

Inter-Governmental Action Group Against Money Laundering in West Africa

Mutual Evaluation Report

Reports on Observance of Standards and Codes (ROSC)

Anti-Money Laundering and Combating the Financing of Terrorism

07 November 2007

Cape Verde

Cape Verde is a member of GIABA. This report was conducted by International Monetary Fund on behalf of GIABA.

The report was adopted as a 2nd mutual evaluation by its Plenary on 07 November 2007.

©2007 International Monetary Fund/GIABA. All rights reserved. No reproduction or translation of this publication may be made without prior written permission. Requests for permission to further disseminate reproduce or translate all or part of this publication should be obtained from GIABA, Villa 101 Sacré Coeur III x VDN Dakar. Fax +221337241745, e-mail: secretariat@giaba.org

2007 © IMF/GIABA

A. Introduction

1. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering (AML) and 9 Special Recommendations for Combating the Financing of Terrorism (CFT) was prepared by the International Monetary Fund (IMF). The report provides a summary of the AML/CFT measures in place in Cape Verde, the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The assessment is based on the information available at the time of the mission from April 30 to May 15, 2007 and was conducted using the 2004 Assessment Methodology. The detailed assessment report (DAR) on which this ROSC is based was adopted by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) on November 6, 2007. The views expressed in this document are those of the IMF mission team and do not necessarily reflect the views of the government of Cape Verde or the Executive Board of the IMF.

B. Key Findings

2. Cape Verde has taken a number of measures to establish an AML framework but is less advanced with initiatives to establish an effective CFT regime. There is scope for strengthening the framework for the criminalization of money laundering and a clear need to criminalize the financing of terrorism. Significant work needs to be done to strengthen the institutional arrangements. There is currently no institutional arrangement in place that fully meets the FATF requirements for an effective financial intelligence unit. As the regulator of financial institutions, the Bank of Cape Verde needs to substantially review its AML supervisory strategy. There are currently significant differences in arrangements for the regulation and supervision of on-shore and off-shore financial institutions. The authorities need to pay particular attention to the vulnerabilities that arise from the less robust arrangements for financial institutions operating in the offshore sector.

3. Cape Verde has a number of arrangements in place that promote the transparency of legal persons and arrangements including the non-profit sector. However the various official registrars lack the capacity to provide timely information on the beneficial owner of legal persons. In addition there has been no specific review of the vulnerability of NPOs to abuse in the context of the financing of terrorism. While the legal framework extends obligations to some Non-Financial businesses and professions, there has been no implementation of these requirements. The modest arrangements that are in place to facilitate some level of cooperation among various government entities need to be addressed by the authorities.

C. Legal Systems and Related Institutional Measures

4. In 2002, Cape Verde enacted legislation that expanded the list of predicate offenses beyond illicit drug trafficking and criminalized money laundering in a manner consistent

with the material and subjective elements required by the Vienna Convention. However the range of predicate offenses for money laundering under the existing legislation falls short of the requirements set forth in the FATF 40 Recommendations. There have so far been no convictions for money laundering. While Cape Verde has ratified the UN Convention for the Suppression of the Financing of Terrorism, it has not yet criminalized the offense of the financing of terrorism domestically, in accordance with the convention.

5. Cape Verde has a comprehensive framework that addresses the freezing, seizing and confiscation of the proceeds and instrumentalities of crimes (including money laundering) or assets of corresponding value. There are also adequate provisions to protect the rights of bona fide third parties.

6. While financial institutions and other covered persons and entities have an obligation to file suspicious transaction reports with the judiciary police (JP), this office does not perform all of the functions of a financial intelligence unit. Within the JP, reports are received by an internal unit known as the Central Section for the Investigation of Trafficking of Stupefacients (SCITE). SCITE is not an operationally independent unit and does not have the autonomy to decide what information can be disseminated to the public ministry for possible prosecution. This unit does very limited financial analysis of reports and treats STRs in a manner very similar to criminal investigations. After informing the public ministry of the information contained in an STR, the JP has a great deal of autonomy in pursuing any matters related to the STRs. However, the JP does not have timely access to additional banking records or other confidential information.

7. Cape Verde has the necessary institutional framework, as well as the necessary powers in place for the investigation and prosecution of money laundering offenses. The JP has general powers to obtain information during the course of an investigation and to carry out inspection and searches for documents and information, including banking information if so authorized by a magistrate of the public ministry. However it does not have resources or expertise to adequately perform its investigatory functions related to money laundering offenses.

8. Cape Verde's money laundering law provides that persons entering the country must make a declaration to Customs when they are in possession of foreign currencies or bearer securities in excess of one million escudos (EUR 9,090). The law does not apply to persons leaving Cape Verde and is silent on whether transportation methods such as shipments through containerized cargo or mailing are covered by the law. The Customs Department has the responsibility to ensure compliance with this obligation but indicates that it does not have the power to stop or restrain currency or bearer instruments that are falsely declared or are suspected to be related to ML or the financing of terrorism. The system has not yet been implemented.

D. Preventive Measures—Financial Institutions

9. Cape Verde's regime for preventive measures is built on its principal money laundering law and technical instructions (TIs) issued by the Bank of Cape Verde. The TIs require specific types of identity documents to be used where transactions are in excess of

one million escudos (EUR 9,090). For transactions that fall below this threshold, the AML law contains a general obligation to identify the customer but there is less certainty about the types of identity documents that are considered to be acceptable.

10. The customer due diligence (CDD) regime also allows financial institutions to base customer identification, in part, on verifications provided by foreign institutions, without establishing a framework to ensure that only well supervised institutions that adequately apply the FATF recommendations are used for this purpose. Existing arrangements for preventive measures do not adequately address the risks posed by certain types of higher risk customers such as PEPs, and those associated with correspondent banking relationships and regimes for introduced business. The framework does not require financial institutions to apply Cape Verde requirements to foreign branches and subsidiaries.

11. There are a number of significant concerns about Cape Verde's framework for the operation of international financial institutions. Under existing arrangements it is possible for institutions operating in this sector to fall outside of acceptable arrangements for global consolidated supervision and to operate without a substantive physical presence in Cape Verde. In a number of instances regulatory arrangements for these institutions are also less rigorous than the arrangements in place for institutions that operate in the domestic sector.

12. There are some fundamental weaknesses in relation to the obligation to monitor transactions which also spill over to the obligation to report suspicious transactions. The obligation to monitor transactions is limited to those transactions that are suspected of being linked to a predicate offense currently covered by the money laundering legislation.

13. While the legal framework meets the requirements for the time period over which records should be maintained, institutions appear unaware of the requirements of the money laundering law in this regard and do not generally have well documented record retention policies.

14. The Banco de Cabo Verde (BCV) is the regulator for all activities conducted by financial institutions and the Auditor General of Capital Markets (AGMVM), which supervises capital market licensees, is a unit within BCV. The Bank Supervision Department has issued AML regulations and has undertaken AML inspections of banks that operate in the domestic market. It has not however clearly defined an AML/CFT supervisory strategy and does not have a clear perspective on the varying levels of risk across the different financial institutions and their lines of business. The department's staff has had varying degrees of basic training relevant to AML supervision but is in need of a more systematic and focused program of training in this regard.

E. Preventive Measures—Designated Non-Financial Businesses and Professions

15. AML obligations are extended to individuals or corporations engaged in the operations of gaming establishments, real estate or property brokerage, property buying for resale and dealers in precious metals and stones, antiques, works of art and motor vehicles. Lawyers, notaries, accountants, and trust and company service providers are not covered by the legal framework.

16. There are currently no gaming houses or casinos in Cape Verde although discussions during the course of the assessment suggest that there may be some interest, on the part of a group of foreign investors, in establishing a casino at some time in the future. There are no persons providing trust and company services as a distinct form of business activity. The authorities also report that there is no significant activity in the sale of precious metals and stones, antiques and works of art.

17. The Ministry of Finance and Public Administration is designated as the regulator of designated non-financial businesses and professions (DNFPBs). The ministry has not issued any regulations or guidance to assist with the implementation of the principal money laundering law in respect of the covered DNFBPs. Discussions with persons who undertake some of the covered activities indicated that they are generally not aware of their obligations under the AML law.

18. The only covered activities which conduct any significant volume of business are real estate agents and dealers in motor vehicles. The real estate market is unregulated and highly informal, except for the general licensing requirements for the construction of buildings and the large resort-like projects which account for the vast majority of intermediation. These projects are undertaken by large foreign and multinational agents whose principal clients are foreigners (mainly from the UK) who purchase properties for their personal use and for investment purposes. The law's coverage of motor vehicle dealers is comprehensive and not limited to those who sell high-end vehicles.

19. There are approximately 120 lawyers licensed to practice in Cape Verde. Their activity is supervised by the Bar Association which administers their disciplinary code. Notaries are public officers, employed by the Ministry of Justice and are generally responsible for the authentication of real estate title deeds. They do not receive money from persons involved in the purchase of property and do not perform any of the designated functions outlined under FATF Recommendation 12. They are well placed to contribute to the detection of suspicious transactions in respect of contracts involving the sale of real estate but do not have a legal obligation to do so.

F. Legal Persons and Arrangements & Non-Profit Organizations

20. It is mandatory that all legal persons, associations, foundations and companies be registered in the commercial registry. Records must include the company by-laws, the names and identification of the shareholders, the name of the legal person, the object, the place of incorporation, the amount of capital, the capital held by each shareholder, the composition of management and persons who can act on behalf of the company. Changes to any of these elements must also be registered. Information recorded in the commercial registry is available to the general public and any interested person can therefore have access to the identification of any shareholder. However, the various official registrars lack the capacity to provide timely information on the beneficial owner of legal persons.

21. Joint-stock companies can issue nominative and bearer shares. Bearer shares are issued in paper form and are not subject to registration. It is required that the persons holding

these shares be identified during the annual general meeting of the issuing company and when receiving dividends. There are very few joint-stock companies in Cape Verde and an even smaller number that issue bearer shares.

22. Cape Verde's Civil Code establishes a regime for the operation of associations, foundations, and unincorporated associations. It establishes requirements for the constitution and internal organization of these entities which are also subject to registration in the commercial registry. Information held on these persons includes their by-laws, the names of their managers, the place of incorporation, their object, the name of persons who can act on their behalf and the capital and property held by the legal persons if they are foundations. Before registration of any legal person, either of a civil or commercial nature, the Registrar must verify that the registrant has been constituted in accordance with the country's Constitution and the Civil Code and that its aims are legal. However, Cape Verde has not taken any specific measures to review the vulnerability of NPOs to abuse in the context of the financing of terrorism. The authorities have not undertaken, in general, any outreach to the NPO sector aiming at raising the awareness of the the financing of terrorism vulnerabilities of these entities. It was not demonstrated as well that NPOs were obliged to maintain records and documents of their operations for a period of at least five years. Nor was it demonstrated that there are sanctions applicable to NPOs for failing to comply with existing laws and regulations.

G. National and International Cooperation

23. Cape Verde does not have a strong framework for national cooperation in the context of AML/CFT issues. The National Committee for Coordination on the Fight against Drugs, Organized Crime and Corruption (NCC) is potentially a good foundation for such cooperation as it brings together most of the relevant government institutions involved in the fight against ML/the financing of terrorism. While the committee has successfully undertaken some relevant initiatives, there is not strong and effective operational cooperation across all relevant agencies.

24. There is some level of interaction between the JP and the Public Prosecutor's office which, by the nature of their functions, are compelled to collaborate on investigations and prosecutions. There is, however, no mechanism that governs such cooperation or ensures that it takes place in a structured and consistent manner. There is little or no coordination between BCV and the law enforcement agencies.

25. Mutual Legal Assistance in Cape Verde is carried out through bilateral and multilateral treaties applicable in Cape Verde. The Attorney General's Office is the central authority with the ability to render mutual legal assistance in judiciary matters and coordinate the gathering of the relevant information from the Public Ministry and the criminal police. The criminal police also has the ability to cooperate internationally and respond to foreign requests for assistance. Upon receiving a specific and well-founded request from a judiciary authority of a foreign State, the judiciary police has the ability to investigate whether assets or products arising from money laundering committed abroad are located in Cape Verde. They can also search for and seize those goods or products applying all the measures provided for in the Criminal Procedure Code and inform the foreign authorities of the

outcome of its measures. If the enquiries reveal that assets or products are related to the offense of money laundering or the relevant predicate offense, the Cape Verde authorities are empowered to initiate criminal proceedings for the crime of money laundering and take the necessary measures to prevent the disappearance of the assets through seizure. Although the law enables the cooperation between countries related to foreign requests for seizure and confiscation of assets or property related to ML/the financing of terrorism, there are no coordinating arrangements or mechanisms in place. Discussions during the mission did not provide conclusive evidence that the authorities' interpretation of the dual criminality principle is flexible enough to overlook technical differences between the laws of Cape Verde and those of the requesting state, in order not to impede the provision of mutual legal assistance.

26. Extradition is legally possible only if the foreign court has jurisdiction for the trial and the offense is punishable with a penalty of one year or more of imprisonment, under Article 88 of Decree-Law No. 6/1997 of May 5. However, when in the requested country the offense is punishable by a death sentence or life imprisonment or offense to the physical integrity of the person the extradition is forbidden. Extradition is also prohibited for political grounds or for offenses related to the freedom of speech, under Article 90 of the above mentioned Decree-Law.

27. The authorities did not produce any evidence that they have cooperated internationally in matters related to the financing of terrorism. In the absence of the criminalization of the financing of terrorism, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on the financing of terrorism matters, using the existing framework for MLA.

Summary Table of Observance and Key Recommendations

FATF 40+9 Recommendations[1]	Key Assessor Recommendations
1. Legal System and Related Institutional Measures	
Criminalization of Money Laundering **R.1 – [PC]** **R. 2 – [LC]**	The scope of the ML offense should be broadened to encompass, at a minimum, a catalogue of offenses included in the list of "designated categories of offenses" referenced in Recommendation 1 and the Glossary to the FATF Recommendations. It should be clearly provided in law that a conviction for the predicate offense is not necessary before issuing a ML conviction in connection with that predicate offense.
Criminalization of Terrorist Financing **SR.II – [NC]**	The financing of terrorism should be expressly and autonomously criminalized in accordance with Article 2 of the UN Convention on the Suppression of the financing of terrorism. It should be considered in law also that the financing of terrorism is a predicate offense for ML and all steps should be taken to ensure that the offense is punishable even when the terrorist acts have been carried out abroad or the organization or group is also functioning outside the national territory, but the terrorism suspect or the funds or goods related to the suspect are found in Cape Verde.
Confiscation, freezing, and seizing of proceeds of crime **R.3 – [LC]**	The authorities should implement a system that allows for the collection and maintenance of specific data on the freezing, seizure and confiscation of goods, property and values, related to the underlying offense.
Freezing of funds used for terrorist financing **SR.III – [NC]**	The system in place should be revised to ensure that all situations referred in the UN Security Council Resolutions are immediately applicable and allow for the freezing and seizure of all funds, goods and property of any kind of suspects of terrorism, such as individual terrorists or anyone pertaining to a group or a terrorist organization.
The Financial Intelligence Unit and its functions **R.26 – [NC]**	Amend the law to provide for the establishment of a full-fledged FIU in accordance with the R.26. The FIU should centralize the reception and administration o*f* STRs, conduct a specialized desk analysis of them and forward the resulting cases to the public ministry. Adequate operational independence, resources, training and sources of information need to be given to the FIU. The new FIU should be authorized to obtain additional information from reporting institutions with respect to STRs without the need to initiate a police or judiciary inquiry and obtain a court order. It should also be able to exchange information with foreign counterparts and consider applying for membership in EGMONT. Law 17 of 2002 should be revised to prevent Article 22 (4) from being interpreted as allowing accused persons in a trial to have access to the actual STR filed by a reporting institution. STRs should be treated as intelligence and not as evidence in court. The FIU should be authorized to provide reporting institutions with guidance regarding the manner of reporting and cooperate with other agencies of Government, and it should exercise such authority.
Law enforcement, prosecution and other competent authorities	The authorities should give adequate attention to the investigation of ML cases.

[1] **Compliant (C)**: the Recommendation is fully observed with respect to all essential criteria. **Largely compliant (LC)**: there are only minor shortcomings, with a large majority of the essential criteria being fully met. **Partially compliant (PC)**: the country has taken some substantive action and complies with some of the essential criteria. **Non-compliant (NC)**: there are major shortcomings, with a large majority of the essential criteria not being met. **Not applicable (NA)**: a requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country.

R.27 – [PC] **R. 28 – [PC]**	There is need for more specialized staff and use of specialized investigative techniques. The enactment of legislation criminalizing the offense of financing of terrorism should also provide the mandate to law enforcement authorities to investigate and prosecute the financing of terrorism offenses. The power to take down witnesses' statements in relation to AML/CFT investigations should be made more explicit. The powers of investigation and prosecution should extend to offenses related to the financing of terrorism. Both the judiciary police and the Public Prosecutor' Office should consider establishing units specialized in the investigation and prosecution of ML and the financing of terrorism.
Cross Border Declaration or disclosure **SR IX– [NC]**	The law should be amended to cover both incoming and outgoing persons. Customs should establish a mechanism to monitor and enforce compliance with the requirement to make these cross-border declarations. Records should be maintained of the amounts and the identity data of the person in instances where a declaration is made , there is a false declaration or there is a suspicion of ML or the financing of terrorism. Powers should be defined so authorities may request and obtain this information. Powers to restrain currency found in breach of the obligation should be provided. The Law should be amended to provide for the restraint of currency for the purposes of determining whether it is related to ML/the financing of terrorism. Sanctions should be applied following a case of false declaration.
2. Preventive Measures: Financial Institutions	
	●
Customer due diligence, including enhanced or reduced measures **R.5 – [NC]** **R.6 – [NC]** **R.7 – [NC]** **R.8 – [NC]**	Financial institutions should be required to undertake customer due diligence measures when there are doubts about the veracity of previously obtained information. The threshold of one million escudos that is currently associated with the provisions of Chapters II {B}{1} of TIs 108 and 109 should be removed. If the authorities wish to maintain the current arrangement under which a foreign bank can verify the veracity of identity information provided by a customer, in addition to the existing arrangements, the following conditions should also apply. Financial institutions should be required to satisfy themselves that the foreign financial institution is regulated and supervised (in accordance with Recommendation 23, 24 and 29), and has measures in place to comply with, the CDD requirements set out in R.5 and R.10. In determining in which countries the third party that meets the conditions can be based, competent authorities should take into account information available on whether those countries adequately apply the FATF Recommendations.[2] Measures should be taken to give effect to all other requirements of FATF Recommendations 5, 6, 7 and 8. (see detailed recommendations in the detailed assessment report)
Third parties and introduced business **R.9 – [NC]**	The current provisions for introduced business should be applied to all institutions and not just IFIs as is currently the case.

[2] Countries could refer to reports, assessments or reviews concerning AML/CFT that are published by the FATF, FSRBs, the IMF or World Bank.

	Where financial institutions rely on a third party to perform some elements of the CDD process they should be required to satisfy themselves that copies of the identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with FATF Recommendations 23, 24, and 29 and has measures in place to comply with CDD requirement set out in FATF Recommendations 5 and 10.
Financial institution secrecy or confidentiality **R.4 – [PC]**	The regime of secrecy applicable to IFIs should be reviewed and put in accordance with the regime applicable to financial institutions, in general, with the purpose of not discouraging IFIs and employees from reporting suspicious transactions of ML and TF.
Record keeping and wire transfer rules **R.10 – [PC]** **SR.VII – [NC]**	**Recommendation 10** Financial institutions should be required to maintain transaction records for at least five years following the completion of the transaction or longer if requested by a competent authority in specific cases and upon proper authority. This requirement should apply whether the account or business relationship is ongoing or has been terminated. It should be required that such records should be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Financial institutions should be required to maintain records of identification data, account files and business correspondence for at least five years following the termination of the business relationship, or longer if requested by a competent authority in specific cases and on proper authority. Financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. **SR. VII** The BCV should issue regulations to ensure that financial institutions include accurate and meaningful originator information (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 related message through the payment chain. These regulations should include the requirement to monitor for, and conduct enhanced scrutiny of transfers which do not contain complete originator information.
Monitoring of transactions and relationships **R.11 – [PC]** **R.21 – [NC]**	The legal and regulatory provisions should be amended to explicitly provide for the following: The obligations to pay special attention to all transactions and patterns of transactions that are unusually complex or large and without an apparent economic or visible lawful purpose. Reporting institutions should leave a written record of their review process and their findings Institutions should be required to pay special attention to transactions from or to countries which do not or insufficiently apply the FATF Recommendations, and authorities should provide guidance about who these are and how to identify them. The authorities should determine if counter measures can be applicable within the current legal framework (taking into account the examples provided in the assessment methodology) and make the necessary amendments to be able to apply them to countries that insufficiently apply the FATF standards, in case the need arises.
Suspicious transaction reports and other reporting **R.13 – [NC]** **R.14 – [NC]** **R.19 – [NC]** **R.25 – [NC]** **SR.IV – [NC]**	**Recommendation 13** Include the financing of terrorism as one of the offenses that must trigger an STR when reporting institutions suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations. Make it mandatory to report any suspicion arising from attempted transactions.

	Consider amending the definition of suspicious transactions to allow for the filing of STRs with a lower degree of suspicion. Make it mandatory for reporting institutions to notify the FIU, and not only the public ministry, in the event that they suspend a transaction considered to be suspicious. It should also be clear that all suspicious transactions should be reported to the same central authority. **Recommendation 14** Prohibit tipping-off the customer and any third party about a report being filed. Revise the system for mandatory suspension of all suspicious transactions to prevent alerting the customer. Consider possibly limiting the suspension to exceptional cases such as when there is "fear of flight of funds" and there is a significant amount involved (Not applicable in the case of SR IV reports once the financing of terrorism is criminalized). **Recommendation 19** Consider the feasibility and utility of establishing a system of Cash Transaction Reports (CTR) taking into consideration whether there are adequate resources to handle such reports, what use the authorities would make of them and whether the expected objectives and benefits justify the costs to the government and the financial system, among other considerations. If the authorities opt in favor of such a system, the amount of the threshold needs to be set in accordance with the economic context of the country and the average amount of the various types of financial transactions. **Recommendation 25** The supervisory and enforcement entities should provide feedback about suspicious transactions reported by reporting entities and guidelines on the manner in which those reports should be filed.
Internal controls, compliance, audit and foreign branches **R.15 – [NC]** **R. 22 – [NC]**	**Recommendation 15** Financial institutions should be required to establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing and to communicates these to their employees. The policies, procedures and controls should cover customer due diligence, record keeping, the detection of unusual and suspicious transactions and the obligation to report such transactions. Financial institutions should be required to develop appropriate compliance management arrangements. This should include the appointment of an AML/CFT compliance officer at the management level. The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records and other relevant information. Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with these procedures, policies and controls. Financial institutions should be required to establish ongoing employee training to ensure that employees are kept up to date on new developments, including information on current money laundering and terrorist financing methods and trends. There should be a clear explanation of all AML/CFT laws and obligations and in particular requirements concerning CDD and suspicious transaction reporting. Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

	Recommendation 22 Financial institutions should be required 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 host country laws and regulations permit. Where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that host country laws and regulations permit. Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by host country laws and regulations.
Shell banks **R.18 – [NC]**	Cape Verde should not allow the establishment or accept the continued operation of shell banks. The provisions of Articles 12 and 44 of Law 12/2005 should be amended to ensure that banks operating in Cape Verde have a physical presence (i.e. effective mind and management in Cape Verde) and are affiliated to a group that is subject to effective consolidated supervision. Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks. Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
Supervisory and oversight system–competent authorities and SROs **Role, functions, duties and powers (including sanctions)** **R. 17 – [PC]** **R.23 – [NC]** **R.25 – [NC]** **R.29 – [PC]**	Law 17/VI/2002 should be amended to ensure that it covers all financial sector activities set out in the glossary to the FATF Recommendations. Fit and proper criteria should be uniform across all laws regulating financial institutions. The criteria should be applicable to shareholders, managers and directors. The term integrity should be fully defined in each law. Article 10 of Law 3/V/1996 should be amended to remove the provision that permits licensees to issue bearer shares. The authorities need to review the regulatory arrangements for IFIs to bring them up to international standards by addressing the weakness identified at a number of places in the report. BCV should undertake an AML/CFT risk assessment of the financial institutions operating in Cape Verde and develop an appropriate regulatory and supervisory strategy. **Recommendation 25** The authorities should develop a comprehensive set of AML/CFT guidance for financial institutions. . The BCV, in coordination with the JP, should issue procedures, guidance and templates for the filing of STRs. **Recommendation 29** BCV's inspections powers as set out in Law 12/2005 should be widened to be similar to the inspections powers currently applicable to institutions operating in the domestic market as expressed in Law 3/V/1996. BCV should undertake inspections of branches of institutions operating in the domestic sector as well as IFIs. The BCV should update its inspection manual to incorporate procedures and tools for supervision of compliance with AML requirements.

	BCV staff should receive additional training on AML supervisory strategies and practices. **Recommendation 17** The BCV should be given autonomy to impose (not only to instruct and recommend) the administrative sanctions for breach of AML regulations by financial institutions and their employees. The AML Law including its sanctioning regime, should be fully implemented for any breach of the AML requirements. Law 17, 2002 should be amended to provide for administrative sanctions for the violation of all the requirements of said law (currently the breach of requirements from Articles 18 and 21 does not have a corresponding penalty).
Money value transfer services **SR.VI – [PC]**	
3.Preventive Measures: Non-Financial Businesses and Professions	
Customer due diligence and record-keeping **R.12 – [NC]**	Take the necessary administrative and regulatory steps to implement the AML law with respect to DNFBPs and undertake outreach to these sectors. Expand the scope of the AML law to include lawyers and accountants under the circumstances set out under Recommendation 12. Consider circumscribing the preventive obligations of casinos and dealers in precious metals or stones to the thresholds allowed by FATF Recommendation 12 and its Interpretative Note, or to lower thresholds according to their evaluation of the risks involved.
Suspicious transaction reporting **R.16 – [NC]**	Lawyers, notaries, solicitors and accountants should be required to report suspicious transactions when they engage in the activities described in FATF Recommendation 16. Expand the scope of the AML law to include notaries and registrars, especially to allow for the filing of suspicious transaction reports under adequate protection against civil and criminal litigation when reporting in good faith.
Regulation, supervision, monitoring, and sanctions **R.24 – [NC]** **R.25 – [NC]**	**Recommendation 24** Regulations should be issued by the ministry of finance to implement the law with respect to the DNFBs, having regard to the special characteristics of each of them. The ministry of finance should carry out supervision of compliance with the AML law by DNFBPs. Adequate training and resources should be provided to the ministry. Undertake, as much as possible, a risk assessment of the different DNFBP economic sectors to determine the depth and characteristics of the supervision required, based on their exposure to misuse for ML and TF. For example, determine if CSP or casino markets are expected to grow in the future and take adequate steps for their regulation. **Recommendation 25** Guidelines should be developed for DNFBPs, especially on how to identify suspicious operations in their respective activities. There should also be efforts to elevate the level of awareness of ML/the financing of terrorism risks and improve the private sector's knowledge of the regulations.
Other designated non-financial businesses and professions **R.20 – [PC]**	Encourage the development and use of modern and secure techniques for conducting financial transactions that create a disincentive for the use of cash and are less vulnerable to ML.
4. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information **R.33 – [PC]**	The authorities should promote the interconnection of the registries offices in order to allow for comprehensive and effective public knowledge of the records on companies and legal persons and enhance the accessibility of the registered information.

	The authorities should collect, maintain and provide statistical data on the number of companies, types of companies, legal persons, number of companies issuing shares and bearer shares, and extinction and liquidation of companies by public prosecutors.
Legal Arrangements–Access to beneficial ownership and control information **R.34 – [NA]**	
Nonprofit organizations **SR.VIII – [NC]**	Cape Verde should conduct a review of its NPO sector with the aim of verifying in depth, any vulnerability to the misuse of NPOs for TF and ML and institute the adequate measures to promote transparency, accountability and integrity in the management of NPOs. Measures should be taken to license or register NPOs and require them to maintain records of transactions for a period of at least five years. There should be domestic authorities charged with monitoring the activity of NPOs and also mechanisms in place to allow for cooperation between domestic and international authorities and exchange of information at national and international levels, regarding any forms of suspicious activities that may be linked to the financing of terrorism.
5. National and International Cooperation	
National cooperation and coordination **R.31 – [LC]**	A national mechanism to ensure coordination and cooperation among agencies on AML/CFT issues should be established. The mandate and powers of the NCC set up under the Drugs Law could be extended for more effective focus on the implementation of the AML/CFT requirements.
The Conventions and UN Special Resolutions **R.35 – [PC]** **SR.I – [NC]**	The authorities are encouraged to implement fully the provisions of the Vienna and the Palermo Conventions. The implementation of the UN Convention on the Suppression of the Financing of terrorism should be a matter of priority for the authorities. There is need to put in place the necessary measures, including procedures and mechanisms, to implement the UNSCRs 1267 and 1373.
Mutual Legal Assistance **R.36 – [PC]** **R.37 – [PC** **R.38 – [NC]** **SR.V – [NC]**	Laws and measures put in place regarding freezing or confiscation of property related to the investigation of money laundering and the financing of terrorism should be strengthened to allow for expeditious response to foreign requests. The authorities should consider the setting up of an Asset Forfeiture Fund and the sharing of assets and property confiscated among countries which have participated, directly or indirectly, in the confiscation. The authorities should extend the powers of freezing, seizure and confiscation to assets related to financing of terrorism, which is not an autonomous offence in the legal system of Cape Verde.
Extradition **R.39 – [PC]** **R.37 – [PC]** **SR.V – [NC]**	Cape Verde Authorities should create expressly the the financing of terrorism offense in accordance with the UN Convention on the Suppression of Terrorism Financing and consider this offense an extraditable one and also ensure that even before the financing of terrorism is criminalized they can extradite foreigners that have committed this offense in the requesting State. Cape Verde Authorities should ensure that nationals whose extradition has been requested for offenses committed abroad are subject to trial in Cape Verde in a manner comparable to similar domestic prosecutions for serious offenses.
Other Forms of Cooperation **R. 40 – [PC]** **SR.V – [NC]**	Cape Verde should be able to develop cooperation mechanisms which can facilitate its competent authorities to cooperate with other countries on matters relating to the fight against money laundering and the financing of terrorism. The implementation of the UN Convention on the Suppression of the Financing of Terrorism and the relevant UNSCRs should allow possibilities for cooperation on issues related to the fight against the financing of terrorism. Channels for enhanced cooperation among countries on prompt exchange of information and

	conducting investigations on behalf of foreign counterparts, should be developed. The law should be amended to allow for possibilities of cooperation among all Cape Verde competent authorities on matters related to ML. Laws 3/V/1996, 53/V/1998, and 52/F/1990 should be amended to provide clear gateways for supervisory cooperation.
6. Other Issues	
Resources & Statistics **R.30 – [PC]** **R.32 – [NC]**	**Recommendation 30** There is need for more training of persons involved in the investigation of money laundering particularly in the use of specialized investigative techniques. The SCITE for the time being, and the future FIU, once it is created, require training on analysis of suspicious transactions, financial literacy and the production of financial intelligence. BCV staff should receive additional training on AML supervisory strategies and practices. Resources and training should be provided to customs officers for an effective implementation of the obligation to monitor the cross border movement of currency and bearer negotiable instruments. The commercial registry should be capable of providing accurate and timely information on the status of registered legal persons, and the identity of their representatives, officers and beneficial owners. **Recommendation 32** There is a need for the authorities to put in place a system of collecting data for purposes of cooperation and reviewing trends and the effectiveness of the system. Data should include information on prosecutions, convictions, penalties, freezing/seizing and confiscation. Once the system for monitoring the cross border movement of currency and bearer negotiable instruments is implemented records should be maintained of amounts of cash and bearer negotiable instruments and identity data in instances where a declaration exceeds the prescribed threshold, there is a false declaration or there is a suspicion of ML or the financing of terrorism. The authorities should collect and maintain statistics on the number of companies, types of companies, legal persons, number of companies issuing shares and bearer shares, and extinction and liquidation of companies by public prosecutors. Authorities should maintain more detailed data to track progress and efficiency of investigations and prosecution related to money laundering and the financing of terrorism, and for the analysis of trends in underlying criminality. The authorities should establish a system for maintaining comprehensive statistics on mutual legal assistance regarding seizures, freezing and confiscation of assets, and extradition.

H. Authorities' Response

28. In response to a request from the Cape Verde authorities, in 2007 the IMF undertook an assessment of the AML/CFT system in Cape Verde. The results of this assessment are recorded in a DAR, a document which has been ratified by the country authorities who made

a number of comments—but which, a little more than a year later, has not been updated to incorporate the latest AML/CFT developments in Cape Verde.

29. The need to find solutions to the concerns expressed by the international community regarding the repercussions from money laundering practices dovetails with longstanding concerns expressed by the Cape Verde authorities. In response to these requirements, Cape Verde has ratified the main UN conventions on AML/CFT and has approved Law No. 17/VI/2002 of December 16, 2002 which equips Cape Verde with a major AML/CFT framework. Key efforts to improve the legal and regulatory framework for AML/CFT in Cape Verde include the 2005 legislation on IFIs as well as regulations issued by the BCV to improve the monitoring of the activities of banking and parabanking institutions, and thereby prevent any slippages.

30. With regard to the more recent issue of combating the financing of terrorism, a number of steps have been taken, including the adoption of international conventions, promulgation of the new Criminal Code, and publication of technical instructions by the BCV. The Cape Verde authorities are aware, however, that these actions ought to be further strengthened if they are to confront this issue as effectively as possible, in particular, through the adoption of special legislation criminalizing the financing of terrorism.

31. This initial report identifies a number of vulnerabilities in the existing AML/CFT system in Cape Verde and suggests ways to overcome these deficiencies; in addition, the document serves as a benchmark for optimal decision-making, with a view to reforming—gradually, but as thoroughly as possible—the legal and regulatory framework currently in place in Cape Verde, in order to align it with international standards and practices.

32. To assist the authorities in their efforts to strengthen the AML/CFT system, a joint decision (*despacho*) by the Ministers of Finance, Justice, and Domestic Administration was issued at end-2007 to appoint an ad hoc commission which, on the basis of the DAR, prepared a plan establishing priority actions for 2008 and 2009. Since the DAR was finalized, the authorities have made progress with the following measures inter alia:

- Creation and establishment of a Financial Intelligence Unit (FIU, which is already operational and which will shortly be submitting a formal request for membership of the Egmont Group).

- Far-reaching reforms of Law No. 17/VI/2002, broadening its scope and aligning it with the provisions of the Palermo Convention (the draft law was examined at a meeting of the Council of Ministers and submitted to the National Assembly).

- Preparation of a Law criminalizing the Financing of Terrorism (the draft law was examined at a meeting of the Council of Ministers and submitted to the National Assembly);

- Review of the banking sector law which dates from 1996, including in order to strengthen the supervisory framework for the banking sector, harmonize banking secrecy requirements with the needs associated with the exchange of information among supervisory institutions and ultimately, if possible, in order to unify the entire banking sector in regard to prudential requirements (the draft decree (*dipoma*) is at an advanced stage of preparation, and the first version is expected to be completed by end-December 2008);

- The signing of memoranda of understanding between the BCV and foreign supervisors.

33. In addition to in-service training activities, there are plans in 2009 to regulate the designated nonfinancial activities and professions [*Actividades e Profissões Não Financeiras Designadas (APNFD)*] as well as to review and strengthen the BCV's technical instructions pertaining to AML/CFT for the banking sector and to prepare technical instructions for the insurance sector and the capital market.

34. It should be noted that at the request of the Cape Verde authorities, the IMF in November 2008 embarked upon the first phase of an assessment of the stability of the financial sector in Cape Verde (FSAP). Furthermore, the implementation of the recommendations of this exercise (whose second phase will be concluded in January 2009) should help to strengthen Cape Verde's framework for monitoring and supervising the financial sector, thereby further hampering attempts to use this sector for money laundering or terrorist financing activities.

Praia, December 15, 2007