attempt is punishable with the corresponding penalty of more than three years in prison in relation to the principal act. The exception to this provision, as provided by Article 24, is when the action taken is not adequate or the person lacks an essential object to fully commit the crime, where the perpetrator voluntarily stops from pursuing the execution of the crime or prevents the execution, among other things;

- ***Facilitating acts*:** Article 21 of the Penal Code provides that facilitating acts are those that are conducive to facilitate external or prepare for the commission of the crime and which are not even the commencement of execution. It further provides that preparatory acts are not punishable, unless otherwise specified.

- ***Conspiracy, aiding and abetting*:** Article 27 of the Penal Code punishes a person as an accomplice to a criminal offence if that person intentionally and in any form, material or moral, provides assistance to others to commit a criminal offence. Articles 272(1)(a)[criminalization of money laundering] and 292(1)(a) [criminalization of laundering of objects or proceeds of drug trafficking] of the Penal Code, among others, criminalise the *assistance or facilitation* of any operation of conversion or transfer of goods or products, in whole or in part, directly or indirectly, for the purpose of concealing or disguising the illicit origin or of assisting a person involved in the practice any of these offenses to evade the legal consequences of their actions. In this regard, this offence is punishable with imprisonment from 3 to 12 years.

Additional elements - Money laundering offense on the proceeds of crime as a result of conduct that occurred in another country which is not an offense in that other country (c.1.8)

135. Under Article 5 of the AML/CFT Law, the punishment for crimes defined in money laundering offences apply even if the acts that constitute the main offence takes place outside STP, or even if location of the act or identity of the of the persons who committed the acts are unknown. In this regard, proceeds of crime derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, constitute a money laundering offence. This situation will not apply to the offences that have not been criminalised by STP. Article 1 of the Penal Code provides that only actions that are described and declared punishable by law prior to the time of their practice can be criminally punished.

RECOMMENDATION 2

Liability of Natural Persons who knowingly engage in money laundering activity (C. 2.1)

136. The offence of money laundering in STP applies to natural persons who knowingly engage in ML activity. Article 11 of the Penal Code provides that unless otherwise stated, only natural persons can be held criminally liable. Pursuant to this provision, Articles 272 (1) and 292(1) of the Penal Code, as well as Article 5 of the AML/CFT Law extend the money laundering offence to natural persons who know, or ought to know, suspect that the goods or products were derived from the commission of any of the crimes listed. Under Article 272 (1) of the Penal Code, natural persons who commit the ML offence are punishable by a term of imprisonment ranging from three (3) to twelve (12) years.

Intentional element of the ML offence (c. 2.2)

137. Article 14 of the Penal Code permits the intentional element of the offence of ML to be inferred from objective factual circumstances. Article 14 of the Penal Code provides that *whoever acts intentionally representing a fact which fulfils a type of crime, act with the intention to perform.* In this case, the person is considered to have made a conscious decision to commit the offence. Intention may also be inferred on the premise that when a person acts with intent to represent the performance of an act that constitutes a type of crime, that person intended the necessary consequence of his conduct. Article 14(3) precludes a person from invoking fraud as a defence when the realisation of the fact is represented as a possible consequence of the conduct and the person acts in furtherance of that action. The authorities of STP submitted that in addition to the intention to commit an offence of money laundering, the perpetrator should further manifest his actions to complete the commission of the crime in order to succeed in the prosecution thereof. This is an acceptable principle of law.

Criminal liability of legal persons (c. 2.3)

138. Under Article 11(2) of the Penal Code, legal persons or similar bodies can only be criminally liable in cases specifically provided by the Penal Code or in special legislation and natural persons behind the legal personality. This provision applies to the agents or representatives of the legal person acting on their behalf and in their collective interest. It does not apply when the agent acted against the express orders or instructions and does not exclude individual or similar responsibility of the respective agents.

139. Furthermore, Article 272 of the Penal Code extends criminal liability to agents or corporate bodies or equivalent that commit the ML offence and sets the punishment of a fine between fifty million (50,000,000) and five hundred million (500,000,000) Dobra, and possible decree of dissolution of the reported legal person or equal.

140. Legal persons can also be held criminally liable under Article 45 of the AML/CFT Law for the offences committed by their directors, managers or employees while carrying out their functions, as well as for the offences committed by representatives of the legal person in acts practiced in their name and interest. This provision applies even if the basis of the relationship between the individual agent and the legal person is not valid or effective.

Possibility of Parallel Criminal, Civil or Administrative Proceedings (C. 2.4)

141. A legal person may be dissolved when it is demonstrated that the body corporate or similar entity was created with the intention of exclusively or predominantly engaging in those criminal activities or when the repeated commission of such crimes show that the entity or similar entity is being used exclusively or predominantly for criminal purpose by their agents or representatives, or by the person holding the relevant administration, management or direction.

Proportionate, effective and dissuasive criminal, civil and administrative sanctions (c. 2.5)

142. Articles 272 and 292 of the Penal Code provide for sanctions for money laundering. The offence attracts a term of imprisonment ranging from three to twelve years, in case of natural persons. Legal persons are liable to a fine between fifty million and five hundred million Dobra, and possible decree of their dissolution. Article 5(2) of the AML/CFT Law permits the Court to increase the sentence by one third if the offender is found to habitually engage in those criminal activities. Article 5(3) permits the sentence to be reduced under special circumstances if the offender provides concrete assistance in gathering of decisive evidence for the identification or arrest of those responsible for engaging in the illicit activities from which the benefit have been derived. In any case, the sentence should not exceed the maximum limit possible for the illicit activities from which the advantage was obtained, or the minimum and maximum limit possible for the main corresponding offences.

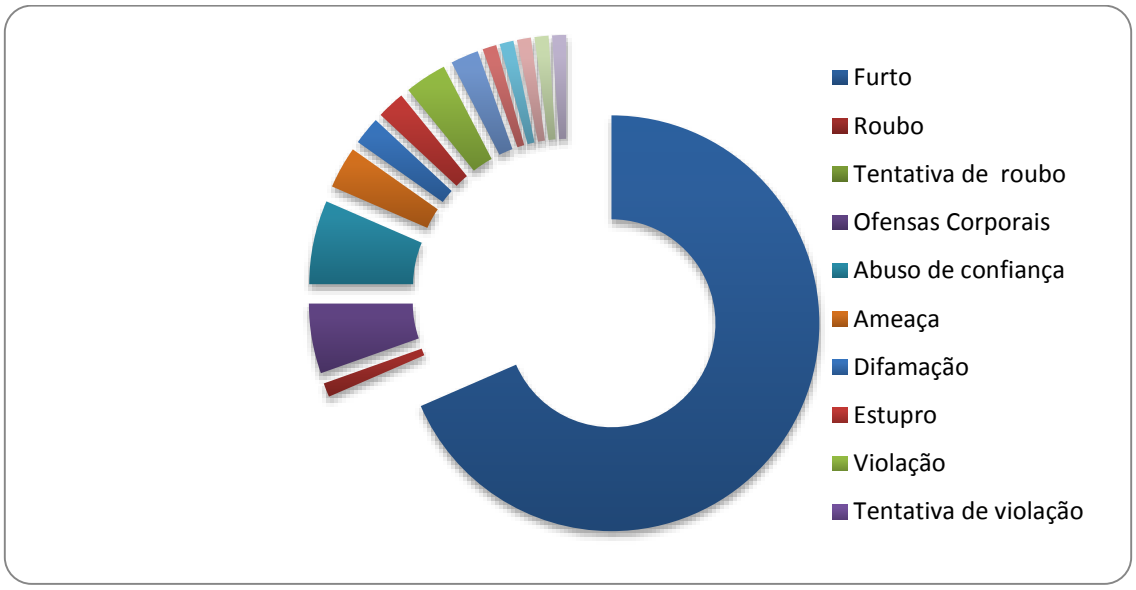
143. Assessors were of the opinion that there were no wide variations in terms of sanctions for crimes similar to those provided for the predicate offences of ML listed under Article 5 of the AML/CFT Law. Therefore, one could conclude that sanctions provided for money laundering offences is proportionate. However, in view of the fact that there has been no conviction for money laundering offences in STP, the Assessors could not determine the effectiveness of the sanction regime for money laundering offences.

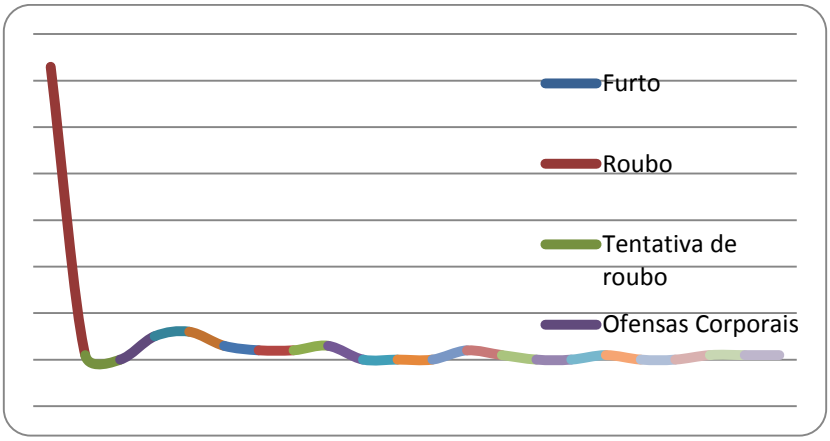
Statistics (Recommendation 32)

144. STP has not applied the AML/CFT provisions with regard to sanctions. The following table provides an overview of the number of predicate offences handled or being handled by the authorities from 2009 to 2011.

Type of Crime	No. of Pending Cases for Processing			No. of Cases Processed		
	2009	2010	2011	2009	2010	2011
Homicide	4	5	2	6	5	9
Robbery or theft	50	70	137	41	40	33
Physical Injuries	163	138	106	121	149	61
Embezzlement	5	0	3	1	0	0
Counterfeiting of Currency (forgery of Banknotes)	0	0	0	0	2	0
Illicit Trafficking of Weapons		1	1		0	1
Counterfeiting	3	0		0	0	4
Public Maladministration	0	0		0	0	
Extortion	0	0		0	0	

Illicit Trafficking of Drugs and Psychotropic Substances	0	1		1	0	





Analysis of the effectiveness

145. No criminal prosecutions have been initiated and no case has been brought before the STP courts since the enactment of the AML/CFT Law in 2008, as well as the relevant provisions in the Penal Code. Similarly, the authorities in charge of investigation, prosecution and conviction did not appear to have a clear understanding of the risks and threats of money laundering nor the capacity to expeditiously respond to these risks and threats. The authorities, in their response to the Mutual Evaluation Questionnaire (MEQ) and interactions with Assessors, stated that *"in order to prepare the country for self assessment, the FIU held recently working*

meetings with the Minister of Justice, the Governor of the Central Bank, the Attorney General of the Republic, the President of the Supreme Court, and the Commander General of Police. At the meetings, the FIU highlighted difficulties confronting the effective operation of the FIU particularly those arising from the cumbersome process of passing laws and the gaps in these laws. Based on these meetings, we learnt that the suspected crimes of money laundering among some cases already investigated to date, have been classified and sanctioned as serious fraud and were not indicated as crimes of money laundering." In this regard, it is not possible to assess the effectiveness of the AML/CFT regime of STP.

2.1.2 Recommendations and Comments

146. STP has taken bold steps to criminalize money laundering under Article 272 of the Penal Code of 2010. Article 272 extends the offence of money laundering to include those offences for which the maximum punishment is more than ten years in prison. The list of predicate offences is expanded by Article 4 of the AML/CFT Law. Furthermore, Article 292 provides adequately for the criminalization of the laundering of proceeds of illicit trafficking in narcotic drugs and psychotropic substances consistent with Articles 3 (1) (c) (i) of the Vienna Convention and Article 6 (1) (b) (i) of the Palermo Convention. The combined threshold and listing approach adopted by STP, as well as the provision in Article 292, enable the country to cover a significant number (18) of predicate offences of money laundering. However, STP has not criminalised counterfeiting and piracy of products , and insider trading and market manipulation. Additionally, the requirement for proof that property is the proceeds of crime without conviction of a person for the predicate offence applies only to instrumentalities. Sanctions provided in the Penal Code and AML/CFT Law are broad, proportionate, and dissuasive enough to deal with money laundering risks in the country. But these have not been applied, either to natural or legal persons hence their effectiveness has not been tested.

147. STP admitted during the on-site visit that there were gaps in the existing legislation and has thus drafted a Bill to address the deficiencies. STP could not provide any evidence of convictions to enable the Assessors determine the effectiveness of the anti-money laundering measures.

148. Accordingly, STP is encouraged to improve its AML/CFT regime by:

- Enacting the draft AML/CFT Bill to adequately criminalize the full range of predicate offences of money laundering in accordance with the FATF Recommendations;
- Training relevant personnel to effectively respond to the risks and threats of money laundering;
- Extending requirement for proof that property is the proceeds of crime without conviction of a person for the predicate offence should extend to all property, regardless of nature;
- Taking concrete steps to investigate, prosecute and convict persons found culpable of committing money laundering crimes to ascertain the effectiveness of the AML/CFT regime.

2.1.3 Compliance with Recommendations 1 & 2

FATF Rec.	Rating	Summary of factors underlying the rating
Rec. 1	**PC**	• Piracy and counterfeiting of products and insider trading and market manipulation have not been criminalized • Relevant authorities lack the knowledge and capacity to expeditiously respond to ML risks and threats • There has been no implementation of the provisions relating to this Recommendation, including self-laundering.
Rec. 2	**LC**	• Proof that property is the proceeds of crime without conviction of a predicate offence applies only to instrumentalities • Sanctions have not been applied to ascertain their effectiveness

SPECIAL RECOMMENDATION II

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

149. STP's legal framework against terrorist financing comprises the following:

- Law no. 2/2008 - Organic Police of Criminal Investigation
- Law No. 6/2012 - Penal Code
- Law 5/2010 - Criminal Procedure Code.
- Law 15/2008 of 14 November republished in DR. 84, 27 September 2010 - Law on Preventing and Combating Money Laundering and Financing

Criminalisation of terrorist financing (SR. II.1.a)

150. Terrorist financing is a standalone offence in the criminal jurisprudence of STP. Under Article 5-A of the AML/CFT Law, a person commits an offence of terrorist financing if that person, by any means, directly or indirectly supplies, holds, collects funds or goods of any kind as well as products or rights capable of being transformed into funds intended to be used or knowing that they may be used wholly or partially in planning, preparing or practice of **promoting or establishing a terrorist group or terrorist organisation or committing a terrorist act** (offences referred to in Articles **359º and 360º** of the Penal Code). The offence is punishable with a term of imprisonment from 3 to 15 years.

151. Article 359 of the Penal Code criminalises the **promotion** or **establishment of a terrorist group or terrorist organisation.** The penalty for this offence ranges from 5 to 20 years imprisonment. Article 359(2) considers as a terrorist group - *any terrorist group, organization or association of 2 or more persons, acting in concert, aimed at undermining the integrity and national independence or impede, alter or subvert the functioning of state institutions provided for in the Constitution or compel the public authority to do an act, to*

refrain from the practice or tolerate that practice or to intimidate certain persons, groups of persons or the general population through the practice of any [of the following]crimes:

a) against life, physical integrity or liberty of persons;
b) against the security of transport and communication, including the telegraph, telephone, radio or television;
c) intentional production of common danger through fire, releasing radioactive substances or toxic or asphyxiating gases, flood or avalanche, collapse of building, contamination of food and water for human consumption or dissemination of epidemic;
d) sabotage;
e) involve the use of bombs, grenades, firearms, explosive devices or substances, means any kind of incendiary, orders or letter bombs.

152. Article 360 criminalises terrorism by reference to the acts listed in article 359 (a) to (d) with the use of bombs, grenades, firearms, explosive devices or substances, means any kind of incendiary, orders or letter bombs (359) (e). In addition to articles 359 and 360, one may cite article 358 which criminalises the promotion or founding of a group, organization or association whose purpose or activity is directed to the practice of one or more crimes punishable by imprisonment of not less than four years. This offence attracts a punishment of a term of imprisonment for 1-8 years. It also punishes those who are part of such groups, organizations or associations or those who support them, namely, financing, supplying arms, munitions, instruments of crime, custody or places for meetings, or any aid for which they recruit new members. The combined provisions of article 5-A of the AML/CFT Law, articles 359 and 360 of the Penal Code cover the financing of terrorist acts, terrorist organisation and an individual terrorist.

153. The acts listed in paragraphs (a) to (d) of article 359 do not seem to cover all the offences within the scope of and as defined in one of the treaties listed in the annex to the TF Convention. However, the Penal Code incorporates elements of the following treaties annexed to the TF Convention:

a) Convention on the Suppression of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973;
b) International Convention against Taking of Hostages of 17 December 1979 and
c) International Convention for the Suppression of Terrorist Bombings of 15 December 1997;
d) International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
e) Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970;
f) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September, 1971;
g) Additional Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf of 10 March 1988 ; and

h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988.

154. Some of the offences[15] in these treaties have been criminalised in the Penal Code. Thus, the country can extend the terrorist financing offence to the offences criminalised in the Penal Code. In the absence of any precedent to this effect, Assessors were not convinced that STP would apply articles 5-A of the AML/CFT Law and articles 359 and 360 to the offences in all the treaties.

Definition of funds (c.II.1.b)

155. There is no express definition of funds in the AML/CFT Law. However, article 2 of the Law defines 'goods' to include 'assets of any kind, corporeal or incorporeal, movable or immovable, tangible or intangible, as well as legal instruments or documents certifying ownership or other rights over the assets in question.' The definition of "goods", just as the definition of funds in the TF Convention and the Glossary to the FATF Methodology, is very broad and covers all types of property. However, it does not provide for examples like bank credits, travellers' cheques, money orders, shares, securities, bonds, drafts, letters of credit, as provided in the TF Convention and the Methodology. It is unclear whether the authorities of STP would define goods to cover these items. Also, the definition of goods does not appear to differentiate between goods from legitimate or illegitimate sources. In view of the fact that the same definition applies to property subject to confiscation under the law, it may be presumed that the definition covers goods from both legitimate and illegitimate sources.

Use of funds (c.II.1.c)

156. Article 5A (2) of the AML/CFT Law provides that in order for an act to constitute a terrorist financing offence, it is not necessary for the funds to come from third parties, nor for them to have been delivered to whom they are destined, **or for them to have been effectively used to commit the facts described**. There is no provision to the effect that terrorist financing offences should not require that the funds be linked to a specific terrorist act(s).

Attempt to commit the offence of terrorist financing (c.II.1.d)

157. There is no specific provision criminalising an attempt to commit terrorist financing in STP. However, article 23 of the Penal Code provides that unless otherwise stated, attempt is punishable with the corresponding penalty of more than three years in prison in relation to the principal act. This means an attempt to commit a terrorist financing offence can be punished under the criminal justice system of STP. The exception to this provision, as provided by Article 24, is when the action taken is not adequate or the person lacks an essential object to fully commit the crime, where the perpetrator voluntarily stops from pursuing the execution of the crime or prevents the execution, among other things. In Article 5-A (3) of the AML/CFT Law, the offender may receive a reduced sentence or may not be punished if the offender voluntarily

[15] hostage taking (163), terrorist bombing, piracy (386)

abandons his or her activities. Article 22 of the Penal Code explains attempt to mean *when a person takes an action to commit a crime without actually executing the act, completes a constituent element of a type of crime, takes an action that is capable of producing a specific result or that, according to common experience, and unless unforeseen circumstances are such as to expect them to result in specific acts.*

158. ***Participation as an accomplice:*** Article 5-A (3) anticipates participation in the financing of terrorism or an attempt to finance terrorism as an accomplice to the criminal offences by reference to the collection of decisive evidence in the identification or capture of other criminals with the assistance of a person who attempted to commit the terrorist financing offence. The authorities may also rely on article 27 of the Penal Code to punish a person who participates in terrorist financing as an accomplice. Article 27 of the Penal Code punishes a person as an accomplice to a criminal offence if that person intentionally and in any form, material or moral, provides assistance to others to commit a criminal offence.

159. ***Organization or direction of others to commit an*** **offence:** Article 5-A of the AML/CFT Law provides for direct or indirect commission of the offence which can also be committed by any means. Therefore, in line with article 5-A of the AML/CFT Law and article 359 of the Penal Code, a person who organises or directs other to commit the offence of terrorist financing can be punished pursuant to Article 26 of the Penal Code which considers authors of crime to include a person who

a. undertakes the action, by himself or through others, or takes direct part in executing the action;
b. by tacit or express agreement with another or others, takes a direct part in the execution or act together in joint efforts for the same offense;
c. provided there is execution or early execution, determines directly and intentionally directing others to commit the crime.
d. In view of the above, a person who organises or directs others to commit the offence will suffer the same punishment as the person who actually committed the offence.

Predicate offence of money laundering (SR. II.2)

160. The terrorist financing is predicate offence of money laundering pursuant to article 272 of the Penal Code (penalty is more than four years) and article 4(a) of the AML/CFT Law.

Location of offenders (R. II.3)

161. There is no requirement in the AML/CFT Law regarding the application of the terrorist financing offence regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist (s) or terrorist organisation is located or the terrorist act(s) occurred or will occur. STP will assume jurisdiction over a terrorist financing offence in accordance with articles 5 and 6 of the Penal Code as extensively discussed under **Recommendation 1.5 above.**

Special Recommendation II.4 (Applying Criteria 2.2 to 2.5)

Intentional element (II.4) (applying R. 2.2)

162. Article 14 of the Penal Code permits the intentional element of the offence of terrorist financing to be inferred from objective factual circumstances. Intent may direct may be direct, necessary or eventual. Article 14 of the Penal Code provides that whoever acts intentionally representing a fact which fulfils a type of crime, act with the intention to perform. Intention may also be inferred on the premise that when a person acts with intent to represent the performance of an act that constitutes a type of crime, that person intended the necessary consequence of his conduct. In this case, article 14(3) precludes a person from invoking fraud as a defence when the realisation of the fact is represented as a possible consequence of the conduct and the person acts in furtherance of that action. The authorities of STP submitted that in order to succeed in the prosecution of an offence, the perpetrator should, in addition to the intention to commit that offence, further manifest his actions to complete the commission of the crime.

Criminal Liability of legal persons (applying R. 2.3)

163. Under article 11(2) of the Penal Code, legal persons or similar bodies can only be criminally liable in cases specifically provided for by the Penal Code or in special legislation. This provision equally applies to the natural persons that are in control of the legal person. This provision applies to the agents or representatives of the legal person acting on their behalf and in their collective interest. It does not apply when the agent acted against the express orders or instructions and does not exclude individual or similar responsibility of the respective agents. A legal person may be dissolved when it is demonstrated that the body corporate or similar entity was created with the intention of exclusively or predominantly engaging in those criminal activities or when the repeated commission of such crimes show that the entity or similar entity is being used exclusively or predominantly for criminal purpose by their agents or representatives, or by the person holding the relevant administration, management or direction.

164. Additionally, article 45(1) of the AML/CFT Law extends criminal liability to legal persons for offenses committed by members of the respective bodies, the office holders, directors or management or any employee, if the acts are committed in the exercise of its functions, as well as for offenses committed by representatives of legal person acting on behalf of and in the interest of the legal persons. Article 45(1) applies even if the legal acts underlying the relationship between the individual employee and the legal person are not valid or effective. The liability of legal persons does not exclude the personal liability of individuals acting as members of its organs or holding directorship or management positions, which will be punished even when the legal type of offense requires certain personal elements and these only where the person represented in the agent or the practice act in their own interest and the representative acting on behalf of the defendant.

Administrative sanctions

Sanctions

165. Punishment for the terrorist financing offence ranges from a term of 3 to 15 years imprisonment. Assessors were of the opinion that the sanctions were proportionate and dissuasive. However, its effectiveness could not be ascertained because the sanctions have not been applied.

Statistics

166. There are no statistics available in respect of terrorist financing.

Analysis of Effectiveness

167. Assessors could not assess the effectiveness of this Special Recommendation during the on-site visit because the country had not implemented the relevant provisions with regard to investigation or prosecution of terrorist financing offence. Staff of relevant competent authorities need intensive training on issues relating to combating the financing of terrorism to enable them to apply the provisions of the law.

2.2.2 Recommendations and Comments

168. STP needs to take urgent steps to build the capacity of relevant institutions to implement measures to combat the financing of terrorism.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR II	**PC**	• Relevant personnel and institutions lack the capacity to implement CFT provisions • Terrorist financing provisions, including sanctions, have not been implemented

RECOMMENDATION 3

2.3.1 Description and Analysis

Description and analysis

169. STP has adopted legislative measures that enable its competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences. Thus, the framework for the confiscation, freezing and seizing of proceeds of crime in STP is the AML/CFT Law, as well as the Penal Code. Article 3(g) of the AML/CFT Law defines "loss" to mean *"a measure of complementary character decreed* ***as a consequence of a case*** *related to one or various penal infractions that could lead to the definitive loss of the good, object, product or rights derived*

thereby". The powers to identify and trace the proceeds of crime and to investigate the financial aspects of a criminal offence more generally can be pursued as part of the main criminal investigation, and the normal powers to search and seize, to compel production, and to take statements, are set out in the Penal Procedure Code (PPC). These powers have not been exercised in relation to ML offences.

Confiscation of laundered property or instrumentalities (c. 3.1)

Proceeds from (3.1.a)

170. Chapter IV of the AML/CFT Law on "Loss of Objects, Benefits, Goods, Funds or Rights" provides that the destination of the assets used or intended to be used in the commission of money laundering or terrorist financing is outlined in Chapter IV. With regard to confiscation of property that constitute proceeds from ML or FT or other predicate offence, Article 7 (1) of the Law requires "all of the benefits, advantages or rights attributed, promised or given to agents of the offences of money laundering and terrorist financing intended for them or for third parties are to be declared confiscated to the State. This provision also applies to objects, goods, funds, rights and advantages that, through these offences, were acquired by those who committed the offences or for third parties.

171. On laundered property, the State will, in accordance with article 8(1) of the AML/CFT Law, confiscate the benefits, objects, goods, funds, rights or advantages that have been **transformed or converted** into other goods (see definition of goods [16]above).

Instrumentalities used in or intended for use in (3.1.b &c)

172. Article 6 of the AML/CFT Law provides for the confiscation of "objects" if the objects were used in or intended to be used in the commission of the offences of money laundering or terrorist financing or were produced for the purposes of committing these offences. "Object" is not defined in the Law, but article 3 of the Law defines "tools" to mean *any **object** used or intended to be used, in whatever way, in whole or in part, to commit one or various penal offences*.

173. The authorities can also rely on Article 104 of the Penal Code which provides that objects that have been or were intended to be used for the commission of a crime, or that were produced by the crime as by its nature or the circumstances of the case would jeopardize people's safety, morals or public order, or offer serious risk of being used to commit new crimes, should be confiscated by the State. However, article 104 is narrow in scope as the instrumentalities covered are those that *would jeopardize people's safety, morals or public order, or offer serious risk of being used to commit new crimes*.

Property of corresponding value

[16]Definition provided at paragraph 133 in line with Article 2 of the AML/CFT law of STP.

174. Article 8(2) of the AML/CFT Law permits the confiscation of assets of corresponding value when objects, goods, securities, rights or benefits have been incorporated in property lawfully acquired. The provision applies only to the extent of the value assigned to the tainted property that has been commingled with the legitimately acquired property. Similarly, article 7(3) of the AML/CFT Law permits the confiscation of objects, goods, securities, rights or benefits to be replaced by payment of its value if it may not be appropriate in kind to confiscate those assets.

Property derived from proceeds (3.1.1(a)

175. Article 9 of the AML/CFT Law permits the application of confiscation measures in article 6 to 8 to claims, profits, interest and other benefits derived from the proceeds of crime.

Property held by criminal defendant or third party (3.1.1(b)

176. Article 7(2) of the AML/CFT Law provides for the confiscation of objects, properties, values, rights and benefits that have been purchased by the offenders for themselves or others through the offence. This provision is without prejudice to the rights of third parties in good faith.

Provisional measures to prevent dealing in property subject to confiscation (3.2)

177. Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation are implicitly provided under article 17 of the AML/CFT Law which prohibits financial entities from executing transactions when there is suspicion that a transaction is related to the offence of money laundering. An entity that suspects that a transaction could be related to the offence of money laundering is required to immediately inform the A-G's Office which may order the suspension of the execution of the transaction.

178. Article 17(3) permits an entity to continue with a transaction if the suspension order is not confirmed by a criminal investigation judge[17] within two working days after providing information to the A-G (the declaration of STR) pursuant to article 17(2). An entity may execute a transaction if, in the opinion of the A-G, the suspension is likely to frustrate or undermine the preventive measure or gathering of evidence by the "authority[18]". In such situations, an entity is obligated to provide "that authority" with all the information relating to the transaction. It is not clear as to which authority is referred to in article 17(2). "Authority" is not defined in the AML/CFT Law, except that article 56 of the Law confers the power to investigate offences under the Law on supervisory authorities of the various sectors. However, action needed to be taken in on in respect of such information appears to fall within the mandate of the FIU. STP needs to

[17] There is no provision for confirmation of suspension by a criminal investigation judge.

[18]The investigation of offenses under this Act and the instruction of their processes in relation to financial entities are the responsibility of the authority responsible for the supervision of the respective sector and for non-financial entities within the competence of the supervisory authorities referred to in n. 1 of article 41. (Article 56 of AML/CFT Law)

clarify the authority envisaged by article 17(2) to avoid confusion in submission of the required information.

179. The AML/CFT Law does not define "transaction" which would have enabled Assessors to determine whether the context in which the word "transaction" is used will cover all property. In this regard, Assessors had recourse to the following definition of "transaction" in the Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for common law legal systems)[19]:

"transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to:

(a) opening of an account;

(b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;

(c) the use of a safety deposit box or any other form of safe deposit;

(d) entering into any fiduciary relationship;

(e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any payment made in respect of a lottery, bet or other game of chance;

(g) establishing or creating a legal person or legal arrangement; and

(h) such other transaction as may be prescribed by the [minister/competent authority] by regulation.

Seizure

180. The authorities may rely on Article 249 of the PPC, on objects liable to seizure, prevent any dealing, transfer or disposal of property by seizing:

a. objects that have served or were destined to serve the commission of a crime;

b. objects which constitute proceeds, profit, price or reward,

c. Objects that have been left by the offender at the scene, or

d. any other object likely to serve as proof of the offence.

181. There can also be seizure of correspondence sent by the suspect or concerns a crime that is punishable by imprisonment for more than three years or will prove of great interest to the discovery of truth or evidence (Article 250). Seizures are authorized, ordered or validated by order of the prosecutor or the judge. Seizures made by national criminal police are subject to

[19] UNODC, Commonwealth Secretariat and the International Monetary Fund, April 2009

validation by the prosecutor or the judge, within seventy-two hours. These measures permit the authorities to prohibit the transfer, conversion, disposition or movement of funds or other assets.

182. In the light of the definition of transaction above, Assessors were of the opinion that article 17 of the AML/CFT Law is broad enough to prevent any dealing, transfer or disposal of property subject to confiscation (as defined by the FATF). However, while article 17 (2) requires entities to inform the A-G's Office of any suspicion, article 17(4) requires entities to immediately provide "that authority" with all information regarding transactions if it is not possible suspend transactions or in the opinion of the A-G such an action will jeopardise the "the authority's" preventive or probative action. It is not clear which authority is referred to. STP needs to clearly state the name of the authority required to receive this information.

183. Apart from the provision in article 17 of the AML/CFT Law, which may involve freezing, Assessors did not sight any provision for freezing funds or other assets which remain the property of the person(s) or entity (ies) that held an interest in the specified funds or other assets at the time of the freezing and continue to be administered by the financial institution or other arrangements designated by the affected person(s) or entity(ies) before to the initiation of an action under the freezing mechanism. STP should consider having freezing mechanisms in order to avoid situations where seized property is not properly managed and requiring the government to compensate the owner if the State is unable to confiscate the assets.

Ex-parte application for provisional measures (3.3)

184. There is no express provision for an initial application to "suspend" or seize property subject to confiscation to be made *ex-parte* or without prior notice. Due to the fact that entities are prohibited from tipping off clients and third parties about the fact that a report or information has been or is been submitted to the A-G, it may be inferred that it is possible to suspend and confirm suspension of a transaction under article 17 of the AML/CFT Law ex-parte or without prior notice. Seizure of property subject to confiscation under article 249 of the PPC is without prior notice. It takes place on suspicion that a criminal offence has been or is being committed and the purpose is to prevent the disposal or use of the objects or proceeds.

Power to identify and detect the origin of property subject to confiscation (3.4)

185. The Public Prosecutor and PIC may search residential dwellings, offices and other places, and means of transportation, and to seize relevant documents and other items. Under article 146(c) of the PPC, a competent police officer, even before even before receiving an order of the PP or the judge to carry out investigations, may take precautionary measures that are necessary and urgent to ensure evidence by making seizures during searches or in case of emergency or danger of delay, take the precautionary measures necessary for the conservation or maintenance of items seized. Article 252 of the PPC empowers the judge to order the seizure of documents, titles, values, amounts and any other objects, even in individual safes in banks or other credit institutions when there are reasonable grounds to believe that they are related to a crime and will prove of great interest for the discovery of truth or evidence. This applies even if the listed items do not belong to the accused person or they were not deposited in the name of the accused person. The judge may consider any bank correspondence and documentation for discovery of

items to be seized. The examination of the documents is to be done personally by the judge, assisted where necessary by the qualified police officer both of whom are bound by duty of secrecy regarding everything they have learned and have no interest in the case.

Protection of bona fide third parties (3.5)

186. Article 60 of Law 15/2008 provides for "defence of the rights of third parties of good faith," if the assets seized from defendants as part of a criminal case for offences related to money laundering or terrorist financing are found to be registered in the name of third parties. The holders of these registrations are notified in order to defend their rights and summarily prove their good faith. The assets in question are to be immediately returned to them.

187. In the absence of such registration, a third party invoking good faith in the acquisition of seized assets may undertake the defence of his or her rights in the case. The defence of the rights of the third party invoking good faith may be undertaken up to the declaration of confiscation and is presented by way of a request submitted to the judge, with the interested party indicating all of the elements of proof in favour or his or her claim. This request is annexed to the case, and, following the notification of the Public Ministry, which may oppose the application, the court shall decide, conducting all diligences it considers convenient for such purpose. When a claim by a third party may not be conveniently decided as a part of a case due to its complexity or delay in the normal course of the criminal case, the judge may refer the matter to the civil courts for determination.

188. Third party interest is also protected under article 249(6) of the PPC which permits holders of assets or rights subject to seizure to request the judge to modify or revoke the order for seizure. Article 249(7) of the PPC requires the judicial authority to order the presence of and hear a third party if the items seized are likely to be declared forfeited to the State and they do not belong to the defendant. The authorities may also rely on the provision for seizure, being another form of restraint, under articles 249 and 252 of the PPC to void actions.

Power to Void Actions (3.6)

189. According to the terms of article 17 of the AML/CFT Law relating to "Duty of abstention and power of suspension", an entity that suspects that a given transaction could be related to the practice of the crime of money laundering or to terrorist financing must immediately inform the A-G's Office, which may determine the suspension of the execution of the respective operation.

Additional elements (3.7)

a) Property of organizations considered to be criminal in nature

190. Article 358 of the Penal Code criminalises the promotion or founding of a group, organization or association whose purpose or activity is directed to the commission of one or more crimes punishable by imprisonment of not less than four years shall be punished with imprisonment for 1-8 years. Such group, organization or association concerned normally consist

of a set of, at least, three individuals acting in concert during a certain period of time. There is also the criminalisation of promotion or founding of terrorist group, organization or association under article 359 of the Penal Code. However, there is no specific provision for confiscation of property of organisations whose principal function is to perform or assist in the performance of illegal activities. In this case, since property of both natural and legal persons can be confiscated in the criminal jurisprudence of STP, it would be possible to confiscate the proceeds of an offence under Articles 6, 7 and 8 of the AML/CFT Law.

b) Assets subject to confiscation without conviction (civil forfeiture)

191. Article 6 of the AML/CFT Law provides for confiscation of instrumentalities used in or intended for use in the commission of money laundering offences even if no individual is punished for the offences. Furthermore, article 104 0f the Penal Code permits the confiscation of objects that have been or were intended to be used for the commission of a crime, or that were produced by the crime as by its nature or the circumstances of the case would jeopardize people's safety, morals or public order, or offer serious risk of being used to commit new crimes, should be confiscated by the State. However, article 104 is narrow in scope as the instrumentalities covered are only those that *would jeopardize people's safety, morals or public order, or offer serious risk of being used to commit new crimes*.

c) Assets subject to confiscation and requiring owner to prove lawful origin

192. There is provision for confiscation of property subject to confiscation but there is no provision which requires an offender to demonstrate the lawful origin of the property.

Statistics on confiscation and seizure (application of Recommendation 32)

193. STP does not have statistics of proceeds of crime or instrumentalities intended for or used in the commission of any ML, TF or other predicate offences, and property of corresponding value.

Analysis of effectiveness

194. STP has not applied any of the provisions cited to ML cases.

2.3.2 Comments and recommendations

195. STP has legal provisions to confiscate criminal assets and take similar actions. However, STP needs to have clearly defined procedures that allow the initial procedures to be taken ex-parte or without prior notice. The powers to freeze are not clearly articulated in the AML/CFT Law.

2.3.3 Compliance with Recommendation 3

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	**PC**	• There are no clear procedures to freeze property subject to confiscation • There has been no seizure, freezing or confiscation of proceeds or instrumentalities used in or intended for use in the commission of a crime

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

SPECIAL RECOMMENDATION III

2.4.1 Description and Analysis

S.R. III.1-9

196. Special Recommendation III require countries to implement measures that will freeze or, if appropriate seize terrorist-related funds or other assets without delay in accordance with the relevant United Nations Security Council Resolutions, and to put in place measures that permit the countries to seize or confiscate terrorist funds or other assets on the basis of an order or mechanism issued by a competent authority or a court. Currently, STP does not have any law or measure in force and effect that implements the requirements of SR. III. *São Tomé and Príncipe is a member of the United Nations, but has not yet ratified United Nations Security Council Resolution 1267 (1999). In other words, its internal Law to Prevent and Combat Money Laundering and Terrorism Financing does not cite United Nations Security Council Resolution 1267 (1999)*[20].

197. However, the country has ratified/acceded to the following universal instruments against terrorism:

198. According to Article 130 of the Constitution of STP, international conventions and treaties have primacy over domestic legislation and are applicable in the legal system of STP upon their publication in the Official Journal. Additionally, Article 60-B of the AML/CFT Law, "Disposition in matters of international cooperation," provides that the regulation of the presuppositions and content outlined in the present Law implies the duty on the part of São Tomean entities to provide and receive information to and from foreign entities, in fulfilment of inter-regional accords or any tool of international law in various different matters such as: mutual legal assistance, extradition, cooperation in matters of the apprehension and loss of the products of criminal activities, the exchange of information and cooperation between proper authorities. Despite these provisions, STP has not implemented any measures in furtherance of Special Recommendation III. No additional information was provided regarding how the country

[20] Reproduced from MEQ

implements its obligations in international instruments that have not been domesticated into its national laws.

Review of freezing decision (III.10)

199. Article 371 of the PPC permits appeals against decisions of judges and courts that are not expressly precluded by law. The authorities reported that they may apply article 376 of the PPC in cases in which a person or entity's funds or assets have been frozen, the procedure to be adopted to challenge the freezing of assets in cases in which it is desired that this be decided through the courts. In general, judicial decisions may be challenged through appeals. Appeals may be ordinary or extraordinary–appellate, review and damages are ordinary, while revision and opposition from a third party are extraordinary.

Freezing, seizure and confiscation in other circumstances (III.11)

200. Chapter IV of the AML/CFT Law provides for the confiscation of objects, benefits, goods, funds or rights described under Recommendation 3 above, also apply in relation to the confiscation of terrorist-related assets in contexts other than those described in Criteria III.I to III.10.

201. Under the provisions of article 17 of The AML/CFT Law, "Duty of abstention and power of suspension", the entity that suspects that a given operation may be related to the practice of the crime of money laundering or terrorist financing must immediately inform the Attorney General's Office, which may determine the suspension of the execution of the respective operation.

202. São Tomé and Príncipe's PPC may handle cases in which the funds or assets of designated person have been frozen. Such freezing action may be challenged in the courts. In conformity with article 676 of the Civil Procedure Code (CPC), in the general dispositions, judicial decisions may be challenged through appeals. Appeals may be ordinary or extraordinary – appellate, review and damages are ordinary, while revision and opposition from a third party are extraordinary.

Protection of third party rights (III.12)

203. In conformity with Article 60, in the Final Dispositions is the Defense of the rights of third parties acting in good faith, which establishes that if the assets seized from a defendant in a criminal case for infractions related to money laundering or terrorist financing are publicly registered in the name of a third party, the holders of these registrations are notified to undertake the defense of their rights and provide summary proof of their good faith, with the assets in question able to be immediately returned to them.

Monitoring compliance with obligations (III.13)

204. Article 28, "Powers of supervisory authorities and duty of communication," stresses that the enforcement of the fulfilment of the duties outlined in the present subsection is the

responsibility of the supervisory authorities of the respective sector which, to this effect, exercise the authority and powers outlined in the respective legislation.

Additional elements
Measures in Best Practices Paper for SR III (III.15)

205. Up to the present there have been no cases of terrorism in São Tomé and Príncipe, and, as such, it has not been necessary to implement the best practices for Special Recommendation III.

Recommendation 32 (data on asset freezing related to terrorist financing)

206. There is not yet any statistical data on issues relevant to the number of people or entities and the amount of assets frozen with respect to financing of terrorism.

Analysis of effectiveness

2.4.2 Comments and recommendations

207. Although the Republican Constitution of STP permit the country to implement its obligations under regional international instruments duly adopted and has acceded to the TF Convention, STP has not implemented any of the requirements under SR. III. There are no measures in place to freeze terrorist funds and other assets. The country has not criminalized the financing of individual terrorist. STP is called upon to urgently to:

- Criminalise the financing of an individual terrorist; and
- Put in place and implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the UNSCRs 1267 and 1373.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• Financing of individual terrorist is not criminalised • No measures to freeze or seize terrorist funds or other assets
R 32	**NC**	No statistics

2.5 The Financial Intelligence Unit and its functions

RECOMMENDATION 26

2.5.1 Description and Analysis

Establishment, Structure and functions of the FIU (c. 26.1)

208. Article 60-A of the AML/CFT Law provides that a Financial Intelligence Unit (FIU) is hereby created through a specific legislation stating the type and responsibilities in relation to the prevention of money laundering and terrorist financing. Consequently, the **Financial Intelligence Unit (FIU)** of STP was established by Article 1 of Decree n.º 60/2009. By Article 11 of the FIU Decree, the FIU operates under the charge of the Ministry of Planning and Finance (now Ministry of Finance and International Cooperation). The FIU is an administrative type with perpetual succession except for the tenure of office of the persons in charge of the affairs of the FIU (the Coordinator and Deputy Coordinator) which is for four years, as provided by article 2 of the FIU Law. The Board consists of the Ministry of Planning and Finance, the Central Bank, the Ministry of Justice and Parliamentary Affairs, Criminal Investigation Police, the Ministry of Commerce, Trade and Investment Directorate, and Directorate of Inspection Games. Article 3 of Decree nº 60/2009 provides that the function of the FIU is to **centralize**, **analyze** and **disseminate** financial information to the competent authorities responsible for the prevention or prosecution of money laundering and terrorist financing offences. It is also empowered to provide and receive information from entities outside STP concerning the crimes of money laundering and terrorist financing in accordance with international agreements or any other international law instrument. In the performance of its functions, the FIU is empowered by Article 4 to:

a) receive** the information provided to the FIU and the elements developed from that **information to create and maintain a database;

b) analyse the information received and report to prosecutors transaction that give rise to suspicion of the crimes of money laundering or terrorist financing

*c) support the criminal police and judicial authorities, and other entities with responsibilities for the prevention or prosecution of money laundering and terrorist financing offences, including **through the transfer of data and the provision of technical support expertise,** when essentially requested;*

d) provide and receive from entities outside the Democratic Republic of Sao Tome and Principe information concerning the crime of money laundering and financing of terrorism in compliance with international agreements or any other international law instrument, as referred to in the previous paragraph;

e) collaborate in the development and revision of the guidelines against money laundering and terrorist financing with public authorities responsible for issuing such guidelines or regulation;

f) develop, disseminate and educate the general public on issues related to combating money laundering and the financing of terrorism; and

g) prepare an annual report to be submitted to the supervisory authority on the activities undertaken by FIU in each calendar year.

209. The FIU is also empowered by Decree n.º25/2012, the Internal Rules of the FIU to:

(a) ensure the implementation of the National Plan to combat money laundering and terrorist financing;

(b) Prepare an annual report on the activities undertaken by FIU in each calendar year and submit to the governing organ;

(c) conduct periodic studies on the evolution of techniques and trends used for money laundering and terrorist financing;

(d) advise on the policy of the State in this matter; and

(e) assist the competent authorities responsible for investigating and prosecuting money laundering and terrorist financing cases.

210. Despite these provisions relating to the functions of the FIU, there is no corresponding requirement for reporting entities to submit STRs to the FIU. However, Articles 16 of the AML/CFT Law requires a financial institution to immediately inform the Attorney General's Office, if its monitoring of transactions result in suspicion or knowledge of certain facts that indicate the commission of money laundering or terrorist financing offence. Article 27(1) also requires financial institutions to inform the Attorney-General's Office as soon as they discover or suspect that any amounts registered in their books originate from the commission of illicit acts. They are also required to report to the A-G's Office when they notice any facts that could constitute evidence of the commission of money laundering or terrorist financing offence.

211. Recognising the need for reporting entities to submit STRs to the FIU, the CBSTP issued NAP 20/2011 on suspicious transaction reporting to financial institutions. Although NAP 20 makes reference to Article 60-A of the AML/CFT Law which provides for the creation of the FIU, as well as the FIU Decree which entrusts the FIU with the exclusive competence in the collection, centralization, analysis and dissemination of information relating to transactions which give rise to the suspicion of money laundering and terrorist financing, it does not expressly require financial institutions to submit STRs to the FIU, but to the "competent authority". Though not defined in NAP 20, "competent authority" may be construed to mean the FIU within the context of NAP 20. The authorities informed Assessors that the purpose of NAP 20 – on suspicious transaction reporting- is to require financial institutions to submit STRs to the FIU.

212. In accordance with NAP 20 issued by the Central Bank, financial institutions have submitted STRs to the FIU and not the A-G, as required by Law n. º 15/2008. Focal persons from designated entities submit the STRs manually and directly to the Coordinator of the FIU in sealed envelopes and labeled CONFIDENTIAL. They are kept in a secure cabinet to which only

the Coordinator has access. The Coordinator analyses the STRs with the analyst and determines whether there is reasonable suspicion that the transaction is related to an unlawful activity. However, the FIU has analysed a very limited number of STRs because it is in a very early stage. At the time of the on-site visit, the FIU had not disseminated any financial information to the competent authorities or Public Prosecutor, (PP). STP has reviewed the AML/CFT Law to expressly empower the FIU to receive, analyse and disseminate disclosures of STR and other relevant information concerning suspected ML or TF activities.

Guidance for reporting entities (c. 26.2)

213. Article 4(e) of the FIU Decree mandates the FIU to collaborate in the development and revision of guidelines against money laundering and terrorist financing with public authorities responsible for issuing such guidelines. Article 7of NAP 20 (STRs) provides guidance to financial institutions in the submission of STR. Specifically, article 7 on "Rules for reporting suspicious transactions" require financial institutions to refer to current facts when submitting information or suspicious transaction report to competent authorities [the FIU) to enable the authorities to undertake effective investigation. The information must contain the complete identities of persons involved in the transaction (customer account holders, originators or beneficiaries of international transfer, the beneficial owners of the operation), as well as their activity. It must also include the characteristics of the operation (total and partial amounts, time period covered, justification, currency used, indicators of suspicious, payment means and instruments used. The reports are to be submitted in accordance with the format approved by the Central Bank and attached to the NAP.

214. The FIU and the Central Bank created a format for submitting STRs. There are separate formats for reporting by financial institutions and DNFBPs. The FIU has been organising sensitization sessions for reporting entities on how to use the formats. Reporting entities have been submitting STRs using the format provided by the FIU and the Central Bank.

Access to information on timely basis by FIU (c. 26.3)

215. The FIU does not have direct access to any information within the different government departments or authorities. The existing databases of government and other sources of information of state agencies are not accessible to the FIU, and the FIU has to make a formal request to the relevant institution for the information. To obtain information from financial, administrative and law enforcement agencies, the FIU relies on its power under Article 6 and Article 4 of the FIU Decree and FIU Internal Rules which empower the FIU to request and receive all relevant information from any public or private entity, particularly supervisors and criminal investigation agencies, in the performance of its functions. According to the authorities, competent authorities can provide the FIU with information when requested at any time. However, there is no sanction for failure to provide the information requested by the FIU.

216. It is worth clarifying that the use of indirect means to obtain information could only meet the requirements of FATF R.26 if "timely" analysis of STR is guaranteed, which, in the opinion of the Assessors, is not the case in São Tomé and Príncipe. From the structure of the FIU which

comprises financial, administrative and law enforcement institutions, it should be possible for the FIU to have direct and timely access to the information that it requires to properly undertake its functions, including the analysis of STRs. To ensure adequate cooperation, the authorities of STP should consider empowering the Coordinator of the FIU to enter into consultation agreements with the agencies and officials to authorize the FIU to access the databases of the agencies and the officials in charge of the investigation and prosecution of criminal offences or with the supervision of compliance with AML/CFT rules and regulations. These agencies and officials should be obligated to allow the FIU to access their databases.

Request for additional information (c. 26.4)

217. There is no requirement for the FIU to either directly or through another competent authority, obtain from reporting entities additional information needed to properly undertake its functions. Article 4(2) of the FIU Regulations rather enjoins the FIU to request for additional information from individuals or legal entities in order to enrich its database. Professional secrecy cannot be invoked in this case as a reason for not reporting, except as specifically provided in the AML/CFT Law. The Regulation does not specify the means through which such information can be transmitted to the FIU. However, articles 4(3) and 4(4) of the Regulation provide that where there is urgency, the submission can be received by telephone or electronically subject to written confirmation in paper form within forty eight (48) hours and with confirmation by the FIU to the person who submitted the STR. In exceptional cases, and based on consistent and credible information in the possession of the FIU, the FIU can prevent any individual or entity from carrying out a transaction in respect of a natural or legal person under suspicion for a period of not more than 48 hours.

218. In reading Article 4 of the Internal Rules in its entirety, it could be concluded that the additional information required under Article 4(2) is not only intended to enable the FIU to enrich its database but also to assist it to properly undertake its function of analyzing STRs.. Thus, for consistency, there is the need for STP to revise the AML/CFT Law or the FIU Decree to authorise the FIU to obtain from the person who made a report, as well as from the person who, due to the provision of a service, is involved in a transaction about which the FIU has gathered information, and not only to enrich its database.

Dissemination of Information (c. 26.5)

219. Article 3 of the FIU Decree requires the FIU to disseminate to prosecutors financial information on money laundering or terrorist financing. Specifically, the FIU is to provide prosecutors with information obtained from analysis of transactions that give rise to suspicion of the commission of these offences. In article 4(c), the FIU may, on request, provide information, including the transfer of database, to the PIC, judicial authorities and other competent authorities with responsibilities for the prevention or prosecution of money laundering and terrorist financing offences.

220. Furthermore, in article 7 of the Internal Rules of the FIU, the Coordinator of the FIU may refer issues relating to money laundering or terrorist financing offences to the prosecutor based

on the opinion of the Multi-sectoral Commission (MSC) using analysis reports of the FIU. In urgent cases, and where there are strong indications of ML/TF, the FIU can immediately disseminate information to the Prosecutor without the prior opinion of the MSC.

221. Thus, pursuant to Articles 3 and 4 of the FIU Decree, and its Internal Rules, the FIU can disseminate information relating to money laundering or underlying predicate offences and terrorist financing to competent authorities, both spontaneously and on request. However, at the time of the on-site visit, the FIU had not disseminated any information to the relevant domestic authorities for investigation or action because from analysis of STRs received by the FIU, there have not been grounds to suspect money laundering or terrorist financing.

Operational Independence and Autonomy of FIU (c. 26.6)

222. The FIU is a separate entity created by Law no. 60/2009 but operates under the charge of the Ministry of Finance (article 11). It is headed by a coordinator and assisted by a deputy coordinator, both of whom are appointed by order of the Prime Minister based on proposal by the Minister of Finance. The tenure of office of the Coordinator and Deputy Coordinator are not specified in the FIU Law or Internal Regulations. Article 5 of the Internal Regulations of the FIU provides that the coordinator of the FIU is responsible for the management and autonomy of decision of the FIU, as well as ensuring coordination of the FIU and managing the relationship between the FIU and other sectors involved in the training component and reporting. The Coordinator may delegate powers in specific areas, while the Deputy Coordinator or other members of the FIU and can receive delegation of signature of the Minister of Finance for acts falling within the domain of their functions. The Coordinator presides over the meetings of the MSC and has voting rights. The other members of the FIU are appointed by Order of the Minister of Finance.

223. The Prime Minister and Head of Government and the Minister of Finance set the salaries of the Coordinator and Deputy Coordinator of the FIU. The FIU does not have a separate budget. Estimates for its operational expenses are included in the national budget and allocated to the Minister of Finance. Thus, the FIU budget is presented by the Minister of Finance as part of the budget of the Ministry of Finance and approved as such. Access to the FIU, remuneration of staff, internal organisation of services, operation of the fund and internal structure of the FIU are defined in Regulation approved by the Minister of Finance. The following tables show the internal and external structure of the FIU (except the coordinator and deputy coordinator) as approved by the Minister:

Staff of the FIU

SN.	FUNCTION/DESIGNATION	NUMBER
1.	Coordinator	1
2.	Deputy Coordinator	1
3.	Technical, Administrative, Financial	1

SN.	FUNCTION/DESIGNATION	NUMBER
4.	Superior Technical Training	4
5.	Secretary	1
	Total	8

The Governing Board consists of the following focal points

SN.	NUMBER	ORGANIZATION
1.	2	Central Bank
2.	1	Ministry of Justice
3.	1	Ministry of Planning
4.	1	Ministry of Finance
5.	2	Prosecutor General of the Republic
6.	1	Criminal Investigation Police
7.	1	Immigration and Frontier
8.	1	Financial (Fiscal) Police
9.	1	National Police
10.	1	ENASA
11.	1	INAC

224. It may be gleaned from the FIU Law and its Internal Regulations that the FIU lacks sufficient operational independence and autonomy to ensure that it is free from undue influence or interference. The FIU does not have the power to recruit its own staff.

225. A major concern is that, the FIU is not allocated with a sufficient level of resources due to general pressure on available resources in the country. Although the FIU has a specific budget line in the budget of the Ministry of Finance, the budget is not sufficient to cover the operations of the FIU. Article 12 of the FIU Decree permits the FIU to, by regulations, create a permanent fund to properly pursue its activities, taking into account that the FIU does not generate revenue. Article 12(2) of the Internal Rules of the FIU permits the FIU to seek finance from development partners and other interested parties. However, the FIU has not been able to attract such financial support. In fact, the authorities stated that the budget of the FIU, just as other public institutions, is not sufficient to cover its operations. The budget covers only salaries and incidentals. The FIU is currently occupying two small rooms allocated by the Ministry of Finance and is yet to be provided with suitable accommodation. Overall, the FIU is handicapped to make long term plans to address issues relating to hiring and retaining additional suitably qualified staff, purchasing and installation of equipment, and development of comprehensive training programmes for staff of the FIU.

226. The absence of a specific tenure of office for the Coordinator and Deputy Coordinator may give room for the removal of the two officers at any time and ultimately affect the operations of the FIU. The role of the opinion of the MSC with regard to STRs may impede the effective dissemination of financial intelligence, even though the Coordinator is permitted to

disseminate such information immediately and without the prior opinion of the MSC. It may also affect issues relating to confidentiality of information. Furthermore, article7(3) of the Internal Rules of the FIU states that the MSC meets twice in a month, but does not provide for extraordinary meetings and the authorities did not provide any evidence that there has been the need for such meetings.

Protection of Information (c. 26.7)

227. Staff of the FIU are bound by secrecy concerning information provided to them in the exercise of their duties in accordance with Article 7 of the FIU Decree. Furthermore, article 8 of the Internal Rules of the FIU enjoins officials of the FIU and members designated by their institutions to maintain secrecy concerning information provided to them in the discharge of their duties. The FIU Decree and Internal Rules do not specify the sanctions for violation of these provisions. The authorities informed Assessors that such violations can be punished under the Penal Code. Article 205 of the Penal Code, violation of professional secrecy, provides that "who, without cause and without consent of those entitled to, disclose or take advantage of a secret that he has knowledge by reason of their status, occupation, employment, profession or art, and if such disclosure or use can cause injury to the State or the third party will be punished with imprisonment up to two years or fine up to 200 days. An exception to article 205 is where the information is revealed in the fulfilment of a legal duty that is significantly higher or in pursuit of an interest in conflict and the duties of information, according to circumstances, it can be considered an appropriate means to achieve that end to impose the duty upon the employee.

228. STRs are saved at the office of the FIU without the minimum conditions of security. The STR until then received by the FIU are kept in a cabinet in the coordinator's office. Article 11 of the Internal Rules provides that the facilities of the FIU should be manned by the Public Security during the day and night. However there is no control and security system at the office of the FIU, making access to the premises and data very easy. It is important to find a solution that guarantees data security and confidentiality. The physical location of the FIU is inappropriate for an institution of this nature from the point of view of information security.

Publication of Annual Reports (c. 26.8)

229. Article 4(d) of the FIU Decree and article 15 of its Internal Rules require the FIU to prepare an annual report to be submitted to the Ministry of Finance regarding activities undertaken by the FIU in each calendar year. There is no reference to the fact that the report should include statistics, typologies and trends. At the time of the on-site visit to the country, the FIU had neither prepared nor publicly released any periodic reports on the activities undertaken, including the types and trends of money laundering or statistics based on STR, the amounts involved. However, focal points in financial institutions that submit STRs are provided with feedback on actions taken in respect of the STRs.

Membership of the Egmont Group (c. 26.9)

230. The FIU of STP has considered applying for membership of the Egmont Group. However the on-site visit to the country revealed that much still needs to be done to meet the minimum requirement for membership of the Egmont Group, including improvement in the legal framework, as well as the technical and human resources to facilitate the effective operations of the FIU.

Principles of Information Exchange Instrument (c. 26.10)

231. Article 4(d) of the FIU Decree empowers the FIU to exchange information relating to crimes of money laundering and terrorist financing with entities outside STP in compliance with international agreements or any other instrument of international law. However, at the time of the visit, the FIU had not signed any memorandum of understanding or agreement with any other counterpart.

Adequacy of resources for the bodies responsible for law enforcement and other bodies responsible for research and practice of the prosecution in respect of money laundering and terrorism financing (Application of c. 30.1)

232. The bodies responsible for the investigation and criminal prosecution do not have sufficient staff or possess the needed resources for research and promotion of appropriate action against the crimes of money laundering and terrorist financing. They lack competences to research and prosecute crimes against money laundering and terrorist financing.

233. The level of awareness of the issues relating to money laundering is low in STP. Obtaining adequate resources and training in this area should be a priority for the national bodies involved in combating these crimes. Training on combating money laundering and terrorist financing should cover both generic skills and expertise.

Integrity of Competent Authorities (Application of c. 30.2)

234. The Constitution defines the appointment process of the Attorney-General of the Republic and public prosecutors and ensures that these employees must have the necessary probity and merit to be appointed. The recruitment of these employees is made on the basis of defined criteria in the Constitution and requires a high level of integrity. The recruitment of prosecutors is done on merit and in accordance with law. Such employees are not permitted to discharge any other public or private duties, except teaching duties or legal scientific research and on *pro bono* basis. They must act with impartiality and lawfully, and in accordance with the principles enshrined in the law.

Training for Competent Authorities (Application of c. 30.3)

235. The prosecutors and the judiciary participated in conferences and seminars on topics related to money laundering, but received no specialized training or were confronted with techniques or methods of research on this subject. There is a general lack of expertise and

capacity to investigate and carry out penal action against the crimes of money laundering and terrorist financing.

236. Insufficient knowledge and operational capacity to investigate and carry out penal action against money laundering and terrorist financing is a concern which needs to be addressed by the authorities.

Statistics (application of R.32 to FIU)

237. The FIU received 64 suspicious transaction reports, from January to July 2012. The collection of statistical data on the number of STRs and the subsequent investigations is inadequate even for the small number of STRs received. With the exception of the summary table below and the fact that only banks and insurance companies have submitted STRs, the authorities have not provided adequate information to enable the Assessors to determine the source of the statements by category and size of banks, the amounts referred to in STR, the most prevalent crimes that were suspected, or economic activities involved (ie, related to large cash deposits, real estate transactions or foreign residents, etc.). The tables below show the number of STRs received and analysed by the FIU:

Total received	Analysisinprogress	AnalysisCompleted	Disseminated
64	7	57	0

Statistical Table of the volume of Monthly Suspicious Transaction Report (January – July 2012)

January	February	March	April	May	June	July	Total
14	16	14	18	0	0	2	64

238. Either way, it is necessary to empower the focal points from financial institutions as they have better command of STR and fill in the information to be communicated, and 7 require a deeper analysis taking into account that there are signs of money laundering practices.

239. The accuracy and availability of statistics are weak in all sectors of public administration involved in combating money laundering.

Terrorism and declarations of suspicions about the financing of terrorist activities

240. No statistics were provided about STRs related to suspected TF.

Analysis of effectiveness

241. The FIU is not expressly empowered by law to receive STRs. Conversely, there is no express requirement for reporting entities to submit STRs to the FIU. The AML/CFT Law confers this power on the Attorney-General. Although financial institutions have been obligated by NAP 20/2009 to submit STRs to the FIU and have been doing so in furtherance of that, the FIU is not mentioned in name. Thus, the FIUs power to receive STRs is not guaranteed.

242. All STRs are submitted manually to the Coordinator of the FIU. The Deputy Coordinator is to receive the STRs in the absence the Coordinator. However, there was no Deputy Coordinator at post at the time of the on-site visit. In view of that, the analyst is required to receive the STRs. Assessors were not convinced about the security of such STRs since it is only the Coordinator who has access to the safe in which the STRs are kept. STRs are analysed by the Coordinator. No preliminary case has been sent to the Attorney-General or law enforcement agencies for further investigation.

243. The FIU received 62 STRs from banks and 2 from insurance companies (64). After the analysis of the STRs, the FIU concluded that 57 were normal financial transactions, so it was necessary to empower the focal points of the financial institutions as they have better understanding of filing STRs and the information to be communicated. The remaining 7 require further analysis taking into account that there are suspicions of money laundering. This confirms the fact that the quality of the analysis of STRs by the FIU is generally feeble. The absence of an AML/CFT analytical software which may enable the FIU to filter STRs and come up with some red flags is a major impediment to the analytical capacity of the FIU.

2.5.2 Recommendations and Comments

244. There is the need strengthened the AML/CFT regime of STP in order to ensure effective implementation of the legislative framework in the field of money laundering and terrorist financing. The police and prosecutors do not have the necessary training, skills and resources to properly fulfill and effectively implement the essential Recommendations and criteria. There is a need to provide more skilled and specialized investigative techniques, as well as more training.

- It is necessary that the FIU establish a system of data collection for the purpose of cooperation and trend analysis and the effectiveness of the system. The data and other information must include details on prosecutions, convictions, sentences, freezing/seizures and loss of property. The powers of investigation and promotion of prosecution should be extended to crimes relating to terrorist financing.
- As a matter of priority, the FIU should be made fully autonomous and operationally independent. It should be expressly empowered by law to receive, analyse and disseminate STRs. In this regard, STP is called upon to urgently review the AML/CFT Law and the FIU Decree to clearly stipulate the FIU as the recipient of STRs, rather than the Attorney-General.

- The FIU should be provided with adequate financial and human resources (including the recruitment of the Deputy Coordinator), and training financial analysis.
- Suitable premises with adequate security for personnel and information security should be provided.
- The FIU should be equipped with modern information and communication technology equipment, including AML/CFT analytical software to enable the FIU to effectively receive, analyse and disseminate disclosures of STRs and other relevant information concerning suspected money laundering or terrorist financing activities.
- Article 4(2) of the Internal Rules of the FIU should be revised to empower the FIU to request and obtain from reporting entities additional information needed to properly undertake its functions, not only to enrich its database. In this regard, the FIU should consider establishing protocols with the various institutions involved in AML/CFT matters in the country to facilitate timely access to the information needed. This should not be difficult due to the fact that the governing Board of the FIU consists of multi-sectoral institutions.
- The FIU should intensify efforts to give guidance to reporting institutions on how to prepare STRs and cooperate with other public entities to ensure quality STRs.

2.5.3 Compliance with Recommendation 26

Rec.	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• Although the FIU is designated as a national centre for receiving, analyzing and disseminating disclosures of STR and other relevant information concerning ML or FT activities, there is no express requirement for reporting entities to submit STRs to the FIU • The FIU does not have access, directly or indirectly, on a timely basis to administrative and law enforcement information that it requires to properly undertake its functions • FIU is empowered to request for additional information to enrich its database rather than to properly undertake its functions • The FIU lacks sufficient operational independence and autonomy to ensure that it is free from undue influence - Inadequate financial and other resources - Too much influence by the minister in the affairs of the fiu - No certainty about tenure of office of coordinator and deputy coordinator • There is no requirement for the FIU to publicly release periodic

		reports, including statistics, typologies and trends of money laundering or terrorist financing • Though the FIU had received some STRs, it has not disseminated any report to the competent authorities to facilitate investigations.

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

2.6.1 Description and Analysis
Legal Framework

245. Investigation and prosecution of criminal offences in STP, including money laundering and terrorist financing are governed by the following legal frameworks:

a. Law 6/2012, the Penal Code;
b. Law 5/2012, the PPC;
c. Law 2/2002, relating to detention, coercive measures and warrant sheet;
d. Statute of the Public Prosecution
e. Law 9/2010 Law on Prevention and Combating ML;
f. Law no. 2/2008, Organic Law of the PIC;
g. Status of Judges;
h. Statute of the Public Prosecution;
i. Law 15/2008, AML/CFT Law

Authorities with enforcement powers (c.27.1)

246. The Public Prosecutor is responsible for the prosecution and investigation of criminal offences, including money laundering and terrorist financing pursuant to Article 26 of the PPC. The Prosecutor General has power to arrest, while the PIC can arrest on the authority of the Prosecutor General.

247. Article 3(2)(d) and (f) of Law no. 2/2008, the Organic Law of Criminal Investigation Police empowers the PIC to investigate cases involving terrorism (not terrorist financing) and money laundering, coordinated by the Public Prosecution. The exercise of powers provided by the PIC in article 4 do not in any way relieve other law enforcement agencies to conduct the investigation of crimes listed in article 4(2), is legally committed to them, nor the length of the obligations arising from the duty to cooperate with the PIC specified in Article 6. Article 6 of the PIC Law enjoins all law enforcement agencies to accord the PIC with mutual cooperation in the exercise of its powers. The authorities and law enforcement agencies who know any facts relating to the preparation or execution of a crime referred to in Article 3(2) are to communicate

such information without delay, and that the PIC to prosecutors under the Law of the process, and take up this intervention, urgent measures that the specific circumstances of each case require.

248. No money laundering or terrorist financing investigation or prosecution has been conducted by the Prosecutor General or the PIC.

Power to postpone or waive arrest of suspect and/or seizure (c.27.2)

249. Chapter III, Article 161 of the PPC permits the arrest and detention of suspected criminals and persons found committing criminal offences. The law requires arrest warrants to be issued by an authorized official to apprehend suspects, unless the suspect is caught committing a crime. It requires a determination within 48 hours of the legality of a detention, and authorities generally respect this right. This applies where the non-arrest or detention of the suspect will undermine the investigation, or there is a risk that the suspect will flee from justice. In this regard, the Prosecutor General and the PIC can postpone or waive the arrest of suspected persons for the purposes of identifying the persons involved in the criminal activities or for evidence gathering. This may also apply to seizures of money for purposes of identification of suspects or evidence gathering.

Additional elements

Ability to use Special investigative techniques (c.27.3)

250. Law enforcement authorities in STP can use special investigative techniques in respect of money laundering and terrorist financing. Under article 250 of the Criminal Procedure Code, the judge may permit or order the interception of communications, even in post offices and telecommunications, letters, packages, values, telegrams or other correspondence, when it has reasonable grounds to believe that:

a. The correspondence was sent by the suspect or it is directed, even if under different name or through a person;
b. The concerned crime is punishable by imprisonment exceeding three years;
c. The investigation will prove of great interest to the discovery of truth or evidence.

251. Article 258(1) of the PPC also empower a judge to, during instructions or at the request of the prosecutor authorize or order the interception and recording of conversations or telephone calls in relation to the crimes:

a) punishable by imprisonment exceeding, at its maximum, three years;
b) relating to drug trafficking;
c) relating to guns, gadgets, explosives and the like;
d) contraband, or

e) injury, threat, coercion, of wanton of privacy and breach of the peace and tranquility, when committed by telephone if there is reason to believe that diligence will prove of great interest to the discovery of truth.

252. A judge may also authorise or order the interception of conversation the places where it can eventually effect the conversation or telephone or the seat of authority for criminal investigation, in the case of the following crimes:

a) terrorism, violent or highly organized;

b) criminal organizations;

c) crimes against peace and humanity;

d) against the security of the state;

e) production and trafficking of drugs;

f) counterfeiting currency or securities similar to the coin;

g) covered by the Convention on safety of navigation by air or sea.

253. These provision do not apply to the correspondence between the defendant and his counsel, unless the court has reasonable grounds to believe that there is the object or element of a crime. The judge who authorized or ordered this action is the first person to examine the content of the correspondence seized.

Use of Special Investigative techniques for predicate offences (c.27.4)

254. The Prosecutor General and the PIC have not conducted any investigation relating to money laundering and terrorist financing. In this regard, the techniques applied under R.27.3 relate to underlying predicate offences of money laundering in so far they meet the criteria in those provisions.

Permanent or temporary investigative groups (c.27.5)

255. The PIC works in cooperation with the Public Ministry, the National Police and Interpol, the FIU and Customs Police.

Review of ML/TF methods, techniques and trends by Competent Authorities (c.27.6)

256. Article 4 (c) of the FIU Decree, mandates the FIU to conduct periodic studies on the evolution of techniques and trends used for money laundering and terrorist financing. However, the FIU has not performed this function since its establishment. Similarly, LEAs have not reviewed ML/TF methods, techniques and trends.

Recommendation 28

Power to obtain records, search and seize

257. The authorities involved in conducting investigation can obtain any type of information provided there is an investigation by prosecutors and the court issues an order to obtain certain evidence in private places. They can search premises and individuals in accordance with Article 246 of the PPC. Relevant authorities can search premises (house searches), but must obtain a court order before doing so. Premises can only be searched between 06:00 and 18:00 hours. The Public Prosecutor can also conduct searches under Article 245 without a court order subject to later validation by the judge under a penalty of nullity. This applies where the offence involve terrorism, highly organized violence or, when there is a legitimate indication of the imminent crime which put the life or health of any person at grave risk, or was committed in the presence of the PP.

258. Throughout the search, within or outside of it, the individual may be subjected to search if he meets the requirements provided in Article 245, i.e. since there is evidence that the person may be hiding on his person an object related to a crime that could serve as evidence. In all cases the dignity and modesty of the individual are to be safeguarded.

Witness statements

259. Article 215 of the PPC provides competent authorities responsible for conducting investigations on offences in STP with the powers to take witness statements for use in investigations and prosecutions. Although there has not been any investigation or prosecution of cases involving money laundering and terrorist financing, this provision will apply to them.

Resources (law enforcement and Prosecution authorities only)

260. Article 130 of the Constitution provides that prosecution is organized as a hierarchical structure under the direction of the Attorney General's Office. The A-G is appointed by the Government under article 81(k) of the Constitution. The A-G has a focal person at the FIU. The Public Prosecutor`s Office has 50 staff. The prosecutors review the legality, represents, in the courts, the public and social interest and is the holder of the prosecution.

261. At the time of the onsite visit, the PIC had 426 staff, 6 District Commands in Sao Tome and 1 in Principe.

Professional standards, ethical and professional requirements

262. Under Article 30 of the Organic Law, the staff of the PIC have the rights and duties common to most public servants. However, under article 31 the personnel of the PIC are specifically obliged to:

a) exercise their functions with a special sense of responsibility and discipline, continuous availability and spirit of collaboration;

b) act with integrity, impartiality and dignity, opposing - vigorously to any act of corruption;

c) abstain from practicing torture or inhuman, cruel or degrading treatment;

d) act with the necessary determination, but without resorting to force beyond what is strictly necessary to accomplish a task legally required or authorized;

e) ensure that the life and physical integrity of detainees or persons who are under their custody or protection are treated with the honor and dignity of the human person;

f) act without discrimination based on ancestry, sex, race, language, place of origin, religion, political or ideological affiliations, education, economic situation or social status;

g) identify themselves as an employees of PIC when they are to carry out the identification or arrest;

h) observe strictly, and with due diligence, the course, the deadlines and requirements of the Act, where they have to arrest someone;

i) act with the necessary promptness and decision, when their action aimed at preventing the commission of a serious injury, immediate and irreparable harm, observing the principles of adequacy, appropriateness and proportionality in the use of available resources;

263. Article 32 provides that the procedural criminal investigation and assistance of police authorities are subject to the secrecy of justice under the Law. It prohibits officials working in PIC from making public disclosures related to lawsuits or matters reserved in nature, except what is provided for in the Organic Law on public information and preventive measures among the population and also the provisions of the Criminal Procedure Code. Personnel can make disclosures when permissible, depending on the authorization of the Director or the Assistant Director. Non-compliance attracts penalty of disciplinary proceedings, without prejudice to the criminal liability that may be made.

264. Preventive actions and proceedings against - administrative offenses, disciplinary, investigation, inquiry, and inspection are subject to professional secrecy under the general law. Violation of secrecy can also be punished with imprisonment up to 2 years or fine up to 200 days under article 465 of the Penal Code. If an official, without being authorized, reveals a secret that the official had knowledge of or entrusted to him in the exercise of his or her duties with the intent to obtain for himself or for another, an unlawful gain or cause a loss of public interest or others, then an attempt to violate the secrecy rules is also punishable.

265. Article 34 requires employees to attend training which they are expected to attend and / or maintain - if available, in particular with regard to the legislation that governs the suitability for and performance of their duties, except for serious reasons or other service.

Structure, resources, integrity standards and training for law enforcement and prosecution agencies (Applying R.30)

Law enforcement authorities and Public Ministry only (30.1)

266. The authorities involved in combating money laundering and terrorist financing, as well as the Public Ministry have investigative autonomy, although they are administratively connected to specific government ministries. Some of these authorities, for the purpose of institutional improvement, have undertaken cooperation agreements with other countries in relation to investigative capacity building in order to better respond to international demands. The existing autonomy of these authorities protects them from manipulation for undue interests.

The Police, including Criminal Investigation Police

267. The PIC is part of the Ministry of Justice and is organically and hierarchically dependent on the Minister of Justice, particularly with regard to the organization and management of human and material resources. The PIC investigates crimes committed throughout the nation's territory, no matter what the applicable punishment may be, as well as to carry out the respective preparatory instruction that is delegated to it. The functions of the PIC are governed by its Organic Law and the Criminal Procedure Code.

268. Article 19 of the Organic Law of PIC provides for the Nature and Composition of the Specialized Services Unit (SSU). The SSU is a set of ancillary services of a criminal investigation, with specialized character, which seeks integrated management thereof, based on the rationalization of resources and human materials and versatility of personnel. They comprise the Archive of Criminal Information and Statistics; Financial Intelligence Unit; the Laboratory; Telecommunications Service; The Office of Weapons, Transportation and Security. The SSU is directed and coordinated by the Principal Inspector and integrated by research personal or with another formation or appropriate knowledge.

269. For purposes of this report, Article 20 provides, among other things, that the competency of the SSU is to directly assist the criminal investigation in all technical areas – trends in specialized crime , in particular, through the operation of the following of units:

a. **Archive of Criminal Information and Statistics** - the recording and processing of criminal intelligence, the police registration and statistical treatment of data;

b. **Financial Intelligence Unit** - collect, centralize, analyse and disseminate nationally, financial information regarding the investigation of crimes of money laundering and tax crimes, ensuring internally, cooperation and coordination with the prosecutor, Central Bank, the supervisory authorities, where they exist, with the economic operators - Financial and at international level, cooperation with counterpart financial intelligence units, in both cases without prejudice to the powers of the organs and departments of finance;

c. **Laboratory** –undertake the lofoscopia, photography and examinations that require specific expertise or your request to laboratories or institutions of specialties, notably based on existing international legal agreements;

d. **Telecommunications services** - design, coordinate and implement activities related to the installation, operation, maintenance and security of all telecommunications facilities, as well as in the field of electrical installations;

e. **Armament Service, Transportation and Safety** - save, store and distribute equipment, weaponry and their monições; teach or promote shooting instruction; ensure the management of the fleet of vehicles and support research in the transportation of people and goods; ensure safety of staff and facilities.

270. Article 20(2) permits the SSU to integrate the FIU in the regime set by the Ministers of Finance and Justice, Central Bank employees, supervisory authorities or other governmental services and facilities.

271. Article 22 of the Organic Law of PIC provides for the competence and composition of the **National Bureau of Interpol** (NBI). The NBI is responsible for ensuring relationships similar to those contained in the Statute of the International Criminal Police Organization, between the police and other public services in STP and national Interpol offices of other countries that are members of the Interpol. It processes and disseminates to international police information and documentation of extra-territorial files.

272. There is also the **National Police (NP)** whose mandate is to maintain public order and protect the public and property. The national Police focus on cases that attract convictions of up to three years imprisonment. Due to the size of the country, the NP works in strict collaboration with the PIC. The NP has a focal person in the FIU. The NP has not dealt with any issue relating to money laundering or terrorist financing, but is aware that its mandate permits it to deal with issues relating to these crimes. Personnel of the NP rely on the training they receive at the Police Academy and enforce preventive measures at the airport.

Public Ministry, including agencies responsible for confiscation of assets

273. This Ministry opens investigations on information received regarding suspected money laundering/terrorist financing activities and, if material proof is obtained, submit it to Courts if considered a public crime.

Customs authorities

274. The STP Customs is responsible for inspecting and overseeing all customs services, namely seaports and airports, with the special collaboration and support of the Fiscal Police, in the combat against customs fraud and evasion, the illegal traffic of merchandise and the control of related activities within the context of the fight against money laundering and terrorist financing. The functions of the STP Customs are provided for in Law no. 55/2006 while its relationship, customs, importers and other legal provisions relating to customs are provided for in Law no. 39/2009. The STP Customs has established cooperation on issues relating to illicit trafficking in narcotic drugs with Customs authorities in all Portuguese speaking countries. It has been a member of the World Customs Organisation since September 2009.

Ministry of Finance and International Cooperation

275. The Ministry of Finance and International Cooperation (MFIC) is the central state administrative organ whose mission is to define and conduct the state's international cooperation and financial policy, promote the rational management of public resources, an increase in efficiency in their collection and equity in their management, and improve their organizational systems and processes. It oversees the FIU and is responsible for the creation of the financial and normative conditions for the full operations of the FIU. The MFIC establishes the link between the FIU, the Government, the Central Bank and development partners.

Ministry of Justice, including the central authorities for international cooperation

276. The Ministry of Justice ensures the adequate functioning of the justice administration system, prevention of litigation and non-jurisdictional conflict resolution; the development/drafting and revision of AML/CFT laws, law-decrees and decrees, and their submission to the National Assembly or to the Government for approval; partnership with development partners to ratify international agreements and conventions and coordinate policy; direction, guides and coordinates marital status and nationality, civil identification, land registration, commercial registration, mobile assets registration and notary services; link between the Criminal Investigation Police and the Public Ministry in terms of AML/CFT instructions.

Ministry of Justice, "Registrar and Notary Service"

277. The Registrar and Notary Service of the Ministry of Justice is mandated to direct, inspect, control and guide marital status and nationality, civil identification, land registration, commercial registration, mobile assets registration and notary services. It is also mandated to promote cooperation with government organs and non-governmental institutions for the improved execution of their respective tasks; collaborate, within the context of its responsibilities, with São Tomean or foreign public and private entities and conserve documents.

Ministry of Internal Administration (Fiscal Police)

278. The Ministry constitutes the armed branch of the Customs Department. It carries out customs surveillance; ensures the fulfillment of trans-border transportation protection services; fulfills and enforces airport service laws and regulations; and controls the entry and exit of ships and carries out inspections on vessels.

Ministry of Foreign Affairs

279. The Ministry of Foreign Affairs and Communities is the central State administrative organ responsible for the initiation, execution and coordination of the São Tomean state's foreign policy, specifically in the political-diplomatic and consular domain. It is responsible for international negotiations, regional integration and the promotion and defence of São Tomé and Príncipe's interests abroad. The Ministry ensures São Tomé and Príncipe's adherence to various international conventions and protocols relating to the criminalization of money laundering and terrorist financing. The Ministry is also responsible for legislation regarding legal persons and entities without legal personality (legal arrangements).

Financial sector entities

Central Bank of Sao Tome and Principe

280. The Central Bank's intervention in this field is implicitly regulated in the following legal bodies.

- Law 15/2008, the Law to Prevent and Combat Money Laundering and Terrorist Financing, specifically in Article 28 ("Powers of supervisory authorities and duty of communication, 1 – The surveillance of the fulfillment of the duties outlined in the present subsection is the responsibility of the supervisory authorities of the respective sector that, for this purpose, exert the authorities and powers outlined in the respective legislation.
- The authorities charged with the supervision of financial entities are to inform the Attorney General's Office whenever, in the inspections they carry out in these entities, they obtain knowledge or well-founded suspicions of facts that serve as evidence of the practice of crimes of money laundering or terrorist financing.")
- Law 8/92, the Central Bank Organic Law, in the following articles:
  - Article 8(2)(f) ("It is the duty of the Central Bank to exercise the functions of supervision and inspection of the national financial system")
  - Article 31(2) ("The Bank may require the presentation of and proceed with the examination of accounts, accounting records or other documents from any business the Bank has reason to presume may be granting credit to or accepting deposits from the public.")

    Line g) of Article 32 ("Carry out the supervision of the institutions referred to in line b), establishing, namely, directives for their actions, promoting forms of cooperation among the above-mentioned institutions with the aim of improving the operating conditions of the markets in question and assuring the services for the centralization of credit information and risks.")
  - Line f) of Article 38 ("Establish directives for the actions to be carried out by the institutions, namely with regards to their accounting and internal control systems.")
  - Article 40 (It is the Bank's responsibility to:

    a) Carry out inspections in the financial institutions subject to its supervision and proceed with verifications alongside any entity or wherever there are founded suspicions of the irregular practicing of monetary, financial or exchange activities;

    b) Begin adequate processes for the verification of infractions committed that are not criminal in nature, applying the respective sanctions;

c) Submit to the proper judiciary and police authorities any irregular acts or facts of which it learns and which fall beyond the scope of its authority of intervention.")

DNFBPs and other matters

281. STP has a range of services that have responsibilities within the domain of inspection, namely:

- Inspectorate General of Games, which supervises casinos;
- Inspectorate General of Economic Activities;
- Directorate General of Registrars and Notaries;
- Order of Official Accounting Reviewers;
- Order of Lawyers;
- Chamber of Official Accounting Technicians and Solicitors.

282. These supervisory authorities have, within the framework of their activities, the legal responsibility to report facts indicating the commission of money laundering/terrorist financing crimes, fundamentally in the values involved in business dealings, as well as other goods and products for all due effects to the Attorney-General.

c. Overview of policies and procedures

283. The mechanisms adopted by the Government to control the risks of money laundering and terrorist financing so as not to make it easy for money launderers to misuethe system are legal frameworks that regulate these risks (Law 15/2008 to Prevent and Combat Money Laundering and Terrorist Financing, Decree 60/2009, which creates the Financial Intelligence Unit, the Internal FIU Regulations, the Law-Decree proposal on the trans-border transportation of currencies, the "Know Your Customer" Permanent Application Guideline, the proposal for the "Communication of Suspicious Transactions" Permanent Application Guideline, the "Movement of currency from national territory" Permanent Application Guideline).

Recommendation 30 (Only law enforcement and judiciary authorities)(30.2)

Integrity of Competent Authorities

284. High professional standards, including rules on confidentiality. According to the organic structure, law enforcement authorities have the duty not to make public disclosure regarding cases or on matters of a reserved nature, on outcome of disciplinary proceedings.

Training for competent authorities (30.3)

285. Staff members of the relevant agencies need intensive training to enhance their capacity to perform their functions under the various laws and policies. In the government's program to build the capacity of the investigative sector, there is already a large-scale personnel training

proposal. STP intends to establish an investigation police school within the framework of the cooperation program between Brazil and São Tomé and Príncipe. Training will be given by the Brazilian Federal Police, precisely to build the capacity of investigative police in the investigation of offences such as money laundering and terrorist financing and other related crimes, as well as ballistics. There is also an ongoing capacity building training for officers of the Criminal Investigation Police in the area of criminal law, criminal procedure and ethics and deontology. The Public Prosecutors have not yet benefited from trainings focusing on money laundering or terrorist financing.

Additional elements

Special training program for judges (30.4)

286. São Tomé and Príncipe has the SAJE for the training of judges and court prosecutors within the framework of cooperation with Portugal.

2.6.2 Recommendations and Comments

287. Significant powers exist in the Organic Law of the PIC and the PPC relating to the investigation of predicate offences as well as to ML/TF offences. However, these powers have not been used in relation to ML/TF offences. This is due to lack of conceptualization of the ML/TF offences. Relevant officers generally lack training, including financial investigation and analytical skills. There is the need to immediately develop such skills to ensure effective ML/FT investigation.

Recommendation 27

288. The PIC is statutorily empowered to investigate a significant number of criminal offences, including ML and terrorism in collaboration with the Public Ministry, but this power has not been exercised due to lack of skills. It is recommended that relevant officers should be trained and adequately equipped to deal with ML/TF cases.

Recommendation 28

289. Competent authorities responsible for investigations of ML, FT and other underlying predicate offences have general and specific powers to compel production of records, search persons or premises, take witness statements either on their own or on authority of a judge depending on the circumstances of the case. However, personnel knowledge and skills on ML/TF issues need to be developed and sustained to ensure effective use of these powers.

Recommendation 30

290. There is need to strengthen the capacity of all officers responsible for the investigation of ML/TF across all the agencies. Specialized investigation teams should be set up and adequately

resourced to ensure the effective implementation of the AML/CFT Law. STP should develop a training plan to cover national and international training programs, as well as the development of exchange programs and study tour or attachment of experts to government agencies to enable them have the relevant skills similar to those of their counterparts in the region and internationally.

Recommendation 32

291. Statistics provided in respect of underlying predicate offences demonstrate the low rate of crime in STP. However, this may also mean the lack of skills to maintain comprehensive statistics in general. No statistics were provided in respect of ML/FT cases, as well as assets seized, frozen and confiscated.

2.6.3 Compliance with Recommendation 27 and 28

	Rating	Summary of factors underlying the ratings
R.27	**PC**	• No authority to investigate counterfeiting of products and insider trading and market manipulation unless they are criminalised • Lack of resources, capacity and training to deal with issues relating to ML/TF and general crime fighting • No investigation of ML/TF cases • Absence of review of methods, techniques and trends
R.28	**PC**	• Lack of application of available powers for AML/CFT purposes

RECOMMENDATION SR. IX

2.7 Cross border declaration or disclosure (SR.IX)

Description and Analysis

292. The country is yet to adopt a declaration system which will require every individual entering or leaving the territory of STP to declare currency or bearer negotiable instruments (BNI) or electronic currencies to Customs officials at each cross-border control point whenever they are carrying an amount equal to or exceeding two hundred and forty-five million (Dbs 245,000,000.00) (equivalent to ten thousand Euros (€10,000). Customs can also conduct random searches based on intelligence or suspicion. The information from these statements will be forwarded to the FIU. Whenever there is a suspicion of money laundering or terrorist financing or when false declarations are filed to the customs authorities, the customs official in charge of the shift will be empowered to seize or retain part or all the amount of currency or bearer negotiable instruments that were not declared. On the other hand, the Council of Ministers recently approved *Venerando Model Values Statement* presented by the Directorate of Customs to be used by all persons entering and leaving the country. STP has also prepared a draft AML/CFT Legislation which incorporates elements of this Recommendation. However, customs officials are not adequately trained to implement procedures relating to cross border declaration of currency and bearer negotiable instruments.

Recommendations and Comments

293. STP should urgently undertake the following:

- Implement a

  (a) A declaration system which requires:

  - (i) All persons making a physical cross-border transportation of currency or BNIs that are of a value exceeding a prescribed threshold should be required to submit a truthful declaration to the designated competent authorities; and

- (ii) The prescribed threshold cannot exceed EUR/USD 15,00060

  OR

  (b) A disclosure system which requires:

  (i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments should be required to make a truthful disclosure to Customs authorities upon request; and

(ii) The Customs authorities have the authority to make their inquiries on a targeted basis, based on intelligence or suspicion, or on a random basis.

- Upon discovery of a false declaration/disclosure of currency or bearer negotiable instruments or a failure to declare/disclose them, Customs authorities should have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use.

- Empower Customs officials to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found where there is a suspicion of ML or TF or where there is a false declaration/disclosure.

- At a minimum, retain information on the amount of currency or bearer negotiable instruments declared/disclosed or otherwise detected, and the identification data of the bearer(s) should be for use by the appropriate authorities in instances when:

  (a) A declaration which exceeds the prescribed threshold is made; or
  (b) Where there is a false declaration/disclosure; or
  (c) Where there is a suspicion of money laundering or terrorist financing.

- Make information obtained through the processes implemented in the disclosure or declaration system available to the FIU either through:

  (a) a system whereby the FIU is notified about suspicious cross-border transportation incidents; or

  (b) by making the declaration/disclosure information directly available to the FIU in some other way ;

- Ensure adequate national co-ordination among customs, immigration and other related authorities on issues related to the implementation of cross-border declaration or disclosure of currency or BNI.

- At the international level, allow for the greatest possible measure of co-operation and assistance with competent authorities, consistent with the obligations under the FATF Recommendations on ratification and implementation of international instruments, mutual legal assistance, extradition and international cooperation ;

- Ensure that effective, proportionate and dissuasive sanctions also apply to persons who make a false declaration or disclosure contrary to the obligations to declare or disclose ;

- Ensure that effective, proportionate and dissuasive sanctions also apply to persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to TF or ML contrary to the obligations under this SR;

- Ensure that seizure, freezing and confiscation requirements also apply in relation to persons who are carrying out a physical cross-border transportation of currency or bnis that are related to TF or ML;

- Ensure that freezing measures also apply in relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing;

- Where an unusual cross-border movement of gold, precious metals or precious stones is discovered, STP should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and should co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action;

- Subject the systems for reporting cross border transactions to strict safeguards to ensure proper use of the information or data that is reported or recorded ;

- Develop and apply training, data collection, enforcement (including sanctions) and targeting programmes

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying the overall rating
SR.IX	**NC**	• There is no declaration system in place • Customs officials are not trained nor have the means for effective control of cross border movements of currency and bearer negotiable instruments.

3 - PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Recommendation 5

Customer Due Diligence - CDD) and Record keeping

3.1. Risk of Money Laundering and Terrorist Financing

294. The banking sector dominates the financial sector activity being therefore considered as the main source of vulnerability.

295. STP has not conducted a national risk assessment to determine the extent of vulnerability of each to risk of ML or TF. As such, all entities subject to the legal and regulatory provisions of AML/CFT are required to adopt the specified standards. Although the institutions must apply a risk-based approach in the application of the standards in high risk situations. The authorities however noted that main exposure occurs through cash from transactions conducted by the banking sector.

296. It was also observed that there is a high number of transactions conducted outside the financial system without any control, given the high level of informal economy of Sao Tome.

297. There is limited offering of Life insurance as a product in the financial services sector, since they are not mandatory in STP.

298. There is no capital market in STP.

299. Regarding the geographical distribution of banking, by the end of 2011, three districts and autonomous region of Principe were covered with at least one branch. Also, there is a branch in Santana in the Cantagalo District, one in Neves in the Lemba District and one in Trinidade in the Me-Zochi District. Caue and Lobata Districts do not yet have agencies.

300. The CBSTP, through the Directorate of Banking Supervision, consisting of six employees - four technicians and two directors (responsible for overseeing the banking and insurance) conducts off-site monitoring of institutions and prudential risk-based supervision on money laundering and terrorist financing (ML/TF), although no assessment of ML/TF risk has been carried out. The authorities informed Assessors that the CBSTP will start conducting inspections of reporting entities in collaboration with the FIU.

301. By the end of 2011, the financial system of Sao Tome consisted of 10 FIs (8 banks and 2 insurance companies) and 5 Financial Auxiliary (currency exchange offices). In the year 2011, financial services accounted for 3% of the national GDP. It is important to note that whereas

about 90% of the population of STP cannot afford to make savings, the number of banks in the country has increased with the discovery of oil.

Number of FIs in STP

Type of Institution	Number of authorized / registered institutions as at September 30, 2011	Size of the financial contribution (asset, liability, revenue) in Db and in USD	Description of the main activities and products offered	Number of branch offices in STP
Commercial Banks	8 (7 in operation and a new authorization issued to an investment bank)	Total assets mmDBs 2928.33	Receipt of deposits Granting of loans Cash transfer services Issuing payment instruments Issuing guarantees Processing operations of monetary and non-monetary settlement electronic banking	22
Insurance Companies	2	Premium pool mmDBS 35.6	Non life	2
Money remittance services	Associated with banks		Money transfer services as agents or sub-agents	4 agents[21]
Money exchange	5		Foreign Exchange Services	
Total	15			

Source: Report of pre-assessment (FIU)

302. The table below shows the financial activities that can be conducted in STP:

[21] At present, all remittance services are always associated with a banking institution.

Type of financial activity (See Forfeiture of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor In addition to the FIU	AML/CFT Law Article preventive measures applicable for scope/supervision	Additional prudential/AML preventive measures
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks	CBSTP	ART.2 AML/CFT LAW	LAW 9/92 NAP 06/2007 NAP 20/2011
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks Microfinance companies	CBSTP Draft law in working progress as microfinance activity is neither regulated nor supervised yet	ART.2 AML/CFT LAW	NAP 06/2007 NAP 20/2011 LAW DRAFT
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	N/A	No specific legislation issued as none FI is carrying those activities		
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity),	Banks Informal:	CBSTP	ART.2 AML/CFT LAW	NAP 06/2007 NAP 20/2011 Decree Law 32/99 NAP 21/2009 NAP 24/2009

Type of financial activity (See Forfeiture of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor In addition to the FIU	AML/CFT Law Article preventive measures applicable for scope/supervision	Additional prudential/AML preventive measures
but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Supermarket??s			
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks	CBSTP	ART.2 AML/CFT LAW	NAP 06/2007 NAP 16/2009 NAP 20/2011 NAP 10/2011
6. Financial guarantees and commitments	Banks	CBSTP	ART.2 AML/CFT LAW	No regulation
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index	N/A			

Type of financial activity (See Forfeiture of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor In addition to the FIU	AML/CFT Law Article preventive measures applicable for scope/supervision	Additional prudential/AML preventive measures
instruments; (d) transferable securities; (e) commodity futures trading				
8. Participation in securities issues and the provision of financial services related to such issues	N/A			
9. Individual and collective portfolio management	Banks	CBSTP	ART.2 AML/CFT LAW	NAP 06/2007 NAP 20/2011
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	CBSTP	ART.2 AML/CFT LAW	NAP 20/2011 NAP 06/2007 NAP?(TBC)
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Banks	CBSTP		No specific regulation
12. Underwriting and placement of life insurance and other investment related	Insurance companies (none life)	CBSTP	ART.2 AML/CFT LAW	NAP 06/2007 NAP 20/2011 Note (TBC) Decree-law

Type of financial activity (See Forfeiture of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor In addition to the FIU	AML/CFT Law Article preventive measures applicable for scope/supervision	Additional prudential/AML preventive measures
insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))				47/98 Decree-law 27-30/2000
13. Money and currency changing	1. Banks 2. Exchange agencies	CBSTP for banks and exchange agencies		NAP 06/2007 NAP 20/2011

303. Seven of the eight authorized banks (BancoInternacional de Sao Tome and Principe, Equator Bank, Energy Bank of STP, Island Bank SA, FB AFriland STP, STP Commercial Bank (COBSTP), Ecobank STP, BGFI Bank), are under foreign control. The major shareholders are mainly from Angola, Cameroon and Nigeria, countries considered to be at risk of ML/TF.

304. The BISTP is the country's largest bank, whose main shareholders are the state of STP (48%), CGD (public bank of Portugal) with 27% and BAI - the African Investment Bank with 25%. The BISTP accounts for 50% of the market share, followed by Afriland First Bank (16%) - Cameroon and Banco Equador (12%) - Angola. However, in terms of deposits, the BISTP controls 74% of the deposit base, while Banco Equador (the second largest market share) holds 9% of deposits. The other five banks hold the remaining 17%.

305. As at 31 December 2011, the insurance market consisted of two insurers (SAT Insurance - group based in Cameroon and Nicon Insurance). These two insurance companies provide non-life (general) insurance services with their main focus being real estate and vehicle insurance policies. In 2010, insurance claims amounted to DBs 33.132 million, a much higher level than in 2009.

3.2. Customer due diligence, Including Enhanced or Reduced Measures (Recommendations 5-8)

3.2.1. Description and Analysis

Legal Framework

306. The basic legal framework governing the financial system consists of the following:

- Law 8/92 –"Organic Law of the Central Bank,"
- Law 9/92- "FIs Act,"
- Decree Law 47/98- "Regulation of Insurance Business" and
- Law 30/2000 which defines the parameters of the insurance business.

307. In addition, various regulations issued by the banking authorities, including the NAPs (Standard Permanent Application), where it stands out:

- NAP No. 2/2007 - Standard for qualification of directors;
- NAP No. 6/2007 - Standard for identification and classification of bank customers, also referred to as the "Know Your Customer"(KYC) Guidelines;
- NAP No. 11/2007 - Internal Control, Audit and Accounting;
- NAP No. 21/2209 - Exit of Foreign Currencies from the National Territory;
- No NAP. 20/2011 - Suspicious Transactions Report – STR.

308. The AML/CFT Law also contains preventive measures applicable to all financial (as well as non-financial) entities having their headquarters within and outside the territory of Sao Tome. Article 11 of the AML/CFT Law subjects financial entities to a number of obligations, including the duty to require identification from all customers and duty to refuse to carry out transactions where necessary (Articles 12 and 13).

309. STPs response to meet the requirements of certain Recommendations is contained in several articles of the new draft law on the prevention of ML and TF (prepared with the help of the International Monetary Fund (IMF)[22] that will replace the current the AML/CFT Law. However, that draft was not taken into consideration in this review because it was not in force and in effect. The conclusions were therefore based on the current law.

Prohibition of anonymous accounts (c. 5.1*)

310. Article 23 (2) of the AML/CFT Law provides that under no circumstances is the opening of anonymous accounts or accounts in fictitious names or the existence of anonymous savings accounts permitted. Officials of the Banking Supervision Department of the CBSTP and the banks met by the Assessors confirmed that there were no anonymous accounts in STP.

Timing for CDD (c. 5.2*)

[22] The assessors read the revised AML/CFT Law (draft) and found to be comprehensive. However, the draft needs to be updated based on the findings in the MER before its passage into law. The Assessors acknowledge the support of the IMF in revising the law.

311. This provision emphasizes that the entities subject to the duty of identification have the special duty to take adequate measures to identify the customers and, if so required their representatives or other people acting on their behalf. The AML/CFT Law does not define "customer".

a. Establishing a business relationship

312. Article 24(1) of the AML/CFT Law provides that "*financial entities are subject to the duty to require identification, in the terms of Article 12 (on CDD), whenever they establish business relationship, especially when opening a deposit or savings account, offering money or investment safe deposit services, issuing insurance policies or managing pension plans*". Article 12-A of the AML/CFT Law, requires the verification of the identity of a customer, the customer's representatives or beneficial owner to take place at the moment in which the business relationship is established or prior to any occasional transaction.

b. Carrying out occasional transactions above USD/EUR 15 000 including linked transactions

313. Article 24(2) requires FIs to apply CDD measures when they carry out occasional transactions in which identification has not taken place in line with the provisions of Article 24(1) of the AML/CFT law and whose amount, individually or jointly, is equal to or more than Two hundred and forty-five million Dobra (Dbs245,000,000)[23] .

314. Under article 12(3) of the AML/CFT Law, CDD requirements apply in cases where the transaction is carried out in a single operation or in several operations that appear to be linked, and the total value of the operation or operations is not known at the time of its beginning. In this case, the financial entity is required to undertake the identification as soon as there is knowledge or confirmation of the total amount.

c. Occasional wire transfers

315. FIs are required by Article 12(4) of the AML/CFT Law to apply CDD measures in long-distance transactions that involve amounts that are equal to or greater than two hundred and forty-five million Dobra (Dbs 245,000,000)) and do not result from service provision contracts. In this situation, the financial institution is not permitted to carry out the transaction or establish any business relationship unless the institution involved is certain of the true identity of the customer through the means that prove most adequate and as defined by the supervisory authority of the respective sector.

d. Suspicion of ML or TF

316. Application of CDD measures are mandatory under article 12(5) of the AML/CFT Law when the transactions, regardless of their value, **prove** to be related to the commission of the crime of money laundering or terrorist financing. FIs are to perform CDD depending on the

[23] Equivalent of €10,000.00 and $13,000 at the time of the on-site visit

nature, complexity, unusual characteristic with regards to the client's activities, the **amounts involved,** and their frequency, the economic and financial situations of those involved or the means of payment used for the transaction. This provision incorporates elements of unusual transactions that are rather required under Recommendation 11. STP needs to review the AML/CFT Law to provide proper distinction between the requirements of suspicious transactions and unusual transactions.

e. Doubts about the veracity or adequacy of previously obtained identification

317. Article 24(2) requires FIs to identify customers when there are doubts regarding the veracity or adequacy of the previously obtained customer identification data.

318. In the case of insurance entities, which normally involve small amounts, insurers, do not have complete information about the customer. The CDD is usually done in detail during payment of claims and not when establishing customer relationship.

319. In the case of postal financial services, Assessors were informed that there have been few transactions and it is possible for them to keep records (although they have not), and only the money express service has a supervisor that examines their operations.

Identification measures and verification sources (c. 5.3*)

320. Article 12 of the AML/CFT Law requires FIs to identify their customers and their representatives through the presentation of a valid document with a photograph containing their name, birthplace and date of birth. In the case of legal persons, the identification is to be carried out by way of a copy of the certificate of incorporation. Article 4(1) (b) of NAP No. 6/2007 also requires FIs to always verify the identity of clients through reliable sources or original documents. In addition, article 4(3) of NAP 6 provides that the complete identification of client should include name, address, date of birth, nationality, occupation, income and other activities. In this regard, FIs rely on the specified documents to fulfil the CDD obligations.

Identification of legal persons or other entities with legal personality (c. 5.4)

321. Article12 (1) of the AML/CFT Law requires the identification of legal persons to be carried out by way of a copy of the certificate of incorporation. Furthermore, Article 4(1) (a) of NAP 6/2007 requires banks to complete customer identification information, depending on whether the customer is an individual or legal person. Article 4(1) (c) of NAP 6 requires banks to identify the owners or controllers, as well as persons in whose names the transactions are carried out.

Identification of beneficial owners (c. 5.5*)

322. Article 12-A (1) of the AML/CFT Law provides for the verification of the identity of the client, their representatives and, where applicable, **the beneficial owner**. Article 12-A does not specify how FIs should carry out the identification and verification of t**h**e identity of the

beneficial owner, that is, take reasonable steps to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the FI is satisfied that it knows who the beneficial owner is.

Determining whether customer is acting on behalf of another person (c.5.5.1*)

323. There is no requirement for FIs to determine, in relation to all customers, whether the customer is acting on behalf of another person, and whether FIs should take reasonable steps to obtain sufficient identification data to verify the identity of that other person. Rather, Article 12(2) of the AML/CFT Law requires the mandatory identification of a person on whose behalf a client is acting when there is suspicion that the client does not act on his or her own behalf. In this case, the financial institution is required to obtain information from the client regarding the identity of the person on whose behalf he or she is acting. The requirement in R.5.5.1 is not to be based on knowledge or suspicion, but rather based on determination by the financial institution as to whether a client is acting for himself or on behalf of another person.

Understanding the ownership and control structure of legal persons or legal arrangements (c.5.5.2*)

324. There is no express requirement in the AML/CFT Law for FIs to take reasonable measures to (a) understand the ownership and control structure of customers that are legal persons or legal arrangements and (b*) determine who are the natural persons that ultimately own or control the customer. Article 12(1) which requires FIs to identify legal persons by way of copy of the certificate of incorporation does not provide any additional information to determine whether a financial institution is to understand the ownership and control structure of the customer.

325. Article 4(1) (c) of NAP No. 6/2007 requires banks to identify the owners or controllers and the people in whose name the operations are performed. Although this provision may enable banks to understand the ownership and control structure of the customer and determine who are the natural persons that ultimately own or control the customer, the provision does not fully satisfy the requirements in R.5.5.2 due to the following:

- NAP 6/2007 is limited in scope as it applies to only banks (thus excluding insurance service providers) and other financial services providers);
- NAP 6 is a Guideline of the CBSTP which may be classified as “other enforceable means (OEM). However, the requirement in R. 5.5.2(b) is a basic requirement that should be in law or regulation and not in other enforceable means.

326. Based on the foregoing, Assessors concluded that STP has not fully complied with the requirement of R.5.5.2. STP needs to amend the AML/CFT Law to expressly require FIs to take reasonable measures to (a) understand the ownership and control structure of customers that are legal persons or legal arrangements and (b*) determine who are the natural persons that ultimately own or control the customer.

Intended purpose and nature of the business relationship (c. 5.6)

327. There is no requirement for FIs to obtain information on the purpose and intended nature of the business relationship.

Ongoing Due Diligence on the business relationship (c. 5.7*)

Scrutiny of transaction throughout the course of the relationship (c.5.7.1*)

328. Article 4(2) of NAP 6/2007 requires banks to maintain regular diligence and scrutiny of accounts and transactions to ensure that they match the information already supplied by the client, its activity and if possible the source of its resources. Furthermore, Article 11 of the NAP No. 6/2007 requires banks to continuously monitor customer accounts to ensure that there is no unusual activity. Also, Article 14 of NAP 6/2007 enjoins banks to review the profile of existing customers every six months in order to ensure that they are in conformity with the NAP and that they are properly identified, including with respect to the degree of risk. In the case of new customers, this requirement applies immediately. It may be inferred that the action is required throughout the course of business relationship. Additionally, these provisions may enable banks to conduct ongoing scrutiny of transactions to ensure that they are consistent with the institution's knowledge of the customer, the customer's business and risk profile, and where necessary, the source of funds.

Keeping CDD data up to date (c.5.7.2*)

329. There is no requirement in the AML/CFT Law for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. Article 8(2) of NAP 6/2007 requires banks to periodically revise the documents collected under the CDD process to ensure the existence of adequate and updated information, as prescribed in internal procedures. They are also required to adopt necessary measures in case such actions are not taken.

330. The requirements in Recommendation 5.7 are basic obligations that should be set out in law or regulation. In this regard, it may be concluded that STP has not complied with Recommendation 5.7.

Risk - Enhanced due diligence for high-risk customers (c. 5.8)

331. There is no express requirement in the AML/CFT Law for FIs to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. Article 20-A(1) of the AML/CT Law provides as follows:

> *In the fulfilment of the duties of identification and examination outlined in Articles 12 and 15, the entities subject to these duties **may** adapt the nature and extension of their verification procedures as a function of the risk associated with the type of client in*

question, to the business relationship, to the product, to the transaction and to the origin or destination of the funds.

332. From the foregoing, Article 20-A(1) gives FIs the discretion to adopt procedures as a function of the risk associated the type of client, business relationship, product, transaction and the origin or destination of funds. The permissive nature of this provision may lead to non-application by FIs. There is no further elaboration as to what may constitute risks, whether high or low, or how to identify such risks.

333. Article 2(1) of NAP 6 requires banks to develop policies and procedures to identify the types of customers that present higher risk of money laundering activity. Article 2(2) requires banks to apply enhanced due diligence in accounts opening or transactions for high risk customers and comply with internal rules which define the category in order to obtain the necessary approval of the transactions with those clients. Article 3(1) provides that in determining the risks or type of client, banks may consider the following elements:

a) The origin of the client (nationality, residence etc) the area where the client is settled, where its business partners are established and connections with tax havens, particularly non-cooperating countries;

b) Background or position of the client, such as connection with public figures, major entrepreneurs, individuals with substantial inheritance but whose origin of resources are not clear;

c) The nature of the activity of the client, which can be particularly facilitate money laundering such as casinos, lotteries or exchange houses, which involve movement of large sums of cash; and

d) Legal persons with complex structure and shareholders.

334. Under Article 3(2), banks are to reclassify information regarding a client after acceptance if the activity of the client does not correspond to the information or classification which the bank had regarding the client.

335. NAP 6 is limited in its scope of application as it only applies to banks. There is the need for STP to have recourse to the Basel CDD Paper and harmonise the provisions in article 20-A of the AML/CFT Law and article 2(1) of NAP 6/2007 to cover all financial institutions.

Risk - Application of simplified or reduced CDD in appropriate cases (c. 5.9)

336. There is no requirement to apply simplified or reduced CDD measures. However, Article 25(1) of the AML/CFT Law exempts FIs from applying CDD measures to the following:

a. Insurance or pension fund contracts in which the annual total premiums or contributions is less than nineteen million six hundred thousand Dobra

(19,600,000 Dbs) or, in the case of a single premiums or contributions that are less than forty nine million Dobra (Dbs 49,000,000);

b. *Insurance contracts that guarantee the payment of claims resulting from a work contract or the professional activities of the insured party, as long as these insurance contracts do not contain a surrender clause and cannot serve as collaterals for loans;*

c. *Insurance contracts and pension plans, as long as the payment of the premium or contribution is effected by debit from, or a cheque written on, an account opened in the name of the policy holder in a credit institution subject to duties outlined in Article 11*[24].

337. CDD measures may also be dispensed with when the client is a financial institution with its headquarters in any country with an AML/CFT regime considered by the supervisory authority of the reporting entity to be equivalent to that established in the AML/CFT Law of STP.

338. The provisions of Article 25(1) are not applicable when there is suspicion of ML or TF.

339. The interpretative Note to Recommendation 5.9 provides that where there are low risks, countries may decide that FIs can apply reduced or simplified measures despite the general rule that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner. It also provides for circumstances where the risk of ML or TF is lower, or where information on the identity of the customer and the beneficial owner of a customer is publicly available or where adequate checks and controls exist elsewhere in national systems. These include public companies that are subject to regulatory disclosure requirements, government administrations or enterprises, beneficial owners of pooled accounts held by DNFBPs provided that those DNFBPs are subject to requirements to combat ML/TF consistent with the FATF Recommendations and are subject to effective systems for monitoring and ensuring their compliance with those requirements. The Interpretative Note further requires banks to also refer to section 2.2.4 of the Basel CDD paper which provides specific guidance concerning situations where an account holding institution may rely on a customer that is a professional financial intermediary to perform the CDD on his or its own customers.

340. Even though the customers listed in Article 25 seem to be low risk customers, Article 25(1) to (3) seems to permit total exemption from application of CDD measures instead of requiring FIs to apply simplified or reduced CDD measures. Also, Article 25 is narrow in scope as it only focuses on insurance business and clients located in countries with AML/CFT requirements similar to those in STP. The authorities of STP should consider revising Article 25 to expressly require all FIs to apply simplified or reduced CDD measures and also expand the list

[24]Duties outlined in Article 11 are duty to: require identification, refuse to carry out operations; conserve documents; examination; communication; abstention; collaboration; secrecy; create control mechanisms; and training.

of customers to whom CDD simplified measures can be applied, including providing guidance in relation to similar accounts held by other types of FIs.

Risk-Simplification/Reduction of CDD measures relating to overseas residents (c. 5.10)

341. There is no requirement for FIs to apply simplified or reduced CDD measures to customers resident in another country.

Risk - Non-application of simplified CDD measures when there is a suspicion of ML / TF or other high-risk scenarios (c. 5.11)

342. There is no requirement prohibiting FIs from applying simplified or reduced CDD measures when there is suspicion of ML or TF. This is because, as stated under Recommendation 5.9 above, the provisions of Article 25 did not provide for the obligation to apply simplified or reduced CDD measures rather provide for exemptions from application of CDD measures. In this regard, it may be concluded that Article 25(2) (4) of the AML/CFT Law which provides that "The above-mentioned exceptions do not apply when there are suspicions of ML or TF" does not comply with the requirement in Recommendation 5.11.

Applying a risk-based approach on CDD measures consistent with the issued guidelines (c. 5.12)

343. Article 20A (1) of the AML/CFT Law permits entities subject to CDD requirements to adapt the nature and extent of their verification procedures as a function of the risk associated with the type of client in question, to the business relationship, the product, transaction and origin or destination of funds. The entities are to be able to demonstrate the adequacy of the procedures adopted for the measures associated with the risk of diligence whenever they are requested to do so by the proper supervisory or inspection authorities. Bank officials informed Assessors that, in practice, they follow STP AML/CFT requirements in the country and those of their group standards.

Timing of verification of identity - General rule (c. 5.13)

344. Article 12-A(1) of the AML/CFT Law requires the verification of the identity of a client, the client's representative or beneficial owner to take place at the time of establishing the business relationship or prior to any occasional transaction.

Timing verification of identity - Treatment of exceptional cases (C.5.14 and 5.14.1)

345. Article 12-A(2) permits subjected entities to complete the verification of identity of clients or beneficial owners after the commencement of the business relationship when the risk of ML or TF is low and if the contrary does not result from legal or regulatory requirements applicable to the activity of the concerned entity. This exemption applies if the suspension of the verification process proves to be indispensable to the execution of the operation. In this case, the identity verification process is to be completed within the shortest possible time. However, under

subparagraph (3), credit institutions are precluded from allowing any debit or credit transactions to take place in the account following the initial deposit or make available any means of payment on the account or carry out any alterations in the ownership of the account until the identity of the client has been verified through legal or regulatory processes applicable to the beneficiary that intends to exercise the rights granted by the policy. Thus, utilization of the business relationship prior to the verification is based on low risk of ML and TF and non-use of the account.

346. Officials of insurance companies informed Assessors that they can establish business relationships with clients even where the process for identification and verification of identity has not been concluded. However, full identification and verification of identity is required before payment is made to claimants. More documents are required at this stage to attest to the true identity of claimants. Additional due diligence is carried out by paying the insured person at the premises of the insurance company and by marking each currency note for identification when there is doubt about the origin of the currency.

Failure to satisfactorily complete the CDD (c. 5.15)

347. Recommendation 5.15 provides that a financial institution should not be permitted to open account, commence business relations or perform transactions when the financial institution is unable to identify a customer and verify the identity of the customer (including beneficial owners) and unable to ascertain the nature and purpose of the business relationship. In such situations, a financial institution is to be required to consider making a suspicious transaction report. Article 13 of the AML/CFT Law (captioned "Duty to refuse the carrying out of operations) precludes subjected entities from carrying out verification of identity of the beneficiary of the policy when the client fails to provide the respective identification or the identification of the person on whose behalf the client is effectively acting.

348. This provision applies to life insurance contracts and, as stated, permits the verification of the identity of the beneficiary to take place after the business relationship has been established, but always prior to or at the time of the payment of any benefit or prior to the or at the time of the date for carrying out the transaction. It does not prohibit FIs from opening account, commencing business relations or performing a transaction when they are unable to comply with the requirements for identification and verification of identity of customers and beneficial owners. It does not require FIs to consider making a suspicious transaction report.

Failure to satisfactorily complete the CDD after the start of the business relationship (c.5.16)

349. There is no express requirement for a financial institution to terminate business relationship and consider making a suspicious transaction report where the financial institution has already commenced the business relationship and the financial institution is unable to identify and verify the identity of a customer, that a person purporting to act on behalf of a customer is so authorized, or to identify and verify the identity of a beneficial owner. However, article 15 of the KYC Guidelines requires banks to cease operations with any client who refuses to cooperate in providing information, but does not require banks to consider making a

suspicious transaction report. This provision applies only to banks and needs to be extended to insurance and other financial institutions.

Existing customers - CDD Obligations (c. 5.17)

350. There is no requirement for FIs to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct CDD on such existing relationships at appropriate times.

CDD on existing holders of anonymous accounts or accounts in fictitious names (c. 5.18)

351. Article 23 (2) of the AML/CFT prohibits the opening of anonymous accounts or accounts in fictitious names. As such, there is no requirement for FIs to apply CDD measures on existing customers if they are holders of anonymous accounts or accounts with fictitious names.

Recommendation 6

352. Article 3(h) of the AML/CFT Law defines politically exposed person (PEP) to mean "the individual person who holds or has held, within the last year, political or public posts, as well the members of his immediate family and people who are acknowledged to have close business or commercial relations with him or her." Article 5 of the KYC Guidelines issued by the Central Bank, NAP 06/2007 also makes provision for measures relating to PEPs, referred to as "public figures". Article 5(2) of the KYC Guidelines defines public figures to mean "any person who occupies an important position at the legislative, executive, judicial or military; an influential politician or political party leader; or a person who occupies a high ranking position in government public administration or the private sector". These definitions seem to cover both foreign and domestic PEPs.

353. Requirements relating to PEPs have also been incorporated in Group AML/CFT Policies of private banks. The country has a list of domestic PEPs but does not have a list of foreign PEPs. The CBSTP monitors banks for compliance with requirements relating to PEPs. In practice, it was found that institutions have no way/criteria established to be able to detect foreign PEPs. The authorities informed Assessors that they have not faced any challenges in dealing with issues relating to PEPs due to the small size of the country and the fact that the identities of individuals residing in STP are publicly known.

Foreign Politically Exposed Persons (PEPs) - CDD Obligations (c. 6.1)

354. Article 20A(1) of the AML/CFT Law requires FIs to, in the fulfilment of their duties of identification and verification of clients, adapt their verification procedures according to the risk associated with the type of client, business relationship, product, transaction, origin and destination of funds. Article 20(3) of the AML/CFT Law requires FIs to have adequate risk-based procedures in order to determine if a client is a politically exposed person (PEP). This provision is to apply when the FIs engage in occasional business transactions or relations with PEPs residing outside the territory of STP. In the case of a particular bank, all supporting documents are forwarded to the branch of the bank in the country where he/she resides for

verification of their authenticity before account opening is authorized. Where the bank has no branch in the country of residence of the client, the bank searches through other reliable sources to verify the identity of the client or forwards all the information to the headquarter of the bank to undertake the CDD and authorization of the account to be opened.

355. Although banks will conduct CDD for all transactions involving PEPs, the provision in Article 20-A (3) is narrow in scope as it covers only occasional transactions or associates of PEPs. It does not require FIs to determine whether a beneficial owner is PEP nor cover "a potential customer".

356. Article 5 of the KYC Guidelines of the CBSTP requires banks to determine whether a client is a public figure or linked to a public figure as defined above. This is to be done at the time of opening bank accounts for clients.

Senior management approval (c. 6.2)

357. FIs are required by article 20-A (3) of the AML/CFT Law to obtain authorization from the immediate hierarchy prior to establishing business relations with PEPs. "Immediate hierarchy" is not defined but FIs visited, as well as officials of the CBSTP informed Assessors that approval is sought from senior management sought before opening an account or establishing a business relationship with foreigners and PEPs. In the case of international banks, such authorization is granted by the headquarters on notification by the STP branch.

Customer or beneficial owner subsequently found to be PEP (c. 6.2.1)

358. There is no requirement for FIs to obtain senior management approval to continue business relationship with a customer that has been accepted and for the customer or beneficial owner who has subsequently been found to be or subsequently becomes a PEP.

Source of wealth and source of funds (c. 6.3)

359. Article 20-A (3) of the AML/CFT Law requires FIs to take the necessary measures to determine the origin of the assets and funds of foreign PEPs. Article 5(1) (a) of the KYC Guidelines also require banks to establish the origin of resources when public figures make deposits into their accounts. In both cases, there is no requirement to establish the source of wealth and source of funds of beneficial owners identified as PEPs.

Enhanced ongoing monitoring of relationship (c. 6.4)

360. Article 20-A (3) of the AML/CFT Law provides for ongoing monitoring of business relationship with PEPs without specifying whether it should be enhanced or normal monitoring. In practice, and due to the fact that PEPs are considered high risk customers, both under the AML/CFT Law and the KYC Guidelines, banks apply enhanced monitoring of relationship with PEPs. Monitoring of relationships continue even after the customer ceases to be a PEP but continues to pose ML and TF risk due to the profile or nature of the transactions conducted by the customer. Despite this, there is the need for STP to expressly require FIs, in law, regulation

or other enforceable means to conduct enhanced ongoing monitoring on their relationships with customers who are PEPs.

Domestic PEPs (additional element c. 6.5)

361. The definition of PEPs in Article 3(h) seems to cover domestic PEPs, but Article 20-A(3) is silent on domestic PEPs. Within the definition of public figure in the KYC Guidelines, the requirement relating to PEPs may be extended to domestic PEPs. However, the general understanding of PEPs in STP relate to foreigners. According to FIs visited, domestic PEPs are easily identifiable, hence there is not much need to subject them to more rigorous scrutiny. In this regard, the requirements of R.6 are not yet extended to PEPs who hold prominent public offices in STP. There is the need for STP to expressly extend the requirements of R.6 to domestic PEPs.

Ratification of the Merida Convention (Additional Element c. 6.6)

362. STP ratified the United Nations Convention against Corruption on 12 April, 2006.

Recommendation 7

Cross border accounts between correspondent banks and similar relationships (c. 7.1, - c.7.5)

363. There is no specific regulation on correspondent banking relationships. According to the Central Bank, FIs are required to inform the CBSTP about all relationships established with correspondent banks, including full information on AML/CFT measures of the respective jurisdiction of the correspondent bank. Banks visited have incorporated requirements on correspondent banking into their AML/CFT policies. In the case of one bank, such relationship is established when there is a need for it and authorized by its headquarters. Nevertheless, STP needs to incorporate the requirements of Recommendation 7 into its AML/CFT system through law, regulation or other enforceable means.

Recommendation 8

Unlawful use of new technologies for the purposes of ML / TF (c. 8.1)

364. There are no provisions in the AML/CFT Law requiring FIs to have policies in place or take measures to prevent the misuse of technological developments in ML or TF schemes. However, the authorities of STP informed Assessors that this may be subsumed under Article 20 of the AML/CFT Law which requires reporting entities to establish control mechanisms to provide, including in subsidiaries and branches abroad, internal control processes and communication that enable the fulfilment of the obligations contained in the Law and prevent operations related to the money laundering, goods, products and other rights arising from criminal activities. In the view of Assessors, Article 20 is not sufficient to cover the requirements of Recommendation 8.

Risk of non-face to face business relationships (c. 8.2 e 8.2.1)

365. Article 9(2) of NAP No. 20/2011 requires banks to develop programmes to prevent ML and TF, including adopting procedures that aim to safeguard the risk of ML and TF due to the use of technologies that favour anonymity. In October 2011, the BCSTP approved the launching by commercial banks of the 'Rede Dobra 24', i.e. Automated Teller Machines (ATM) for cash withdrawals. The current ATM system allows access to only domestic account holders. This means, only customers who have been duly identified and their identities verified are can use ATMs in STP.

366. NAP 20/2011 is narrow in its scope of application since it only applies to banks. In this regard, insurance and other non-bank FIs are not covered by this requirement. STP needs to broaden its legislative scope on new technologies and put in place adequate safeguards against their misuse for purposes of ML and TF due to the anticipated increase in the level of banking access and the internationalization of the financial sector in STP, the sophistication of financial products and services.

Recommendations and Comments

Recommendation 5

- Identify the beneficial owners and take necessary steps to verify the identity of customers be they existing or potential.
- Require FIs to obtain information on the purpose and nature of the business relationship in general and customers and beneficial owners.
- For customers that are legal persons or entities without legal personality, FIs should take steps to understand the structure of ownership and control and determine the identity of individuals who actually own or control the customer and the purpose and nature of business relationship and its risk profile.
- There should be express requirement in law or regulation for diligence procedures (in addition to the identification of customers, representatives and beneficial owners) and the situations in which this duty should be strengthened and it should be shown what risk situations that require such requirements (e.g. remote operations, PEPs outside the territory, correspondence with risk countries).
- FIs should conduct ongoing monitoring of the business relationship of operations / customers to ensure that transactions are consistent with the risk profile of the customer, including if necessary the source of funds.
- FIs should apply enhanced due diligence for higher risk categories of customers, business relationships or transactions.
- Require FIs to apply CDD measures to existing customers on the basis of materiality and risk and to conduct CDD on such existing relationships at appropriate times.

- In cases where the customer is allowed to benefit from the business relationship prior to verification of identity, FIs should be required to adopt risk management procedures regarding the conditions in which this situation occurs.
- Expressly require FIs to refuse any transaction, start business relationship or perform any occasional transaction when the identification data of the customer, his representative or the beneficial owner is not forthcoming, or information on the structure of ownership and control of the customer, the nature and purpose of the business relationship and the origin and destination of the funds is not provided.
- Expressly require FIs to terminate business relationship and consider making a suspicious transaction report where the FIs have already commenced the business relationship and the FIs are unable to identify and verify the identity of a customer, that a person purporting to act on behalf of a customer is so authorized, or identify and verify the identity of a beneficial owner.

Recommendation 6

- Require all FIs to establish appropriate systems of risk management to determine whether the existing or potential customer or the beneficial owner is a domestic PEP in all cases, not only for occasional transactions;
- Require FIs to obtain approval from Senior Management to continue the business relationship when a client has been accepted and subsequently determines that this or the beneficial owner becomes PEP.
- FIs should take adequate measures to establish the source of wealth and funds of beneficial owners identified as PEPs.
- FIs should be expressly required to conduct enhanced ongoing monitoring of their business relationships with PEPs.

Recommendation 7

367. The requirements of R. 7 are not reflected in the legal framework of STP. However, commercial banks in STP have correspondent banking relationships with banks outside the region. STP should consider requiring FIs through law, regulation or other enforceable means to:

- Gather sufficient information about a correspondent institution to understand fully the nature of their businesses and to determine from publicly available information the reputation of the institution and the quality of its supervision, including whether the institution has been subject to a ML or TF regulatory action;
- Assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective;

- Obtain approval from senior management before establishing new correspondent relationships;
- Document the respective AML/CFT responsibilities of each institution;
- Where a correspondent relationship involves the maintenance of "payable-through" accounts, be satisfied that
    - the respondent financial institution has performed all the normal CDD obligations on its customers that have direct access to the accounts of the financial institution; and
    - the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent FIs.

Recommendation 8

368. STP should broaden its legislative scope on new technologies and put in place adequate safeguards against their miuse for purposes of ML and TF due to the anticipated increase in the level of banking access and the internationalization of the financial sector in STP, the sophistication of financial products and services.

3.2.3 Compliance with Recommendations 5-8

	Rating	Summary of factors underlying the rating
R.5	**NC**	• Requirements for CDD relating to suspicious transactions have been defined to incorporate elements of unusual transactions • No requirement to take reasonable steps to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source • No requirement to obtain information on the purpose and intended nature of the business relationship • No requirement to understand the ownership and control structure of legal persons or entities without legal personality to determine the identity of individuals who own or control the customer. • No express requirement to terminate business relationship and consider submitting an STR when business relations have already commenced • No requirement in law or regulation for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships • No requirement to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct CDD on such existing

	Rating	Summary of factors underlying the rating
		relationships at appropriate times • No requirement for FIs to apply simplified or reduced CDD measures to customers resident in another country • No requirement to apply simplified or reduced CDD measures where there are low risks. There are rather exemptions • Situations of duty of refusal and possible declaration of suspicious transaction should be established. • Implementation of CDD measures is not effective
R.6	**NC**	• Requirement to determine whether a customer is a PEP only relate to occasional transactions • No requirement to establish the source of wealth and funds of beneficial owners identified as PEPs. • No express requirement to conduct enhanced ongoing monitoring of business relationship with PEPs.
R.7	**NC**	• The requirements on correspondent banking have not been reflected in the legal framework of STP despite the existence of correspondent banking relationships
R.8	**NC**	• Provision on new technologies only applies to banks

Recommendation 9

3.3. Third Parties and introduced business (R.9)

3.3.1 Description and Analysis

Legal Framework

369. There is no requirement in the legal framework of STP that permits FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business. The CBSTP and financial institutions visited informed Assessors that they rely solely on their own CDD measures.

Recommendations and Comments

370. In the absence of any express legal requirement precluding FIs from relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, there is no guarantee that FIs will not rely on third parties to carry out their

CDD functions. In this regard, there is the need for STP to require a financial institution relying upon a third party to perform some elements of CDD, in law, regulation or other enforceable means to:

a. immediately obtain from the third party the necessary information concerning the identification and verification of the identity of the customer, persons purporting to act on behalf of the customer, the legal status of the legal person, the beneficial owner, ownership and control structure of legal persons and legal arrangements, the natural persons that ultimately own or control the customer or exercise effective ultimate effective control over a legal person or arrangement and the purpose and intended nature of the business relationship;

b. take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay;

c. satisfy themselves that the third party is subject to effective AML/CFT regulation and supervision and is effectively implementing the FATF Recommendations and has measures in place to implement CDD and record keeping requirements;

d. take ultimate responsibility for the customer identification and verification performed by the third party on behalf of the FIs.

Compliance with Recommendation 9

	Rating	Summary of factors underlying the rating
R.9	**NC**	• This recommendation is not reflected in the legal framework of STP and there is doubt that FIs will not rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business in future.

Recommendation 4

3.4. Secrecy or Confidentiality of FIs (R.4)

3.4.1 Description and Analysis

371. The confidentiality of customer information kept by reporting institutions, the exceptions to that confidentiality and the authorities that are empowered to obtain confidential information, are described in very similar terms in Article 80 of the Organic Law of the BCSTP and Article 39 of the FIs Law.

Legal Framework

Inhibition of Implementation of FATF Recommendations (c. 4.1)

372. Financial secrecy does not constitute an obstacle for the effective implementation of the FATF Recommendations in STP. Reporting entities are required by Article 18 of the AML/CFT Law to provide all information and submit all document requested by the judicial authority responsible for handling a case or by a supervisory authority in fulfilment of its duties required under the Law. However, Assessors were informed that Sao Tomeans are generally seen as suspicious and are not confident to provide information for fear that the information will not be well protected until it is forwarded to the FIU. This situation is attributed to the small size of the population. Thus, issues relating confidentiality are handled very delicately. Focal points in banks are often anonymous in order to protect themselves against possible intimidation. The prevalence of this situation will inhibit the implementation of FATF Recommendations.

Banking secrecy (c.4.1)

373. Article 80 of the Organic Law of the CBSTP provides as follows:

1. *The members of the administrative, supervisory, and management and consulting bodies, as well as all employees of the Bank are subject to a confidentiality duty and bank secrecy ensuring the professional ethics in all respects regarding Bank acts and operations.*
2. *Extraction of certificates or disclosure of acts or transactions in which the Bank has intervention are permitted only in the following cases:*
   a) The written request of the holder of acts or transactions in question;
   b) By written court order prior to hearing the official letter by the Governor of the Bank;
   c) determination of the Government, by order of the Head of Government. ")

374. Similarly, Article 39 of FIs law provides that:

1. *The officers, directors, employees and auditors of FIs, have a duty to maintain confidentiality about facts that they have known in the exercise of their financial activities and related services offered by the institutions.*

2. *Such information may only be disclosed to the Central Bank, or other administrative or judicial authority by established procedure in law.*

3. *All those who violate the provisions of this article commit a punishable crime with imprisonment up to 5 years"*

375. Article 19 of the AML/CFT Law subjects members, managers or leaders, employees of all reporting entities, without exception, to secrecy rules in relation to submission of STRs or any information concerning an ongoing criminal investigation. A violation of this provision attracts a penalty of a term of imprisonment of up to three years or a fine ranging from Dbs. 125,000,000.00 toDbs.12,5000,000.00 or Dbs.62,000,000.00 to Dbs.5,000,000,000.00.

Access to information by competent authorities (c.4.1)

376. Competent authorities that are empowered to obtain confidential information and documentation held by reporting institutions include judicial authorities, the FIU and other supervisory bodies. Article 4 of the FIU Decree mandates the FIU to request and receive all relevant information from any public or private entity, especially of supervisors and criminal investigation, in the performance of the functions assigned to it. It can also request for additional information from individuals or legal entities in order to enrich its database. The entities or persons from whom information may be requested are precluded from invoking professional secrecy as a reason for not providing the FIU with the information, except as specifically provided for in the law.

Sharing of confidential information with other local and foreign authorities (c.4.1)

377. There are no limitations to the ability of competent authorities to obtain information from other national authorities as long as the information requested is within their scope of competence. At the local level, the multi-sectoral approach to the operations of the FIU permit information sharing among the competent authorities. At the international level, the FIU is mandated by article 4 of the FIU Decree to provide, and receive from, entities outside the Democratic Republic of Sao Tome and Principe information concerning the crime of money laundering and crime of financing of terrorism in compliance with international agreements or any other instrument of international law. At the time of the on-site visit, the FIU had not signed any memorandum of understanding nor exchanged any information with any foreign FIU. Other competent authorities have been cooperating with their foreign counterparts, mainly in Portuguese speaking countries, but not on AML/CFT issues. As previously stated, the ability to exchange information is fraught with fear of intimidation of those who provide information. Nevertheless, the authorities are cooperating on AML/CFT issues.

3.4.2 Recommendations and Comments

378. STP has provisions that will ensure that financial secrecy rules do not impede the implementation of FATF Recommendations. However, due to fear of victimization by citizens, relevant personnel are afraid to provide confidential information. STP needs to undertake more sensitization programmes for the general population on AML/CFT issues, including the need to provide relevant information to combat ML and TF.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying the rating
R.4	**PC**	• The duty of confidentiality is a sensitive point in STP given the small size of its society and the consequent difficulty to keep certain transactions/situations confidential. This issue is reflected in the lack of communication to the competent authorities.

Recommendation 10*

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

3.5.1. Description and Analysis

Legal Framework

379. The AML/CFT Law imposes the obligation to keep record of identification documents and transactions executed, including originals, copies, business correspondence, for a minimum period of ten years after the execution of the transaction and five years after termination of the business relationship. Although not expressly stated, the records required to be kept can allow the reconstruction of individual transactions. There is explicit obligation to deliver the records in a timely manner when requested by competent authorities. The entities are also required to keep records for more than ten years when requested by competent authorities in specific and duly authorised cases.

Preservation of documents and reconstitution of transaction records (c. 10.1)*

380. Article 14(1) of the AML/CFT Law requires FIs to keep records of copies or references of documents of identification for a period of 10 years from the time the identification is performed. Article 14(2) provides for the retention of originals, copies, business correspondence, account archives, references or micro-films as the probative documents and records from transactions for a period of ten years beginning from the date of execution of the transactions.

381. Similarly, article 9 of the KYC Guidelines requires FIs to ensure the preservation of details of businesses, the supporting evidence and records, consisting of original documents or copies with similar probative force for a period of at least five years from the date of execution of the transactions.

382. Both provisions meet the threshold requirement for the duration for which the documents are to be kept[25] and apply regardless of whether the account or business relationship is ongoing or has been terminated. In any case, "business relations" is defined in Article 3(k) of the AML/CFT Law to mean relations of business or professional nature between financial entities or non-financial entities and their clients that, at the time at which they are established, are expected to be or are long-lasting.

Reconstruction of individual transactions (c.10.1.1)

383. The records required by the AML/CFT Law and the KYC Guidelines to be kept are sufficient to permit the reconstruction of individual transactions that may provide, if necessary, evidence for prosecution of criminal activity.

Preservation of documents for identification data (c. 10.2)*

384. Article14 (1) and 14(2) of the AML/CFT Law require FIs to maintain records of identification data, accounts files and business correspondence for five years following the termination of the business relationship. FIs are also required to maintain such records for a longer period if so demanded by the authorities in specific and duly authorised cases.

Availability of Record to the competent authorities on a Timely Manner (c. 10.3)*

385. Article 14 (3) of the AML/CFT Law requires FIs to make available records to the proper authorities in a timely manner when requested. "Proper authorities" is construed to mean domestic competent authorities. Documents will be delivered as required by Article 18 of the AML/CFT Law, as well as other laws of STP.
Note

Special Recommendation VII

Wire transfers

Originator information (applying c. 5.2 and 5.3 in R.5, c.VII.1)

386. The same CDD requirements explained in section 3.2 are applied in identifying customers according to criterion VII.1 of the Methodology. The threshold for identification of occasional customers (long-distance transactions that do not result from service provision

25 10.1 requires for 5 years or longer.

contracts, as provided in Article 12(4) of the AML/CFT Law) equal to or greater than 245,000,000 Dbs (two hundred and forty-five million Dbs), which is an equivalent of USD1000 and less than EUR1000. In this case, FIs are precluded from carrying out transactions unless they are certain of the true identity of the client through the means that prove most adequate and as defined by the supervisory authority of the respective sector.

387. The means of proving the identity of a client in a long distance transaction under article 12(4) is to be determined by the supervisory authority of the respective sector. In furtherance to that, article 7 of the Know Your Customer (KYC) Guidelines requires that each transfer or payment document must include the name and account number of the originator. Banks are also required to include the name and an account number of the customer who is making electronic transfers abroad. There is no specific threshold for this requirement, but the requirement in Article 7 will cover wire transfers of EUR/USD 1000 or more. However, there is no requirement to include the originator's address, or any provision permitting FIs to substitute the address with a national identity number, customer identification number, or the date and place of birth of the originator.

388. Remittances services in STP are provided by Western Union under contractual arrangements with FIs supervised by the CBSTP and are subject to the same AML/CFT requirements.

Inclusion of originator information in domestic and cross-border transfers (c. VII.2, and VII.3 VII.4)

389. There are no rules in the AML/CFT Law governing electronic transfers. Article 7 of the KYC Guidelines requires FIs to include the name and an account number of the customer who is executing a cross-border electronic transfer. No specific threshold is indicated. This means FIs are obliged to include full originator information with transfers irrespective of the amount involved. The deficiency relating to absence of requirement to include the address or substitute information of the originator also applies to VII.2 and VII.4.

390. There are no requirements dealing with criteria VII.3 and VII.4.

Risk-based procedures to identify and handle transfers without complete originator information (c. VII.5)

391. There is no requirement for beneficiary FIs to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Monitoring of compliance with Special Recommendation VII (c.VII.6)

392. The existence of some of provisions portends the need for monitoring for compliance with SR. VII. Specifically, Article 12(4) requires the adoption of procedures by the respective

supervisory authorities. The CBSTP has issued regulations covering some of the requirements of this Recommendation. However, the CBSTP is not mentioned as a supervisory authority in the AML/CFT Law. The KYC Guidelines issued by the CBSTP does not provide for sanctions for violation of the regulations, including wire transfer requirements. And there has been no supervision to ensure compliance with rules and regulations implementing cross-border and domestic wire transfers between FIs.

Sanctions (applying c. 17.1-17.4 in R.17, c. VII.7)

393. There are no regulations that address this aspect of the Recommendations.

Additional elements elimination of thresholds SR VII (c. VII.8 and c. VII.9)

394. These requirements have not been provided for.

Recommendations and Comments

Recommendation 10

395. The record-keeping provisions in the AML/CFT Law meet the requirements in Recommendation 10. FIs visited informed Assessors that they were implementing record keeping requirements. However, there has been no AML/CFT Compliance supervision, hence there was no examination report evidencing effective implementation of this Recommendation.

Special Recommendation VII

- The CBSTP should issue regulations to ensure that FIs include accurate and relevant information about the originator (name, national identification number and account number) on all wire transfers that are sent, and to ensure that the information remains with the transfer or associated message through the payment chain. These regulations should include the obligation to monitor and conduct an enhanced scrutiny of the transfers that do not contain complete originator information.
- There should be measures in place to effectively monitor the compliance of FIs with rules implementing requirements on wire transfers.

Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying the rating
R.10	**PC**	• No evidence of effective implementation of record keeping requirements
RE.VII	**NC**	• Measures for treatment of obligations of Special Recommendation VII are not defined.

		• No requirement to include the originator's address, or any provision permitting FIs to substitute the address with a national identity number, customer identification number, or the date and place of birth of the originator in respect of domestic wire transfer • There are no regulations that indicate which procedures to adopt for incoming wire transfers that do not contain complete originator information. • The KYC Guidelines does not provide for sanctions for violation of the regulations, including wire transfer requirements • No supervision to ensure compliance with rules and regulations implementing cross-border and domestic wire transfers between FIs.

Suspicious and Unusual Transactions

3.6. Monitoring of transactions and business relationship (R.11 and R.21)

3.6.1. Description and Analysis

Recommendation 11

Special attention to complex and unusual large transactions (c. 11.1)

396. Recommendation 11.1 provides that FIs should be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Article 15(1) of the AML/CFT Law requires FIs to pay special attention to transactions, including the nature, complexity, relatively unusual nature of the business of the customer, the amount involved, the economic and financial situation of the actors or other means of payment that are likely to involve ML or TF. However, FIs do not make an automated analysis of customer transactions.

397. Article 15(1) does not succinctly cover the requirement in R.11.1 because FIs are required to pay special attention to transactions with the attributes listed in the Recommendation. Reference to ML and TF narrows the scope of application. "No apparent or visible lawful purpose" envisages a wider scope of unlawful purposes, including ML and TF. Finally, there is no reference to "apparent or visible economic purpose". In practice, large amounts of deposits seem to be the only criterion used for detection purposes. FIs have no other monitoring mechanisms beyond the clerk's ability or the official who deals with the operation to identify its unusual character at the time of its execution.

Examination of the background and purpose of complex and unusual large transactions (c. 11.2)

398. FIs are required under Article 15(2) to obtain information regarding the origin and destination of funds, justification for the operations, as well as information on the identity of the beneficiaries, in cases where the beneficiaries are not those conducting the transactions. This provision applies when the transactions involve an amount equal to or more than two hundred and forty five million Dobra (Dbs245,000,000). This provision is also narrow in scope as it applies only to transactions involving an amount equal to or more than 245,000,000 Dbs conducted on behalf of third parties. The requirement in R.11.2 applies to all unusual transactions, irrespective of the persons involved in those transactions.

Keeping findings in writing (c.11.2)

399. Article 15(3) requires FIs to keep their findings in writing.

Record keeping of Examination Findings (c. 11.3)

400. The aforementioned article 15(3) of the AML/CFT Law requires institutions to keep the records for possible use by competent authorities and auditors for a minimum of five years.

Recommendation 21

Special Attention to Countries not sufficiently applying FATF Recommendations (c. 21.1)

401. Recommendation 21.1 provides that FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. In STP, FIs are required by article 26 of the AML/CFT Law to pay special attention in the **examination of documents** whenever a transaction, irrespective of its nature and amount involved, relate to a country or territory considered non-cooperative in a decision made public by the supervisory authority of the respective sector, due to failure to conform with international standards in the prevention of and the fight against ML and TF. The requirement is without prejudice to the duty to require identification provided in Article 12 of the Law. Article 12 covers the following issues relating to identification of customers:

- Customers and their representatives;
- When there is suspicion that the client is acting on behalf of another person;
- Series of transactions related or linked to each other;
- Long-distance (cross-border) transactions;
- Transactions related to ML or TF.

402. The above list, including the condition provided in Article 26 of the AML/CFT Law, on examination of documents, cover business relationships and transactions with persons, including legal persons and other FIs. However, it is to be noted that R.21 focus on the FATF Recommendations in particular and not international standards on AML/CFT. This may cover a wider scope but STP needs to focus on the FATF Recommendations for ease of reference and

implementation. Also, the concept of non-cooperative countries and territories no longer exists. In this regard, there is the need for STP to revise Article 26 in line with Recommendation 21.1.

Advice about Weaknesses in AML/CFT System of other countries (c.21.1.1)

403. Article 26 implicitly requires supervisory authorities of the respective sectors to issue public statements on countries that fail to conform to international standards on AML/CFT. However, no statement of that nature had been issued at the time of the on-site visit. In meetings with FIs, officials did not demonstrate a high level of knowledge about the international concerns about the risks associated with business relationships and transactions with persons from countries which do not or insufficiently apply FATF Recommendations. Most banks officials were not aware that STP has been on targeted review under the FATF International Cooperation Review Group (ICRG) process since 2007 and a Public Statement has been issued to that effect. They did not know why business relationships with some banks in STP were terminated by their foreign counterparts.

Examination of Transactions with no apparent economic or visible economic or lawful purpose (c. 21.2)

404. There is no requirement for FIs to as far as possible, examine the background and purpose of transactions, with persons from or in countries which do not or insufficiently apply the FATF Recommendations, which have no apparent economic or visible lawful purpose, and have written findings available to assist competent authorities and auditors.

Ability to apply countermeasures to countries not sufficiently applying the FATF Recommendations (c. 21.3)

405. There are also no provisions in the AML/CFT Law or other legal texts that requires reporting entities to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

Note:

3.6.2. Recommendations and Comments

Recommendation 11

406. Although there is a regulation that states that banks should continuously monitor customer accounts to ensure that there is no unusual activity, this monitoring is not done in an automated manner. FIs do not have monitoring mechanisms to identify their unusual characteristics.

Recommendation 21

407. Although the law provides for this requirement and that business relationships and non-residents are required to be subjected to strict CDD measures, it was observed in meetings with FIs, that the knowledge about higher-risk jurisdictions was low. The institutions were not adequately informed about the countries/jurisdictions in question. STP should consider taking the following measures:

- The CBSTP (or the Ministry of Finance) and sector supervisory authorities should advice reporting entities of concerns about weaknesses in the AML/CFT systems of other countries;
- FIs should be required to examine the background and purpose of transactions that have no apparent economic or visible lawful purpose, and written findings should be available to assist competent authorities and auditors;
- well as the appropriate counter-measures they can apply when a country continues not to apply or insufficiently applies the FATF Recommendations;
- The authorities should put in place measures that require FIs to apply countermeasures against countries that do not or insufficiently apply the FATF standards, in case there was necessary.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying the rating
R.11	**PC**	• Requirement applies only to transaction involving an amount equal to or more than 245,000,000 Dbs conducted on behalf of third parties • In practice, there are no automated analysis of customer transactions • There is no reference to transaction that has "No apparent or visible lawful purpose"
R.21	**NC**	• No effective measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries • There is no requirement to examine the background and purpose of transactions and take related actions • No express requirement to apply appropriate counter-measures where a country continues not to apply or insufficiently apply the FATF Recommendations

3.7. Suspicious Transactions Reports and Other Statements (R.13-14, 19, 25 and SR.IV)

3.7.1 Description and Analysis

408. The AML/CFT Law requires financial entities, as well as supervisors, to submit STRs to the A-G, although contrary to the requirement in Recommendation 13 to submit such reports to the FIU. The main statutory provisions for submission of STRs by FIs are Articles 16 and 28(2) of the AML/CFT Law. In addition, the CBSTP has issued the following NAPS requiring FIs to submit STRs to the "FIU":

- NAP No. 6/2007 establishes in its Article 13 that banks should report to the CBSTP of S. Tome and Principe and the Public Prosecutor.

- NAP No. 20/2011 provides in its Article 7 that communications should be made to the FIU.

409. All these NAPs are in force and effect. The ultimate goal is to ensure that FIs submit STRs to the FIU. However, the necessary changes in law or regulation within the context of the FATF Recommendations have not been effected.

Recommendation 13 and Special Recommendation IV

Obligation to submit STRs related to terrorism and its financing in (c. 13.1 and SR.IV.1)

Suspicious transaction report

410. Article 16 of the AML/CFT Law requires FIs that detect or suspect, in the course of examination of transactions, that a transaction indicates the practice of ML or TF to report to the A-G's Office. Also, Article 27 provides that in the fulfilment of the duty to report under article 16, FIs should inform the A-G's Office as soon as they discover that any amount registered in their book originate from the commission of illicit act or observe any facts that could constitute evidence of commission of ML or TF. Recognizing the need for compliance with this requirement in relation to FIs, the CBSTP issued directives, NAP 6/2007 and NAP 20/2011, requiring FIs to submit STRs to the FIU, as agreed by financial entities, and all AML/CFT stakeholders in STP. Consequently, FIs submit STRs to the FIU.

Funds linked or related to terrorism, terrorist acts or by terrorist organisations (c.13.2)

411. FIs are required by Article 27 (1) of the AML/CFT Law to report to the A-G as soon as they become aware or suspect that any sums entered in their books are the proceeds of illicit acts that could constitute evidence of practice of ML or TF. This provision will apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. However, STP has not criminalised the financing of an individual terrorist.

Attempted transactions (c. 13.3 part 1)

412. The obligation to report attempted transactions is not explicitly provided in the AML/CFT Law. However, this may be subsumed under article 16(1) of the AML/CFT Law

which requires a financial entity that suspects or has reasonable knowledge of facts that indicate the commission of ML or TF offence in the course of examining transactions, including unusual transactions that prove likely to involve ML or TF, to immediately inform the A-G. Statistics provided by the FIU did not include STRs on attempted transactions.

No reporting threshold for STRs (c. 13.3, second part)

413. In line with the requirement of 13.3, there is no threshold limiting the range of STRs that are to be reported, except where the transaction reveals a particular risk of ML or TF relating to a particular country or jurisdiction that is subject to countermeasures and the transaction involves an amount that is equal to or more than Dbs. 125,000,000.00 as provided under article 27(2) of the AML/CFT Law. In the view of Assessors, article 27(2) will have the ultimate effect of reducing the scope of the requirement of R. 13.3 with regard to reporting suspicious transactions relating to high risk countries.

Submission of suspicious transactions regardless of issues of fiscal nature (c. 13.4, c. IV.2)

414. Tax fraud is a predicate offence of money laundering in STP. In this regard, the laws of STP will permit the submission of STRs regardless of whether, among other things, they involve tax matters.

Additional element

STRs on predicate offence for money laundering (c. 13.5)

415. FIs are required by article 27 (1) of the AML/CFT Law to report to the A-G as soon as they become aware or suspect that any sums entered in their books are the proceeds of illicit acts that could constitute evidence of practice of ML or TF. "Illicit acts" is not defined, but this provision will cover the requirement that the report should relate to criminal acts that would constitute predicate offences for money laundering domestically. However, the application of this provision will be impeded with regard to the offences that have not been criminalised by STP. (see R. 1)

416. As regards criminal acts that may constitute predicate offence for money laundering in a foreign country, article 27(2) permits supervisors of respective sectors to determine whether to report such transactions to the A-G when the amount involved is or more than Dbs. 125,000,000.00. This provision applies when the transaction relate to a particular country or jurisdiction that is subject to additional countermeasures. Although this is an additional element, there is the need for STP to require such reporting, regardless of the amount, country or jurisdiction involved in the transaction in line with Recommendation 13.

Recommendation 14

Protection against criminal or civil liability (c. 14.1)

417. Article 21 provides that the information given in good faith as part of fulfilment of duties enumerated in articles 16, 17 and 18 does not constitute a violation of any duty of confidentiality nor imply responsibility of any kind for those providing the information. The fact that this protection is granted to any person who provides information in good faith (including legal persons) makes it broad enough to include the reporting institutions, their directors, officers and employees. There is no express provision to the effect that the protection should be available even if those who made disclosures did not know precisely what the underlying criminal activity was, regardless of whether illegal activity actually occurred. This is subsumed under the requirement to report in good faith. However, there is no precedent on what the laws of STP consider to be "good faith".

Prohibition from tipping off (c. 14.2)

418. Article 19 of the AML/CFT Law prohibits members of the respective bodies, those who engage in their managerial, leadership or management, their employees, agents and others who provide service, permanent, temporary or casual, from revealing to clients or third persons that any STR or information has been transmitted, or there is an ongoing criminal investigation. Such breach is punishable under article 52 by a fine between ninety eight million Dobra (98,000,000 Dbs) and forty nine billion Dobra (49,000,000,000 Dbs), in the case of a financial entity, or forty nine million Dobra (49,000,000) and nineteen billion six hundred thousand Dobra (19,600,000,000), in the case of individuals.

Additional element

419. Article 7 of the FIU Decree binds staff of the FIU to secrecy concerning information furnished to them in the exercise of their functions. This will apply to names and personal details of staff of FIs that make STR to the FIU. Additionally, article 21(2) of the AML/CFT Law, impliedly prohibits the negligent disclosure of information or causing the disclosure of the identity of a person who submits an STR. Negligent disclosure is punishable with imprisonment up to 3 years or a penalty fine under article 21(2). Breach of confidentiality is considered a misdemeanour under article 52(e) of the AML/CFT Law and is punishable by a fine of Dbs. 125,000,000.00 to Dbs. 62,500,000,000.00 or Dbs. 62,500,000.00 the Dbs. 25,000,000,000.00, whichever are applicable, respectively, to the financial institution or any individuals who are directors or management, or acting on behalf of, legal or voluntary, a reporting entity. This provision applies irrespective of whether the person involved is a permanent employee, manager, director etc of the reporting entity.

Recommendation 19 – Cash transaction reports

Consideration of reporting cash transactions above a threshold (c. 19.1)

420. The authorities have not studied and considered the feasibility and usefulness of implementing a system where FIs will report all cash transactions above a fixed threshold to a national central agency with a computerised database. In STP, there is no system in law or in practice by which banks and other FIs and intermediaries communicate any operation in national

currency or in foreign exchange, exceeding an amount set to a national agency with a base centralized data. In any case, the FIU does not have a computerised database and is not adequately resourced to receive and deal with such reports.

Additional elements

Computerized database for cash transactions above a threshold and its access by the competent authorities (c. 19.2)

421. This is not applicable because there is no requirement to submit CTRs.

Safeguards and proper use of information (c. 19.3)

422. Not applicable. There is no system for submitting CTRs.

Recommendation 25

Guidelines on AML/CFT requirements (c.25.1)

423. Competent authorities are empowered by article 20 of the AML/CFT Law to provide internal control processes and communication that enable the fulfilment of the obligations contained in the Law and prevent operations related to ML and TF, goods, products and other rights arising from criminal activities. In furtherance of this, the CBSTP has issued regulations (NAPs) to FIs to enable them to comply with their AML/CFT obligations. The NAPs focus on customer identification, ongoing monitoring of business relationships, the implementation of ongoing due diligence for higher risks customers such as PEP or type of activity, location of clients customers, record keeping, suspicious transaction reporting, and AML/CFT procedures, policies and controls FIs that should implement. Based on the directive of the Central Bank, FIs have been submitting STRs to the FIU. There is also a general understanding among AML/CFT stakeholders, including national authorities that the FIU is the institution responsible receiving, analysing and disseminating STRs. However, the quality of STRs submitted to the FIU suggests that FIs need more guidance on how to identify suspicious transactions. DNFBPs have not been issued with guidelines on their AML/CFT obligations.

Adequate and appropriate feedback to FIs and DNFBPs for STRs (c. 25.2)

424. There is no direct requirement for competent authorities to provide FIs that are required to report suspicious transactions with adequate and appropriate feedback, except in situations where the A-G decides to request an entity to suspend transaction in relation to which a report has been submitted. This provision has not been applied in the case of FIs due to the fact that no situation has given rise to its application.

3.7.2 Recommendations and Comments

Recommendation 13

425. Overall, while the reporting system in STP has some important and valuable aspects, but it generally lacks effectiveness. The current reporting regime requires reporting entities and supervisory authorities to report suspicious transaction to the A-G. The FIU started receiving STRs recently following the issuance of regulations by the CBSTP, which does not make direct reference to the FIU. The FIU has analysed a very limited number of STRs and has not disseminated any financial information to the competent authorities. The Assessors had concerns about the low quality and number of STRs received by the FIU. They also had concerns about mode of transmission and storage of the STRs. STP should thus strengthen the supervision of the compliance of reporting entities with the reporting system, and competent authorities should provide more comprehensive guidance and more feedback to FIs to improve the effectiveness of the reporting regime by intensifying its education of FIs. Furthermore, STP has requirements for reporting suspicious transactions relating to terrorist financing, but the requirements have not been implemented, as neither the A-G nor the FIU has received any STR related to terrorist financing. The FIU should therefore improve the awareness of FIs regarding their reporting obligations and should work to enhance their capability to identify TF related transactions.

- There should be an express requirement for FIs to submit STRs, including STRs on attempted transactions, to the FIU;
- The full range of predicate offences, including the financing of individual terrorist, should be criminalised and be included for purposes of reporting suspicious transactions.

Recommendation 14

- Provide protection for those who provide information even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

Recommendation 19

- STP should consider the feasibility and utility of implementing a system where FIs report all transactions in currency above a fixed threshold to a national central agency with a computerised database.
- When the system for reporting large currency transaction is in place, the reports should be maintained in a computerised database, available to competent authorities for AML/CFT purposes.
- The system for reporting large currency transactions should be subject to strict safeguards to ensure proper use of the information or data that is reported or recorded.

Recommendation 25.2 (Feedback)

426. There should be comprehensive provision requiring supervisory and law enforcement authorities to provide reporting entities that submit STRs with adequate and appropriate feedback, including:

a. Statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures;

b. Information on current techniques, methods and trends (typologies);

c. Sanitised examples of actual money laundering cases;

d. Acknowledgement of receipt of the report;

e. If a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and information on the decision or result, if available.

427. STP should also have regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting FIs and Other Persons.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2) and Special Recommendation IV

Rec.	Rating	Summary of factors underlying the rating
R.13	**NC**	• There is no requirement to submit STRS to the FIU • No express requirement to report attempted transactions • Requirement to report suspicious transaction relating to high risk countries is based on a threshold • The full range of predicate offences, including the financing of individual terrorist, have not been criminalised • Poor quality of STRS submitted No effective • No effective implementation of requirement to submit STRS
R.14	**LC**	• No express provision for protection of those who provide information even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred
R.19	**NC**	• STP has not considered the feasibility and utility of implementing a system where FIs report all transactions in currency above a fixed threshold to a national central agency with a computerized data base • Absence of a national central agency with a computerised database to receive reports
R.25.2	**PC**	• Limited provision for feedback • No guidance for DNFBPs on how to submit STR

Rec.	Rating	Summary of factors underlying the rating
		• Banks that submit STRs are not provided with feedback
SR. IV	**NC**	• Requirement on STR relating to terrorist financing have not been implemented • Financing of individual terrorist is not criminalised

Internal Controls and Other Measures

3.8. Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1. Description and Analysis

428. The framework for Recommendations 15 and 22 are as follows:

- The AML/CFT Law;
- NAP 02/2007 "Standard for Administrators Qualification";
- NAP No. 11/2007, establishing standards of internal control, audit and accounting to be adopted by banks in STP. The NAP in question does not mention the risk of ML / TF, nor its control;
- NAP No. 6/2007, laying down detailed rules on Identification and Classification of Bank Customers "Know Your Customer" refers to procedures, policies and internal controls to mitigate and prevent the ML / TF; and
- NAP No. 20/2011 on "Suspicious Transactions Reporting", requiring the creation of internal control mechanisms regarding the risk of ML / TF.

Recommendation 15 – Internal Controls

Establishing and maintaining internal controls to prevent ML and TF (c. 15.1)

429. Article 20 of the AML/CFT Law requires FIs to have available, including in their branches and affiliates abroad, internal control and communication processes that allow for the fulfilment of the **duties contained in** the AML/CFT Law and which prevent the carrying out of transactions related to the laundering of money, goods, products and other rights resulting from criminal activities, as well as the financing of terrorism. There is no requirement to communicate these internal procedures to their employees.

430. Article 1 of the KYC Guidelines requires Board of Directors of banks to adopt mechanisms that permit them to know those who use their services. The mechanisms should include criteria for acceptance of customers, definition of the types of customers that represent a high risk urn Rules action for different types of customers. In adopting the mechanisms, banks are to take into account the background of c1iente, his public position, accounts relating to their

business, among other elements. Banks are to delegate authority to their staff to ensure that the policy established by the Board of Administration and implemented and lead to effective and adequate knowledge of the customers.

431. FIs are required by article 1(4) of the KYC Guidelines to establish appropriate procedures, according to the policy set by the Board of Administration and the evaluation of the risk of clients, to ensure ethical and professional standards that prevent involvement, although accidental, in illicit activities. The procedures are to cover the matters discussed in the KYC Guidelines and establish an internal control and communication system for personnel that are authorized to process reporting of transaction by clients, define their documents seized and the relevant period. Banks should incorporate the principles of CDD measures in their internal control and risk systems, especially in customer acceptance, customer identification and monitoring of high-risk accounts.

432. Other matters discussed in the KYC Guidelines include policies for customer acceptance, customer risks, customer identification, public figures, update of information, money transfer, retention of identification documents, record keeping, fixing of thresholds, monitoring of accounts, high risk customers, and suspicious transaction reporting.

433. Furthermore, article 9 of NAP 20/2011 requires FIs to have internal control mechanisms to ensure that the duties which are imposed on the prevention of money laundering and terrorism financing are also observed in their agencies, branches and subsidiaries abroad, including those located in financial external or international centres ("offshore centres"). They are to develop programs to prevent ML and TF, which at least, comprise policies, procedures and adequate internal control processes, including: a) the devices which provide monitoring of operations, including computer systems, allowing the detection and monitoring of transactions which involve increased risk; b) the procedures aimed at safeguarding the risk of ML and TF due to the use of technologies that favour anonymity; c) the appropriate procedures in the hiring of employees, to ensure that this is carried out in accordance with high ethical criteria; d) the regular programs of training for employees and staff on matters related to the prevention of money laundering; e) and other internal control mechanisms established by the CBSTP."

434. Banks and insurance companies have adopted AML/CFT policies which incorporate elements of CDD, record keeping, detection of suspicious transaction and reporting obligations. Customer acceptance forms have been adopted and customers are mandated to complete them before the FIs establish business relationships with them.

Compliance management arrangements (c.15.1)

Designation of compliance officer (c.15.1.1)

435. There are no express provisions in law, regulation or other enforceable means to require financial institutions to develop appropriate compliance management arrangements and to designate at a minimum an AML/CFT compliance officer at the management level. Article 5(1) of the KYC Guidelines requires financial institutions to, among other things, establish an internal system for monitoring and submission of STRs, as well as authorized personnel to handle STRs

or customers. Following sensitisation by the FIU and the CBSTP, FIs have designated focal points to ensure compliance with AML/CFT requirements, particularly with regard to submission of STRs. Not all financial institutions have designated compliance officers at senior management level. Due to problems relating to confidentiality in STP, such officers maintain anonymity to avoid being victimised for discharging their reporting duties. Some of the institutions visited also had procedures and internal directives that reproduce these obligations in the FATF Recommendations because they are subsidiaries of foreign groups which are already implementing these measures.

Timely access to information (c.15.1.2)

436. There is no express requirement for compliance officer and appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information. According to the authorities, this is it is envisaged in article 1(5) of the KYC Guidelines which requires internal procedures to cover the matters discussed in the KYC Guidelines, establish an internal system for monitoring and communications, as well as authorized personnel to handle communications on operations or customers, define documents to be retained and its period. In practice, it appears that even in the absence of express requirements, banks and insurance companies have implemented the necessary measures, particularly due to the importance they attach to AML/CFT issues, as well as group requirements.

Independent audit of internal controls to prevent ML and TF (c. 15.2)

437. There are no provisions in law, regulations or other enforceable means to require financial institutions to maintain an adequately resourced and independent audit function to test compliance with procedures, policies and controls. The authorities stated that article 7 of NAP No. 11/2007, CBSTP regulation on Inter Control, Audit and Accounting, which requires banks to maintain comprehensive and effective system of internal audit to be carried out by competent personnel who are operationally independent and properly trained. The internal audit function is to be independent of the daily functioning of the bank and have the responsibility of assessing the activities conducted by the bank, including the operations of agencies, branches and subsidiaries consistent with the nature, complexity and risk of the activities of the bank. Deficiencies in the internal control, whether identified by the administration or by another person, are to be brought to the attention of the appropriate hierarchy on a time and remedial action promptly taken, while those considered relevant are to be reported to the Board and governing body of the bank. Article 8 states that this function will be supplemented by annual external audits.

438. The provisions cited contain all the requirements in R. 15.2. However, the regulations which is based on the FIs Law, does not make reference to AML/CFT. Specifically, article 2 requires banks to establish sound systems of internal control with the objective to eliminate fraud and loss, to maintain a set of financial reports and management, to increase prudence in operations of banks, and to collaborate in the promotion of the stability of the financial system STP. Although fraud is a predicate offence of ML and ML/TF may cause loss or otherwise affect the financial system of STP, Assessors were of the view that, for purposes of clarity, NAP 11

needs to make specific reference to AML/CFT. The Banking Supervision is mandated by article 2(3) of the NAP 11 to evaluate the internal controls of each bank during their inspections, as well as the external auditors, but there has been no inspection for purposes of AML/CFT in general to ascertain the appropriateness and level of implementation of these requirements. Further, NAP 11 applies to banks, thus excluding other financial institutions.

Training of employees with regard to AML / CTF (c. 15.3)

439. Article 20 (2) of the AML/CFT Law stipulates that FIs should provide their directors and employees with adequate training in order to recognise transactions related to ML and TF and permit them to act in their functions as supervisory bodies in accordance with the Law. Article 9(2) (d) of NAP No. 20/2011 also requires institutions to develop regular training programs for employees and contractors. In general, institutions have not provided their staff with sufficient training on ML /TF. Awareness of the problem has started now, and some activities are being programmed with the FIU. The programmes will cover explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. All institutions visited had been provided with copies of the FATF 40+9 Recommendations and also sensitised on the Recommendations relating to them.

Procedures in the hiring of employees (c. 15.4)

440. NAP No. 2/2007 on "Qualification of Directors" describes the requirements to be observed in the nomination of directors. There is no standard defining the standards in the hiring of new employees. Article 22 of the FIs Law also refers to the need to comply with the requirements of qualification, experience, personal conduct and reputation for a management position.

441. Most of the institutions visited demonstrated the use of some measures for selecting potential employees. Efforts to assess the integrity of such people are based on obtaining a police report that reveals if the prospective staff has a criminal record. A common practice used is to place the employee on internship for a period of 6 months before confirmation of appointment.

Additional element- Independence of compliance officer (c. 15.5)

442. There are no specific provisions for the creation of the position of the official responsible for compliance. From visits made, Assessors observed that the institutions do not have strong internal controls and systems aimed at efficient management of their risks of ML/TF. Given the small size of the institutions and the consequent low number of employees, it was seen that, in some cases, an individual was in charge of the internal control, audit and compliance function.

443. The obligations to institutions to define internal systems and controls to prevent ML/TF fall short of the FATF standard. The absence of a clear infrastructure for compliance, including the obligation to appoint an official responsible for compliance is a significant deficiency.

Recommendation 22 – Foreign branches and subsidiaries

Implementation of AML/CTF measures to foreign branches and subsidiaries (c. 22.1, 22.1.1 and 22.1.2)

444. Financial institutions in STP do not have foreign branches and subsidiaries. At legislative level, article 20 of the AML/CFT Law provides for the "duty to create control mechanisms consisting of the obligation to have, even in subsidiaries and branches abroad, control and communication processes that enable the fulfilment of the duties contained in the AML/CFT Law.....". However, there is no requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that the local laws and regulations permit.

445. There is no requirement for FIs to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, or apply a apply the higher standard to the extent that local laws will permit, where the requirement of the home and host countries differ. In reverse, all financial institutions in STP are subsidiaries of foreign institutions or groups, and in practice apply the principles prevailing in the legal "parent institution" pertaining to money laundering and terrorist financing. Some of the banks even apply the AML/CFT standards of their correspondent banks.

Obligation to inform the supervisor of the country of origin when the branches or foreign subsidiaries cannot implement AML/CTF measures (c. 22.2)

446. There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by host country laws, regulations and other measures.

Additional Element - Consistency of STR measures at the group level (c. 22.3)

447. There is no specific reference to this Recommendation in the legal structure of STP. Institutions are not required to apply consistent STR measures at the group level, taking into account the activity of the client with the various branches and subsidiaries. However, Assessors observed that there are cases of institutions belonging to international groups that follow the directives within the group.

3.8.2 Recommendations and comments

Recommendation 15

- FIs should develop appropriate compliance devices, at management level, including the appointment of compliance at the management level.
- The compliance officer and other appropriate employees should have timely access to customer identification data and other STR information, transaction records and other relevant information.

- FIs should be required to maintain independent and adequately resourced internal audit function to test compliance with these procedures, policies and controls.
- FIs should establish a program of continuous professional training to ensure that their employees are up to date on new developments, including information on methods and trends of ML and TF. They should be given clear explanation of all laws and obligations relating to AML/CFT, particularly the obligations relating to CDD and suspicious transactions reporting.
- FIs should be required to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

- The legal standards should include the requirements of this Recommendation.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying the rating
R.15	**NC**	• No requirement to appoint compliance officer at management level. • No requirement for compliance officer and other appropriate employees to have timely access to customer identification data and other STR information, transaction records and other relevant information. • No requirement for FIs to maintain independent and adequately resourced internal audit function to test compliance with AML/CFT procedures, policies and controls. • Inadequate AML/CFT training programs, including information on methods and trends of ML and TF, explanation of all laws and obligations relating to AML/CFT, particularly the obligations relating to CDD and suspicious transactions reporting, to ensure that employees are up to date on new developments. • No express requirement to put in place screening procedures to ensure high standards when hiring employees.
R.22	**NC**	• No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that the local laws and regulations permit. • There is no requirement for FIs to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, or apply a apply the higher standard to the extent

	Rating	Summary of factors underlying the rating
		that local laws will permit, where the requirements of the home and host countries differ • There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by host country laws, regulations and other measures

3.9. Shell Banks (shell banks) (R.18)

3.9.1. Description and Analysis

Legal framework

448. The glossary to the FATF Methodology defines a shell bank as a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision. The FIs Law No. 9/92 provides the legal framework for licensing of banks, whether state enterprise, joint venture, or private enterprise, in STP which effectively prohibits the establishment of shell banks. The licensing authority for banks is the CBSTP which deals with the initial licensing as well as changes in ownership or controlling interests in existing banks. The FIs Law requires the participation of at least two people with reputation, qualifications and experience necessary for the proper management of the institution in the board of directors. Representative offices in FIs in STP domiciled abroad are not permitted to accept deposits or conduct financial transactions in the country. Similarly, FIs domiciled abroad without authorized representative offices, cannot practice any of the activities of private FIs, directly or through other agents not authorized by the Central Bank.

449. Authorization to operate a bank is granted for an indefinite period, and is neither negotiable nor transferable. FIs located in STP are organized as limited liability companies and are required to comply with the rules governing the type of company and the FIs Law, unless otherwise exempted. In this case, each bank is to have a written charter that in compliance with the bylaws, provide for:

a) The structure of management and operational and administrative organs and their functions, positions of authority and reporting relationships;

b) The duties of each director and the services under his direction and supervision;

c) The systems of internal committees and internal audit;

d) The limits of competence and organs to decide on hiring and lending operations.

450. All persons elected or appointed to management positions, are to meet qualification requirements relating to experience, personal conduct, and reputation previously specified by the CBSTP and may not be invested in office without formal approval of election and appointment by the Central Bank.

Establishment of shell banks (c. 18.1)

451. There is no express provision in STP Laws that prohibit the establishment of shell banks. However, STP's FIs Law effectively precludes the establishment of shell banks due to its requirements for market entry. Article 7(d) requires that feasibility study of the operations of the financial institution before issuance of licence must demonstrate positive effect on the market, including increased competition. In practice, all banks licensed by the CBSTP have management and control mechanisms, as well as full complement of staff in STP.

Correspondent relationships with shell banks (c. 18.2)

452. Article 27-A of the AML/CFT Law prohibits credit institutions from establishing correspondent relations with shell banks while article 27-A(3) requires FIs that become aware that they maintain correspondent relations with shell banks to immediately put an end to the relationship.

Use of accounts by shell banks (c. 18.3)

453. FIs are required by article 23-A (2) to conduct due diligence in order to avoid establishing correspondent baking relations with other credit institutions that are known to permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

454. The legal standards prohibit the establishment and continuation of correspondent banking relationships with shell banks. STP should expressly prohibit the establishment of shell banks.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying the rating
R.18	**PC**	• The legal standards prohibit the establishment of correspondence with shell banks, but there is no express prohibition of the establishment of shell banks in STP

Regulation, Supervision, Guidance, Monitoring and Enforcement Sanctions

3.10 The supervisory and oversight system - competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 and 29)

3.10.1. Description and Analysis

Main legal provisions

455. Law on Preventing and Combating Money Laundering and the Financing of Terrorism (The AML/CFT Law); Organic Law of the CBSTP (Law no. 8/92, Article 38, 40); FIs Law (Law No. 9/92, Art º 41).

456. Summary**:** The CBSTP has adequate legal powers of regulation in relation to FIs covered by FIs Law, and to oversee compliance with such laws and regulations. Inspections are carried out on a regular basis, but there has been no supervision for AML/CFT purposes. The categories of administrative sanctions are broad, proportionate and have a deterrent effect.

Recommendation 23 – Regulation, supervision, guidance, monitoring and sanctions

Regulation and supervision of FIs (R.23.1)

457. The CBSTP is the regulatory authority of FIs in STP (CBSTP). The CBSTP regulates banking institutions, insurers and non-bank FIs. Supervision of ML/TF measures of authorized entities by the CBSTP is carried out by CBSTP - the Directorate of Banking Supervision and Insurance, (as provided in article. 40 of the Organic Law of the CBSTP, article 28 of The AML/CFT Law and article 41 of the FIs Law). However, at the time of the on-site, it was observed that the CBSTP had not undertaken any AML/CFT supervision. Inspections carried are for prudential purposes. Thus, FIs are not subject to adequate regulation and supervision regarding AML/CTF and effective implementation of the FATF Recommendations.

Designation of competent authority (c. 23.2)

458. Article 28 of the AML/CFT Law specifies that "the enforcement of duties ... it is for the supervisory authorities of the respective sector which, for this purpose, exercise the powers and duties provided for in the legislation." By implication and being the sole regulator of FIs in STP, the CBSTP is considered to be the supervisory authority for FIs for AML/CFT purposes within the meaning of article 28. The supervision of AML/CFT measures of authorized entities by the CBSTP is carried out by the CBSTP - the Directorate of Banking Supervision and Insurance, (as provided in article 40 of the Organic Law of the CBSTP, article 28 of AML/CFT Law and article 41 of the Law 9/92). The CBSTP is a member of the Multi-Sectoral Committee of the FIU with the duty to provide directives against ML and TF for FIs, transactions and large cash amount in the insurance business. It has issued several directives to banks and other FIs to ensure that financial institutions adequately fulfill the requirements to combat ML/TF. However, article 41 of the AML/CFT Law which specifically designates inspection authorities for DNFBPs is silent on inspection authority (ies) for FIs, whether banking or insurance service providers. In view of this, there is the need to expressly designate the CBSTP as the supervisory authority for FIs for AML/CFT purposes.

Authorities, structure, staffing, and resources, Recommendations 23 and 30

The Central Bank of Sao Tome and Principe

459. The CBSTP commenced operation on 26 August, 1992 following its establishment by article 1 of Law 8/92, the Organic Law of the Central Bank of Sao Tome and Principe, as a legal person of public law endowed with administrative and financial autonomy with functions that are only entrusted to a Central Bank. Its current functions include supervision and control of the various institutions operating in the financial market, including the insurance sector. The CBSTP is the sole currency issuer of the country and the state's banker with the responsibility to: formulate, implement and monitor monetary policy; develop, manage and execute exchange rate policy, ensure internal stability and external national currency - Dobra. According to article 5 of the Organic Law, the Bank has its headquarters in São Tomé and may establish regional offices where this is justified on national territory, and be represented by foreign financial institutions. Administrative power over the CBSTP is exercised by a Governor and a Deputy Governor. The Governor and two Deputies are appointed for a period of three years but are eligible for reappointment. The main organ of the CBSTP is the Board of Directors, consisting of the Governor as Chairman, the First and Second Deputy Governors, and nine Directors, one of whom is a representative of the Ministry of Finance and Economic Planning. Members of the Board of Directors are appointed by the President of STP in consultation with the Council of State. All the members of the Board, other than the Governor and his two deputies, hold office for a period of three years but are eligible for re-appointment[26]. The role of the Board of Directors is to formulate policy in respect of the objectives of the Bank.

460. Under section 11 of the Organic Law, a person does not qualify to be appointed as a member of the CBSTP Board if that person a) is not a citizen of STP; b) has entered into terms with any person for payment of that person's debt, c) has suspended payment of his or her debt or has been declared insolvent; d) has been convicted of a felony or an offence involving dishonesty; (e) is adjudged to be a person of unsound mind; or (f) in the case of a person who has a professional qualification, that person is disqualified or suspended or otherwise than at the request of that person, from practising the profession of that person by order of a competent authority made in respect of that person. There is no requirement for any knowledge or experience of the financial sector, international trade, economics or monetary policy.

461. The CBSTP carries out onsite supervision of financial institutions through its Directorate of Banking Supervision and Insurance and has power to appoint a conservator, impose moratorium, and revoke licenses under certain circumstances without resort to judicial processes.

462. Currently, the CBSTP has not commenced comprehensive supervision of reporting entities for AML/CFT purposes. The CBSTP provides its staff with training both internally and externally. The DBSI drives the CBSTP's development of AML and fraud policy within CBSTP working in partnership with other areas of the CBSTP, the Government, the financial industry, the FIU and law enforcement agencies. Its activities include providing advice on AML compliance issues and guidance. The DBSI has also participated in discussion of policy issues such as the enactment of the AML/CFT Law and issued guidance on KYC, CDD and STRs to reduce money laundering risks in the financial sector.

[26]Number of terms not specified.

Funding

463. To fund its work, the CBSTP charges fees from all authorized financial institutions that carry out activities that it regulates.

Professional standards, confidentiality, integrity, and skills

464. Article 80 of the Organic Law provides that the members of the administrative, supervisory, and management and consulting, as well as all employees of the Bank are subject to a duty of confidentiality and banking secrecy by ensuring professional ethics in all respects as the acts and operations of the Bank. They are also expected to be of high integrity and appropriately skilled. The extraction of certificates or the provision of information concerning acts or transactions in which the Bank has intervention are authorized upon written request of the holder of acts or transactions in question, by written court order, following an opinion by letter from the Governor of the Bank or by determination of the Government, by order of the President. To avoid conflict of interest, article 81 precludes members of the Board, as well as any employee of the Bank from being part of governing bodies of credit institutions, non-bank institutions, or any other entity subject to supervision of the Bank, or even perform any of these functions, except when representing the Bank or duly authorized by the Board of Directors. The members of the Board are required to disclose to the Council, any direct or indirect pecuniary interests, commercial, financial or industrial, which they, as well as members of the families, have at any time. Board of Directors and employees cannot intervene in the assessment of matters in which they have an interest.

Training

465. Article 70 of the Organic Law provides that the Bank will maintain a policy of continuing education, training, and technical development through the preparation of an annual program to be approved by the Board of Directors which shall be coordinated and streamlined by the competent department.

Authorities, powers and sanctions - Recommendation 29 and 17

Powers to monitor compliance (c. 29.1) and conduct inspections (c. 29.2)

466. Article 2(1) 8 of the AML/CFT Law provides that the monitoring of compliance of duties relating to financial institutions is the responsibility of the supervisory authorities of the respective sector that, for this purpose, exert the authorities and powers outlined in the respective legislation. All FIs covered by Article 2 of the AML/CFT Law are under the supervision of CBSTP (credit and para-banking institutions, insurance companies). Thus, supervisory power over financial institutions is conferred on the CBSTP by the Organic Law of the CBSTP, the FIs Law and, by implication, the AML/CFT Law. Article 8(f) of the Organic Law of the CBSTP empowers the CBSTP to perform the functions of supervision and oversight of the financial system. Article 32 of the Organic Law of the CBSTP requires the CBSTP to set guidelines to be followed by all institutions operating in the financial, monetary and exchange rate policies. This

function is to be performed with the view to (b) set the generic constraints to be satisfied by the borrowing and lending of credit institutions and other financial institutions and regimes of their interest rates, commissions and other forms of compensation and exercise oversight of the credit and financial institutions by establishing particular directives for their actions, ways of promoting cooperation between those institutions with a view to improving the functioning of the markets concerned and ensuring services centralization of information and credit risks.

467. Furthermore, Article 40 of the Organic Law requires the CBSTP to conduct inspections in establishments of financial institutions subject to its supervision and carry out inquiries with any entity or where there are grounds to suspect malpractice activity monetary, financial and exchange. Thus, the CBSTP relies on article 40 of the Organic Law to conduct on-site inspection of FIs but has undertaken few inspections on need basis but not relating to AML/CFT. Also the article 41 of the FIs Law provides that all FIs (as defined in article 3 of the same Law) are subject to inspections determined by the Central Bank. As earlier stated, the CBSTP has not commenced AML/CFT inspection of FIs. Officials of the CBSTP demonstrated a high level of understanding of the need to protect the financial system of STP from being used for purposes of criminal activities, including ML and FT. However, the officials will need intensive training in AML/CFT issues in order to undertake any meaningful supervision for purposes of ensuring compliance with AML/CFT obligations.

Appropriate powers to compel the production of documents (c. 29.3 and 29.3.1)

468. The power of the CBSTP to compel production of documents lacks clarity. Article 41 of the FIs Law only provides that the CBSTP and its auditors can, in the course of inspections at financial institutions examine the bookkeeping and related evidence, corporate books and any documents from the archives of the institution and request the supervisory board members, officers, agents and employees of the institution about any facts related to its organization and functioning. There is no specific penalty for refusal by FIs to provide documents or what further action the CBSTP can take in such circumstances. However, the CBSTP informed Assessors that FIs cooperates fully with the Bank when such requests are made.

Powers to implement and enforce sanctions (c. 29.4): designation of the competent authority to impose penalties (c. 17.2)

469. Article 56(1) of the AML/CFT Law confers the responsibility of filing of judicial cases, with respect to FIs, on the authority charged with supervising the respective sector. In the context of article 28 of the AML/CFT Law (stated above) and in practice, this power is exercised conferred on the CBSTP as the supervisory authority of FIs in STP. However, article 56(2) of the AML/CFT Law confers the power to impose fines and accessory punishment against FIs on the Ministry of Finance. The CBSTP issued a NAP No.3/2007 on Supervisory and Enforcement Action Penalty which states in its article 4 that "whenever the Supervisory Board considers necessary to enforce the law or regulations, can use the disciplining power granted by article 42 of the FIs Law". Given the fact that the FIs Law preceded the AML/CFT Law, and NAP 3/2007 is a subsidiary legislation, there is a presumption that in the absence of a specific provision to the contrary, the CBSTP does not have legal capacity to impose sanctions for violations of AML/CFT obligations. In fact, the Assessors were not sure whether the AML/CFT Law intended

to preclude the CBSTP from applying sanctions under the AML/CFT Law. This presumption may be rebutted by the fact that article 50(2) of the AML/CFT Law on destination of fines provides that *"funds resulting from fines applied to financial entities shall revert to the State (40%) and to the Central Bank (60%)*. Other institutions to which such fines revert to under article 50 are designated supervisory authorities under the Law. In any case, the Ministry of Finance has not imposed any fines or other punishment on any FI for violation of AML/CFT obligations.

470. In accordance with article 5 of the FIU Decree, the Ministry of Finance is a member of the FIU and has the responsibility of instructions for prevention and suppression of crimes of money laundering and terrorist financing. However, at the time of the on-site, Assessors only observed the involvement of the Ministry at the policy formulation level, with the CBSTP, playing a major role in issuing directives to FIs and ensuring compliance, albeit for prudential purposes. In this regard, STP may consider empowering the CBSTP to implement and enforce sanctions relating to AML/CFT in addition to its powers under the FIs Law.

Recommendation 17 -Sanctions

Availability of sanctions for violations of the AML obligations (17.1)

471. Sanctions for violations of AML/CFT obligations by FIs are specified under articles 51 and 52 of the AML/CFT Law under separate headings of: a) violation of duties on the part of FIs; and b) particularly grave violation of duties by FI and persons. Sanctions may be applied for failure to fulfill duty of identification, duty of examination and duty to keep records. The penalties apply to both natural and legal persons and applied depending on the nature and gravity of the offense and the criminal intent with which the crime was perpetrated. Fines for violation of AML/CFT obligation range between nineteen million six hundred thousand Dobra (19,600,000.00 Dbs) and fourteen billion seven hundred million Dobra (14,700,000,000 Dbs) or between nine million eight hundred thousand Dobra (9,800,000.00 Dbs) depending on whether the penalties are applied to a FI or to any person who is a member of the governing body, a director, employee or representative of a legal person.

472. In addition to the administrative sanctions specified under articles 51 and 52, accessory punishment can be applied under article 55 in the form of prohibition of holding social offices and administrative, directorship of management positions in legal entities covered by the AML/CFT Law, when the defendant is a member of an association of any of those entities, holds directorship, ownership or management position or acts in their legal or voluntary representation. The supervisory authority of the concerned party is required by article 55(2) to publish its final decision on the punishment of the person.

473. The fate of the fines in which financial entities were condemned reverts in the proportion of 40% for the state and 60% to the CBSTP (Article 50).

Authority empowered to impose penalties (c.17.2)

474. The competence of administrative authorities is established in article 56 of the AML/CFT Law (see 29.4 above).

Applicability of sanctions to natural and legal persons (c. 17.1), and the directors and effectiveness, proportionality and dissuasive sanctions (c. 17.1 and 17.4)

475. The CBSTP may rely on article 42 of the FIs Law to punish FIs and related persons for violations of the FIs Law, and by extension to violations relating to ML and TF, which provides as follows:

> *1. Violation of the provisions of this law entails for offenders, be they shareholders, directors, members of collegial bodies, managers, or the FIs themselves, the following penalties:*
>
> *a) Warning;*
>
> *b) Directives, including those that limit the operations of FIs;*
>
> *c) fine;*
>
> *d) Disqualification for a fixed or indefinite period for the exercise of positions in FIs;*
>
> *e) Revocation of authorization to operate;*
>
> *f) detention or imprisonment under the criminal law.*
>
> *2 - The application of the penalty provided in paragraph a), b), c) and e) above shall be by decision of the Director of Banking Supervision of the Central Bank, was guaranteed to the accused ample opportunity of defence, including the right to appeal with suspension effect to the board of directors of the Central Bank, in accordance with law.*
>
> *3 - The application of the penalty provided in subparagraph d) far will the request of the CBSTP to the body in charge of the exercise of criminal action. The same procedure will be followed in the event of infringement of Article 38 and applies to all persons mentioned therein.*
>
> *4 - The administrative sanctions provided for in this law does not preclude the adoption of other under the laws in force, provided the offence is punishable in civil or criminal liability.*
>
> *5 - All cases involving facts relating to FIs or their managers run in secrecy until the stage of the trial, regardless of the organ, authority or court has jurisdiction to try them.*
>
> *6) Penalties will be applied depending on the seriousness of the misconduct and the impact equity, should be especially taken into account the need to be maintained over the credibility of the financial system with public opinion. Such penalties are aggravated whenever a recurrence generic or specific.*
>
> *7) The application of this penalty will be exclusive to any natural or legal persons that a business practice that is specific to a financial institution.*

476. The sanctions enumerated under article 42 of the FIs Law are similar to those envisaged by Recommendation 17 (see examples in box under R.17.4) and apply to natural and legal persons, as well as the directors, managers, employees and all relevant persons. However, the amount of fine to be imposed by the CBSTP is not determined by the Law but by a decision of the Director of Banking Supervision of the CBSTP in accordance with article 42(2) of the FIs Law. This decision has not been made against FIs and sanctions in the AML/CFT Law have never been applied, which questions the dissuasiveness and effectiveness of the sanctions.

Fit and proper test (c. 23.3 and 23.3.1)

Market entry and licensing

477. The CBSTP is empowered under the FIs Law to license any person that intends to carry on the business of banking. Under article 7 of the FIs Law, the authorization to operate a financial institution as well as their status is granted by the Organic Law of the CBSTP. The request should be made in accordance with standards established by the Organic Law and the feasibility study of the project, demonstrating:

a) the existence of capital and appropriate funds for the project;
b) participation in the board of directors of at least two people with reputation, qualifications and experience necessary for the proper management of the institution;
c) the need and desirability of the new institution for the country and for the communities to be served
d) the positive effect on the market, including increased competition;
e) a reasonable prediction of the time required for establishing and generating profits.

478. Article 21 of the FIs Law requires each FI to have a written charter that in compliance with the bylaws, provide for:

a) the structure of management and operational and administrative organs and their functions, positions of authority and reporting relationships;
b) the duties of each director and the services under his direction and supervision;
c) the systems of internal committees and internal audit;
d) the limits of competence and organs to decide on hiring and lending operations.

479. The bylaws are approved by the board and a certified copy of the text or amendments are forwarded to the Central Bank. The authorization to operate foreign-funded FIs, foreign bank branches or representative offices of financial institutions established abroad, are only be granted after approval by the CBSTP in accordance with Article 7. Requests for authorization to operate are decided within 30 days.

Power to revoke license

480. Under article 10 of the FIs Law, the CBSTP may cancel approval granted to an FI where:

a. there is proof of falsehood or inaccuracy of any of the information provided for authorization;

b. the institution fails to comply within the time specified by the Central Bank regarding:

i) the rules setting new minimum capital levels;

ii) the replacement of the minimum capital absorbed by losses;

iii) the termination of certain acts that imply specific violation of law, regulation or other statement of the CBSTP, or poses breach of obligation to the authority;

iv) commencing business with the public.

481. Approval will also be cancelled where there is determination for a forced liquidation, bankruptcy or dissolution of a corporation, in cases of merger, amalgamation or demerger. The CBSTP maintains and updates a register of special registration information and other types of institutions subject to its supervision, and is responsible for defining the elements that should be included in it in accordance with article 39 of the Organic Law.

Significant shareholdings

482. Article 11 of the FIs Law provides that the transfer of a block of shares representing individually or cumulatively more than 15% of the capital of a financial institution must be preceded by specific authorization of the Central Bank. The CBSTP will only approve of merger, consolidation or spin-off if there is authorization for operation of the institution or FI made from the FIs.

483. The shares representing the share capital of an FI, with or without voting rights, are nominative. Article 16 does not permit preference shares to be converted into shares with voting rights. Under article 17, the shares of any financial institution are to be expressed in the currency of STP.

Appointment of directors and employees

484. Article 22 of the FIs Law requires all persons elected or appointed to management positions to meet qualification, experience, personal conduct, and reputation requirements previously specified by the CBSTP and may not assume duty without formal approval of election and appointment by the Central Bank. Article 2 of NAP 2/2007 specifies the qualification for management and supervision of FIs. A person can only be part of management and supervision based on suitability and availability to ensure good management, particularly with regard to the safety of the funds entrusted to the institution. Under article 2(2) of NAP 2, a person is considered unsuitable if the person has been:

a) Declared bankrupt or insolvent or held responsible for the bankruptcy or insolvency of a company that has been manager, director or manager, sentence by domestic or foreign;

b) Administrator, director or manager whose company bankruptcy or insolvency, in the country or abroad, have been prevented, suspended or prevented by measures of business recovery or other preventive or supervisory means, or holds a position of dominance in these company conditions, since its responsibility for this situation in any case, has been recognized by the competent authorities;

c) convicted in the country or abroad for crimes of fraudulent bankruptcy, bankruptcy by negligence, favouring creditors, forgery, theft, credit frustration, extortion, embezzlement, cheating, usury, corruption, issuing checks without provision, misappropriation of property, public or cooperative management damaging economic unit in the public sector or cooperative, misrepresentation, unauthorized receipt of deposits or other repayable funds, money laundering, insider trading, or crimes provided for in the Commercial Code ;or

d) Convicted in the country or abroad, for offenses against the legal rules or regulations governing the activities of FIs when the severity or recurrence of these offenses justifies.

485. Article 3 of NAP 2 require the members of the administrative, management and supervisory bodies responsible for the administration, management and auditing of current financial institution are to have appropriate experience to carry out their duties. A person is considered to have adequate experience if the person concerned has previously performed in a competent position(s) of responsibility in the financial field. On previous experience, the nature and degree of responsibility of the functions previously performed are to be proportional to the size and characteristics of the financial institution in question. The Law requires for the verification of the fulfilment of the requirement of appropriate experience to be made subject to prior consultation with the competent authority.

486. Article 4 provides for qualification of directors which requires an administrator must meet the following requirements:

a) *Qualification*-have a university degree, preferably in economics, management, accounting, law;
b) *Experience* - carry on banking business in management positions at least 5 years, or have held progressively responsible positions over a career, at least 7 years;
c) *Personal Conduct* - have an ethical and professional conduct without negative references, not caused by fault or negligence, financial or administrative problems in the exercise of its business;
d) *Criminal Record* - have a record free of criminal sanctions, fines or any involvement in financial fraud;
e) *Legal Requirement* - absence of any legal impediments;

f) *Institutional Requirement* - have not exercised in the last 12 months duties as inspector, director, consultant to the administration area of the Supervisory Board or the Board of Directors of the Central Bank.

487. To qualify for certain positions candidates are required to be members of direction - at least 3 years experience in banking in banks of equal level or type, reasonable knowledge of international standards in financial matters. They are also expected to members of the supervisory board or audit committee and must have at least five years of experience in accounting, auditing or financial training in related areas, and reasonable knowledge of international standards in financial matters.

488. Article 5 of NAP 2 provides that if a person, for any reason, no longer meets the legal requirements or statutory normal functioning of the administrative or supervisory body, the Central Bank shall determine that person should be changed within the composition of the body concerned. If the FI fails to respect the deadline, the BCSTP may revoke the authorization in accordance with article 42(d) (Disqualification for a fixed or indefinite period for the exercise of positions in financial institutions) of the FIs Law. The Board of Directors of the CBSTP may waive some of the requirements based in all the relevant information about the nominees for the positions. There is also partial waiver of some of the requirements of qualification and experience. Waiver relating to members of the board may be granted when at least two of the elected members meet the necessary conditions on reputation, qualifications and experience. The waiver does not apply to requirements on personal conduct and experience. Any change in status must be subject to prior approval of the Central Bank as required by Article 24 of the FIs Law.

489. Article 7 of NAP 2 provides for the approval process for officers of FIs. FIs are to submit requests for approval in writing to the Central Bank with the following information:

a) a certified copy of the decision taken by the general meeting of shareholders of the ***bank*** *regarding the election or appointment of directors.*

b) in the case of directors, a copy of the decision of the Board.

c) name and residential address of the nominee;

d) certified copy of national identity card or passport for foreigners;

e) business activity and professional in the last ten years included in their curriculum vitae duly proven;

f) criminal record date;

g) information if the person named is a senior partner or manager of a bank located in any country;

h) investments in companies, partnerships, associations and groups of people acting together for a common interest, whether or not organized as a formal business.

490. The Central Bank is to decide within 30 days from the date it receive the request in writing, accompanied by all the required information. Failure to comply with this standard, or sending false information, misleading or insufficient care may result in the denial or cancellation of authorization by the Central Bank.

Power to request for information and examination

491. Article 40 of the FIs Law requires FIs to prepare balance sheets and periodic reports containing information on the administrative and operational, liquidity, solvency and profitability of the FIs in accordance with the accounting standards established by the CBSTP. This is to evaluate the stability and evolution trends of the financial situations of the FIs. The CBSTP and its auditors are enabled by article 41 of the FIs Law to carry out an examination of the operations and affairs of FIs, with reference to bookkeeping and related evidence, corporate books and any documents from the archives of the institution. The CBSTP may also request the supervisory board members, officers, agents and employees of the institution about any facts related to its organization and functioning. Non-compliance or failure to cooperate and supply the required information is an offence under the Law.

Intervention powers

492. Article 43 of the FIs Law empowers the CBSTP to intervene in the functioning of an FI when it has evidence that the state of solvency of any institution is not at appropriate minimum levels of security to operate the market, jeopardizing applications and deposits from their customers, the by an act of its board of directors determine the involvement of the same to restore normalcy in the situation.

493. Under article 43 The CBSTP may, by an act of its board of directors determine the involvement of the CBSTP to restore normalcy in an FI if the CBSTP has evidence that the state of solvency of any that FI is not at appropriate minimum levels of security to operate the market, jeopardizing applications and deposits from their customers.

Remedial actions

494. The intervention actions of the CBSTP includes:

a. Designation of an intervener/trustee who may or may not be an employee of the Central Bank;

b. Waiver applications or deposits from customers of the institution;

c. Measures applicable in relation to the management of the institution, which could result in blocking their personal property to secure payment of any damages caused to the institution or to a third party;

d. Management and adoption of any measures to normalize the situation of the institution, including determining the closure of facilities and laying off employees as considered unnecessary or inability of the intervener/trustee to perform his duties; and

e. Suspension in whole or in part, for a maximum period of 1 year, deposits and investments made by the public at the institution, provided that adequate measures are taken in maintaining the approximate and actual value of the deposits and applications.

Application of prudential standards for AML / CFT (c. 23.4)

495. There is no specific reference to this Recommendation in the legal structure of STP. The CBSTP is indeed the single regulator of FIs in STP. It has broad regulatory and supervisory powers over bank and non-bank FIs, which are referred to in the analysis concerning Recommendation 23.2. The powers are not limited to prudential issues and apply for the purposes of regulation and CBSTP supervision device. The DBSI has not defined a clear strategy on ML/TF. The Board seems to give high priority to the supervision of the 7/8 commercial banks because of its relatively size in the domestic financial sector. However, other factors to determine the overall level of risk of ML/TF, such as the high level of remittances received / raised, the number of existing banks versus economic / savings of the population have not been considered as risk factors.

Transfer / Exchange rates and other financial services

Licensing or registration of value transfer/currency exchange services (c. 23.5 and 23.6)

496. The remittance services (and foreign exchange services) at STP are being performed by authorized FIs who are also prudentially regulated by the CBSTP (5 exchange homes). However, there are a lot of unlicensed/unregistered persons exchanging money on the streets. The CBSTP informed Assessors that it was putting in place measures to license or register those persons for purposes of regulation and ensure that their services are not used for criminal purposes. An early implementation of this plan will be a welcome development for the country.

Licensing and supervision for AML/CFT, other FIs (c. 23.7)

497. The CBSTP is responsible for authorization for the operation of FIs in accordance with Article 7 of the FIs Law.

Guidelines for FIs other than on STRs (c. 25.1)

498. Article 32 of the Organic Law of the CBSTP requires the CBSTP to set guidelines to be followed by all institutions in view of the functioning of the monetary, financial and foreign exchange, credit policy, adequate levels of liquidity. There is no requirement in the AML/CFT Law for competent authorities to establish guidelines that will assist FIs and DNFBPs to implement and comply with their respective AML/CFT requirements. The CBSTP has issued several NAPs on prevention of ML and TF to provide guidance on operations that could be considered suspicious. However, the NAP relating to STRs also provide for CDD, record keeping, risk-based approach and internal control. The procedure in article 5 relating to suspicious transactions focuses on unusual transactions. Article ii of NAP 20/2011 provides that questions or omissions in the application of the standard should be forwarded to the DBSI and interpreted in accordance with the AML/CFT Law. No specific sanctions are provided in NAP 20, except that article 10 provides that FIs that violate the NAP shall be punished in accordance with the NAP on Supervisory Action and Enforcement of Penalties. The CBSTP should give more detailed guidance to promote knowledge, not only of the existing legal framework and

implementation obligations, but also on the most relevant international developments in AML/CFT.

3.10.2 Recommendations and Comments

Recommendation 23

- Amend the AML/CFT Law to specifically designate the CBSTP as the supervisory authority for FIs and provide it with the necessary powers.
- The CBSTP should conduct a risk assessment of the AML/CTF level for FIs to operate in STP and develop an appropriate strategy at the level of regulation and supervision.

Recommendation 25.1

- The authorities should define a complete set of AML/CFT directives for FIs. This should cover the FATF Recommendations and relevant aspects of other international standards for the regulation of the financial sector; guidance on how to determine the appropriate countries for household of FIs, which can be used to assist in STR processes for non-face to face customers and information on countries which do not apply or insufficiently apply the FATF Recommendations.

Recommendation 29

- Although in legal terms, it is already provided for, in practice the inspection functions of CBSTP should be extended to the assessment of risk of ML/TF, to actually analyze the procedures followed in this matter.
- The CBSTP should update its manual inspection to include procedures and supervisory instruments in accordance with the AML requirements.
- The staff of the CBSTP should be provided with additional training on strategies and supervisory practices in AML/CFT.

Recommendation 17

499. CBSTP should supervise FIs for AML/CFT purposes and apply sanctions for violations of AML/CFT obligations.

3.10.3 Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors relevant to Section 3.10 underlying the general rating
R.17	**PC**	• There has been no sanctions for violation of AML/CFT obligations

R.23	**PC**	• Lack of risk assessment and appropriate strategy for AML/CFT regulation and supervision of FIs which are operating in STP • Lack of consistency in assessing the competence and suitability of managers and employees
R.25.1	**NC**	• Lack of effective guidance to FIs
R.29	**PC**	• Absence of monitoring of FIs to ensure compliance with requirements to combat ML and TF • There has been no inspections of FIs, including on-site inspections to ensure compliance • There is no evidence of the use of available powers of enforcement and sanction against FIs

3.11. Money or securities Transfer Services (RE.VI)

3.11.1. Description and Analysis

500. **Summary**: All transfer services (and foreign exchange services) shall be furnished by banking institutions or non-bank FIs authorized and regulated by the Central Bank. There is, however, informal business of exchange (money changers).

Competent authorities to authorize remittance activities (c. VI.1)

501. It is attributed to the CBSTP the authority to regulate and supervise the foreign exchange market (Article S.31, 32, 38 of Law no. 8/92, Organic Law of the CBSTP. Remittance services (and foreign exchange services) in STP are not being performed only by authorized FIs and prudentially regulated by the CBSTP (5 exchange houses). There are, however, informal Currency Exchange businesses (hawkers).The Directorate of Banking Supervision and Insurance is aware that such services exist, but *"given the shortage of human resources, prioritizes the supervision of the financial system."*

All service operators Money Value Transport - MVT subject to FATF Recommendations (c. VI.2)

502. There is no specific reference to this recommendation in the legal structure of STP.

Monitoring transfer values service operators (c. VI.3)

503. The Directorate of Banking Supervision and Insurance is aware that such services exist, but "given the shortage of human resources, prioritizes the supervision of the financial system" ... intends, as soon as possible, monitor this kind of activity and, in the future, regulate ".

MVT service operators must have the list of agents (c. VI.4)

504. There is no specific reference to this recommendation in the legal structure of STP. The CBSTP maintains a list of FIs, including MVTs.

3.11.2 Recommendations and Comments

- CBSTP should supervise FIs for AML/CFT purposes and apply sanctions for violations of AML/CFT obligations.
- Register and/or license money changers and supervise them for compliance with AML/CFT obligations

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying the rating
RE.VI	**PC**	• There is no monitoring of money or value transfer services • Existence of informal money changing businesses that are not being regulated

4. DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs)

4.1 Customer due Diligence and record keeping (R.12) (applying R.5, 6 and 8 to 11)

4.1.1 Description and Analysis

505. The same obligations of FIs present in the AML/CTF legislation are imposed on some DNFBPs and other companies, but their implementation has not yet started. The AML/CFT Law extends all obligations and penalties, all the activities required by the FATF recommendation 12. The regulation of compliance with requirements to combat money laundering of DNFBPs is the responsibility of the Minister responsible for each sector and authorities are in charge of monitoring as provided in article 41. No regulation or guidance has been issued to the DNFBPs.

506. Practical application: Governmental Authorities of each of the sectors have not issued any regulation or guidance which would help DNFBPs in fulfilling their obligations under the AML/CFT Law. No DNFBP has submitted any STR, whether to the A-G or the FIU. The level of awareness of AML/CFT issues, as well as their duties as provided in the AML/CFT Law, amongst DNFBPs is quite low and now being stimulated by the FIU.

507. Article 29 of the AML/CFT Law provides for the scope of application of the Law in respect of DNFBPs as listed below:

a) Companies operating gaming concessionaires;

b) Companies engaged in real estate activities and pursue the business of buying and reselling properties;

c) Companies that carry the premium payments betting or lotteries;

d) Merchants of goods of high unit value;

e) Statutory auditors, certified accountants and external auditors as well as the carrier of funds and tax advisors;

f) corporations, notaries, registrars, lawyers, solicitors and other independent professionals who assist or intervene on behalf of a client or other circumstances in operations:

i) purchase and sale of real estate, businesses and shareholdings;

ii) in fund management, securities or other assets belonging to clients;

iii) from the opening and management of bank, savings and securities;

iv) creation, operation or management of companies, trusts or similar structures;

v) financial or estate, on behalf of the client;

vi) from sale and acquisition of rights to practitioners of sports professionals.

508. Thus Essential legal provision : Specific references to DNFBPs are made in articles 2ºA, 29, 30 º, 31º, 32 º, 33 º, 34 º - 35 º, 36 º, 37 º, 38 º and 39 of the AML/CFT Law.

CDD measures (Applying Recommendation 5.1-5.18) (c. 12.1)

509. Identification duties imposed on FIs by article 12 of the AML/CFT Law also applies to DNFPs in addition to specific obligations provided in subsection II of Chapter V. In this regard, DNFBPs are obliged to identify and verify the identity of their customers.

Casinos

510. Article 31 of the AML/CFT Law requires concessionaires operating gaming casinos identify customers and the amounts of the transactions carried out by them, when, in the halls of traditional games, acquire, for cash, tokens or other conventional symbols usable to play that, alone or together, in the same game, beyond Dbs. 25,000,000.00[27]. identification is also required when the casinos issue their checks:

a) in exchange for tokens, in the halls of traditional games, only the order of the same patrons who have purchased the game via credit card or check is not unusable, and the maximum amount equivalent to the sum of those acquisitions;

[27]At the time of the on-site, equivalent of Dbs. 25,000,000 was

b) in the halls of vending machines, only the order of the regulars who have won awards resulting from combinations of the payment plan of the machines;

c) to customers to whom they are to issue checks, which will be named and crossed.

511. The identification is made by submitting a document with photograph, stating the name, nationality and age of the holder. In view of this, customer identification is not only conducted at the entry to the casino, but at each relevant stage where there is the likelihood that the casino may be used for purposes of ML or TF. The casino is able to link CDD information to a particular customer to the transactions that the customer conducts in the casino. During the on-site, it was noted that guests at the Hotel Pestana are offered complementary casino coupons to patronise the casino. Such coupons are endorsed with the names and room numbers of the guests, thus making it possible to identify the guests based on information provided to the hotel on arrival. Guests who opt to patronise the casino are identified again at the casino to ensure that the person allocated the coupons is the same person who used them. The casino is also guided by the rules of its parent casino based in (Madeira).

512. STP has not established any rules to determine the basis on which internet casinos are subject to national AML/CFT requirements because no transaction is conducted via internet. All transactions with the casino are conducted at the hall requiring the physical presence of gamblers. Gambling is often conducted in small amounts but is duly monitored by operators.

Real estate agents

513. Article 32 of the AML/CFT Law requires natural or legal persons who are engaged in real estate business to identify contractors and customers where the amount of the transaction is equal to or greater than Dbs. 275,000,000.00. In this regard, real estate agents can identify and verify identity of both the purchasers and the vendors of the property.

Dealers in precious metals and dealers in precious stones

514. Article 34 of the AML/CFT Law obliges auctioneers and other entities that sell precious metals and stones, antiques, artwork, airplanes, boats or cars to identify customers and their transactions where the amount to be paid in **cash** equalled more than Dbs. 125,000,000.00. However, there was no information provided on activities of these dealers to the mission, but the general opinion of respondents was that this business takes a very small scale.

Lawyers, solicitors, notaries and registrars

515. Articles 37 and 38 of the AML/CFT Law require these professionals to identify their customers when they perform the following designated activities where the amounts involved in the transactions are or above Dbs. 375,000,000.00:

i) purchase and sale of real estate, businesses and shareholdings;

ii) fund management, securities or other assets belonging to clients;

iii) the opening and management of bank, savings and securities;

iv) creation, operation or management of companies, trusts or similar structures;

v) financial or estate, on behalf of the client;

vi) from sale and acquisition of rights to practitioners of sports professionals.

a. Statutory auditors, certified accountants and external auditors, cash carriers and tax consultants

516. Article 35 of the AML/CFT Law imposes CDD obligations on auditors, certified accountants and external auditors and tax consultants and transporters of funds who assist in accounting or auditing firms, corporations and clients or transport and safekeeping of goods or values when the amount involved in transaction is equal to or greater than Dbs. 375,000,000.00.

517. Article 35 does not provide for the scope of activities to be undertaken by these professionals in order to apply the CDD measures. However, article 36 requires *independent professionals or companies* who intervened on behalf of clients in transactions listed in Article 29 (f)[28] to identify these customers and the subject of contracts and transactions where the amounts involved are equal to or greater than Dbs. 375,000,000.00.

Trust and company service providers

518. These do not exist in STP and are therefore not listed in the AML/CFT Law. Even foreign trusts are not recognised in STP. Therefore, the non-inclusion of trusts by STP in the AML/CFT Law is not considered a gap.

519. Designated activities based on which DNFBPs are required to apply CDD measures to their customers are in tandem with the requirements of Recommendation 12. The nature of the customer identification requirements set out by the AML/CFT Law is the same for DNFBPs as it is for FIs. DNFBPs are required to identify legal and natural persons on the basis of the same documents and prior to the starting of the business relationship. The deficiencies identified in Recommendation 5 with regard to FIs also apply to DNFBPs.

Applying Recommendation 6

520. The provisions in article 20-A (3) of the AML/CFT Law as discussed in relation to FIs in STP also apply to DNFBPs. Thus, the deficiencies identified in relation to article PEPs under FIs will also relate to DNFBPs.

Applying Recommendation 8

[28]Activities under article 29(f) are those listed under lawyers, solicitors and registrars.

521. There are no provisions in the AML/CFT Law requiring DNFBPs to have policies in place or take measures to prevent the misuse of technological developments in ML or TF schemes. However, the authorities of STP informed that this may be subsumed under article 20 of the AML/CFT Law which requires reporting entities to establish control mechanisms to provide, including in subsidiaries and branches abroad, internal control processes and communication that enable the fulfilment of the obligations contained in the Law and prevent operations related to the money laundering, goods, products and other rights arising from criminal activities. In October 2011, the BCSTP approved the launching by commercial banks of the 'Rede Dobra 24', i.e. Automated Teller Machines (ATM) for cash withdrawals. The current ATM system allows access to only domestic account holders.

4.1.2 Recommendations and Comments

522. Take the necessary administrative and regulatory measures (Government member responsible for each sector) required to apply AML/CTF Law in relation to DNFBPs and intervene in these sectors to sensitize them taking into account the risks associated with their activity, train them and involve them in the process of issuing regulations and guidelines conforming to the nature of their activities.

523. In a second phase, STP should develop supervisory activities for compliance with AML/CTF rules and regulations.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of relevant factors to Section 4.1 underlying the overall rating
R.12	**NC**	• Authorities have not issued any regulation or guidance accordingly and DNFBPs have not complied with their obligations under the Law • The description of the shortcomings of preventive regime with respect to FIs applies almost entirely to DNFBPs (especially the limited range of CDD measures, monitoring and the duty to report suspicious transactions). • Lawyers have not submitted STRs to the Bar Association

4.2 Monitoring transactions and other issues (R.16)

(Applying R.13 to 15 and 21)

4.2.1 Description and Analysis

524. The DNFBPs are subject to the same obligations as FIs.

Suspicious transaction reporting (Applying Recommendation 13 and Special Recommendation IV)

525. Article 39 of the AML/CFT Law requires DNFBPs, with the exception of lawyers and solicitors, to submit STRs to the A-G as required of FIs by article 16 of the Law.

526. With regard to lawyers or solicitors, article 39(2) requires them to submit STRs to the Bar Association and the Chamber of Solicitors, being the self-regulatory organisations of lawyers and solicitors. Submission of STRs by lawyers and solicitors does apply to information obtained in the course of ascertaining the legal position of the client, within the legal advice in performing their task of defending or representation of the client in a lawsuit, or concerning judicial proceedings, including advice on how to propose or avoid a lawsuit, whether the information is obtained before, during or after process. However, this is permitted if they are satisfied that this is justified.

527. The Bar Association is in the process of adopting regulations relating to AML/CFT obligations, including requirements for submission of STRs, of lawyers. On adoption of the regulations, lawyers will be required to submit STRs to the FIU instead of the A-G[29].

Protection against criminal and civil liability (applying Recommendation 14)

528. The legal protection and tipping off provisions are the same for DNFBPs as for FIs as provided for by article 21 of the AML/CFT Law and discussed in section 3.7 of this report.

Applying Recommendation 15 (Internal controls)

529. The requirement for FIs also applies to DNFBPs. However, supervisory authorities for DNFBPs have not issued them with any guidance on these requirements.

4.2.2 Recommendations and Comments

530. Although the AML/CFT Law applies to DNFBPs, there has been minimal implementation of AML/CFT obligations by DNFBPs. Both supervisory authorities and reporting entities do not have a clear understanding of AML/CFT issues. There is the need for STP to intensify efforts to promote effective implementation of AML/CFT requirements through sensitization and training of stakeholders in the DNFBPs sectors to ensure effective implementation of AML/CFT requirements, as well as supervision/monitoring for compliance.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of relevant factors underlying overall rating
R.16	**NC**	• See comments on R.12 above

[29]The AML/CFT Law is being revised to require entities to submit STRs to the FIU

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

531. Article 41 of the AML/CFT Law lists the following institutions as regulatory authorities of DNFBPs for purposes of monitoring the DNFBPs for compliance with their AML/CFT obligations:

a) Inspection-General Games – casinos and operators of games of chance;

b) The Directorate-General for Economic Activities – real estate agents andauctioneers and other entities that sell precious metals and stones, antiques, artwork, airplanes, boats or cars;

c) The Directorate - General of Registries and Notaries - notaries and registrars of record;

d) the Order of Chartered Accountants - statutory auditors;

e) the Board of Chartered Accountants - chartered accountants;

f) At the Bar, in the case of lawyers;

g) In the Chamber of Solicitors, in relation to solicitors.

532. These authorities are empowered by article 56 to investigate offences committed by entities within their sector in relation the AML/CFT Law and impose fines and other punishment on DNBPs for non compliance with AML/CFT obligations. As at the time of the on-site visit, no fine had been imposed and the supervisory authorities lack the knowledge and ability to perform their duties to combat ML or TF.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 and 24.1.3)

533. Article 275 of the Penal Code prohibits the establishment, opening, funding, operation, control or holding of a casino or organization for the exploration of the lucrative business of games of chance, wagering, lottery, of roulette, bingo or lotto without lawful authority. The offence is punishable by imprisonment from one to five years. Representatives of legal entities or similar bodies who act on their behalf or in the collective interest are criminally liable and punishable with a fine to be set between 10 million and 100 million folds.

534. There is one casino operating in Sao Tome and Principe. The General Inspectorate of Games (GIG) is responsible for registration and supervision of casinos. The GIG is empowered to sanction casinos and operators of games of chance for non-compliance with AML/CFT obligations. The sanctions may be applied to natural and legal persons found culpable of AML/CFT breaches, as well as other violations relating to operation of the casinos in particular and regulatory requirements in general.

535. The laws of STP subjects casinos to legal or regulatory measures, including registration requirements under the company laws of STP, which ensures the prevention of criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being an operator of a casino.

536. Given the fact that the casino is subject to the same obligations as FIs, the deficiencies identified in relation to FIs also apply to the casino. Furthermore, the few inspections conducted by the agency did not involve monitoring the casino for compliance with AML/CFT obligations. However, it was observed that the casino in STP is also monitored for compliance with the AML/CFT requirements of its parent company based in Madeira where AML/CFT supervision is very comprehensive.

Monitoring Systems of other DNFBPs (c. 24.2 and 24.2.1): Guidelines for DNFBPs (applying c. 25.1)

537. Other DNFBPs are subject to AML/CFT requirements in STP and have designated competent authorities that have powers to perform regulatory and supervisory functions, including power to sanction for non-compliance with obligations. The competent authorities are empowered by article 20 of the AML/CFT Law to provide internal control processes and communication that enable the fulfilment of the obligations contained in the Law and prevent operations related to the money laundering, goods, products and other rights arising from criminal activities. However, at the time of the on-site visit, no guidance had been issued to these DNFBPs to enable them to implement and comply with their respective AML/CFT requirements.

538. There is no direct requirement for competent authorities to provide DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback, except in situations where the A-G decides to request an entity to suspend transaction in relation to which a report has been submitted. This provision has not been applied in the case of DNFBPs. Likewise the supervision of non-financial entities' obligations is virtually nonexistent.

4.3.2 Recommendations and Comments

539. It is necessary for government and private entities responsible for ensuring compliance by DNFBPs with AML/CFT requirements to immediately provide their designated entities with the requisite guidelines and supervise them for compliance. As an initial measure, STP should consider providing supervisors with training and resources for this, including assigning clear responsibilities for monitoring the various entities listed in article 41 with regard to prevention of ML and TF. Since the DNFBPs are completely devoid of standards that should guide their

activities in terms of preventing their use for ML/TF, there is the need for general awareness-raising across the whole DNFBP sector. A more vibrant FIU will be a formidable asset in this endeavour.

4.3.3 Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBPs)

	Rating	Summary of relevant factors underlying overall rating
R.24	**NC**	• There is no supervision of DNFBPs for AML/CFT purposes • Insufficient technical and other resources to perform supervisory functions
R.25	**NC**	• No guidelines has been issued and, except for the Bar Association, there is no expectation that this will occur in the medium term • Insufficient requirement for providing feedback

4.4. Other non-financial businesses and professions and modern and secure transaction techniques (R.20)

4.4.1. Description and Analysis

Recommendation 20

Other non financial businesses and professions (c. 20.1)

540. STP has considered submitting other types of non-financial businesses and professions to AML/CFT requirements. Article 2 of the AML/CFT Law lists other non financial businesses and professions, such as:

- Concessionary gambling companies. However, casinos are not mentioned under article 2 and assessors were of the view that the obligations pertaining to this entity under article 31 are the same for casinos. In fact, information was provided to that effect ;
- Entities that engage in the payment of betting and lottery (article 33);
- Traders of high value (no reference to luxury)(article 34);
- Tax consultants ((article 35);
- Transporters of funds;
- Entities that engage in sales and acquisition of rights over practitioners of professional sporting activities (not provided); and
- Corporations (article 36).

541. The entities listed above have neither been issued with guidelines nor submitted STRs to the FIU. They have also not been subjected to AML/CFT supervision.

Development and use of modern and secure techniques for conducting financial transactions (c.20.2)

542. The highest denomination note of STP is one hundred thousand Dobra (100,000.00 Dbs), which was equivalent to ... at the time of the on-site visit. The authorities of STP have taken some measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. However, the country's economy relies heavily on cash, with an overall lack of patronage of the banking sector due to the level of income generated by the citizens through employment or trade. As earlier stated, article 9(2) of NAP No. 20/2011 requires banks to develop programmes, including devices to ensure the monitoring of transactions, including computerised systems that allow the detection and monitoring of transactions involving high risk and adopting procedures that aim to safeguard the risk of ML and TF due to the use of technologies that favour anonymity. In October 2011, the BCSTP approved the launching by commercial banks of the 'Rede Dobra 24', i.e. Automated Teller Machines (ATM) for cash withdrawals. The current ATM system allows access to only domestic account holders.

4.1.2 Recommendations and Comments

543. STP has considered that other non financial businesses and professions were at risk of being misused for ML/TF and thus decided that they should be subject to AML/CFT obligations in accordance with the AML/CFT Law. STP should take measures to ensure that these AML/CFT measures are effectively implemented by these non-financial businesses and professionals.

544. STP has also encouraged the development and use of modern and secure techniques for conducting financial transactions. However, the country's reliance on cash is a major obstacle to the effective use of these techniques. STP should intensify efforts to introduce measures on financial inclusion and encourage its citizens to use the financial sector, including the use of ATM in conducting financial transactions.

4.1.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying the rating
R.20	**NC**	• Other non financial businesses and professions have not been issued with guidelines • There has been no supervision for compliance with AML/CFT obligations • No submission of STRs to the FIU • The economy of STP relies heavily on cash

5. LEGAL PERSONS AND ARRANGEMENTS & NON PROFIT ORGANIZATIONS

5.1 Legal persons - Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

545. The Commercial Code (law charter from June 28, 1888), Law no. 17/2009 published in the Official Gazette as no. 90/9 Supplement of 31.12.2009 are the main legal frameworks governing legal persons in STP.

Recommendation 33

Prevention of unlawful use of legal persons (c.33.1)

546. STP has two types of legal persons, public and private legal persons. Private legal persons in STP are regulated by the Commercial Code which identifies four types of companies that can be incorporated in STP. However, the following three are the most prevalent in the country:

- ***Sociedade por quotas (limited Liability Company)*:** A limited liability company must have a minimum of two members (individuals or companies). This form is most commonly used for incorporating small or medium-sized enterprises. There is no minimum capital requirement to incorporate this kind of company, although the notary public may refuse to execute the deed of incorporation if the members' share capital is deemed insufficient for the planned business activity.
- ***Sociedade anónima (stock corporation):*** A stock corporation must have a minimum of ten members (individuals or companies). Such companies may be public stock corporations (where share capital is offered for public subscription) or private stock corporations (where share capital is privately held). Under article 105-A of Law 14/2009, the minimum share capital for the establishment of a joint stock company is three hundred and fifty million Dobra (Dbs 350,000,000.00).
- ***Sociedade unipessoal (single member private limited company):*** A single member private limited company is basically a limited liability company, which can be established by one sole member, (individual or legal entity) who will hold the entire share capital. The entire share capital should not be less than Twenty Million Dobra (Dbs. 20,000,000.00).

547. All legal persons in STP are to be incorporated through the following process:

- Verification of whether the proposed company name is available;
- Execution before a notary public of the company's deed of incorporation, including the company's memorandum and
- Articles of association;

- Deposit of required initial share capital at a bank, with evidence of deposit;
- Publication of the company's memorandum and articles of association in the official gazette (*diário da república*);
- Publication of the company's memorandum and articles of association in one of the country's newspapers;
- Registry of the company at the commercial registry office;
- Request for authorisation to conduct commercial activities (decree law 7/2004 of 30 June);
- Power of attorney, in the case of solicitors, or notarized photocopy of the power of attorney document;
- Request for a corporate tax identification number (decree law 12/93 of 5 march);
- Statement of commencement of business to be filed with the tax directorate; and
- Registration of employees at the social security office.

548. Prior to 2010, the Directorate General of Registries and Notaries (attached to the Ministry of Justice) was in charge registration of legal persons. However, in 2010 STP established the One Stop through Decree 37/2009 as amended by Law no. 6 2010 to register legal persons. Law no. 6 2010 also laid down the functions of the One Stop and established the registration procedures. Act 26/ 2010 obligates all legal persons to comply with the requirements of this law. Under STP law, the names of owners of the legal persons are required at the time of registration and documents to be registered include passports and national identification documents. Owners of legal persons who are unable to appear personally at the registry are required to provide their representatives with notarized power of attorney.

549. In the case of a foreign company, the documents required for incorporation include a certificate of incorporation of the parent company, minutes of board meetings, registration documents, company statutes, a testimonial from the competent authority in the parent company's country and an attestation that the company is not going through insolvency or bankruptcy.

550. There is no limitation on the number of shares that can be held by companies. Companies are required to have records on bearer shares because the share certificates do not bear the name of any person. The holder of the highest number of shares has control over the legal person. The control may not be absolute. In the event of a change of ownership, STP law requires the company to present minutes of the meeting designating the new owners. The minutes must be acknowledged by the board of directors as designating the new owners. All new shareholders are required to register at the One Stop in person and sign relevant documents.

551. Registration of financial institutions is first processed by the Central Bank after which incorporation takes place on authorization of the Central Bank.

552. Companies incorporated before the entry into force of the new law are required to regularize their status or lose their permits to do business. Similarly, incorporated companies that fail to do business after two years of incorporation lose their permit to do business.

553. Registration is done both manually and electronically and all companies in STP have unique identification numbers.

554. Oversight responsibility of legal persons in STP is performed by various bodies depending on the sector of the legal person. The One Stop does not visit the commercial sector to verify whether companies are in business. This function is performed by the Trade, Industry and Tourism Inspection of Economic Activities.

555. Access to information on legal persons is available to the public without charge. Any request for information by external persons is passed on to the sector's competent authority. Furthermore, over a year ago, the Ministry of Justice commenced implementing Information Technology for a Single Window which includes computerization of the Directorate of Registries and Notaries. Presently, there is a list of all the companies formed in STP to date in the Single Window database. This information can only be accessed by employees of respective departments, and investigators through initiation of a judicial inquiry. The authorities informed Assessors of their plans to establish an institution that will be responsible for providing information on companies in the country. They also plan to establish information centres in other countries for such purposes. It is envisaged that this will facilitate timely access to relevant information on legal persons in STP.

556. In case of loans, purchase and sale of properties, registration is verified by the notaries and registration services through the issuance of a clearance certificate authorizing the transaction.

557. Based on article 270, Code of Criminal Procedure "Special competence for investigation" the prosecutor has exclusive jurisdiction in criminal investigation in special laws, which indicates that the legal system of STP guarantees a good relationship between the Prosecutor General and existing oversight bodies.

558. All authorities in STP with investigative powers have authority to access information. However, there is little or no reliance on the investigative or other powers of the law enforcement, regulatory and monitoring authorities to access information relating to ownership and control of legal persons. The STP officials stated that competent authorities are becoming increasingly aware of ML and TF and have recognized the need to jointly prevent their increase. Some authorities have failed to act in this respect due to a lack of resources, but it is expected that with the enactment of the new Penal Code, which provides for stricter sanctions, the powers of the LEAs would further reinforce these obligations. Sharing of information as regards the regulation and monitoring authorities is guided by the particular authority involved in the investigation and the law that governs the type of crime.

Timely access to adequate, accurate and current information (c.33.2)

559. In addition to the Public records at the Notary Department and the Database at the Ministry of Justice, competent authorities are able to obtain accurate information on beneficial ownership of legal persons in a timely manner by virtue of article 29 to 44, 62 and 63 of the

Commercial Code which requires companies to maintain adequate register of members including the beneficial owners.

Bearer shares (c.33.3)

560. There is no mechanism to access information on beneficial ownership of bearer shares. However, a request for judicial inquiry may be made where there is a suspicion of an offence, Apart from these, it will be difficult to limit the potential of using bearer shares anonymously.

Additional elements

Access to beneficial ownership and control information (c.33.4)

561. The Criminal Code, penalizes violations of the provisions that govern access to information and as such allows financial institutions to have access for the purpose of regulation.

5.1.2 Recommendations and comments

- STP should:
    - review the current system of incorporation to determine ways in which adequate and accurate information on beneficial ownership may be available in a timely manner for investigation by law enforcement authorities;
    - put in place mechanisms, including computerizing its database, to verify the identity of owners for AML/CFT purposes
    - Provide the MOJ with adequate resources to enhance the capacity of the office to conduct onsite investigations on information provided by corporate bodies.

5.1.3 Compliance with Recommendation 33

Rec.	Rating	Summary of Factors Underlying Rating
R.33	**PC**	• Adequate measures are not in place to ensure that there is adequate, accurate and timely information on the beneficial ownership • Information on the companies registrar pertains only to legal ownership/control and does not include information on beneficial ownership • There is no mechanism in place to verify the identity of owners for AML/CFT purposes

5.2 Legal arrangements - Access to the beneficial owner and control information (R.34)

5.2.1 Description and Analysis

Prevention of unlawful use of legal arrangements (c.34.1)

562. Trusts do not exist in STP and are therefore not listed in the AML/CFT Law. Even foreign trusts are not recognised in STP.

5.2.3 Compliance with Recommendation 34

Rec.	Rating	Summary of Factors Underlying Rating
R.34	**NA**	Trusts do not exist in STP

5.3 Non- Profit Organizations (SR. VIII)

5.3.1 Description and analysis

563. In STP, the law governing the establishment of non-profit organisations does not provide any guidance on measures to be taken in order to determine, in advance, whether the entity would be used for the purposes of ML or TF. However, article 4 of the new NGO Law prohibits the establishment of any NGOs intended to be used to promote violence, racism, xenophobia, dictatorship or for the purpose of pursuing criminal activities contrary to law. This may be interpreted to include terrorist financing. The Minister of Justice is responsible for the regulation of NPOs in STP and is empowered by article 9(5) and (7) of Law 8 to establish, regulate and dissolve NPOs.

564. The powers of authorities are guaranteed in the organic laws relating to them. As regards their functions, every authority in the country has its own scope of investigations. In accordance with each of their scope of investigations, information may be shared to ensure efficient outcomes consistent with the duty of cooperation as explicitly provided for in their organic laws.

565. Article 14 of the Non-Governmental Organizations law prohibits the establishment of such organisations for purposes of engaging in unlawful activities. The authorities have, despite resource constraints, made efforts to improve results in obtaining information.

Review of the domestic non-profit sector (c. SR. VIII.1)

566. Law no. 8/2012 was recently enacted for the purpose of establishing a "Legal Regime of the Constitution and Operation of Non-Governmental Organizations". This law governs the

organization, functioning, origin, formation and modification of NGOs pursuant to articles 1 to 18.

567. The Directorate of Registration and Notary reviews the application and other accompanying documentation of prospective NGOs before registration. The review includes verification of the capital and objectives of the NGO with a view to ascertain its potential. The verification is done with the concurrence of the Minister of Justice, as provided by article 157 of the Civil Code. In addition to the provision of the Criminal Code, Law no. 8/2012, provides for the various forms of organization and the establishment of non-governmental organizations, including the prohibition of their use for activities or purposes contrary to law.

568. There is also the FONG-STP, which is a foundation associated with the NGOs for the purpose of securing funding from international donors. NGOs in STP function in accordance with their statutes and internal regulations. NGOs are governed by the new law which was approved in July 2012. Decisions are made on specified issues during General Assembly meetings.

569. There is a permanent secretariat in charge of activities of NGOs. There are seven areas of activity which an NGO can take on including education, health, environment, marine etc. There are currently, FONG has 98 registered NGOs comprising of both local and international organizations. In 2011, 72 organizations were assessed. Of the 72, only 35 are in effective operation.

570. Article 2 of Law 8/2012 considers associations, foundations and other institutions of private non-profit, national or international law, formed under the general law, which aim to engage a recognized interest in the country, particularly in the economic, social, cultural, environmental, scientific, charitable, philanthropic, and contribute to the fulfilment of basic needs of people aiming to improve their living conditions, as NGOs within the meaning of the Law. Additionally, NGOs can pursue other non-profit ventures compatible with their main objective. Associations, foundations and other private institutions that pursue profit, political, military, party, trade union and religious interests that are still developing their activities in areas referred to in the Law, cannot be designated as NGOs as provided by article 2 of Law 8/2012.

571. Private NPOs are not permitted to reserve for themselves or distribute to their members, board members, management, employees and donors, any profits or any other elements of their assets, resulting from the exercise of their activities and that apply fully in achieving their objectives.

572. Under article 4 of Law 8/2012 NGOs, in accordance with their nature and objectives, are permitted to operate in the following areas:

a) Promotion of teaching and education;

b) Promoting health, including medical assistance;

c) Promoting economic and social development and the fight against poverty and social exclusion;

d) Promotion of food security and nutrition;

e) Promotion of social assistance;

f) Protection of heritage and cultural creation;

g) Protection of nature and natural resources;

h) Environmental protection and ecological balance, spatial planning and sustainable development;

i) Employment, training, human resources development and quality of life;

j) Promotion of cooperation agro-livestock, fisheries and rural development;

k) Protection and restoration of wild fauna and flora;

l) Promotion of ethics, peace, citizenship, human rights, democracy and other universal values;

m) Capacity building;

n) Development of new socio-productive models and alternative systems of production, trade, employment and credit;

o) Regional and local development;

p) Supporting women, youth and children;

q) Development cooperation and humanitarian aid; and

r) Promotion of good governance.

573. Under article 7 of Law 8/2012, NGOs are permitted to operate after the Government of STP has analysed their criminal records of the individuals who will manage the NGOs, as well as their spouses, immediate relatives, the formalities regarding entry visas to residence visa and other formalities of similar nature.

574. The NGOs Law does not apply to institutions of a public nature or associations or foundations created by a public body. However, article 19 of the Law provides for NGOs of Public Interest (ONGIP) being NGOs and foreign nationals constituted under the Law, with recognized expertise in their area of intervention and that meet the criteria established by the Law. The ONGIP pursue their goals in the economic, social, cultural, civic, environmental and philanthropic sectors. They are to be recognized in public unit and should preferably develop their activities, particularly in the areas defined in Article 4 the Law (reproduced above). Article 22 of Law 8/2012 provides in relation to the conditions for recognition of ONGIP that NGOs with effective and relevant activities in their area of operation are entitled to recognition as legal persons of public utility under the following conditions:

a) Submission of an application;

b) Certified copy of the acts of incorporation and its bylaws;

c) A copy of the minutes of board members;
d) Plans for current year activity and the means of financing;
e) Opinion by one way of grouping given in Article 8.

575. Under article 19 of the NGOs Law, the ONGIP is an evolution of an NGO and only becomes an ONGIP, an NGO legally constituted and in operation for two years and its activities can be recognised as Public Interest. The recognition may be revoked if some of the irregularities mentioned in the Law are found. The irregularities may include the following:

a) The development of actions that are incompatible with its object;
b) where an ONGIP is idle for a period of more than 12 months;
c) Anomalies detected in the implementation of material and financial resources granted by public agencies, private donors or from international cooperation; or
d) where the ONGIP do not report preparation of financial performance, accounting and operations on the asset realized.

576. The ONGIP is required to register with the Ministry of Justice on presentation of certified copies of its constitution and declaration of public utility. It is provided a certificate of eligibility which is valid for five years and renewable upon written request.

Protecting the NGO sector against terrorism financing through outreach and effective oversight (c. VIII.2)

577. The authorities informed Assessors that during the visit of an IMF mission in February 2012, a meeting was held with various NGOs and with representatives of the STP-FONG where the abuse of NGOs for the purpose of terrorist financing was discussed. The meeting also discussed the risk associated with terrorism financing and the need for transparency, particularly in the management of funds.

578. Article 9(3) of Law 8/2012 requires foreign associations registering candidates to, in addition, prove that they are legally established in the territory of the respective registered offices upon presentation of a copy of the Official Gazette or the Official Journal in which extract of the memorandum was published. A memorandum duly certified by a competent authority is acceptable when the territory of the registered office does not use the procedure referred to in article 9(3). This document is also required for the formalization of national NGOs. The Minister of Justice may refuse to register an NGO based on reasons specified by the Minister in accordance with the Law.

579. Apart from the meeting with the IMF mission and preparation towards the on-site mutual evaluation, the authorities did not demonstrate that they had undertaken any effective outreach to the NPO sector with the view to protecting the sector from terrorist financing abuse. The level of awareness in the NPO sector about the risk of terrorist financing abuse and the available measures to protect against abuse are not adequate. Furthermore, the fact that NGOs are

permitted to engage in effective and relevant activities for at least two years before registration may make the sector vulnerable to TF. This is because criminals may take advantage of the "grace period" to perpetrate their criminal activities before the period when they will be expected to disclose full information of their activities and sources of finance. In this regard, STP should consider requiring prospective NGOs to undergo full registration process and approval before they commence operations. This should enable the authorities to conduct background checks and obtain full information on the prospective NGOs and protect the sector from being abused by criminals for TF purposes.

Effective supervision or monitoring (VIII.3)

580. There is no effective supervision or monitoring of the NGOs sector for AML/CFT purposes. In fact, some officials of domestic NGOs expressed concerns about lack of effective regulation of international NGOs. They were also of the opinion that religious groups ought to be regulated for AML/CFT purposes. Assessors share the concerns and opinions of the officials and wish to encourage the authorities to ensure effective regulation of international NGOs. With regard to religious organisations, the authorities should consider assessing the TF risk and decide whether to subject them to AML/CFT obligations.

Maintaining information (c. VIII.3.1)

581. The Civil Code requires certain information as a precondition to establishing an NGO, in accordance with articles 151 to 201 of the Code. NGOs are required to submit CVs containing full identification details of prospective members of NGO. NGOs are to maintain their information and submit annual report on their activities to the Ass. NGOs that do not comply with the law are either warned or disqualified. This information is available on request or at the website www.fong-stp. Within the framework of their powers to conduct criminal investigation, and based on the Code of Criminal Procedure, the Criminal Investigation Police and prosecutors may conduct investigations as they deem necessary to verify evidence in matters related to terrorism financing, or misuse of NGOs for this purposes.

Measures to sanction violations (c. VIII.3.2)

582. Article 35(1) of Law no. 8/2012, Legal Regime of the Constitution and Operation of Nongovernmental Organizations empowers the Government to, in exercising its supervisory powers, by order conduct periodic audits, inquiries, investigations and inspections on NGOs in the provision of technical and financial support of the State and its institutions or the process for inclusion in the National Register pursuant to be fixed in Regulation.

583. Also the article 36 of that same law provides for the liability of NGOs and their agents in the following terms:

> 1. *The existence of irregularities and mismanagement in the use of material and financial resources available to the ONGIP, shall compel:*
>
> *a) Civil and criminal liability under the law;*
>
> *b) Suspension of technical, financial and material support and cooperation from*

public bodies;

c) Prohibition to apply for such support for a period of two years.

Licensing or registration (c.VIII.3.3)

584. The Civil Code prescribes registration as a condition for the existence of NGOs. NGOs register with the Notary Services of the Ministry of Justice. NGOs with private rights are required to write to the Ministry of Justice after incorporation. This information is available to the competent authority. Foreign associations that intend to register candidates must, in addition to more, prove that they are legally established in the territory of the respective registered offices upon presentation of a copy of the Official Gazette or the Official Journal which published the extract of the memorandum of the NGO.

585. Article 3 of Law 8/2012 provides that the formation of NGOs and amendments require the form of a public deed, and the constitution containing:

a) The name and location of the NGO's headquarters;

b) Purposes and activities;

c) the name, the composition and powers of the governing bodies;

d) the identification of all the founders;

e) The statutes;

f) The quotas, donations or services that members contribute to the assets of the organization.

Records of transactions (c. VIII.3.4)

586. There is no requirement in Law 8/2012 for NGOs to maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. However, article 34 of Law 8/2012 requires the ONGIP, among other things to:

- *adopt transparent methods of managing, preventing, by all means, use the association to obtain, individually or collectively, benefits or personal advantage;*
- *arrange the accounts in accordance with generally accepted accounting principles and standards applicable in STP, so that it reflects all transactions, allowing establishing clearly the results of transactions and changes in equity;*
- *prepare annually by 31 March each year, the general report and statement of accounts for the previous year approved by the competent governing bodies;*
- *provide in their statutes necessarily the existence of a supervisory board which, among other functions for controlling and monitoring the ONGIP, shall prepare the report on the audit carried out during the year and issue an opinion on the annual report and accounts exercise and activity plan for the coming year.*

587. In the case of NGOs, the authorities informed Assessors that each association is required to have Audit Committee which has the responsibility for the accounts and transactions of the NGO and such information may be requested for by regulators or judicial authorities. Assessors were not provided with the corresponding requirements for other NGOs.

Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation:

Effective investigation and gathering of information (c. VIII. 4)

588. The Law of Non-Governmental Organizations states in one of its articles as follows: "In the exercise of its supervisory powers, the Government may order periodic audits, inquiries, investigations and inspections ..." among other functions, to prevent terrorist abuse of NPOs. The Criminal Procedure Code empowers the Criminal Investigation Police and prosecutors to carry out inquiries and investigations as may be necessary, including investigations relating to NGOs.

589. By order of the Government establishing an inter-ministerial working committee for the FIU. We have integrated the institution as a researcher and cooperation with INTERPOL the PIC Criminal Investigation Police and prosecutors as holder of record prosecutor and criminal investigation or research in the opening of the proceedings of crime. This representation is precisely to promote greater integration, availability and flexibility in gathering information and cooperation between these institutions for the proper functioning of the FIU.

Domestic cooperation, coordination and information sharing (c. VIII.4.1)

590. Exchange of information is based on partnership among NGOs. The FONG links all NGOs, particularly the active members. Therefore it is easy to know what others are doing. The activities are discussed in the Media. Domestic cooperation, coordination and information sharing among NGOs and appropriate authorities are cordial and efforts are being made to improve relationship. The NGO team that works closely with the FIU has received indications to take action in this direction.

591. The PIC, the Public Ministry, the FIU and the central bank can cooperate in this regard since TF is monitored by these institutions. Nevertheless, in recent times, there has been collaboration among these institutions. This is demonstrated through the work of the Working Committee of the FIU. However, due to the low level of awareness of the risk of terrorist financing relating to the NGO sector demonstrated by all aspects of the society, STP needs to intensify efforts to increase awareness on the risk of abusing the NPO sector for purposes of terrorist financing ensure a more effective domestic cooperation, coordination and information sharing.

Access to information (c.VIII.4.2)

592. The CPC empowers a prosecutor or a Police Criminal Investigator, on behalf of the Public Prosecutor, to obtain or seize all relevant documents including documents in computerized form during an investigation. Access to management and financial information is only possible for now, through a judicial inquiry initiated by prosecutors. Article 35 of Law 8/2012 empowers the Government, in exercising its supervisory powers, order the holding of periodic audits, inquiries, investigations and inspections of ONGIP in the provision of technical and financial support of the State and its institutions or the process for inclusion in the National Register, on terms to be set out in the regulation of the Law. The Government has not passed any regulations in furtherance of the Law. Furthermore, Assessors were informed that the National Register of NGOs is not kept up-to-date. The authorities are yet to computerise information relating to NGOs.

Mechanisms for prompt information sharing (c.VIII.4.3)

593. Sharing information is part of the duty of the investigating authorities, since their organic establishes the duty of institutional cooperation, understanding that in terms of simple processes they are not under the secrecy of information. In the case of the FIU, communications are reported to prosecutors, but should, in the exercise of their activities have access to information from the database both prosecutors as PIC to better form the conviction of the suspect information received by it.

594. The Law of Non-governmental organizations, provides in articles 34, 35 and 36, the duty of oversight and accountability that really determine information sharing.

Responding to international requests for information about an NPO of concern:

Focal points for international requests for information (c.VIII.5)

595. FONG can provide some information about registered NGOs in STP. Applications for international cooperation regarding the Criminal Police Investigation can be made directly by their counterparts or by INTERPOL because there is some direct cooperation with some PIC and its International Counterparts, but such requests are made through INTERPOL, where it concerns lawsuits. The requests for judicial cooperation can be made through the Prosecutor General concerning matters directly related to some administrative matters of an NGO. In view of the fact that the NPO sector has not been reviewed to ascertain the vulnerability of the sector to terrorist financing, it is not clear whether STP will be able to share information regarding particular NGOs that are suspected of terrorist financing or other forms of terrorist support.

5.3.2 Recommendations and comments

596. STP should ensure that the Register on NGOs is kept up-to-date and contains all information on the identity of the persons who own, control or direct the activities of the foundations, as well as the information on the legal persons they own or control. Also, the information on the persons who own, control or direct the activities of the associations with legal personality should be kept up-to-date and should be made immediately available to the authorities of STP. STP should also ensure that the domestic and international transactions of the

all NPOs are registered for a period of at least five years and made available to appropriate authorities to allow them to verify that funds have been spent in a manner consistent with the purpose and objectives of each organisation.

597. STP should also conduct, as soon as possible, a review of its non-profit sector, including a review on the TF risks. It should also start a program of outreach and awareness-raising with the NPOs in order to strengthen their resistance to terrorist financing abuse.

598. STP should also review its legislation to ensure an effective supervision or monitoring of its non-profit sector. It should equally develop and implement mechanisms for the prompt sharing of information among all relevant competent authorities that have information on NPOs to take preventive or investigative actions. In addition, STP should designate a point of contact and should develop procedures to respond to international requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support.

5.3.3 Compliance with Special Recommendation VIII

Rec.	Rating	Summary of Factors Underlying Rating
SR.VIII	**NC**	• There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing. • The authorities have not conducted outreach or provide effective guidance on terrorist financing to the NPO sector. • The register of NGOs is not kept up-to-date • There is no supervision or monitoring of the NPO sector. • There is no effective domestic co-operation or coordination amongst authorities that would eventually have information on NPOs. • It is not clear as to whether STP can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.

6. National and International Cooperation

6.1 National cooperation and coordination (R.31 & 32)

Recommendation 31

6.1.1 Description and analysis

599. The legal basis for national cooperation and coordination between relevant competent authorities is provided for in the FIU Law, the FIU Regulations and the AML/CFT Law. No MOUs have been concluded between the FIU, supervisory bodies, and law enforcement agencies.

600. Article 18 of the AML/CFT Law provides that "the duty to cooperate relate to providing all assistance required by the judicial authority responsible for conducting the process or by the competent authority for the enforcement of obligations under this Law, including providing all information and presenting all the documents requested by those entities".

Mechanisms to cooperate and coordinate domestically (c.31.1)

601. The main mechanism for policy makers, the FIU, law enforcement and supervisors and other competent authorities to cooperate and coordinate with each other concerning the development and implementation of policies and activities to combat ML and TF is provided by article 5 of the FIU Law which states that the FIU consists of Ministry of Planning and Finance, the Central Bank, Ministry of Justice and Parliamentary Affairs, Criminal Investigation Police, prosecutors, Ministry of Commerce, Trade and Investment Directorate, Directorate of Inspection Games, with the following terms of reference.

- Ministry of Planning and Finance - instructions for prevention and suppression of crimes of money laundering and terrorist financing;
- the Central Bank - directive against Money Laundering and Terrorism Financing for Financial Institutions, transactions and large cash amount in the insurance business;
- Ministry of Justice and Parliamentary Affairs, Criminal Investigation Police, prosecutors - in order to instructions against Money Laundering and Terrorist Financing;
- Ministry of Commerce, Trade and Investment Directorate, Directorate of Inspection of Games.

602. Staff of the FIU consists of representatives from the listed institutions. Article 7(2) of the FIU Regulations provide for an extended membership of the MSC, designated as Focal Points and comprise officials from the Central Bank, MOJ, Ministry of Planning and Development, Ministry of Finance, Attorney General's Office, PIC, Immigration and Border Police, Fiscal Police, National Police, ENASA and INAC. The MSC is required to provide opinions on

analysis of STRs submitted to the FIU (article 7(1). According to article 7(3) of the FIU Regulations, the MSC is to meet twice in a month. The MSC was instrumental in drafting the AML/CFT Law, the new Penal Code and the draft AML/CFT Bill.

603. Furthermore, article 4(c) and (e) of the FIU Law requires the FIU to:

c) support when essentially requested, the criminal police and judicial authorities, and other entities with responsibilities for the prevention or prosecution of the crime of money laundering and terrorist financing offenses, including through the transfer of data and the provision of technical support - expertise;

e) collaborate in the development and revision of the guidelines against money laundering and terrorism financing with public authorities with responsibilities for issuing the same information;"

604. Under Article 6 of Decree n. 60/2009 The FIU may, in the performance of the functions assigned to it, request information from any public or private authorities."

Recommendation 32

Review of the effectiveness of AML/CFT systems (c.32.1)

605. STP has not undertaken any investigation or prosecution of cases relating to ML or TF. Except the few STRs received by the FIU, the country is not maintaining statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and TF. The AML/CFT Law was enacted in 2008, but the country has reviewed the Law since it was placed on the FATF/ICRG targeted review. The AML/CFT Law was republished in 2010 as Law no.15/2008 through the enactment of Law 9/2009. The Law has been subjected to a further review and STP hopes to enact a more comprehensive legislation based on the findings of the MER. Furthermore, STP adopted a National Plan to Fight against Money Laundering and Combating Terrorism Financing (adopted in the Official gazette through Decree no d. 44/2009 of 17 December 2009) based on an assessment of the effectiveness of the AML/CFT system of the country. Nevertheless, STP needs to undertake a more comprehensive assessment of its whole AML/CFT system.

6.1.2 Recommendations and comments

606. Coordination and cooperation between domestic competent authorities is very good and cut across all relevant competent authorities, including the Bar Association. However, the coordination and cooperation efforts are impeded by lack of capacity and resources. Due to the general lack of resources in the country, STP needs to intensify efforts to explore technical assistance in its AML/CFT efforts.

6.1.3 Compliance with Recommendation 31

FATF Rec.	Rating	Summary of factors underlying the rating
Rec. 31	**PC**	• Lack of capacity and resources to ensure effective coordination and cooperation

6.2 The Conventions and United Nations Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35 & Special Recommendation I

- Basic Principles on the Independence of the Judiciary
- Model Treaty on Extradition
- Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Guiding Principles on the Role of Prosecutors

607. In accordance with article 13 of the Constitution of STP, the rules and principles of general international or common law are part of the laws of STP and takes precedence over all rules of similar constitutional value.

United Nations Conventions (R.35)

608. Article 13 of the Constitution of STP provides that the rules and principles of general international law or common law are part of Sao Tome and have prevalence over all standards of similar constitutional values. It also provides that rules provided for in international conventions, treaties and international agreements validly adopted and ratified by the respective bodies prevail in the legal Sao Tome after their official publication, while internationally binding on the State Sao Tome. The requirements of international treaties and conventions have direct effect and are applicable in the domestic legal system. STP has signed and acceded to the Vienna and Palermo Conventions, as well as the International Convention for the Suppression Terrorism Financing (TF Convention). A significant number of the provisions related to the criminalization of offenses and sanctions defined in these Conventions are incorporated into the Penal Code and the AML/CFT Law.

609. Under the (Community of Portuguese Speaking Countries) CPLP, the country is also a signatory to the Protocol on Judicial Assistance in Criminal Matters between the Member States of the CPLP, Convention on the transfer of sentenced persons between member states of the CPLP, Praia, 23 November, 2005.

The conventions

Ratification of AML-Related UN Conventions (c. 35.1)

610. STP acceded to the Vienna Convention on 20 Jun 1996. The country aceded to the Palermo Convention on 12 April, 2006

Ratification of CFT-Related UN Conventions (c. I.1)

611. STP acceded to the International Convention for the Suppression of Financing of Terrorism on 12 April, 2006 and has ratified ten out of the remaining fifteen international legal instruments on terrorism, including eight out of the nine Conventions and Protocols listed in the Annex to the TF Convention. The Convention on the Physical Protection of Nuclear Material, 3 March, 1980 has not been ratified, but elements of the Convention have been incorporated in the Penal Code, 2012[30] (See Table of Conventions in Section 1).

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

612. STP law largely complies with many provisions of the Vienna Convention. ML is criminalized largely in line with the Vienna Convention. Confiscation and seizing measures are available for all offences under the Convention; and law enforcement agencies have powers to identify and trace property that is or may become subject to confiscation. These powers have not been utilized. Financial secrecy rules may not hinder the implementation of the requirements of the Conventions if persons who provide information in accordance with law are provided adequate protection against victimization. STP may also provide a wide range of MLA with respect to drug related ML offenses and grant extradition for such crimes, but this is mostly with CPLP countries.

Implementation of FT Convention (Articles 2-18, c. 35.1 & c. I.1)

613. Laws of STP criminalize terrorist financing broadly in line with the requirements under the FT Convention and allows for the application of comprehensive confiscation and seizure measures in relation to such offenses. However, the financing of individual terrorist is not criminalized. There are no clear procedures for freezing terrorist funds and other assets.

614. The preventive measures in place for banks and nonbank financial institutions in relation ML also apply to TF. However, the legal framework setting out the various obligations is still subject to a number of shortcomings as discussed under section 3 of this report. In particular, customer due diligence measures, record keeping, and STR reporting requirements could be strengthened further. There have been no TF related STRs. TF is an extraditable offense under the Laws of STP as indicated under Recommendation 39 below.

[30] Anyone who, outside legal requirements, manufacture, import, transport, sell or transfer firearms to another, chemical and nuclear weapons non-lethal ammunition for those substances for the manufacture or operation or any other type of explosive, shall be punished with imprisonment for 1-4 years. (Article 325 of the Penal Code) 2. Trafficking in nuclear materials is a predicate offence of money laundering.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1)

615. STP law complies with most provisions of the Palermo Convention. ML offenses involving organized crime are criminalized largely in line with the Palermo Convention. However, the full range of predicate offences has not been criminalized. Confiscation and seizing measures in relation to proceeds obtained through the commission of such offenses are available. STP may also provide a wide range of different types of MLA with respect to ML offenses involving transnational organized crime, including in searching for and/or seizing property or evidence in relation to such offenses.

616. Preventive measures and a supervisory regime are in place for banks and nonbank financial institutions, as well as DNFBPs. However, the legal framework setting out the various obligations is still subject to a number of shortcomings as discussed under section 3 of this report. In particular, customer due diligence measures, record keeping, and STR reporting requirements could be strengthened further.

617. STP has established an FIU, but is yet to adopt a cross-border declaration/disclosure. The FIU faces a lot of constraints as discussed under section 2 of this report.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)

618. As outlined in detail under SR III, STP does not have in place mechanism to implement its obligations under UNSCRs 1267 and 1373.

Additional Element—Ratification or Implementation of other Relevant International Conventions (c. 35.2)

619. STP has signed and ratified or acceded to a large number of international and regional treaties and Conventions, including the Merida Convention, the AU Convention on Corruption.

6.2.2 Recommendations and Comments

620. STP should fully implement the Vienna, Palermo and FT Conventions and also address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373. The country should also consider broadening its scope of international relations to include more non-CPLP countries.

6.2.3 Compliance with Recommendation 35

	Rating	Summary of relevant factors underlying the rating
R.35	**PC**	• Piracy and counterfeiting of productsand insider trading and market manipulation have not been criminalized • The provisions of the Vienna and Palermo Conventions have not been fully implemented

SR. 1	**PC**	• Not all instruments have been ratified • Financing of individual terrorist is not criminalised • Absence of mechanisms to implement UNSCRs 1267 and 1373 • Lack of full implementation of relevant international instruments

6.3 Mutual Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

- Law 2/2008 - PIC Organic Law
- CPC (Chapter IV, Relation with foreign authorities and international law enforcement agencies. Article 190 to 194)
- Convention on Judicial Assistance in Criminal Matters between the Member States of the Community of Portuguese Speaking Countries (CPLP).
- International Network for Legal and Judicial Cooperation of the Portuguese Speaking Countries.
- Judicial Agreement between Portugal and STP.
- Convention on Judicial Assistance in Criminal Matters between the member States of the CPLP.

621. In accordance with article 13 of the Constitution of the Republic, the rules and principles of general international or common law are part of Sao Tome law and have prevalence over all rules of infra constitutional value, enabling the implementation of standards in STP treaties ratified by STP, including provision of a widest range of MLA. Also, article 60-B of the AML/CFT Law provides as follows:

> *The regulation of the presuppositions and content outlined in the present Law implies the duty on the part of São Tomean entities to provide and receive information to and from foreign entities, in fulfillment of inter-regional agreements or any instrument on international law in various matters such as: mutual legal assistance, extradition, cooperation in matters of the arrest and confiscation of the proceeds of criminal activities, the exchange of information and cooperation between competent authorities.*

622. Furthermore, article 190 of the CPC provides that "the rogatory, extradition, the delegation of criminal proceedings, the effects of foreign criminal judgments and other relations with foreign authorities relating to the administration of criminal justice are regulated by international treaties and conventions and, in their absence or insufficiency, the provisions in the special law and also by the provisions of this chapter".

623. Thus STP can provide MLA based on article 13 of the Constitution, article 60-B of the AML/CFT Law and Chapter IV of the CPC. The provisions on mutual assistance laid down in the UN Conventions can serve as the basis for a request for international cooperation competences aimed at STP. STP did not provide any statistics or other information to serve as evidence of implementation of these provisions.

Widest possible range of mutual legal assistance (c.36.1)

624. The police criminal investigation has been working in cooperation with other agencies and in support of legal assistance. But regarding the seizure of information and documents it should only be done if an investigation is opened. Article 2(3) of the Organic Law of the PIC provides for the degree of dependence of the PIC with regard to the MLA process.

625. In criminal cases, the PIC depends on:

a) The Public Ministry, the level of education on preparatory acts which are of their competence and crime prevention initiatives coordinated by the Public Ministry;

b)The Judge, the level of education on preparatory acts within its competence, in any investigation and trial."

626. Currently, STP has MLA agreements with the CPLP countries. Requests for searches and seizures from foreign countries are often channeled through the INTERPOL. Searches and seizures are subject to formalities described in articles 245, 246, 247 of the CPP. However, these procedures may not apply with regard to crimes of terrorism, organized and violent crime or *flagrante delicto*, , but must be immediately reported to the judge for validation.

Timely responses to MLA requests (36.1.1)

627. Regarding the PIC, assistance is not a problem, provided the request does not involve the opening of inquiry. Article 4(2) of the Law clearly states that: "the PIC enjoys autonomy in the field of operational planning, technical and tactical execution of investigation and administration under the Law. In this regard, the country can provide assistance provided there is a mutual agreement or a request is received by the INTERPOL.

Conditions applied (c.36.2)

628. Currently, in terms of investigation, provided there is a request through Interpol, investigations are done, but measures can only be taken provided there is a national judicial inquiry opened and the request is not contrary to article 193 of the CPC.

629. Requests for MLA may be accepted provided that the legislation criminalize the type of crime being investigated. Under article 193 of the CPC, MLA will be refused:

a) When a judicial authority rogada has no jurisdiction over the act;

b) When the request to address an act that the law prohibits or is contrary to public policy of STP;

c) When the execution of rogatory offends the sovereignty or security of the State;

d) When the act involves execution of foreign court decision subject to review and confirmation, and there is no proof that the decision has been reviewed or confirmed.

630. Under article 192(3) of the CPC, the prosecutor is required to provide reasons if it is not possible to provide the request made. The grounds for refusal of MLA requests are similar to those specified in Article 21 of the Palermo Convention.

Process for execution of MLA (c.36.3)

631. Article 192 of the CPC permits requests to be received through any channel and relevant prosecutors are required to promote compliance of requirements for requests. MLA is provided without any objection when sought within the limits established by law. As noted above, the procedures begin with the request through Interpol, then the prosecutor, this because for now the current legislation only allows this type of procedure.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

632. Tax evasion or fraud is a predicate offence for money laundering under article 272 of the Penal Code. In this regard, STP will provide MLA regardless of whether the offence is considered to involve fiscal matters.

Secrecy or confidentiality requirements (c.36.5)

633. The PIC can only provide confidential information related to financial institutions if an investigation is opened, but this does not constitute any hindrance because the prosecutor works in collaboration with the PIC and is also an authority working in cooperation with the FIU. Confidentiality exists only to prevent third parties from prejudicing investigations.

Applying the powers in Recommendation 28 (c.36.6)

634. The powers under Recommendation 28 can only be applied from the moment that there is an investigation by prosecutors even if it is an international application. Searches and seizures are subject to the formalities described in article 245, 246 and 247 of the CPC except in cases of crimes of terrorism, violent crime or organized and flagrante delicto, actions can be taken without formalities, but must be immediately communicated to the judge for validation.

Avoiding conflict of jurisdiction (c.36.7)

635. The prosecution of accused persons of other countries on national territory is possible if the crime is punishable by the National Penal Code. Article 6(2) of the CPC provides that the perpetrator is judged according to the country where the act was committed, provided that this is precisely the most favorable procedure to the offender.

Additional elements

Availability of Powers of Competent Authorities Required under R.28 (c. 36.8)

636. It is possible to receive and deal with direct requests under article 192 of the CPC. For now, for every application presented, it is necessary that prosecutors open a judicial inquiry, or that a judicial inquiry has already been opened regarding that application.

Recommendation 37 (dual criminality relating to mutual assistance)

- Convention on Judicial Assistance in Criminal Matters between the Member States of the CPLP.
- Network for Legal and Judicial International Cooperation of Portuguese Speaking Countries.
- Judicial Agreement between Portugal and S. Tomé and Príncipe.

Dual criminality (c.37.1)

637. STP has judicial cooperation agreements with countries that are part of the CPLP and may provide MLA in the absence of dual criminality. However, with regard to extradition, for example in terms of article 15 of the judiciary agreement between STP and Portugal, it is essential that the conduct is punishable by the laws of both countries.

Technical differences between laws (c.37.2)

638. Dual criminality has not been an impediment to extradition, as long as there are extradition agreements, the country has taken measures to that end. The Criminal Investigation Police in both extradition and judiciary assistance judiciary can only provide information, but legal procedures should be followed which would be communicated to the Court in cases under investigation.

Recommendation 38

639. Under the (Community of Portuguese Speaking Countries) CPLP, the country is also a signatory to the Protocol on Legal Assistance in Criminal Matters between the Member States of the CPLP, Convention on the transfer of sentenced persons between member states of the CPLP, Praia, 23November, 2005.

Timeliness to requests for provisional measures, including confiscation (c. 38.1)

640. As indicated above, article 190 of the CPC provides that the rogatory, extradition, the delegation of criminal proceedings, the effects of foreign criminal judgments and other relations with foreign authorities relating to the administration criminal justice are to be regulated in accordance international treaties and conventions and, in their absence or insufficiency, the provisions in special law and also by the provisions of Chapter IV of the CPC. Thus all investigative measures available under the laws of STP (including searches, seizures, confiscation) (article 249 of the CPC, article 104 of the Penal Code etc), international treaties and conventions etc, including seizing measures under the CPC, are also available upon foreign request.

641. Foreign judgments may be executed in STP only on the basis of an applicable treaty, convention or the provisions of Chapter IV of the CPC. In specific cases, a country that is not a party to an existing treaty with STP may enter into such an arrangement on an *ad hoc* basis. The authorities indicated that treaties are mainly entered into with Portuguese-speaking countries.

Property of corresponding value (c. 38.2)

642. As in the domestic context, article 249 of the CPC allows for the seizing and article 7(3) of the AML/CFT for the confiscation of property corresponding in value to proceeds of crime in cases where the latter may not be appropriated in their original form. See Recommendation 3 of this report for a detailed analysis for article 7(3) of the AML/CFT Law and Article 249 of the CPC.

Coordination of seizure and confiscation actions (c. 38.3)

643. No formal procedures are in place to coordinate seizure and confiscation actions with other countries other than member States of the CPLP. However, the authorities stated that if such case was to arise, STP may cooperate and liaise with other countries on an ad hoc basis and in accordance with the Constitution, international treaties and conventions. The authorities cited the Legal Assistance in Criminal Matters between the Member States of the CPLP, the Convention on the Transfer of Sentenced Persons between member states of the CPLP, Praia Nov. 23, 2005 and the Agreement with Portugal but did not provide copies the documents.

Asset forfeiture fund (c. 38.4)

644. STP has considered establishing an asset forfeiture fund into which all or a portion of confiscated property will deposited and will be used for law enforcement, health, education or other appropriate purposes. This is provided in article 30 of the draft AML/CFT Law. The current provision on use of proceeds of confiscated assets, article 10 of the AML/CFT Law, provides for outright distribution to the relevant agencies and for specific purposes.

Sharing of confiscated assets (c.38.5)

645. Article 10 of the AML/CFT law provides for the disposition of property declared forfeited to the State). The funds are applied as follows:

> *a)to the actions, measures, means of combat and programs for the prevention of the illicit consumption and trafficking of drugs;*
> *b) to the Ministry of Health, with the objective of assuring the means necessary for the consultation, treatment and reinsertion of individuals suffering from chemical dependency;*
> *c) to the Ministry of Justice, in order to implement measures for the treatment and social reinsertion of inmates suffering from chemical dependency during the course of their sentences;*
> *d) to entities intervening directly in the fight against money laundering and terrorism financing, observing the following proportions in their distribution:*

i. 20% State;
ii.20% Central Bank;
iii. 15% Department of Gambling;
iv.15% Department of Economic Activities;
v.15% Criminal Investigation Police;
vi.15% Public Ministry

646. Article 10(2) provides that the total sum of the values to be provided to the entities involved in activities mentioned in lines a), b) and c) of the previous item may not be greater than the budget that is set for the Office for the Prevention and Fight against Drugs. If there is a balance remaining, this will constitute revenues belonging to the State. The provisions of article 10 have not been applied as there has been no confiscation of proceeds of crime or funds or other assets intended for the financing of terrorism.

647. Article 10(5) of the AML/CFT Law permits the sharing of assets confiscated on request of a foreign authority into equal parts between the requesting country and STP.

Additional elements

Foreign non-criminal confiscation orders (c.38.6)

648. There is no provision in the laws of STP concerning non-criminal confiscation orders. However, STP can rely on article 364 of the CPC to review or confirm a decision relating to civil damages on request and in the same manner as criminal judgment. This provision applies when, by law or treaty or convention, a foreign criminal judgment should have effect in Sao Tome and Principe. Generally, enforceability of foreign judgments require prior review and confirmation, except in situations when the foreign criminal judgment is invoked in STP courts as evidence.

International cooperation under SR.V (applying c. 36.1-36.6 in R.36, c. V.1)

649. The analysis under Recommendation 36 applies equally to TF cases.

International Cooperation under SR.V (applying c. 37.1-37.2 in R.38, c. V.2):

650. The analysis under Recommendation 38 applies equally to ML and TF conduct.

International Cooperation under SR.V (applying c. 38.1-38.3 in R.38, c. V.3):

651. The analysis under Recommendation 38 applies equally to ML and TF conduct.

R.30 Resources (Central Authority for sending/receiving requests for mutual legal assistance or extradition)

652. The Ministry of Justice has been the central authority for sending and receiving requests for MLA or extradition. Notwithstanding, article 192(1) of the CPC provides that the rogatory may be received by any channel and gives prosecutors the discretion to ensure compliance.

There is the need for STP to clearly designate a Central Authority for sending/receiving requests for mutual legal assistance or extradition.

Special Recommendation V

Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6)

653. The analysis under Recommendation 36 applies equally to TF cases.

Recommendation 32

Implementation and Statistics (applying R.32)

654. The provisions have not been implemented. No statistics were provided. The authorities stated that "In a general overview there is no considered statistic of these elements. However, statistics of the Criminal Investigation Police began to be done from January 2011, since the institution had no trained personnel who could carry out the work".

6.3.2 Recommendations and comments

655. Although the laws of STP permit the provision of MLA based on requirements of international treaties and conventions, including by seizing of information from a financial institution and providing the evidence seized to the requesting authorities, and the country has demonstrated willingness to cooperate, the country has not provided MLA in relation to AML/CFT. Its MLAs treaties are mainly with members of the CPLP. Furthermore, the country lacks resources and capacity to provide MLA, even to the limited number of countries in the CPLP. The requirements in Recommendation 36-38, as well as Special Recommendation V have not been implemented. In this regard, Assessors are unable to assess the effectiveness of application of these Recommendations by STP.

- STP should intensify efforts to pass the draft AML/CFT Bill and establish the asset forfeiture fund.
- Expand the scope of MLA to cover all countries

6.3.3 Compliance with Recommendations 36-38 and SR. V)

	Rating	Factors underlying the rating
R. 36	**PC**	• Request for MLA for investigation depends on whether there is an enquiry at the national level • The requirements of this Recommendation have not been implemented • The scope of MLA treaties is limited to members of the CPLP • Lack of capacity and resources to provide MLA
R. 37	**PC**	• The requirements of this Recommendation have not been implemented

R. 38	**PC**	• No formal procedures are in place to coordinate seizure and confiscation actions with countries other than member States of the CPLP • The establishment of an asset forfeiture fund has been considered but is yet to be effectuated • Existing provisions have not been implemented
SR. V	**NC**	• The requirements of this Recommendation have not been implemented • The scope of MLA treaties is limited to members of the CPLP • Lack of capacity and resources to provide MLA

6.4 Extradition (R.39, 37 & SR.V)

- The Penal Code
- The CPC

6.4.1 Description and analysis

Recommendation 39
Money laundering as extraditable offence (c. 39.1)

656. The legal basis for extradition in STP is the Republican Constitution and the CPC. Article 190 of the CPC provides that "The rogatory, extradition, the delegation of criminal proceedings, the effects of foreign criminal judgments and other relations with foreign authorities relating to the administration of criminal justice are regulated by international treaties and conventions and, in their absence or insufficiency, the provisions in special law and also by the provisions of this chapter." In this regard, money laundering is an extraditable offence in STP and the country can rely on extradition provisions set out in the UN Convention to extradite a person accused of committing a money laundering offence. Extradition will also be possible due to the fact that money laundering is criminalized under the laws of STP. Extradition of foreigners who have been charged with a money laundering offence can only be effected through a court process and in accordance with the CPC.

Extradition of nationals (c.39.2)

657. Article 41(1) of the Republican Constitution of STP prohibits extradition and expulsion of citizens of Sao Tome from the national territory. There is no requirement to submit a case without undue delay to competent authorities for the purpose of prosecution of the offence set forth in the request. The authorities indicated that extradition requests can be granted where a country has an agreement with STP to that effect. In view of the fact that the Constitution prohibits the extradition of nationals of STP, it is not clear how the authorities can extradite a national without any challenge to the constitutionality of such action.

Cooperation for prosecution of nationals (applying c. 39.2(b), c. 39.3)

658. There is no legal provision which permits cooperation for the prosecution of nationals. The authorities indicated that there will only be cooperation if there is a mutual cooperation agreement. Efforts can be made through execution of the rogatory letter addressed to the Prosecutor. In the absence of any legal provision, it is not clear how foreign jurisdictions can make requests for such cooperation.

Efficiency of extradition process (c. 39.4)

659. The authorities indicated that the efficiency of the extradition process depends on the dynamics of each sector, since all the investigating authorities are autonomous. Further, the authorities indicated that STP has no specific procedures on extradition, but it may be made by international treaty within the UN or bilateral agreements of which São Tomé is part. This has not been tested as there has been no implementation.

Additional element

Simplified procedures (c.39.5)

660. STP has no specific law and procedures on extradition. However, the authorities stated that extradition process can be simplified under the rules provided by the UN conventions.

Implementation and Statistics (R.32):

661. No statistics.

Recommendation 37 (dual criminality relating to extradition)

Dual Criminality and mutual assistance (c.37.1 &37.2)

662. Dual criminality is a precondition for the execution of all forms of MLA. The authorities stated that in establishing whether a request meets the dual criminality requirements, mere technical differences between the law of the requesting state and STP law would not pose an impediment to the provision of MLA. Rather, the prosecutor (A-G) would review the facts of the case and determine whether the described conduct is criminalized in STP. The authorities referred to article 15 of the judiciary agreement established between STP and Portugal, which requires that the conduct be punishable by the laws of both countries.

Special Recommendation V

Extradition under SR.V (applying c. 39.1-39.4 in R.39, c. V.4)

663. The analysis under Recommendation 39.1-39.4 (in R.39) applies equally to TF cases.

Additional element

664. In accordance with Article 13 of the Republican Constitution and article 190 of the CPC, STP can apply extradition proceedings to terrorist acts and terrorist financing since the Penal Code criminalises these acts.

6.4.2 Recommendations and comments

665. The laws of STP permit the country to rely on the provisions in international conventions and treaties to grant extradition requests. STP is a party to a significant number of international conventions some of which contain requirements for extradition. However, STP has not implemented the requirements for extradition in relation to ML and TF. Bilateral treaties for extradition are limited to member States in the CPLP thus narrowing the country's scope to CPLP countries. STP has no specific laws or procedures on extradition. It also faces capacity and resource constraints to effectively deal with issues relating to extradition. Furthermore, due to the fact that STP has not criminalized the full range of predicate offences, as well as the financing of individual terrorists, and it relies on dual criminality in extradition matters, the country will not extradite a person accused of committing any of those offences, thus creating a safe haven for the perpetrators of those offences.

666. It is important to state that the requirements of the conventions on extradition can be best implemented if comprehensive legislation is adopted covering the whole extradition process. In this regard, it is recommended that STP should consider:

- Criminalizing the full range of predicate offences of money laundering and the financing of an individual terrorist;
- Adopting comprehensive legislation on extradition that provide for mandatory requirements which must be met before STP can make or accept an extradition request, who can make/receive an extradition request, how stp can make an extradition request to a foreign country, identification of the need to extradite and obtain an arrest warrant, documents/information required in support of an extradition request, channel(s) for sending/receiving extradition requests to or from a foreign country, surrender and return of person, arrest, custody or granting of bail of person, and determination of eligibility of person for surrender, consent to extradition;
- Building the capacity of relevant personnel to respond to extradition requests in a timely manner; and
- Maintain statistics on issues relating to extradition.

6.4.3. Compliance with Recommendations 37 &39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**NC**	• STP has not criminalized the full range of predicate offences of money laundering • STP has no specific laws or procedures on extradition to

		ensure timely response to or submission of extradition requests • STP does not extradite its nationals and there is no requirement to submit a case without undue delay to competent authorities for the purpose of prosecution of an offence set forth in a request involving a national • There is no legal provision which permits cooperation for the prosecution of nationals • Extradition treaties are limited to CPLP countries • There has been no implementation of existing provisions on extradition
R.37	**PC**	• The provisions of this Recommendation have not been applied.
SR. V	**NC**	• STP has not criminalized the financing of an individual terrorist • STP has no specific laws or procedures on extradition to ensure timely response to or submission of extradition requests • STP does not extradite its nationals and there is no requirement to submit a case without undue delay to competent authorities for the purpose of prosecution of an offence set forth in a request involving a national • There is no legal provision which permits cooperation for the prosecution of nationals • Extradition treaties are limited to CPLP countries • There has been no implementation of existing provisions on extradition

6.5 Other Forms of International Cooperation (R.40, R.32 & SR.V)

6.5.1 Description and Analysis

Recommendation 40

- 2003 Constitution
- The CPC
- Law 15/2008 of AML/CTF

667. Article 12 of the Constitution of STP which provide for International Relations states the determination of the country to contribute to the safeguarding of universal peace, establishment of equal relations rights of sovereignty and mutual respect among all states and social progress of humankind, on the basis of the principles of international law and peaceful coexistence. The country proclaims its adherence to the Universal Declaration of Human Rights and its principles and objectives of the AU and the UN and emphasizes its commitment to maintain specialties of friendship and cooperation with Portuguese-speaking countries and host countries of Sao Tomean emigrants, as well as promote and develop close ties of friendship and cooperation with neighboring countries and those in the region.

668. Article 13 on Reception of International Law states that rules and principles of general international or common law are part of Sao Tome ... Rules provided for in international conventions, treaties and international agreements validly adopted and ratified by the respective bodies prevail in the legal system of Sao Tome after its official publication and while internationally binding on the State of São Tome ... rules provided for in international conventions, treaties and international agreements duly adopted and ratified by the respective bodies take precedence, after its entry into force in the international and domestic order, over all legislation and internal regulations of equal constitutional value.

669. Article 190 of the CPC provides among other things that relations with foreign authorities relating to the administration of criminal justice are regulated by international treaties and conventions and, in their absence or insufficiency, the provisions in special law and also by the provisions of Chapter IV of the CPC. Additionally, Article 194 of the CPC on cooperation with international law enforcement agencies states that the provisions of Article 190 shall apply, mutatis mutandis, to cooperation with judicial bodies established under international treaties or conventions that bind the State of São Tome.

670. Article 4(d) of the FIU Law empowers the FIU to provide, and receive from entities outside the Democratic Republic of Sao Tome and Principe information concerning the crime of money laundering and terrorism financing offense in compliance with inter-regional agreements or any other legal international instrument , as referred to in the previous paragraph;

671. Article 60-B of the AML/CTF Law empowers entities in STP to provide and receive information to and from foreign entities in compliance with inter-regional agreements or any instrument of international law in different materials such as mutual legal assistance, extradition, cooperation on confiscation of proceeds of crime and cooperation between the competent authorities.

672. Under the (Community of Portuguese Speaking Countries) CPLP, the country is also a signatory to the Protocol on Judicial Assistance in Criminal Matters between the Member States of the CPLP, Convention on the transfer of sentenced persons between member states of the CPLP, Praia, 23November, 2005.

Widest range of international cooperation (c. 40.1)

673. Pursuant to Article 13 of the Constitution, article 190 and 194 of the CPC, article 4 of the FIU Law and article 60-B of the AML/CFT Law, the authorities of STP mandated to deal with issues related to ML and TF can cooperate with domestic and foreign competent authorities and international organizations, in matters such as the exchange of information, preliminary investigations, searches, seizures, court hearings and execution of foreign judgments. The authorities stated that PIC may provide assistance because of some support programs that São Tomé and Príncipe has with some countries, especially the CPLP. Despite some flaws with quota payment with Interpol, STP continues to benefit from some services which are very useful for investigation. In addition to mutual agreements with the CPLP, STP conducts investigations with INTERPOL since it is a Member State, the training of magistrates and police training school, there has not been any other kind of cooperation.

Provision of assistance in timely, constructive and effective manner (c. 40.1.1)

674. According to the authorities, timely, constructive and effective international cooperation will depend on the nature of the requests and its compliance with the laws of STP (article 193 of the CPC). There has been no cooperation in terms of AML/CFT whether at the FIU or law enforcement level. Due to resource and capacity constraints, it is doubtful whether STP can provide assistance in a timely, constructive and effective manner.

Clear and effective gateways for exchange of information (c. 40.2)

675. 60-B of the AML/CFT Law mandates entities to provide cooperation, including exchange of information. Competent authorities can also exchange information in accordance with Article 13 of the Constitution and article 190 of the CPC. However, there are no procedures in detailing how this duty can be discharged. The authorities have not exchanged information in relation to AML/CFT. Therefore, the effectiveness of the system for information cannot be ascertained at this point.

Spontaneous exchange of information (c. 40.3)

676. There is no express requirement for competent authorities to exchange information spontaneously. However, this may be possible under Article 13 of the Constitution, article 190 of the CPC and article 60-B of the AML/CFT Law which empower entities in Sao Tome to provide international cooperation, including the exchange of information.

FIU to FIU cooperation

677. Article 4(d) of the FIU Law permits the FIU to provide, and receive from, entities outside STP information concerning the crime of money laundering and crime of financing terrorism in compliance with inter-regional agreements or any other instrument of international law. However, the FIU has not exercised this power.

No of Requests received from Egmont FIUs

678. There is no statistics.

Cooperation by law enforcement agencies

679. STP is a member of the INTERPOL and the WCO. There are bilateral arrangements on the exchange of information on security matters. Co-operation agreements also exist in judicial and criminal investigations between STP and members of the CPLP. Chapter IV of the CPC permits LEAs to provide international cooperation. LEAs have not applied these provisions to ML and TF.

Making inquiries on behalf of foreign counterparts (c. 40.4 and c.40.4.1)

680. Authorities may make enquiries if investigations are also open in the country and if the requests of foreign counterparts are typified by law. The prosecutor can perform these searches at the request of another country's prosecutor.

Enquiries on behalf of foreign counterparts (c.40.4.1)

681. *PIC:* PIC does not have a database, because of the program cost, only some statistics[31]. Any detailed information about any investigation, will be available with the responsible head of the brigade.

682. *Prosecutor:* The prosecutor can perform these searches at the request of another country's prosecutor.

Conducting of investigations on behalf of foreign counterparts (c. 40.5)

683. In accordance with Article 13 of the Constitution and article 190 of the CPC, LEAs can conduct investigation on behalf of foreign counterparts provided the acts are criminalized in the country and there is an open investigation.

No unreasonable or unduly restrictive conditions on exchange of information (c. 40.6)

684. Information exchanges can be made without an open inquiry but for the investigation this detail is vital to the fulfillment of the principle of legality, since during investigations some actions are required to have permission.

Provision of assistance regardless of possible involvement of fiscal matters (c. 40.7)

685. Prosecutors and PIC will provide assistance regardless of possible involvement of fiscal matters. This is due to the fact that tax evasion or fraud is criminalized and is a predicate offence of money laundering.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 40.8)

[31] Statistics not provided

686. In accordance with article 4 of the Internal Regulations of the Financial Information Unit faced with the matter. Banking secrecy, in accordance with article 252 of the CPC, is not in principal reason to refuse the provision of international cooperation.

Special Recommendation V:

V.5 Countries should ensure that Criteria 40.1 - 40.9 (in R. 40) are also applicable to the obligations of SR V

6.5.2 Recommendations and comments

687. STP has legal basis to provide international cooperation. However, there are no clear procedures on how to provide such cooperation. The FIU, LEAs and supervisors have never exchanged information with foreign counterparts whether spontaneously or on request the evidencing lack of use of the gateways that are provided by the legal frameworks. International cooperation will be impeded in cases where offences have not been criminalized. STP should:

- Adopt clear procedures for providing international cooperation
- Criminalise the remaining predicate offences of ml, as well as the financing of individual terrorists;
- Take urgent steps to implement the provisions on international cooperation contained in international instruments; and
- Maintain comprehensive statistics on international cooperation.

6.5.3 Compliance with Recommendation 40 & SR. V

	Rating	Summary of factors underlying the ratings
R.40	**PC**	• No clear procedures for providing international cooperation • Cooperation will be impeded in cases relating to offences that have not been criminalized • Provisions on international cooperation have not been implemented
SR.V	**NC**	• Financing of individual terrorist is not criminalized • No clear procedures for providing international cooperation on TF • Competent authorities have never exchanged information on TF

7 Other issues

7.1. Recommendations and Comments - Resources and Statistics

- The authorities are recommended to:
- Provide competent authorities with adequate, relevant and specialized trainings on a regular basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary.
- Increase the human and financial resources for the FIU and ensure full independence of the FIU.
- Develop comprehensive and reliable statistics on property frozen or seized for each type of predicate offense.
- Review the effectiveness of STP's AML/CFT systems on a regular basis.
- Maintain in a systematic fashion comprehensive statistics on international cooperation by LEAs and supervisors, including whether the request was granted or refused

	Rating	Summary of factors underlying the ratings
R.30	**PC**	• General lack of staff, expertise, technical and other resources to fully and effectively perform functions • Staff of all competent authorities have not been provided with adequate and relevant training for combating ML and TF
R.32	**NC**	• Competent authorities are not maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and TF • The statistics of the FIU are insignificant and are not adequately detailed.

Table 1: Ratings of Compliance with FATF Recommendations

The ratings of compliance are made in accordance with FATF Recommendations based on the four levels mentioned in the 2004 Methodology namely, (Compliant-(C), Largely Compliant (LC), Partially Compliant (PC), Non- Compliant (NC), or could in exceptional cases be marked as not applicable (N/A)

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country

Forty Recommendations	Rating	Summary of factors underlying rating
Legal Systems		
1. ML offence	**PC**	• Piracy and counterfeiting of products, and insider trading and market manipulation have not been criminalized • Relevant authorities lack the knowledge and capacity to expeditiously respond to ML risks and threats • There has been no implementation of the provisions relating to this Recommendation, including self-laundering.
2. ML offence – mental element and corporate liability	**LC**	• Proof that property is the proceeds of crime without conviction of a predicate offence applies only to instrumentalities • Sanctions have not been applied to ascertain their effectiveness
3. Confiscation and provisional measures	**PC**	• There are no clear procedures to freeze property subject to confiscation

Forty Recommendations	Rating	Summary of factors underlying rating
		• There has been no seizure, freezing or confiscation of proceeds of crime or instrumentalities used in or intended for use in the commission of a crime
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	• The duty of confidentiality is a sensitive point in STP given the small size of its society and the consequent difficulty to keep certain transactions/situations confidential. This issue is reflected in the lack of communication to the competent authorities.
5. Customer due diligence	**NC**	• Requirement for CDD relating to suspicious transactions defined to incorporate elements of unusual transactions • No requirement to take reasonable steps to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source • No requirement to obtain information on the purpose and intended nature of the business relationship • No requirement to understand the ownership and control structure of legal persons or entities without legal personality to determine the identity of individuals who own or control the customer. • No requirement in law or regulation for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships • No express requirement to terminate business relationship and consider submitting an STR when business relations have already commenced • No requirement to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct CDD on such existing

Forty Recommendations	Rating	Summary of factors underlying rating
		relationships at appropriate times • No requirement for FIs to apply simplified or reduced CDD measures to customers resident in another country • No requirement to apply simplified or reduced CDD measures where there are low risks. There are rather exemptions • Situations of duty of refusal and possible declaration of suspicious transaction should be established. • Implementation of CDD measures is not effective
6. Politically exposed persons	**NC**	• Requirement to determine whether a customer is a PEP only relate to occasional transactions • No requirement to establish the source of wealth and funds of beneficial owners identified as PEPs. • No express requirement to conduct enhanced ongoing monitoring of business relationship with PEPs.
7. Correspondent banking	**NC**	• The requirements on correspondent banking have been not reflected in the legal framework of STP despite the existence of correspondent banking relationships
8. New technologies & non face to- face business	**NC**	• Provision on new technologies only applies to banks
9. Third parties and business introducers	**NC**	• This recommendation is not reflected in the legal framework of STP and there is doubt that FIs will not rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business in future.
10. Record keeping	**PC**	• No evidence of effective implementation of record keeping requirements

Forty Recommendations	Rating	Summary of factors underlying rating
11.Unusual transactions	**PC**	• Requirement applies only to transaction involving an amount equal to or more than 245,000,000 Dbs conducted on behalf of third parties • In practice, there are no automated analysis of customer transactions • There is no reference to transaction that has "No apparent or visible lawful purpose"
12. DNFBP – R.5, 6, 8-11	**NC**	• Authorities have not issued any regulation or guidance accordingly and DNFBPs have not complied with their obligations under the Law • The description of the shortcomings of preventive regime with respect to FIs applies almost entirely to DNFBPs (especially the limited range of CDD measures, monitoring and the duty to report suspicious transactions). • Lawyers have not submitted STRs to the Bar Association
13. Suspicious transaction reporting	**NC**	• There is no requirement to submit STRs to the FIU • No express requirement to report attempted transactions • Requirement to report suspicious transaction relating to high risk countries is based on a threshold • The full range of predicate offences, including the financing of individual terrorist, have not been criminalised • Poor quality of STRs submitted No effective • No effective implementation of requirement to submit STRs

Forty Recommendations	Rating	Summary of factors underlying rating
14. Protection & no tipping-off	**LC**	• No express provision for protection of those who provide information even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred
15. Internal controls, compliance & audit	**NC**	• No requirement to appoint compliance officer at management level. • No requirement for compliance officer and other appropriate employees to have timely access to customer identification data and other STR information, transaction records and other relevant information. • No requirement for FIs to maintain independent and adequately resourced internal audit function to test compliance with AML/CFT procedures, policies and controls. • Inadequate AML/CFT training programs, including information on methods and trends of ML and TF, explanation of all laws and obligations relating to AML/CFT, particularly the obligations relating to CDD and suspicious transactions reporting, to ensure that employees are up to date on new developments. • No express requirement to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	**NC**	• See comments on R.12 above
17. Sanctions	**PC**	• There has been no sanctions for violation of AML/CFT obligations
18. Shell banks	**PC**	• The legal standards prohibit the establishment of correspondence with shell banks, but there is no express prohibition of the establishment of shell

Forty Recommendations	Rating	Summary of factors underlying rating
		banks in STP
19. Other forms of reporting	**NC**	• STP has not considered the feasibility and utility of implementing a system where FIs report all transactions in currency above a fixed threshold to a national central agency with a computerized data base • Absence of a national central agency with a computerised database to receive reports
20. Other NFBP& secure transaction techniques	**PC**	• Other non financial businesses and professions have not been issued with guidelines • No supervision for compliance with AML/CFT obligations • No submission of STRs to the FIU • The economy of STP relies heavily on cash
21. Special attention for higher risk countries	**NC**	• No effective measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries • There is no requirement to examine the background and purpose of transactions and take related actions • No express requirement to apply appropriate counter-measures where a country continues not to apply or insufficiently apply the FATF Recommendations
22. Foreign branches & subsidiaries	**NC**	• No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that the local laws and regulations permit. • There is no requirement for FIs to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which

Forty Recommendations	Rating	Summary of factors underlying rating
		do not or insufficiently apply the FATF Recommendations, or apply a apply the higher standard to the extent that local laws will permit, where the requirements of the home and host countries differ • There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by host country laws, regulations and other measures
23. Regulation, supervision and monitoring	**NC**	• Lack of risk assessment and appropriate strategy for AML/CFT regulation and supervision of FIs which are operating in STP • Lack of consistency in assessing the competence and suitability of managers and employees
24. DNFBP - regulation, Supervision and monitoring	**NC**	• There is no supervision of DNFBPs for AML/CFT purposes • Insufficient technical and other resources to perform supervisory functions
25.Guidelines & Feedback	**NC**	• Lack of effective guidance to FIs • Limited provision for feedback • No guidance for DNFBPs on how to submit STRs • Banks that submit STRs are not provided with feedback • No guidelines has been issued and, except for the Bar Association, there is no expectation that this will occur in the short term
Institutional and other measures		
26. The FIU	**PC**	• Although the FIU is designated as a national centre

Forty Recommendations	Rating	Summary of factors underlying rating
		for receiving, analyzing and disseminating disclosures of STR and other relevant information concerning ML or FT activities, there is no express requirement for reporting entities to submit STRs to the FIU • The FIU does not have access, directly or indirectly, on a timely basis to administrative and law enforcement information that it requires to properly undertake its functions • FIU is empowered to request for additional information to enrich its database rather than to properly undertake its functions • The FIU lacks sufficient operational independence and autonomy to ensure that it is free from undue influence - inadequate financial and other resources - too much influence by the Minister in the affairs of the FIU - no certainty about tenure of office of Coordinator and Deputy Coordinator • There is no requirement for the FIU to publicly release periodic reports, including statistics, typologies and trends of money laundering or terrorist financing • Though the FIU had received some STRs, it has not disseminated any report to the competent authorities to facilitate investigations.
27. Law enforcement authorities	**PC**	• No authority to investigate counterfeiting of products and insider trading and market manipulation unless they are criminalised • Lack of resources, capacity and training to deal

Forty Recommendations	Rating	Summary of factors underlying rating
		with issues relating to ML/TF and general crime fighting • No investigation of ML/TF cases • Absence of review of methods, techniques and trends
28. Powers of competent authorities	**PC**	• Lack of application of available powers for AML/CFT purposes
29 Supervisors	**NC**	• Absence of monitoring of FIs to ensure compliance with requirements to combat ML and TF • There has been no inspections of FIs, including on-site inspections to ensure compliance • There is no evidence of the use of available powers of enforcement and sanction against FIs
30. Resources, integrity and training	**PC**	• General lack of staff, expertise, technical and other resources to fully and effectively perform functions • Staff of all competent authorities have not been provided with adequate and relevant training for combating ML and TF
31.National co-operation	**PC**	• Lack of capacity and resources to ensure effective coordination and cooperation
32**.** Statistics	**NC**	• Competent authorities are not maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and TF • The statistics of the FIU are insignificant and are not adequately detailed.
33. Legal persons - beneficial owners	**PC**	• Adequate measures are not in place to ensure that there is adequate, accurate and timely

Forty Recommendations	Rating	Summary of factors underlying rating
		information on the beneficial ownership • Information on the companies registrar pertains only to legal ownership/control and does not include information on beneficial ownership • There is no mechanism in place to verify the identity of owners for AML/CFT purposes
34. Legal arrangements beneficial owners –	**NA**	Trusts do not exist in STP
International Co-operation		
35. Conventions	**PC**	• Piracy and counterfeiting of products, and insider trading and market manipulation have not been criminalized • The provisions of the Vienna and Palermo Conventions have not been fully implemented •
36. Mutual Legal Assistance (MLA)	**PC**	• The requirements of this Recommendation have not been implemented • The scope of MLA treaties is limited to members of the CPLP • Lack of capacity and resources to provide MLA
37. Dual criminality	**PC**	• The requirements of this Recommendation have not been implemented
38. MLA on confiscation and freezing	**PC**	• No formal procedures are in place to coordinate seizure and confiscation actions with countries other than member States of the CPLP • The establishment of an asset forfeiture fund has been considered but is yet to be effectuated • Existing provisions have not been implemented
39. Extradition	**NC**	• STP has not criminalized the full range of predicate offences of money laundering

Forty Recommendations	Rating	Summary of factors underlying rating
		• STP has no specific laws or procedures on extradition to ensure timely response to or submission of extradition requests • STP does not extradite its nationals and there is no requirement to submit a case without undue delay to competent authorities for the purpose of prosecution of an offence set forth in a request involving a national • There is no legal provision which permits cooperation for the prosecution of nationals • Extradition treaties are limited to CPLP countries • There has been no implementation of existing provisions on extradition
40. Other forms of co-operation	**PC**	• No clear procedures for providing international cooperation • Cooperation will be impeded in cases relating to offences that have not been criminalized • Provisions on international cooperation have not been implemented

Nine Special Recommendations	Rating	Summary of factors underlying rating
I. Implement UN instruments	**PC**	• Not all instruments have been ratified • Financing of individual terrorist is not criminalised • Absence of mechanisms to implement UNSCRs 1267 and 1373 • Lack of full implementation of relevant international instruments
II. Criminalise terrorist financing	**PC**	• Relevant personnel and institutions lack the capacity to implement CFT provisions • Terrorist financing provisions, including sanctions, have not been implemented
III. Freeze and confiscate terrorist assets	**NC**	• Financing of individual terrorist is not criminalised • No measures to freeze or seize terrorist funds or other assets in accordance with UNSCR 1267 and 1373
IV. Suspicious transaction reporting	**NC**	• Requirement on STR relating to terrorist financing have not been implemented • Financing of individual terrorist is not criminalised
V. International co-operation	**NC**	• STP has no specific laws or procedures on extradition to ensure timely response to or submission of extradition requests • No clear procedures on international cooperation • STP does not extradite its nationals and there is no requirement to submit a case without undue delay to competent authorities for the purpose of prosecution of an offence set forth in a request involving a national • There is no legal provision which permits cooperation for the prosecution of nationals • Extradition treaties are limited to CPLP countries • There has been no implementation of existing provisions on extradition
VI. AML requirements for money/value transfer services	**PC**	• There is no monitoring of money or value transfer services • Existence of informal money changing businesses that are not being regulated

Nine Special Recommendations	Rating	Summary of factors underlying rating
VII. Wire transfer rules	**NC**	• Measures for treatment of obligations of Special Recommendation VII are not defined. • No requirement to include the originator's address, or any provision permitting FIs to substitute the address with a national identity number, customer identification number, or the date and place of birth of the originator in respect of domestic wire transfer • There are no regulations that indicate which procedures to adopt for incoming wire transfers that do not contain complete originator information. • The KYC Guidelines does not provide for sanctions for violation of the regulations, including wire transfer requirements • No supervision to ensure compliance with rules and regulations implementing cross-border and domestic wire transfers between FIs.
VIII. Non-profit organisations	**NC**	• There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing. • The authorities have not conducted outreach or provide effective guidance on terrorist financing to the NPO sector. • The register of NGOs is not kept up-to-date • There is no supervision or monitoring of the NPO sector. • There is no effective domestic co-operation or coordination amongst authorities that would eventually have information on NPOs. • It is not clear as to whether STP can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.
IX. Cross Border Declaration & Disclosure	**NC**	• There is no declaration system in place • Customs officials are not adequately trained nor have the means for effective control of cross border movements of currency and bearer negotiable instruments.

TABLE 2: RECOMMENDEDACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional measures	
2.1 Criminalization of ML (R.1 & 2)	• Enact the draft AML/CFT Bill to criminalize the full range of predicate offences of money laundering in accordance with the FATF Recommendations; • Train relevant personnel to effectively respond to the risks and threats of money laundering; • Extend the requirement for proof that property is the proceeds of crime without conviction of a person for the predicate offence should extend to all property, regardless of nature; • Take concrete steps to investigate, prosecute and convict persons found culpable of committing money laundering crimes to ascertain the effectiveness of the AML/CFT regime.
2.2 Criminalization of Terrorist Financing (SR.II)	• Build the capacity of relevant institutions to implement measures to combat the financing of terrorism
2.3 Confiscation, freezing and seizing the proceeds of crime (R.3)	• Clearly define procedures that allow the initial action to be taken ex-parte or without prior notice • Amend the AML/CFT Law to clearly provide for freezing measures
2.4 freezing of funds used for terrorist financing (SR.III)	• Amend the Penal Code to criminalise the financing of an individual terrorist • Put in place and implement measures, including legislative ones, to freeze without delay funds or other assets of terrorists, those who finance

AML/CFT System	Recommended Action (listed in order of priority)
	terrorism and terrorist organizations in accordance with the UNSCRs 1267 and 1373.
2.5 The financial intelligence unit and its functions	• STP should: • establish a data collection system at the FIU to enable the FIU to analyse the trend of ML/TF. The data and other information must include details on prosecutions, convictions, sentences, freezing/seizures and loss of property. • as a matter of priority, make the FIU fully autonomous and operationally independent. • Amend the AML/CFT Law to expressly require reporting entities to submit STRs to the FIU • Provide the FIU with adequate financial and human resources (including the recruitment of the Deputy Coordinator), and training in financial analysis. • Provide the FIU with suitable premises with adequate security for personnel and information • Equip the FIU with modern information and communication technology equipment, including AML/CFT analytical software to enable the FIU to effectively receive, analyse and disseminate disclosures of STRs and other relevant information concerning suspected money laundering or terrorist financing activities. • Amend article 4(2) of the Internal Rules of the FIU to empower the FIU to request and obtain additional information needed from reporting entities to properly undertake its functions, not only to enrich its database. In this regard, the FIU should consider establishing protocols with the various institutions involved in AML/CFT matters in the country to facilitate timely access to the information needed. This should not be

AML/CFT System	Recommended Action (listed in order of priority)
	difficult due to the fact that the governing Board of the FIU consists of multi-sectoral institutions. • The FIU should intensify efforts to give guidance to reporting institutions on how to prepare STRs and cooperate with other public entities to ensure quality STRs
2.6 Law enforcement, prosecution authorities and other competent authorities (R. 27 & 28)	***Recommendation 27*** • STP should train relevant officers and adequately equipped them to deal with ML/TF cases ***Recommendation 28*** • Develop and sustain the knowledge and skills of personnel on ML/TF to ensure effective use of these powers
2.7 Cross Border Declaration and Disclosure (SR IX)	• STP should urgently amend the AML/CFT Law, issue regulations or other enforceable means to: ➢ Implement a (a) A declaration system which requires: (i) All persons making a physical cross-border transportation of currency or BNIs that are of a value exceeding a prescribed threshold should be required to submit a truthful declaration to the designated competent authorities; and (ii) The prescribed threshold cannot exceed EUR/USD 15,00060 OR (b) A disclosure system which requires: (i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments should be required to make a truthful disclosure to Customs authorities upon request; and (ii) The Customs authorities have the authority to make their inquiries on a targeted basis, based on intelligence or suspicion, or on a random basis. • Upon discovery of a false declaration/disclosure of

AML/CFT System	Recommended Action (listed in order of priority)
	currency or bearer negotiable instruments or a failure to declare/disclose them, Customs authorities should have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. ➢ empower Customs officials to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found where there is a suspicion of ML or TF or where there is a false declaration/disclosure. ➢ at a minimum, retain information on the amount of currency or bearer negotiable instruments declared/disclosed or otherwise detected, and the identification data of the bearer(s) should be for use by the appropriate authorities in instances when: (a) A declaration which exceeds the prescribed threshold is made; or (b) Where there is a false declaration/disclosure; or (c) Where there is a suspicion of money laundering or terrorist financing. ➢ Make information obtained through the processes implemented in the disclosure or declaration system available to the FIU either through: (a) a system whereby the FIU is notified about suspicious cross-border transportation incidents; or (b) by making the declaration/disclosure information directly available to the FIU in some other way ; ➢ ensure adequate national co-ordination among customs, immigration and other related authorities on issues related to the implementation of cross-border declaration or disclosure of currency or BNI.

AML/CFT System	Recommended Action (listed in order of priority)
	• ➢ at the international level, allow for the greatest possible measure of co-operation and assistance with competent authorities, consistent with the obligations under the FATF Recommendations on ratification and implementation of international instruments, mutual legal assistance, extradition and international cooperation ; ➢ ensure that effective, proportionate and dissuasive sanctions also apply to persons who make a false declaration or disclosure contrary to the obligations to declare or disclose ; ➢ ensure that effective, proportionate and dissuasive sanctions also apply to persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to TF or ML contrary to the obligations under this SR; ➢ ensure that seizure, freezing and confiscation requirements also apply in relation to persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to TF or ML; ➢ ensure that freezing measures also apply in relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing; ➢ where an unusual cross-border movement of gold, precious metals or precious stones is discovered, STP should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and should co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action; ➢ subject the systems for reporting cross border

AML/CFT System	Recommended Action (listed in order of priority)
	transactions to strict safeguards to ensure proper use of the information or data that is reported or recorded ; and ➢ develop and apply training, data collection, enforcement (including sanctions) and targeting programmes
Preventive measures – Financial Institutions	
3.1 Risk of money laundering and terrorist financing (R. 5)	• Identify the beneficial owners and take necessary steps to verify the identity of customers be they existing or potential. • Require FIs to obtain information on the purpose and nature of the business relationship in general and customers and beneficial owners. • For customers that are legal persons or entities without legal personality, FIs should take steps to understand the structure of ownership and control and determine the identity of individuals who actually own or control the customer and the purpose and nature of business relationship and its risk profile. • There should be express requirement in law or regulation for diligence procedures (in addition to the identification of customers, representatives and beneficial owners) and the situations in which this duty should be strengthened and it should be shown what risk situations that require such requirements (e.g. remote operations, PEPs outside the territory, correspondence with risk countries). • FIs should conduct ongoing monitoring of the business relationship of operations / customers to ensure that transactions are consistent with the risk profile of the customer, including if necessary the source of funds. • FIs should apply enhanced due diligence for customers, business relationships or transactions into categories of higher risk. • Require FIs to apply CDD measures to existing customers on the basis of materiality and risk and

AML/CFT System	Recommended Action (listed in order of priority)
	to conduct CDD on such existing relationships at appropriate times. • In cases where the customer is allowed to benefit from the business relationship prior to verification of your identity, FIs should adopt risk management procedures regarding the conditions in which this situation occurs. • Expressly require FIs to refuse any transaction, start business relationship or perform any occasional transaction when the identification data of the customer, his representative or the beneficial owner is not forthcoming, or information on the structure of ownership and control of the client, the nature and purpose of the business relationship and the origin and destination of the funds is not provided. • Expressly require FIs to terminate business relationship and consider making a suspicious transaction report where the financial institution has already commenced the business relationship and the financial institution is unable to identify and verify the identity of a customer, that a person purporting to act on behalf of a customer is so authorized, or identify and verify the identity of a beneficial owner.
3.2 Customer due diligence including enhanced or reduced measures (R.6-8)	**Recommendation 6:** STP should amend the AML/CFT Law, issue regulations or other enforceable means to require FIs to: • establish appropriate systems of risk management to determine whether the existing or potential customer or the beneficial owner is a domestic PEP in all cases, not only for occasional transactions; • obtain approval from Senior Management to continue the business relationship when a client has been accepted and subsequently determines that this or the beneficial owner becomes PEP. • take adequate measures to establish the source of wealth and funds of beneficial owners identified as PEPs. • conduct enhanced ongoing monitoring of their business relationships with PEPs.

AML/CFT System	Recommended Action (listed in order of priority)

	Recommendation 7
	STP should require FIs through law, regulation or other enforceable means to:
	
	• Gather sufficient information about a correspondent institution to understand fully the nature of their businesses and to determine from publicly available information the reputation of the institution and the quality of its supervision, including whether the institution has been subject to a ML or TF regulatory action;
	• Assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective;
	• Obtain approval from senior management before establishing new correspondent relationships;
	• Document the respective AML/CFT responsibilities of each institution;
	• Where a correspondent relationship involves the maintenance of "payable-through" accounts, be satisfied that
	  o the respondent financial institution has performed all the normal CDD obligations on its customers that have direct access to the accounts of the financial institution; and
	  o the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent FIs.
	
	Recommendation 8:
	• Stronger and more direct requirements are necessary to ensure that non-face to face business relationships, transactions and particularly modern technology is not used by money launderers and those who finance terrorism.
	• A formal monitoring system should be put in place to guide the FIs and to check abuse of new technologies for ML or FT purposes.
	• Supervisors should consider the risks associated

AML/CFT System	Recommended Action (listed in order of priority)
	with non-face to face business and ensure that CDD measures are applied to non-face to face customers.
3.3 Third parties and introduced business (R.9)	• STP should provide requirements of this Recommendation in law, regulation or other enforceable means
3.4 financial institution secrecy or confidentiality (R.4)	• The FIU should, in collaboration with supervisors, undertake more sensitization programmes for the general population on AML/CFT issues, including the need to provide relevant information to combat ML and TF
3.5 Record keeping and wire transfer rules (R 10 &SR VII)	**Recommendation 10** • There should be effective monitoring and supervision of all sectors to ensure compliance with record keeping requirements. **Special Recommendation VII** • The CBSTP should issue regulations to ensure that FIs include accurate and relevant information about the originator (name, national identification number and account number) on all wire transfers that are sent, and to ensure that the information remains with the transfer or associated message through the payment chain. These regulations should include the obligation to monitor and conduct an enhanced scrutiny of the transfers that do not contain complete originator information. • There should be measures in place to effectively monitor the compliance of FIs with rules implementing requirements on wire transfers.
3.6 Monitoring of transactions and relationships (R. 11& 21)	**Recommendation 11** STP should ensure that FIs put in place mechanisms, including automated systems that enable them to continuously monitor customer accounts to ensure that there is no unusual activity. **Recommendation 21** • The CBSTP (or the Ministry of Finance) and

AML/CFT System	Recommended Action (listed in order of priority)
	sector supervisory authorities should advice reporting entities of concerns about weaknesses in the AML/CFT systems of other countries • Amend the AML/CFT Law to require FIs to examine the background and purpose of transactions that have no apparent economic or visible lawful purpose, and make written findings available to assist competent authorities and auditors • CBSTP should issue regulations and circulars to advise FIs on appropriate counter-measures they can apply when a country continues not to apply or insufficiently applies the FATF Recommendations; • CBSTP should put in place measures that require FIs to apply countermeasures against countries that do not or insufficiently apply the FATF standards, in case there was necessary.
3.7 Suspicious transactions reports and other reporting (R. 13,14,19, 25, & SR IV)	**Recommendation 13** • The FIU should improve the awareness of FIs regarding their reporting obligations and enhance their capability to identify TF related transactions • Amend the AML/CFT Law or issue regulations to require FIs to submit STRs, including STRs on attempted transactions, to the FIU • Criminalise the full range of predicate offences and designate them as predicate offences of ML • Criminalise the financing of individual terrorist **Recommendation 14** • Provide protection for those who provide information even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. **Recommendation 25** • STP should require supervisory and law enforcement authorities to provide reporting

AML/CFT System	Recommended Action (listed in order of priority)
	entities that submit STRs with adequate and appropriate feedback, including: f. Statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures; g. Information on current techniques, methods and trends (typologies); h. Sanitised examples of actual money laundering cases; i. Acknowledgement of receipt of the report; j. If a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and information on the decision or result, if available. • STP should also have regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting FIs and Other Persons. **Recommendation 19** • STP should consider the feasibility and utility of implementing a system where FIs report all transactions in currency above a fixed threshold to a national central agency with a computerised database. • When the system for reporting large currency transaction is in place, the reports should be maintained in a computerised database, available to competent authorities for AML/CFT purposes. • The system for reporting large currency transactions should be subject to strict safeguards to ensure proper use of the information or data that is reported or recorded.
3.8 Internal controls, compliance, audit and foreign branches (R.15 &22)	***Recommendation 15*** • The FIU and CBSTP should require FIs to: • develop appropriate compliance mechanisms, at management level, including the appointment of compliance at the management level; • ensure that the compliance officer and other

AML/CFT System	Recommended Action (listed in order of priority)
	appropriate employees have timely access to customer identification data and other STR information, transaction records and other relevant information; • maintain independent and adequately resourced internal audit function to test compliance with these procedures, policies and controls; • establish a program of continuous professional training to ensure that their employees are up to date on new developments, including information on methods and trends of ML and TF. They should be given clear explanation of all laws and obligations relating to AML/CFT, particularly the obligations relating to CDD and suspicious transactions reporting; • put in place screening procedures to ensure high standards when hiring employees. ***Recommendation 22*** STP should amend the AML/CFT Law, issue regulations or other enforceable means to require FIs to: ➢ ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that the local laws and regulations permit; • pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, or apply a apply the higher standard to the extent that local laws will permit, where the requirements of the home and host countries differ • ensure that their institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by host country laws, regulations and other measures
3.9 Shell banks (R.18)	• STP should expressly prohibit the establishment of shell banks.

AML/CFT System	Recommended Action (listed in order of priority)
3.10 The supervisory and oversight system- competent authorities and SROs, Role, functions, duties, and powers, (including sanctions) (R. 23, 29, 17 & 25)	***Recommendation 23*** • Amend the AML/CFT Law to specifically designate the CBSTP as the supervisory authority for FIs and provide it with the necessary powers. • The CBSTP should conduct a risk assessment of the AML/CTF level for FIs to operate in STP and develop an appropriate strategy at the level of regulation and supervision. ***Recommendation 29*** • CBSTP should extend its inspection functions to the assessment of risk of ML/TF, to actually analyze the procedures followed in this matter. • The CBSTP should update its manual inspection to include procedures and supervisory instruments in accordance with the AML requirements. • The staff of the CBSTP should be provided with additional training on strategies and supervisory practices in AML/CFT. ***Recommendation 17*** • CBSTP should supervise FIs for AML/CFT purposes and apply sanctions for violations of AML/CFT obligations. ***Recommendation 25*** • The authorities should define a complete set of AML/CFT directives for FIs. This should cover the FATF Recommendations and relevant aspects of other international standards for the regulation of the financial sector; guidance on how to determine the appropriate countries for household of FIs, which can be used to assist in STR processes for non-face to face customers and information on countries which do not apply or insufficiently apply the FATF Recommendations.
3.11 Money value transfer services (SR.	• CBSTP should supervise FIs for AML/CFT

AML/CFT System	Recommended Action (listed in order of priority)
VI)	purposes and apply sanctions for violations of AML/CFT obligations • Register and/or license money changers and supervise them for compliance with AML/CFT obligations
4. Preventive Measures – Non-Financial Businesses and Professions (DNFBPs)	
4.1 Customer due diligence and record keeping (R. 12)	• STP should take the necessary administrative and regulatory measures (Government member responsible for each sector) required to apply AML/CTF Law in relation to DNFBPs and intervene in these sectors to sensitize them taking into account the risks associated with their activity, train them and involve them in the process of issuing regulations and guidelines conforming to the nature of their activities. • In a second phase, STP should develop supervisory activities for compliance with AML/CTF rules and regulations.
4.2 Suspicious transaction reporting (R.16)	• See comments on R.12 above
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** • Supervisory authorities should provide their designated entities with the requisite guidelines and supervise them for compliance. As an initial measure, STP should consider providing supervisors with training and resources for this, including assigning clear responsibilities for monitoring the various entities listed in article 41 with regard to prevention of ML and TF. ***Recommendation 25*** • SROs should collaborate with the FIU to issue guidelines to the members • Amend the AML/CFT Law to make adequate provisions for feedback
4.4 Other non-financial businesses and professions (R.20)	• STP should intensify efforts to introduce measures on financial inclusion and encourage its citizens to

AML/CFT System	Recommended Action (listed in order of priority)
	use the financial sector, including the use of ATM in conducting financial transactions
5. Legal Persons and Arrangements & Non-Profit Organizations	
5.1 Legal Persons – Access to beneficial ownership and control information	STP should: ➢ review the current system of incorporation to determine ways in which adequate and accurate information on beneficial ownership may be available in a timely manner for investigation by law enforcement authorities; ➢ put in place mechanisms, including computerizing its database, to verify the identity of owners for AML/CFT purposes ➢ provide the MOJ with adequate resources to enhance the capacity of the office to conduct onsite investigations on information provided by corporate bodies.
5.2 Legal Arrangements – Access to beneficial ownership and control information	
5.3 Non-profit organizations	STP should ensure that: ➢ the Register on NGOs is kept up-to-date and contains all information on the identity of the persons who own, control or direct the activities of the foundations, as well as the information on the legal persons they own or control. ➢ the information on the persons who own, control or direct the activities of the associations with legal personality should be kept up-to-date and should be made immediately available to the authorities of STP; ➢ the domestic and international transactions of the all NPOs are registered for a period of at least five years and made available to appropriate authorities to allow them to verify that funds have been spent in a manner consistent with the purpose and objectives of each organisation.

AML/CFT System	Recommended Action (listed in order of priority)
	➢ STP should also conduct, as soon as possible, a review of its non-profit sector, including a review on the TF risks. It should also start a program of outreach and awareness-raising with the NPOs in order to strengthen their resistance to terrorist financing abuse. ➢ STP should: ➢ review its legislation to ensure an effective supervision or monitoring of its non-profit sector. It should equally develop and implement mechanisms for the prompt sharing of information among all relevant competent authorities that have information on NPOs to take preventive or investigative actions; ➢ designate a point of contact and should develop procedures to respond to international requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support
6. National and International Cooperation	
6.1 National co-operation (R.31)	STP should: ➢ intensify efforts to explore technical assistance in its AML/CFT efforts ➢ enhance the capacity of competent authorities and adequately resource them to ensure effective coordination and cooperation
6.2 The Conventions and UN Special Resolutions (R. 35 & SR I)	• STP should fully implement the Vienna, Palermo and FT Conventions and also address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373. • The country should also consider broadening its scope of international relations to include more non-CPLP countries.
6.3 Mutual legal assistance (R. 36-38 & SR V)	• STP should intensify efforts to pass the draft AML/CFT Bill and establish the asset forfeiture fund. • Expand the scope of MLA to cover all countries
6.4 Extradition (R.39,37 & SR V)	The country is advised to:

AML/CFT System	Recommended Action (listed in order of priority)
	• criminalize the full range of predicate offences of money laundering and the financing of an individual terrorist; • adopt comprehensive legislation on extradition that provide for mandatory requirements which must be met before STP can make or accept an extradition request, who can make/receive an extradition request, how STP can make an extradition request to a foreign country, identification of the need to extradite and obtain an arrest warrant, documents/information required in support of an extradition request, channel(s) for sending/receiving extradition requests to or from a foreign country, surrender and return of person, arrest, custody or granting of bail of person, and determination of eligibility of person for surrender, consent to extradition; • build the capacity of relevant personnel to respond to extradition requests in a timely manner; and • Maintain statistics on issues relating to extradition.
6.5 Other forms of co-operation (R.40 & SR.V)	• STP should urgently: • adopt clear procedures for providing international cooperation • criminalise the remaining predicate offences of ML, as well as the financing of individual terrorists; • take urgent steps to implement the provisions on international cooperation contained in international instruments; and • Maintain comprehensive statistics on international cooperation.
7. Other issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** The authorities are recommended to: ➢ Provide competent authorities with adequate, relevant and specialized trainings on a regular

AML/CFT System	Recommended Action (listed in order of priority)
	basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary. ➢ Increase the human and financial resources for the FIU and ensure full independence of the FIU. ➢ Develop comprehensive and reliable statistics on property frozen or seized for each type of predicate offense. ➢ Review the effectiveness of STP's AML/CFT systems on a regular basis. ➢ Maintain in a systematic fashion comprehensive statistics on international cooperation by LEAs and supervisors, including whether the request was granted or refused ***Recommendation 32*** • Comments under R. 30 apply

ANNEX 1: DETAILS OF BODIES MET ON THE MUTUAL EVALUATION ON-SITE MISSION: MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

Ministries

1. Attorney-General's Office
2. Ministry of Finance and International Cooperation
3. Ministry of Infrastructure and Natural Resources
4. Ministry of Justice and State Reform
5. Ministry of Public Affairs

Criminal Justice and Operational Agencies:

1. Border Security and Immigration Services
2. Chamber of Commerce, Industry, Agriculture and Services of the Inspectorate for Economic Activity
3. Court of Auditors
4. Criminal Investigation Police
5. Department of Taxation
6. Department of Trade
7. Directorate of Taxation
8. Directorate of Customs
9. Financial Intelligence Unit
10. Financial Tribunal
11. General Inspectorate of Finance
12. Investment Council General Directorate for Planning
13. Multi-sectoral Commission
14. Narcotics Control Agency
15. National Police
16. Notary Services
17. One Stop Information Centre

18. Tax Enforcement Division
19. Tourism Department
20. Treasury Department

Financial Sector Bodies:

Central Bank of Sao Tome and Principe

Financial Institutions

1. Afriland Bank
2. BGFI Bank
3. Banque de l'Equateur
4. ECOBANK
5. International Bank of STP (BISTP)
6. NICON Insurance
7. Postal Corporation
8. SAT Insurance

Designated Non -Financial Businesses and Institutions

1. EKWATA Real Estate
2. Federation of Non-Governmental Organizations
3. Pestana Casino
4. Red Cross
5. Sao Tome and Principe Bar Association
6. Sao Tome and Principe Traders' Association
7. STP-Real Estate Company

ANNEX 2: LIST OF LAWS, REGULATIONS AND OTHER GUIDANCE RECEIVED

Laws:

1. Constituição 2003
2. Decreto 5/90 (Lei Quadro das Sociedades (OFF-SHORE)
3. Decreto n.º 25/2012 - Aprova o Regulamento Interno da Unidade de Informação Financeira da República Democrática de São Tomé e Príncipe
4. Decreto n.º 42/09- Aprova o Estatuto Orgânico da Direcção de Regulação e Controlo das Actividades Económicas.
5. Decreto N.º 60/2009 - Cria a Unidade de Informação Financeira, doravante designado por UIF
6. Decreto n.º 7/2010 - Regulamento do Guichet Único para Criação de Empresa
7. Decreto-Lei 3/90 – Bancos Offshore
8. Decreto-Lei n.º 11/2011 - Altera o Decreto n. 7/2004, Regula o exercício da actividade comercial e o seu licenciamento.
9. Decreto-Lei n.º 37 /2009 - Cria o Guiché Único para as empresas
10. Decreto-Lei n.º 40/2009-Extingue a Inspecção das Actividades Económicas.
11. Decreto-Lei n.º 41/09 - Cria a Direcção de Regulação e Controlo das Actividades Económicas.
12. Decreto-Lei nº 6/2010 -Que Altera o Decreto – Lei n.º 37/2009 Que Institui o Guichet Único.
13. Lei 9/95 – Autoriza O Governo A Legislar Em Matéria De Zonas Francas E Das Actividades Off Shore
14. Lei n.º 1 /2004 (Lei que define o quadro jurídico- legal regulador dos jogos de fortuna ou azar em São Tomé e Príncipe)
15. Lei n.º 10/2006- Lei Que Regula O Estatuto Da Ordem Dos Advogados
16. Lei n.º 14 /2009 - Alteração Da Carta De Lei De 28 De Junho De 1888, O Código Comercial
17. Lei n.º 15 /2008 - Lei de Combate ao Branqueamento de Capitais
18. Lei n.º 17/2009 - Altera o Decreto-Lei n.º 43843, de 5 de Agosto de 1961, que regula as Sociedades por Quotas

19. Lei n.º 2/ 2008 - Lei Orgânica da Polícia de Investigação Criminal.
20. Lei n.º 33/95, de 18 de Agosto - Lei de autorização de revisão do Código de Processo Civil
21. Lei n.º 5/2010 -Aprova o Código de Processo Penal
22. Lei n.º 6/2012 - Aprova o Código Penal
23. Lei n.º 7/2008 - Código de Investimentos
24. Lei n.º 8/2012 - Regime Jurídico de Constituição e Funcionamento das Organizações Não Governamentais.
25. Lei N.º 8/92, 3 De Agosto - Lei Orgânica Do Banco Central
26. Lei n.º 9/2009 - Lei que altera o Decreto-Lei n.º 47619, de 18 de Janeiro de 1968-Código do Notariado
27. Lei n.º 9/2010 - Primeira Alteração da Lei de Prevenção e Combate ao Branqueamento de Capitais
28. Lei n.º 9/92, 3 de Agosto - Lei Das Instituições Financeiras

International Conventions:

1. 1988 United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention)
2. International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999
3. United Nations Convention against Transnational Organized Crime (the Palermo Convention), 2000
4. United Nations Convention against Corruption (Merida Convention), 2003
5. Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
6. 1988 United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention);
7. International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999;

8. United Nations Convention against Transnational Organized Crime (the Palermo Convention), 2000;
9. United Nations Convention against Corruption (Merida Convention), 2003 ;
10. Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
11. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime
12. International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005
13. International Convention for the Suppression of Terrorist Bombings, 15 December, 1997
14. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September, 1971
15. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 14 December, 1973
16. International Convention against the Taking of Hostages, 17 December, 1979
17. Convention on the Physical Protection of Nuclear Material, 3 March, 1980
18. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 24 February, 1988
19. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March, 1988
20. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 10 March, 1988
21. Convention on the Marking of Plastic Explosives for the purpose of Detection, 1 March, 1991
22. International Convention for the Suppression of Acts of Unlawful Acts of Nuclear Terrorism, 2005
23. Amendment to the Convention on Physical Protection of Nuclear Material, 2005

24. Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005
25. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005
26. UN Security Council Resolution 1267 and 1373 and successor Resolutions.
27. OAU Convention on the Prevention and Combating of Terrorism, 1999;
28. The Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers

Regulations/Guidance:

1. NAP 02 -2007 Norma sobre Qualificação dos Adminstradores
2. NAP 06 2007 Conheça ao Seu Cliente
3. NAP 10 2011- Abertura Movimentacao Contas ME
4. NAP 11 07 - Controlo interno, auditoria e contabilidade
5. NAP 14 2009 Mercado Cambio
6. NAP 20 2009 Intervencao Instituições Financeiras
7. NAP 20 -Comunicação de Operações Suspeitas
8. Nap 29 2011- Instituições Financeiras
9. NAP 29 2011- Regulamento do pedido de autorização para funcionamento de instituição financeira
10. Nap 5 - Regulamento Banco Investimento
11. NAP n.º 11/2009 - Altera o Regime Cambial.
12. NAP n.º 16/2009- Limite de Taxas e Comissões a serem cobradas pelas Instituições Financeiras.
13. NAP n.º 17/2009- Fixa da Taxa de Câmbio.
14. Aviso 2/2006 (Regulamento Bancário Para Pedido de Funcionamento de Bancos Offshore)