

Inter-Governmental Action Group Against Money Laundering in West Africa

Mutual Evaluation Report

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.

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Acronyms

AGMVM	General Auditor of Capital Markets
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BCV	Bank of Cape Verde
CDD	Customer Due Diligence
CECV	Caixa Economica de Cabo Verde
CPC	Criminal Procedure Code
CPLP	Community of Portuguese Language Countries
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
DSU	Bank Supervision Unit of Bank of Cape Verde
ECOWAS	Economic Community of West African States
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSRB	FATF-style Regional Body
FT	Financing of terrorism
GDC	General Directorate of Customs
GIABA	Groupe inter-gouvernemental d'action contre le blanchiment en Afrique
IFI	International Financial Institution
JP	Judiciary Police
LEG	Legal Department of the IMF
ML	Money laundering
MLA	Mutual legal assistance
NCC	National Committee for Coordination on the Fight Against Drugs, Organized Crime and Corruption
NGO	Nongovernmental organization
NPO	Nonprofit organization
OECD	Organization For Economic Cooperation and Development
PEP	Politically-exposed person
PM	Public Ministry (Ministerio Público, similar to an Attorney General's Office)
SCITE	Central Section for the Investigation of Trafficking of Stupefacients of the judiciary police
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TI	Technical instructions
UN	United Nations
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Cape Verde is based on the 40+9 Recommendations of the Financial Action Task Force (FATF). It was prepared using the AML/CFT assessment Methodology 2004, as updated in June 2006. The assessment team considered all the materials supplied by the authorities, the information obtained on-site during their mission from April 30 – May 15, 2007, and other information subsequently provided by the authorities soon after the mission. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and an expert acting under the supervision of the IMF. The evaluation team consisted of: Ian Carrington (LEG, mission chief and financial sector expert); Navin Beekarry (LEG, legal expert); Ernesto Lopez (LEG, financial sector expert) and Maria Célia Moreira Martins de Ramos (legal expert under LEG supervision),. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements. The mission also reviewed the regulatory and other institutional systems in place to counter money laundering (ML) and the financing of terrorism (FT) through financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Cape Verde a at the time of the mission and shortly thereafter. It describes and analyzes those measures, sets out Cape Verde's levels 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). The report was produced by the IMF as part of the assessment of Cape Verde under the Financial Sector Assessment Program (FSAP). It was presented to the Groupe Intergouvernemental d'Action Contre le Blanchiment en Afrique (GIABA) and endorsed by this organization at the eighth session of the plenary meeting of its technical committee on November 6, 2007.

The assessors would like to express their gratitude to the Cape Verde authorities and institutions for their excellent cooperation and assistance throughout the assessment mission.

EXECUTIVE SUMMARY

Key Findings

Legal Systems and Related Institutional Measures

1. Cape Verde first criminalized money laundering in 1993. At that time the offence was limited to proceeds obtained through illicit trafficking in drugs or substances used to produce drugs. In 2002, Cape Verde enacted legislation that expanded the list of predicate offences and criminalized money laundering in a manner consistent with the material and subjective elements required by the Vienna Convention. However, the range of predicate offences under the existing legislation falls short of the requirement of the Palermo Convention and 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 offence of the financing of terrorism in its domestic legal system.

2. 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.

3. While financial institutions and other covered persons/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 (FIU). Within the JP, reports are received by an internal unit known as the Central Section for the Investigation of Trafficking of Stupefacients (SCITE). This unit does very limited analysis of reports and informs the Public Ministry (PM) whenever reports are received. Suspicious transaction reports (STRs) are treated in a manner very similar to criminal investigations and measures are taken to investigate information once it has been received. SCITE is not an operationally independent unit and does not have the autonomy to decide what information can be disseminated. However, after informing the PM of the information contained in an STR, the JP has a great deal of autonomy in pursuing any matters related to the STRs.

4. 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 PM. However, it does not have resources or expertise to adequately perform its investigatory functions related to money laundering offences.

5. 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 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 money laundering (ML) or financing of terrorism (FT).

Preventive Measures—Financial Institutions

6. 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 (BCV). 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, there is also a general obligation to identify the customer but there is less certainty about the types of identity documents that are considered to be acceptable.

7. 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 politically-exposed persons (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.

8. There are a number of significant concerns about Cape Verde's framework for the operation of international financial institutions (IFIs). 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.

9. There are some fundamental weaknesses in relation to the obligation to monitor transactions which impacts on the obligation to report suspicious transactions as the obligation to monitor transactions is limited to those transactions that are suspected of being linked to a predicate offence currently covered by the money laundering legislation.

10. 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.

11. BCV is the regulator for all activities conducted by financial institutions. The auditor general of capital markets (AGMVM) 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.

Preventive Measures —Designated Non-Financial Businesses and Professions

12. 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.

13. 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 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.

14. 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 during the course of the assessment indicated that they are generally not aware of their obligations under the AML law.

15. The only covered activities in the DNFBP sector which conduct any significant volume of business are real estate agents and dealers in motor vehicles. Except for licensing requirements for the construction of buildings, the real estate market is unregulated and highly informal, except for 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. Demand for newer and higher-end motor vehicles has surged in recent years presumably motivated by bank-lending policies which actively target this market and by the existence of high tariffs on the importation of used cars. The law’s coverage of motor vehicle dealers is comprehensive and is not limited to those who sell high-end vehicles.

16. 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 and motivated 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.

Legal Persons and Arrangements and Non-Profit Organizations

17. Legal persons in Cape Verde may be of civil or commercial nature according to the activity they perform. The most common types of companies are partnerships, limited liability companies and cooperatives. There are also a small number of joint-stock companies (also known as corporations or "sociedades anónimas"). 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. Any interested person can therefore have access to the identification of any shareholder. Companies have a legal obligation to make information on nominative shares available to competent authorities and any interested persons.

18. Joint-stock companies can issue nominative and bearer shares. Bearer shares are issued in paper form and are not subject to registration by the Public Registrar (they are only annotated in the books maintained by the company itself). 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.

19. 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.

20. Before registration, 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. Such verification also takes place prior to registering any commercial legal person. Information held on these persons include 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.

21. Cape Verde has not taken any specific measures to review the vulnerability of these types of entities to abuse in the context of the financing of terrorism.

National and International Cooperation

22. 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. While the committee has successfully undertaken some relevant initiatives, there is no strong and effective operational cooperation across all relevant agencies.

23. 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 which is reflected in the fact that BCV issued guidelines to financial institutions for the reporting of suspicious transactions without consulting with the JP, the agency that receives STRs.

24. Mutual legal assistance (MLA) 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 to 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 of 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 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 offence of money laundering or the relevant predicate offence, the Cape Verdean 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 or confiscation.

25. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters using the existing framework for MLA.

DETAILED ASSESSMENT REPORT

1 GENERAL

1.1 General Information on Cape Verde

26. Cape Verde is located off the west coast of Africa, approximately 500 km due west of Senegal. It is comprised of 10 islands, 9 of which are inhabited, and has a total land area of 4,033 sq km and a coastline of approximately 965 km. Its population of approximately 500,000 reflects, in part, heavy emigration which has resulted in more nationals living outside Cape Verde than in the country. The vast majority of Cape Verde's population is found on the islands of Santiago, the island on which the capital city, Praia, is located and Sao Vincente. Some of the largest emigrant groups are located in Boston (USA), Portugal and the Netherlands. In recent years there has been growing economic activity in the island of Sal, primarily in the real estate and tourism sectors. Cape Verde has a strategic location being very close to major North-South sea routes and serves as an important communications station as well as an important sea and air refueling site.

27. Cape Verde is a former Portuguese colony which gained its independence in 1975. The country's constitution was changed in 1990, promoting political openness, allowing for the transition from a single party regime to a multi-party democracy starting in 1991. The constitution guarantees the separation of the legislative, executive, and judicial branches. The President of the Republic is the Chief of State and is elected through universal direct suffrage. The Prime Minister is appointed by the President of the Republic, taking into account the electoral results and the political forces represented in the National Assembly. The members of cabinet are appointed by the President at the recommendation of the Prime Minister. Cape Verde is a member of the African Union.

28. The United Nations Human Development index which consist of a number of indicators including income, literacy and life expectancy currently ranks Cape Verde 106 out of 177 countries. This places Cape Verde at the top of the list of Sub-Saharan African countries and resulted in its inclusion in the "medium" human development category. Cape Verde maintains a consistently high ranking among West African countries in the context of a number of the World Bank's "Worldwide Governance Indicators". It was the highest-rated country in respect of "political stability", "rule of law", "control of corruption", "government effectiveness," and "voice and accountability".[1] It is an active member of the Lusophone block of African countries, the Comunidade dos Países de Língua Portugueca (CPLP) formed in 1996. It also belongs to the Economic Community of West African States (ECOWAS) as well as to the Comité Permanent inter-états de lutte contre la sécheresse dans le Sahel (CILSS). Cape Verde is also an active member of the GIABA.

[1] http://info.worldbank.org/governance/wgi2007/

29. With its relative small size and lack of natural resources, Cape Verde has a service—oriented economy with commerce, transport, tourism, and public services accounting for a large share of economic activity. Foreign aid and migrant remittances are also key sources of income. The country has had strong economic performance in recent years reflecting prudent economic management and has been supported by private and official capital flows and The Program Poverty Reduction Growth Facility from the International Monetary Fund. Cape Verde was one of the first countries to receive support from the Millennium Challenge Account in 2005. The amount of US$110 million is being disbursed over a period of five years and is expected to finance growth in the country's physical and human capacities.[2] Many of private investment flows to Cape Verde are directed to the construction and tourism sectors which exhibit strong growth trends.

General Situation of Money Laundering and Financing of Terrorism

30. The authorities believe that drug trafficking is the primary predicate offence generating illicit proceeds in Cape Verde. Due to its strategic location, Cape Verde is an ideal transit point for drugs being shipped from South America to destinations in Europe. The establishment of the National Committee for Coordination on the Fight against Drugs, Organized Crime and Corruption (NCC) was driven, in large measure, by concerns about the growth in the local drug trade. Since the establishment of the commission in 1995, a number of developments, including an increasing incidence of Cape Verde nationals being found on boats from which drugs were seized, led the authorities to conclude that there was a significant transnational element to the drug trade. The authorities told the assessment team that there was, at one stage, a concern that Cape Verde might also have been used as a transshipment point in the trafficking of persons between South America and Europe. However they indicate that subsequent investigations did not substantiate these concerns.

31. Cape Verde's international financial sector is vulnerable to abuse in the layering stages of money laundering. While most institutions that operate in this sector are subsidiaries of financial institutions headquartered in the EU, primarily Portugal, and are therefore subject to consolidated supervision, a number of them are not. Under the current arrangements it is possible for institutions to be licensed in Cape Verde that are neither subject to consolidated supervision nor have their mind and management in Cape Verde.

32. Cape Verde's rapidly expanding real estate market, which includes both the construction of private residences, office complexes, and large condominium and apartment projects is a potential channel for illicit proceeds. Some persons, with whom the assessment team met, expressed the view that some real estate developments appeared difficult to justify in rational economic terms. They reported instances in which newly constructed properties were sold at prices that appeared to be below the cost of construction.

[2] IMF Country Report No. 06/334

33. The non-profit sector has some vulnerability in the context of the sector is largely unregulated with many institutions only having a reporting responsibility to donor organizations. In addition, the authorities have also not undertaken any review of this sector to determine its FT vulnerabilities.

1.2 Overview of the Financial Sector

34. Financial sector institutions in Cape Verde include banks, para-banks,[3] international financial institutions, insurance companies and capital market intermediaries. The on-shore banks operating in Cape Verde are Banco Comercial do Atlantico, Caixa Economica do Cabo Verde (CECV), Banco Interatlantico and Banco Caboverdiano de Negocios. The first three of these institutions are branches of foreign banks. Banco Caboverdiano de Negocios has majority local ownership and a Portuguese bank which holds 46 percent of its share capital has an option to purchase an additional 5 percent to give it majority ownership. Other financial institutions include 5 para-banks two insurance companies, 3 capital market licensees, and 13 entities licensed to operate as IFIs. At the time of the mission's visit only seven of the IFIs were active.

35. Private sector ownership of financial institutions is a relatively recent phenomenon in Cape Verde. Up to 1993, the BCV was both the monetary authority and the sole commercial banking entity. In 1993, BCV ceased its commercial banking activities which were taken over by Banco Comercial do Atlantico. Prior to 1990, insurance business was only conducted by a government entity. In 1990, this entity was privatized to become Garantia, one of the two insurance companies currently operating in Cape Verde.

36. Motor insurance represents the largest segment of insurance business conducted in Cape Verde, accounting for approximately 50 percent of annual premium income. Other significant segments of the insurance market include accident, fire, construction, maritime, transport, and civil liability. Pure life insurance represents a very small segment of the market (approx 2%) and insurance companies report that many persons who purchase this product do so only because it is a requirement for collateral for certain types of loans.

International Financial Institutions

37. The framework for IFIs in Cape Verde is set out in Law 12/2005. This law provides for the establishment of a wide range of financial institutions namely banks, financial service firms, insurance entities and mutual fund entities. The law sets out a requirement that the ownership of licensees should include a financial institution from the Organization for Economic Cooperation and Development (OECD) or other country that, in the opinion of the BCV, has good supervisory mechanisms. Such financial institutions are required to own at least 15 percent of the shareholding of the entity licensed under Law 12/2005. The law however contains another provision that allows the minister of finance to override these requirements. The law also tries to

[3] Para-banks are financial institutions that are not allowed to accept deposits from the public

establish a requirement for the physical presence of IFIs in Cape Verde but falls short of the requirement for mind and management to be located there.

38. IFIs are also subject to the provisions of Law 43/III/88. Article 2 of this law provides that the principle activity of IFIs should be the provision of financial services in foreign currency to non-residents of Cape Verde. However the article also provides that IFIs can provide credit in foreign currency for the financing of fixed assets, underwrite securities issued by residents of Cape Verde in an "organized market' and participate in any other operation relevant to the development of Cape Verde and authorized by the minister of finance.

39. At the time of the visit there were 13 entities licensed to operate as IFIs, 7 of which were actually in operation. Five of the banks that were in operation were in majority owned by Portuguese financial institutions and one was in majority owned by an Angolan bank. The remaining institution that was in operation at the time of the assessment was owned by a group of individuals.

40. The six institutions that have been licensed but were not yet in operation are owned by groups of individuals. Two of these entities appear to have passed the maximum period allowed by the law (360 days) for institutions to commence operations after receiving a license.

Table 1. Licensed International Financial Institutions[4]

Name of Institution	Operational Status	Ownership
Banco Insular	Active	Portuguese Financial Institution
Banco Sul Atlantico	Active	Angola Financial Institution
Banco Português de Negócios	Active	Portuguese Financial Institution
Banco Motepio Geral-Cabo Verde	Active	Portuguese Financial Institution
Banco Espirito Santo	Active	Portuguese Financial Institution
Caixa Central de Crêdito Agricola Mutuo	Active	Portuguese Financial Institution
Banco Fiduciario Internacional	Active	Portuguese Individuals
Banco International Trading	Inactive	UK Individual
Eurofin	Inactive	Cape Verde and Portuguese Individuals

[4] Derived from information provided by the authorities.

Banco Internacional de Investimentos	Inactive	
Arwen Investments Limited	Inactive	UK Financial Institution
CA-Finance -Gestao	Inactive	Spanish Individuals
Banco Privado Internacional	Inactive	Portuguese Individuals

Stock Exchange

41. Created in 1995, the Bolsa de Valores de Cabo Verde actually commenced operation in December 2005. It currently has listings of 44 government treasury bonds and 4 local companies. The listed entities are Banco Comercial do Atlantico, CECV (commercial banks), Seceded Cabo Verde de Tabasco, and Enroll Empress de Combusttneis. The only members of the stock exchange are the four commercial banks that operate in the domestic market. The exchange uses a Euronex platform and an operational model that combines both auction and quote driven systems. The securities traded on the stock exchange are dematerialized and all transactions are conducted through the banking accounts of the members. The stock exchange is owned by the government which hopes to privatize it within the next two years.

Para-banks

42. There are four entities licensed as para-banks in Cape Verde. They are Promotora, a venture capital company, Cotacambios, and ECV, which operate-exchange bureaus; and, Sociedade Interbancaria e Sistema de Pagmentos, which operates-an international payments system. Para-banks are not allowed to accept deposits from the public.

Remittances Services

43. A unique feature of financial sector activity in Cape Verde is the role played by emigrant remittances which represent a significant portion of the liabilities of the banking system. With more nationals living outside of the country than within, financial institutions receive a steady stream of remittances from the Cape Verdean are diaspora. All available evidence suggests that the funds come directly into the banking system as the authorities have no evidence that there is an informal funds transfers system. The law requires remittances services to be provided by either banks or para-banks. Remittance services in Cape Verde are undertaken by four institutions under agency arrangements with Western Union. These institutions are Banco Comercial do Atlantico and CECV (banks), and ECV and Cotacambios (para-banks). The relatively high concentration of these services, given the small size of the country, is an indication of the important role that remittances play in the Cape Verde economy.

Services Provided through the Post Office

44. CECV is one of four commercial banks in Cape Verde. Its predecessor, the Caixa Económica Postal (CEP), was an institution of the Cape Verde Postal and Telecommunications Service, which provided limited banking services. The CEP ceased operation in 1986 and was replaced by the CECV, which was established as a banking institution. Due to the strategic location of many post office branches, CECV entered into an arrangement with the Post office to use its branch network for the delivery of banking services. This is usually done in areas where CECV does not have branches. The post office staff provides services on behalf of CECV. When opening accounts they collect information from the customer and send it to the CECV branch with which it is affiliated. The due diligence is performed by the CECV branch and not by the post office.

Cross-Ownership of Domestic Financial Institutions

45. A notable feature of Cape Verde's financial sector is the significant cross-ownership among a number of financial institutions as indicated below:[5]

Table 2. Financial Institutions

Shares Held By	Type of Entity	Shares	Shares Held In	Type of Entity
CGD (Portugal)	Commercial Bank	70%	Banco Interatlantico	Commercial Bank
CGD (Portugal)	Commercial Bank	52%	Banco Comercial do Atlantico	Commercial Bank
Banco Comercial do Atlantico	Commercial Bank	35%	Garantia	Insurance Co.
Garantia	Insurance Co.	12.5%	Banco Comercial do Atlantico	Commercial Bank
Montepio Geral (Portugal)		27%	Caixa Económica de Cabo Verde	Commercial Bank
Impar	Insurance Co.	11.5%	Caixa Económica de Cabo Verde	Commercial Bank
Banif (Portugal)		46%	Banco Caboverdiano de Negócios	Commercial Bank

[5] This information in the table represents estimates provided by persons in the industry with whom the mission met.

Table 3. Structure of Financial Sector, 2007

Sample tables, to be adapted as appropriate.	Number of institutions	Total assets ($ million)	Authorized/ Registered and supervised by:
Commercial banks	4	135	BCV
Mortgage banks	--	--	--
Investment companies	--	--	--
Collective investment associations	--	--	--
General Insurance companies	3	25	BCV
Company pension funds	--	--	--
Insurance brokers			--
E-money	--	--	--
Savings institutions	--	--	--
Foreign exchange	--	--	--
Money transmitters	--	--	--
Leasing- and factoring	--	--	--
Credit cards etc.	--	--	--
Postal services [5/]	1	--	-

Table 4. Structure of Financial Sector, 2007

	Number of branches abroad	**Number of subsidiaries abroad**	**Branches of foreign banks in the country**	
			Number	**Supervisor**
Commercial banks	0	0	2	Bank of Portugal
Mortgage banks	0	0	--	--
Life Insurance Companies	0	0	--	--
Investment companies	0	0	--	--
Etc.	0	0	--	--

46. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9.

Table 5. Financial Activity by Type of Financial Institution

Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator and supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks 2. IFIs	1. BCV 2. BCV
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions)	1. Banks 2. Para-banks 3. IFIs	1. BCV 2. BCV 3. BCV
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks 2. Para-banks	1. BCV 2. BCV
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks	1. BCV
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks	1. BCV
6. Financial guarantees and commitments	1. Banks	1. BCV
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Banks 2.	1. BCV 2.
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Para-banks 3. IFIs	1. BCV 2. BCV 3. BCV
9. Individual and collective portfolio management	1. Banks 2. Para-banks 3. IFIs	1.BCV 2. BCV 3. BCV
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks	1. BCV 2.
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks 2. Para-banks 3. IFIs	1 BCV 2. BCV 3. BCV

12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1.General/Life insurance companies 2. IFIs	1. BCV 2. BCV
13. Money and currency changing	1. Banks	1.BCV

1.3 Overview of the DNFBP Sector

47. The same requirements for financial institutions contained in the AML statute are imposed on some DNFBPs and other businesses, but implementation has not started. Law 17 of 2002 extends all its requirements, except with respect to record keeping, to some of the activities required by FATF Recommendation 12. The ministry of finance has authority to regulate and oversee compliance with AML obligations by DNFBPs, but it has not issued any regulations or guidance yet. The next table summarizes the scope of the law with respect to DNFBPs. It also provides a notional indication of the assessors opinion on which sectors should be prioritized for the implementation of CDD and reporting obligations. This opinion is based on responses from interviewees and all other information obtained during the assessment.

Table 6. DNFBPs: FATF List Compared to Cape Verde Law

DNFBPs according to FATF (R. 12)	Incidence in Cape Verde	AML law applies	1. AML regulator 2. Sector regulator	Priority *
Casinos (above $3,000)	Do not exist, but not prohibited. There are plans to open one casino in the medium term.	Yes /no threshold	1. AML: ministry of finance 2. Sector: ministry of justice	Low
Real Estate Agents	The profession is unregulated and no association exists. Transactions outside the key players are small and informal. Real estate boom partly driven by foreign buyers; most of them are serviced by large foreign agencies and one locally-owned agency.	Yes	1. AML: ministry of finance 2. Sector: none	Medium
Dealers in precious metals or stones (above $10,000)	No data available	Yes /no threshold	1. AML: ministry of finance 2. Sector:: No info	Not enough information
Notaries	Total: 15 notaries, all of whom are Government employees (privatization is planned). Most notaries also have the function of registrars of companies, property and civil acts. All contracts involving real estate and most incorporations of companies, and verify that payment was effectively made. Notaries do not act on behalf of the	**No**	1. AML: None 2. Sector: Directorate of Registrars (ministry of justice)	**High.** (opportunity for ML filters or "gate keepers")

	parties neither handle their money.			
Lawyers	120 licensed lawyers	**No**	1. AML: None 2. Sector: Bar Association (licensing and disciplinary powers).	Medium
Independent legal professionals	Only 1 independent legal professional has been licensed (a license of "solicitadores judiciais" is required from the Bar Association).	**No**	1. AML: None 2. Sector: Bar Association (licensing and disciplinary powers).	Low
Accountants	No data available (allegedly there are few practicing accountants due to informality of commerce).	**No**	1. No AML regulator 2. None	Low
Company Services Providers	They do not exist a distinct profession. Services like the sale of "shelf" companies, registered agents, nominee directors or partners, are not offered. Tax law does not support the creation of shelf companies.	**No**	None	Low
Trust Services Providers	Trusts cannot be created under CV law and there are no trust service providers.	Not applicable	Not applicable	Low

*Assessors view of where implementation of CDD and reporting obligations should be prioritized based on responses from interviewees and the information available.

Table 7. Other Businesses Covered by Cape Verde AML Law

Other NFBP (R. 20)	Incidence in Cape Verde	AML controls Required	1. AML regulator 2. Sector regulator	Priority
Dealers in antiques.	No data available	Yes	1. AML: ministry of finance 2. Sector:: No info	Not enough information
Art Dealers	No data available	Yes	1. ministry of finance 2. Sector:: No info	Not enough information
Dealers in motor vehicles	No data available but there is a generalized concern among authorities and the public about recent unexplained display of wealth through new cars.	Yes	1. ministry of finance 2. Sector:: No info	Medium

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

48. The great majority of enterprises in Cape Verde are still owned by individual businessmen. The most common types of companies are partnerships (*sociedades em nome colectivo*), limited liability companies (*sociedades por quotas*), and cooperative companies (*sociedades cooperativas*), while there are very few joint-stock companies (*sociedades por acções*). All the companies must be registered in the commercial registry to obtain legal personality. According to the commercial registry Law, the *Conservador* of the registry verifies if the company whose registration is demanded is in conformity with the law, namely the company code, and should refuse the registration otherwise. When legal personality is acquired, companies are entitled to perform any contracts pertaining to their scope and to own property and register property under their name. As a general rule setting up a company requires at least two persons, however under certain circumstances, individual limited companies or joint-stock companies can be created.

49. In general, in every municipality there is a *Conservador* who is a public official, frequently performing the role of a notary as well. Notaries perform the role of attributing public authority to documents and contracts, verifying compliance with the law and recording them in their official books. Some contracts, for example those related to the transfer of ownership of real estate, must be performed by notaries on a mandatory basis; other legal acts and contracts are performed by the notary on a voluntary basis. Registration in the commercial registry is mandatory for legal persons, associations and companies and information is available to the public, meaning that any interested person may obtain a certificate with the main elements pertaining to the legal person, such as 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, stakes of each shareholder, the composition of management and the identification of the persons permitted to act on behalf of the company.

50. When a foreign company whishes to do business in Cape Verde it must set-up a permanent representation in the country which should be in compliance with one of the types of entities set-out in the company code and register the company in the commercial registry.

51. The public prosecutor is the authority with powers to verify whether a company is complying with the rules of the company code and the law in general, and when a breach of law is detected; the public prosecutor should initiate civil proceedings which may result in the winding up and the liquidation of the company.

52. Associations are subject to the main principle of freedom of association stated in Article 51 of the Constitution of the Republic and can be created, freely and regardless of prior authorization, if they do not promote violence, racism, xenophobia, dictatorship, or have military or similar purposes, and their aims are not contrary to the penal law. They should be registered in the commercial registry to obtain and acquire legal personality, after which they are entitled to perform any contracts pertaining to their scope and to own property. The Civil Code encompasses the legal regime applicable to associations, foundations, and unincorporated associations, providing for the constitution, basic internal organization, legal motives for extinction and effects of this act. Unincorporated associations do not have legal personality and

the individual persons acting on their behalf have personal and unlimited responsibility for their activities.

53. Associations may perform various activities such as promoting healthcare, education, sports, religion, social solidarity, cooperation and development and they perform their functions at local, national, and international levels. In Cape Verde associations devoted to cooperation and development, such as non-government organizations (NGOs), are extremely important and they established, on a voluntary basis, a platform of NGOs, in 1996, associating more than 100 NGOs in the country. They prepare assistance programs related to economic and social development, cooperation and training, to enhance skills among low-income citizens in a variety of economic and social activities, based on financing coming from European and Canadian NGOs. Usually the funds received by Cape Verde NGOs come from northern countries, mostly European. The NGOs are accountable exclusively to their donors and not to any governmental agency.

54. Another important sector involving NGOs in Cape Verde is the micro-finance activity. Some NGOs receive public funds from European and North American cooperation, to provide small loans to their associates, usually not higher than 500,000 Escudos, (Euro 4,545) per associate. At the time of the assessment mission, a draft law was under discussion in the National Assembly providing for the regulation of micro-finance activity. Based on this draft law, BCV will be responsible for authorizing the establishment of micro-finance institutions and for controlling their activities.[6]

55. According to this draft, entities offering micro-finance services will be authorized and supervised by the BCV and will be subject to a special registration within the BCV.

56. The concept of express trusts and similar legal arrangements does not exist in the Cape Verde legal system and therefore express trusts and legal arrangements can not be created or recognized as such.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

AML/CFT Strategies and Priorities

57. Cape Verde's AML framework is based on a number of legal and regulatory instruments promulgated over a period of 12 years from 1993 to 2005. While the current framework does not adequately address all of the FATF recommendations, the authorities attempt to implement it while simultaneously considering ways in which existing arrangements need to be strengthened. The authorities have not developed any national vehicle or arrangement for implementing the framework and implementation is therefore undertaken by various institutions that carry out the specific tasks to which they have been assigned. However the authorities have reported that the minister of finance recently established a National GIABA Coordinating Commission, whose members are specialists from various departments, to "propose, energize, and monitor actions targeting the near-term upgrade of Cape Verde's AML/CFT system and improved follow-up of relations with the GIABA".

[6] This law was approved by the National Assembly on September 10, 2007 (Law No. 15/VII/2007)

58. The authorities consider that the banking sector is Cape Verde's main vulnerability as a gateway for money laundering. While there is some level of insurance and securities activity, for a number of reasons that are explored in the assessment report, the authorities consider that the financial activity conducted within these sectors represents either a very low money laundering risk or can be addressed by the AML arrangements that are in place for banking institutions. The legal framework covers some DNFBPs, but the authorities have made no effort to implement AML requirements for these persons or entities. The overwhelming focus of AML initiatives is on the banking sector.

59. Various measures taken by the authorities make it clear that they consider that Cape Verde is most likely to be used at the placement stage in money laundering. There is therefore an emphasis on use of cash as a medium for the laundering of illicit proceeds. The authorities do not appear to have specifically studied the vulnerabilities that can arise from the activities of institutions that operate in the international financial sector and as a result have not accorded priority to managing the ML risks that might be associated with the activities of these institutions.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

60. Different institutions have responsibilities and jurisdiction to fight crime in general in Cape Verde. Some of those institutions have specific anti-money laundering responsibilities. Institutions in the public sector include both policy bodies and operational agencies. There are no non-government bodies so far that exercise an AML/CFT function.

Ministry of Justice

61. The ministry of justice of Cape Verde is the government department with responsibility for executing justice policies as defined by the government. Consequently, like other government departments, it must take the legislative initiative and create conditions for implementing conventions, laws, and regulations on money laundering and the financing of terrorism.

Ministry of Finance

62. The ministry of finance is directly responsible for issuing the regulations to implement the AML obligations of the DNFBPs included in the law. It has the authority to oversee compliance with the AML law and regulations by DNFBPs. The ministry is also responsible for the financial sector development and initiates legislation which includes matters related to anti-money laundering.

BCV of Cape Verde

63. BCV of Cape Verde is the regulator of banks and non-bank financial institutions. Its oversight mandate includes the power to issue rules to the financial entities covered by the AML Law 2002 and to oversee compliance with those rules by the institutions. It has power to publish notices, circular notes, and technical instructions which entail sanctions for non-compliance.

64. The General Auditor of Capital Markets, which is a unit within BCV is the regulator for capital market intermediaries in Cape Verde. Since the four entities licensed to undertake capital market intermediation are banks, AGMVM does not undertake any AML supervisory activities. It has not issued any AML regulations or guidelines and does not undertake any on-site

inspection of licensees. BCV is in effect the AML supervisor for entities undertaking capital market intermediation.

The Ministry of Foreign Affairs

65. The ministry of foreign affairs has general responsibility for foreign policy aspects of the fight against money laundering and the financing of terrorism. It is mandated to monitor the ratification of international instruments, including conventions and treaties. A directorate for international cooperation has been set up in the ministry to mobilize the necessary resources in order to provide support to the AML strategy. Its mandate also includes an oversight responsibility for the implementation of the international conventions which Cape Verde has signed and ratified. It represents Cape Verde in the different UN working groups, including the Counter Terrorism Committee and the Al Qaeda/Taliban Committee. It also has some responsibility to ensure that the UN Sanctions List of Resolution 1267 is distributed among the different ministries and departments.

Ministry of Internal Affairs

66. The ministry of internal affairs has general responsibility to oversee the security of the country and the maintenance of law and order. It exercises this function through the national police and its different units. Its responsibility for the security of the State provides the ministry with an indirect role in the fight against money laundering. The national police falls under the administration of the ministry of internal affairs.

The Judiciary Police

67. The judiciary police is responsible for the investigation of criminal offences under the supervision of the public prosecutors' office. It has the exclusive competence to investigate money laundering offences, under the direction of the public prosecutor's office. The judiciary police has recently set up three specialized units covering drug trafficking, economic crimes, and money laundering, and organized crime. Reports of suspicious transactions are sent to the judiciary police for investigation.

68. The JP is part of the ministry of justice, and operates through units that are posted over the different islands and is assisted by the national police when the need arises. Its investigations, once completed, are submitted to the public prosecutor's office for prosecution.

The National Police

69. Police forces in Cape Verde include the maritime police, the fiscal police, and the public order police. These have recently been merged under the administration of the national police, which is part of the ministry of internal affairs but still retain their specific functions. The judiciary police exists outside the framework of the national police.

70. The national police constitutes the largest law enforcement agency in Cape Verde but does not investigate drug trafficking and money laundering offences. It operates throughout the islands through a network of police stations. It provides assistance to the judiciary police as and when needed in the investigations of crimes.

71. Public order police are responsible for the maintenance of law and order in the island and investigate minor offences such as contraventions ("misdemeanours"). The fiscal police is responsible for the investigation of tax offences and assists customs in the investigation of

customs offences. The maritime police are responsible for patrolling the borders and assisting in the detection of drugs cases.

General Directorate of Customs

72. The general directorate of customs (GDC) is responsible for the administration of the movement of goods, people, and vehicles, in and out of the country, the collection of customs duties, and the interdiction of prohibited goods.

73. The role of the customs department in respect of AML/CFT relates to the implementation of the obligation to monitor the movement of cash across borders. Under the law, the customs has responsibility to establish and manage the obligation to declare currency or negotiable instruments above a certain limit. Customs has not put any measures in place to monitor compliance with this obligation.

74. The department operates through five directorates, the Directorate for Fraud and Investigation, the Directorate for Accounts and Audit, the Directorate for General Administration. It is serviced by a staff of 200 persons. Customs contraventions are investigated by customs and prosecuted before the customs court, which is administered under the GDC. Criminal investigations are sent to the judiciary police.

The Public Prosecutor's Office

75. The power to prosecute a criminal offence, including money laundering, is vested in the Public Prosecutor Office. Besides having overall prosecution responsibility for criminal offences, the office is also responsible for overseeing any criminal investigation conducted by the judiciary police. The attorney general is the head Public Prosecutor Office and the officers are magistrates appointed by the judicial council. The head of the prosecution division is the Chief Prosecutor. It is an autonomous institution.

National Committee for Coordination on the Fight against Drugs, Organised Crime and Corruption (NCC)

76. In 1995, the government set up this inter-ministerial committee by Legislative Decree (Article 41) to coordinate the fight against drug trafficking. Its mandate was subsequently expanded to include corruption and organized crime. Its responsibility is to develop the strategy to fight against drugs trafficking and organized crime, and to promote and strengthen international cooperation in the fight against organised crime.

77. As part of its functions, the commission proposes relevant policies, programs and legislation on how to strengthen the relevant national strategy and it also evaluates operational needs in specific areas covering drug trafficking, corruption and organized crime. It evaluates the needs of the different agencies and develops programs relevant to the fight against specific crimes. It has so far developed programs aimed at institutional and technical and resource support relating to capacity building.

78. The committee is structured around three organs, the higher council, the commission, and working committees, and is assisted by a Secretariat headed by an executive secretary. It is comprised of the different national agencies from both the public and private sector with direct or indirect responsibility in fighting money laundering and organized crime. These include the ministries of justice, internal affairs, foreign affairs, the public prosecution office, the judicial

council, the Bank of Cape Verde, the fiscal police, the department of immigration, the general directorate of customs, and the registry of companies and notaries. It invites interested parties to participate in meetings on an ad hoc basis and on specific issues. Representatives of different NGOs sit on the committee.

79. The committee accesses information from the different agencies in its attempt to design its strategy and programs. It indicated that, in view of the increasing money laundering and financing of terrorism threat, these should be considered a priority and given more consideration.

General Directorate of Registry of Companies

80. The general directorate of registry of companies is a department integrated into the ministry of justice and those persons who perform registrar functions are public officials. According to the Cape Verdean authorities registrar services are established in every municipality or county. Their records are not centralized and are generally not well managed. In light of the size of the country and the level of development of the commercial activity, in the vast majority of the municipalities the registrar service related to companies and also to other commercial, property and civil contracts is performed by a notary who combines registrar and notary functions. In smaller municipalities where a notary is not available, registrar services are performed by public officials of a lower rank. There are 15 notaries in Cape Verde, the vast majority of whom (approx. 12) also perform registrar services.

Approach Concerning Risk

81. Law 17/VI/2002 applies to credit and para-banking institutions, insurance companies and enterprises that manage pension funds. It does not cover securities firms and collective investment schemes. The authorities indicated that at the time of drafting the law, there were no entities exclusively undertaking such activities and it was not considered necessary to cover these activities under the framework. Up to the time of the assessment there were still no entities, other than licensed banks, that were providing these services.

82. The authorities have also not generally adopted a risk-based approach to the implementation of their AML framework. There are some instances in which certain aspects of the regime for preventive measures are only applicable when transactions are in excess of a specified threshold. This type of approach is applied infrequently and is not reflective of a consistent risk-based approach to the implementation of the framework. Discussions with financial institutions indicate that some of them are applying risk-based approaches in a limited manner, but such measures are not explicitly sanctioned by the authorities. A case in point is the practice of some institutions to apply reduced CDD measures when dealing with one of the four companies listed on the Bolsa de Valores de Cabo Verde.

83. In the day-to-day supervision of financial institutions the authorities have concentrated their supervisory resources on banks as they consider these institutions to have the highest vulnerability to abuse in the context if ML. They have not focused any significant amount of supervisory resources on IFIs.

Progress Since the Last IMF/WB Assessment or Mutual Evaluation

84. Cape Verde has not been subject to a previous AML/CFT assessment.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 Criminalization of Money Laundering (R.1 and 2)

2.1.1 Description and Analysis

85. The offence of ML set forth in Article 3-1 of Law No 17/VI/2002 of December 18 (AML Law). Article 3-1 provides for the application of penalties from 1 to 12 years imprisonment, depending on the actions committed, and states the following:

> 1. Whoever, knowing that the goods or products derive, under any form of participation, from the offences of illegal trafficking of drugs and psychotropic substances, described in Law No. 78/IV/93, of July 12, terrorism, kidnapping, trafficking of minors, sexual abuse of minors, child pornography business, living on earnings from prostitution, arms trafficking, extortion, corruption, embezzlement of public funds, harmful administration of public sector business, illicit appropriation of goods owned by the state or by a cooperative, fraudulent procurement or misallocation of a subsidy, grant or loan, and economic and financial offences:
>
> a) Apply, transfer, convert, assist or facilitate any operation of conversion or transfer of those goods or products, in all or in part, directly or indirectly, for the purpose of concealing or disguising its illegal origin or assist a person involved in the commission of any of those offences to evade the legal consequences of its acts, will be punished by imprisonment for a term from 4 to 12 years;
>
> b) Conceals or disguises the true nature, source, location, disposition, movement or ownership of, or rights with respect to such property or proceeds, will be punished by imprisonment for a term from 2 to 10 years;
>
> c) Acquires or receives on any terms, or possesses or uses such property or proceeds, will be punished by imprisonment for a term from 1 to 5 years.

86. ML was first criminalized under Section 7 of Law No.78/IV/1993, of July 12 as the conversion, concealment, use or acquisition of proceeds, directly or indirectly obtained through illicit trafficking in drugs or substances used to produce drugs. Section 7 has been repealed although the other provisions of the 1993 law remain in force. Cape Verde's criminal ML provision now appears in Article 3 of the ML Law of 2002. The Law No.78/IV/1993 remains important as it provides for provisional measures on seizure and confiscation of assets derived from drug trafficking and also for special investigation techniques, such as interception of communications, controlled delivery and the securing of information on the wealth of offenders.

87. The ML criminal provision enacted in 2002, found in Law No.17/VI/2002 of December 18 (AML Law) expanded the reach of the money laundering offence by providing for additional predicate offences, beyond drug trafficking including terrorism, kidnapping,

trafficking of minors, sexual abuse of minors, child pornography business, living on earnings from prostitution, arms trafficking, extortion, corruption, financial participation on a public business, harmful administration of public sector business, embezzlement and financial participation in a public or cooperative business, fraudulent procurement or conversion of a subsidy, grant or loan, and economic and financial offences.

88. Article 1 of the AML Law (17/VI/2002) adds new measures to those that were set forth in Law No. 78/IV/1993 of July 12.

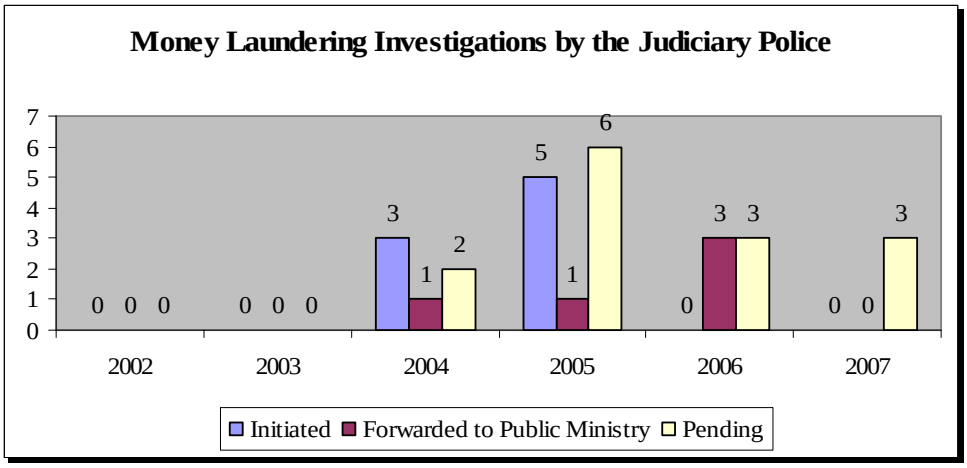
89. The criminalization of ML is in conformity with the material elements set forth in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The convention was ratified by Cape Verde on October 19, 1994, through the National Assembly Resolution No. 71/IV/1994, published in the first edition of Official Gazette No. 34. Article 3-1 of the ML provision respects all the elements required in Article 3 paragraphs (1), b), i), ii), and iii) of this convention.

90. Cape Verde is also a party to the UN Convention against Transnational Organized Crime of 2000 (Palermo Convention). The convention was approved by the National Assembly by the Resolution No. 92/VI/04, published in the first edition of the Official Gazette No. 16, of May 31, 2004.

91. However, Cape Verde's criminalization of ML is not fully in accordance with the Palermo Convention requirements. Although Cape Verde's offence includes the full range of conduct, that is conversion, concealment, use, acquisition or possession of proceeds, not all serious offences as defined by the Palermo Convention and set forth in FATF Recommendation 1 are predicate offences in the AML Law.

92. Accordingly, the ML offence set forth in Article 3 of Law No. 17/VI/2002 is not in full conformity with Recommendation 1.

93. Cape Verde authorities provided some statistics on ML criminal proceedings. The information set forth below indicates that only eight ML preliminary enquiries were initiated by the judiciary police between 2004 and 2007, five of those were forwarded to the public ministry for formal prosecution and no accusations have been undertaken before the courts:



94. Besides the small number of proceedings, another concern arises from the fact that the JP has not initiated any investigative proceedings since 2006 at a time when there has been no significant reduction in the incidence of profit-generating crimes (see next two tables). Also, there is a perfect match between the number of ML enquiries and the number of suspicious transaction reports received by the JP, thereby indicating that the authorities are not actively pursuing ML investigations that could derive from sources other than STRs. All these factors indicate that the system lacks the ability to deal with ML suspicions effectively and should undergo a comprehensive review.

Table 8. All Crimes Investigated Since 2004

YEAR	Balance (from Previous years)	Initiated	Prosecuted	Closed	Sent to PM but still pending additional substantiation
2004	10,200	2,231	656	31	93
2005	11,651	2,659	320	102	70
2006	13,817	3,540	477	5,886	209

Source: Statistics provided by the judiciary police (abstract)

Table 9. Sample of Profit-Generating Crimes Investigated

Crimes	Initiated in 2002	Initiated in 2003	Initiated in 2004	Initiated in 2005	Initiated in 2006
Theft	1,162	1,334	1,189	852	1,022
Theft with violence	223	213	388	1,178	1,371
Receiving stolen property					
Arm trafficking					
Embezzlement of public funds		5			2
Extortion					
Bribing		1			
Corruption		4		1	3
Kidnapping				4	5
Human trafficking				1	
Illegal importation of arms		4	1		
Illegal importation/sale of ammunition		1		1	
Counterfeiting	58	17	50	44	52
Counterfeiting currency	22	34	50	37	60
Making prohibited arms					1
Money Laundering			3	5	
Criminal association(Trafficker)			2		
Trafficking in narcotics	81	98	110	88	69
TOTAL	1,546	1,711	1,761	2,210	2,585
Total Without Thefts:	161	164	184	180	192

Source: Statistics provided by the judiciary police (abstract).

Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence)

95. The ML offence is a willful offence, meaning that the offender should know that the goods or products used in the laundering process derive from any of the predicate offences referred in Article 3 AML Law (knowledge of any crime in general, not referenced in Article 3 of the AML Law, would not suffice for ML purposes in Cape Verde).This provision is constructed in accordance with Article 11 of the Penal Code which states, as a general rule, that criminal offences require willfulness, unless otherwise stated in the law. According also to Article 7 of the Penal Code this Code is considered as subsidiary legislation to all criminal offences created by other laws. Therefore, all the general provisions of the Penal Code are applicable to criminal offences created by other laws, such as Article 3 of AML Law. In particular this means that the willfulness referred in Article 3-1 of the AML Law may present 3 forms, as stated in Article 13 of the Penal Code, meaning *direct willfulness*, when the offender acts with the intention of committing the offence, *necessary willfulness* when the offender mentally anticipated that his/her action would necessarily lead to the commission of the offence, or *eventual willfulness* when the offender anticipated that the offence would be a possible consequence of his/her behavior and acted admitting this outcome from his/her action.

96. Regarding the material elements of the action and the kind of behavior referenced, such as conversion, facilitating, concealment, disguising, acquiring, or possessing the proceeds of an offence, stated in paragraphs a) to c) of Article 3-1 of the AML Law, this provision is built according to the requirements of UN Vienna and Palermo Conventions. The categories of offences described in Article 3 of the AML Law are criminalized in the Penal Code in the following manner: *terrorism,* under Articles 315, 316, 296, 301, 302, *kidnapping,* under Articles 138, 272-d), *trafficking of minors,* under Article 149, *sexual abuse of minors,* under Article 144, 145, *child pornography business,* under Article 150, *living on earnings from prostitution,* under Article 148, *arms trafficking,* under Article 294, *extortion,* under Article 368, 217, 219, *corruption* under Articles 363, 364, 365, *financial participation on a public business,* under Article 203, *harmful administration of public sector business,* under Article 370, *embezzlement and financial participation in a public or cooperative business,* under Article 203, *economic and financial offences,* under Articles 223 and 226.

97. However, the AML Law uses a catalogue of offences as predicate offences, which does not encompass all the designated categories of offences required in FATF Recommendation 1 and the Glossary. In fact the following categories of offences, that should as a minimum be included in the list of serious categories of predicate offences are still missing: participation in an organized criminal group and racketeering; terrorism financing; environmental crime; murder and grievous bodily injury; robbery and theft; migrant smuggling; illicit trafficking in stolen and other goods; bribery; counterfeiting of currency; counterfeiting and piracy of goods, smuggling; forgery, piracy, insider trading and market manipulation.

The Property Subject to the ML Offence (c. 1.2)

98. According to Article 3-1 the offence of ML extends to all the goods and *products* (which could also be translated as proceeds) derived from the predicate offences regardless of any thresholds. The concept of the kinds of property subject to the offence should be established also taking into consideration the provision of Article 7-1 of the AML Law, which refers that not only

the goods but also the "profits, interests, and other advantages derived from those goods" directly or indirectly (Article 7-3) should be confiscated by the State, under a court order. The concept of goods ("bens" in Portuguese) under Cape Verdean civil law includes land, securities, and any kind of physical and immaterial property.[7] Therefore the terms goods and products used in Article 3 of the AML law are sufficiently broad to allow for the ML offence to extend to all types of advantages, direct or indirect, derived from the predicate offences, including land and securities, as required by Recommendation 1.

Proving Property is the Proceeds of Crime (c. 1.2.1)

99. According to the Cape Verde authorities, Article 3-3 of the AML Law allows for the initiation of criminal investigative proceedings for a ML offence, regardless of the result of an investigation or a conviction on the predicate offence but there have not been any convictions. That provision does not clearly eliminate the need for a person to be convicted abroad for the predicate offence before a ML conviction can be imposed in Cape Verde. It only states that "the punishment for [ML offences] … shall be imposed even if the acts constituting the predicate offence were committed outside national territory." There is no direct indication to the effect that a conviction for the predicate offence would be unnecessary.

100. It should be noted also that the offence of ML is autonomous in relation to the predicate offence, as derived from the nature of the offences and interests protected by them, as results from their main elements and also as indicated in the AML Law, in Article 3-2. In fact Article 3-2 makes a direct reference to the separate and autonomous penalties applicable to the predicate offence and to the ML offence, stating clearly that the penalty for a conviction for an ML offence should not exceed in its maximum and minimum limit the penalty applicable for the conviction of the predicate offence. This shows that there are different penalties applicable to the predicate offence and to the ML offence and establishes the necessary relationship between those penalties in both its minimum and maximum limits.

The Scope of the Predicate Offences (c. 1.3)

101. Under FATF Recommendation 1, all serious offences should be covered as predicate for ML. Countries may use different approaches to implement the recommendation, either using the limits of the penalties applicable or a catalogue of offences or a mixed criterion. Article 3 of the AML Law establishes a list of serious predicate offences corresponding to offences that can be found in the Penal Code, as referenced at the beginning of this section (2.1.1). However the AML Law uses a list of offences as predicate offences that does not include all the serious categories of offences set forth in FATF Recommendation 1 and respective Glossary. Therefore the list of predicate offences for ML set forth in Article 3 of Law No.17/VI/2002 is clearly insufficient and should be enlarged in accordance with the FATF Recommendation 1 and the Glossary.

[7] See for example, Articles 54 and 55 of the Civil Code with respect to divorce and separation of property between spouses; Article 83 about curatorship of the property of minors; or Article 91-3 on inheritances which states that "only with prior Court approval can the curator dispose of, or attach real estate, precious objects, negotiable instruments, commercial establishments or any other goods whose disposition or alienation does not constitute an act of administration."

Threshold Approach for Predicate Offences (c. 1.4)

102. Article 3 of the AML Law does not use a threshold approach alone or in combination with other approaches.

Extraterritorially Committed Predicate Offences (c. 1.5)

103. Article 3-3 of AML Law states the following: "The punishment for criminal offences set out in No. 1 applies even when the facts constituting the predicate offence have occurred abroad."

104. Therefore, even when the criminal offence from which the proceeds derive occurred in another country, the ML offence can be investigated and prosecuted by the courts in Cape Verde in accordance with Article 6-2 of the AML Law, as well.

Laundering One's Own Illicit Funds (c. 1.6)

105. There is no express reference in Article 3 of the AML Law that addresses this issue directly. However, according to the Cape Verdean authorities, there are no fundamental principles of law in Cape Verde that prevent the author of the predicate offence from being convicted also for the commission of the ML offence when the predicate offender also launders his/her own proceeds. The authorities explained that, under Article 30 of the Penal Code, the ML offence can be in a situation of concurrence with the predicate offence. In those circumstances if the perpetrator of the predicate offence is the same as the ML offender, he/she could be punished for both offences, according to Article 30 which states the following:

> 1. There is concurrence when the author, has committed an offence and commits another offence before a final conviction for the previous one.
>
> 2. The number of crimes is established by the number of *criminal types of offences* that have been effectively perpetrated, or by the number of times that the same type of offence has been perpetrated by the author.

106. Although the authorities' interpretation may be correct, it should be noted that no proceedings exist so far that apply this interpretation of the law.

Ancillary Offences (c. 1.7)

107. First Article 3 of the AML Law makes express reference to "any form of participation" in the commission of an ML offence. Thus, all forms of participation in the offence that exist under Cape Verde law are punishable. Under Article 7 of the Penal Code, which has subsidiary application to the ML offence, all forms of participation set forth in the Penal Code are applicable to the ML offence, such as attempt (Article 21), complicity (Article 27), and co-partnership (Article 25). The Penal Code specifically criminalizes the conspiracy to commit crimes, called "criminal association" (Article 291), with penalties from 1 to 8 years of imprisonment. The acts of aiding, abetting, facilitating, and counseling in the commission of money laundering are included as part of the criminal conduct described for the ML offence (Article 3-1-a of the AML Law), by stating: "[any person who…] assists or facilitates any

operation of conversion or transfer …, directly or indirectly, for the purpose of concealing or disguising its illegal origin, or assists a person involved in the commission of any of those offences to evade the legal consequences of its acts…".

Additional Element

108. Whether an act occurring overseas, which does not constitute an offence there but would be a predicate offence had it occurred domestically, constitute an ML offence (c. 1.8); there is no indication that this would be an offence under Cape Verde law.

Liability of Natural Persons (c. 2.1)

109. According to a general principle of criminal law implied in Articles 11 and 13 of the Penal Code, criminal liability applies to individual persons. In accordance with that Article 3 of AML Law, a natural person is liable for having engaged in ML if such person knowingly engages in the criminal activity.

The Mental Element of the ML Offence (c. 2.2)

110. Pursuant to Article 3 of the AML Law only actions committed willfully are punishable. However the willfulness referred to in Article 3-1 of the AML Law may present three forms, as stated in Article 13 of the Penal Code, meaning direct willfulness, when the offender acts with the intention of committing the offence; necessary willfulness when the offender mentally anticipated that such action would necessarily lead to committing the offence; or eventual willfulness when the offender anticipated that the offence could be a consequence of his/her behavior and acted admitting this outcome from his/her action. Proof of the intentional element of the offence is in accordance with Articles 173 and following of the Penal Procedure Law (Code of Penal Procedure). According to general principles of evidence in these provisions, all the relevant factual circumstances of the file can be analyzed for a judge to reach a decision. Therefore, the intentional element can be inferred from objective factual circumstances.

Liability of Legal Persons (c. 2.3)

111. The criminal liability of legal persons is provided for by Article 9 of the Penal Code which states the following: (i) Companies and other legal entities under private law shall be responsible for criminal offences committed by their bodies or representatives in their name and pursuing its interests, unless the perpetrator is acting in opposition to orders or instructions received from the legal entity. (ii) In the case of an entity which has not been incorporated and does not possess its own independent legal status, any monetary penalties shall be imposed against the entity's property or assets or, should it have no or insufficient property, against the property of each associate. As referred in this provision criminal liability is not only applicable to legal persons but also to unincorporated associations functioning as legal persons. According to the general criminal provision of Article 7 of the Penal Code this rule is applicable to the ML offence.

112. Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings (c. 2.4)—A legal entity can be criminally liable for committing an ML offence, according to Article 9 of the Penal Code. A special type of administrative liability

(contra-ordenações) is applicable concurrently for breaching the legal duties conferred upon financial entities by the AML Law, in Articles 16–25, in accordance with Article 30 of the AML Law. Legal persons can be also liable for damages resulting from the breach of their duties in accordance with the general provisions on compensation set forth in the Civil Code, and Articles 100 and 406 of the Penal Code. This is applicable to damages derived from offences prescribed in the Penal Code and the AML Law, as referenced in Article 7 of the Penal Code. Their employees could be also subject to disciplinary proceedings for a breach of their obligations towards their employer.

Sanctions for ML (c. 2.5)

113. Natural persons convicted for ML can be subject to penalties of imprisonment ranging from 1 to 12 years, depending on the type of criminal conduct, according to Article 3-1, a) to c) of the AML Law. They can also be subject to ancillary penalties, such as temporary suspension of functions (Article 72 of the Penal Code) and prohibition of performing their functions (Article 73 of the Penal Code).

114. Legal persons convicted for an ML offence can be also subject to fines ranging from 40 days (minimum) to 1000 days (maximum) and in the case of corporations from 60 days (minimum) to 1500 days (maximum), according to the decision of the Court (Art. 79 and 67 of the Penal Code) and to supplementary penalties (Art. 81 of the Penal Code) such as closure of premises, deprivation of public subsidies, and prohibition to bid in a public tender, for certain periods of time. The penalties applicable to natural and collective persons seem to be comprehensive, dissuasive and proportionate.

2.1.2 Recommendations and Comments

115. In general terms, the ML offence respects the elements that should be set forth in a domestic ML offence as specified in the UN Vienna Convention and shows a reasonable degree of conformity with the similar provision in the Palermo Convention.

116. There are, however, important deficiencies regarding the scope of the offence that need particular attention.

- The scope of the ML offence should be broadened to encompass, at a minimum, all categories of offences included in the list of “designated categories of offences” referred to in Recommendation 1 and the Glossary. Currently, under Cape Verde law, the following are not covered: participation in an organized criminal group and racketeering; terrorism financing; environmental crime; murder and grievous bodily injury; robbery and theft; migrant smuggling; illicit trafficking in stolen and other goods; bribery; counterfeiting of currency; counterfeiting and piracy of goods; smuggling; forgery, piracy, insider trading and market manipulation.

- It should be clearly provided in law that a conviction for the predicate offence is not necessary before issuing a ML conviction in connection with that predicate offence.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[8]
R.1	**PC**	The predicate offences for ML set forth in Article 3 of Law n 17/VI/2002 are insufficient and do not include some serious offences, that according to FATF Recommendation 1 should be included as predicate for ML. No evidence that a conviction for the predicate offence is not necessary before issuing an ML conviction It has not been fully established within the Cape Verde legal system that the author of a predicate offence can also be convicted for laundering the proceeds of the predicate offence. The number of ML investigations seems low relative to the number of predicate offences and none has resulted in accusations (let alone convictions) for ML.
R.2	**LC**	There are doubts on the effective implementation of the existing legal framework because since the enactment of the AML law in 2002 there have been few investigations on ML and no accusations before the Courts.

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

117. Cape Verde is party to the UN International Convention on the Suppression of the Financing of Terrorism that was ratified on May 3, 2002 and published in the Official Gazette. According to Article 12-2 and 4 of the Cape Verde Constitution, the aforementioned convention is in force in Cape Verde and prevails over internal law of infra-constitutional nature, except regarding criminalization provisions. Indeed to criminalize a certain behavior an internal provision of law of the National Assembly, or from the government authorized by the assembly, is required under Article 176-1 c) of the Constitution of the Republic. Such a legal instrument has not been issued so far in Cape Verde although there are plans to do so. For the time being there is no law criminalizing terrorism financing as an autonomous offence in accordance with the specific requirements of Article 2 of the referenced UN Convention.

118. However, the Penal Code presents two provisions related to terrorism activities. First, Article 315 defines the concept of terrorist group or organization in No. 4 as the action of two or more persons organized to carrying out violent actions against persons or property, described in No. 4 b), and provides for the punishment of any person who founds, leads or is part of a terrorist organization or group with penalties of 6 to 12 years imprisonment, according to the specific behavior. The Penal Code also criminalizes the support of, or cooperation with, a terrorist organization or group with a penalty of 5 to 10 years imprisonment (Article 316).

119. Neither of these provisions has been applied in practice so far. Therefore the exact meaning of Article 316 of the Penal Code remains unclear. However, the assessors consider that this provision does not cover all forms of the willful provision of funds to or collection of funds

[8] These factors are only required to be set out when the rating is less than Compliant.

for terrorist activities of groups, organizations or individuals, nor the provision of funds to or collection of funds for terrorists or terrorist organizations as required either under Article 2 of the UN Convention on FT and FATF SR II.

120. Regarding terrorism as set forth in the Cape Verdean system, there are no separate provisions that criminalize the terrorist acts of a person acting alone. Even though the terrorism offences set forth in Articles 315 and 316 are predicate offences for ML under Article 3-1 of the AML Law there are significant deficiencies since criminalization of terrorism is inadequate and there is no direct criminalization of FT. Authorities did not provide statistical data regarding proceedings, accusations, or convictions on terrorism and the application of Articles 315 and 316 of the Penal Code. Authorities should consider criminalizing terrorist acts committed by an individual, in any form of participation, in accordance with the UN Convention on the Suppression of TF.

Criminalization of Financing of Terrorism (c. II.1)

121. There is no autonomous and express offence of terrorism financing in the legal system of Cape Verde, stated in accordance with Article 2 of the UN Convention on Terrorism Financing.

Predicate Offence for Money Laundering (c. II.2)

122. As there is no autonomous terrorism financing offence, it is not a predicate offence for ML.

Extraterritorial Jurisdiction for Terrorist Financing Offence (c. II.3)

123. None

The Mental Element of the TF Offence (applying c. 2.2 in R.2)

124. FT is not criminalized.

Liability of Legal Persons (applying c. 2.3 and c. 2.4 in R.2)

125. None for FT.

Sanctions for FT (applying c. 2.5 in R.2)

126. None for FT.

2.2.2 Recommendations and Comments

- The financing of terrorism should be expressly and autonomously criminalized in a manner consistent with Article 2 of the UN Convention on the Suppression of TF and SR II.

- It should be considered in law also that TF is a predicate offence for ML. Provisions should be structured such that it is clear that the offence 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.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**NC**	The financing of terrorism, terrorist acts, terrorist organization, and individual terrorists is not criminalized in accordance with Article 2 of the UN Convention on the Suppression of TF and FATF SR II. Terrorism financing is not considered a predicate offence for ML as required by FATF SR II.

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and Analysis

127. Judicial authorities, such as judges and public prosecutors, have the ability and power to identify, freeze, seize and confiscate any goods or funds derived from predicate offences if they are found in national territory; and also to initiate the proceedings to prosecute and punish ML offences. The goods that can be seized or confiscated include property, profits, interests, or any other advantages derived, directly or indirectly, from the predicate offence.

128. The AML Law provides also for the confiscation by the state of goods or products related to the ML offence, as well as, profits, interests, on other products derived from the proceeds of an offence, directly or indirectly, in case of a conviction, under Articles 6-1 and 2, and 7-1 and 3 of the AML Law. At the public prosecution's request the judge can also confiscate property of the offender, under civil law (Article 11 of AML Law) in order to ensure that all the damages resulting from the offence to the State or the plaintiff are effectively compensated.

129. Legal Framework: The public prosecution or the judge, and in certain situations of urgency, the police may seize any goods that are the product, profit, price or advantage of the offence under Article 243 of the Code of Penal Procedure. When pronouncing the conviction the court has the power to confiscate the products of the offence to the State, under Article 253-3 of the Code of Penal procedure. In addition, the power to seize any goods or funds derived from the offence is stated in Articles 27 and 17 of Law 78/IV/93 of July 12, with regards to products derived from drug trafficking and also in Articles 6 and 7 of AML Law with regard to other predicate offences.

Confiscation of Property Related to ML, FT or Other Predicate Offences Including Property of Corresponding Value (c. 3.1)

130. Article 253-3 of the Penal Code gives competence to the court to confiscate the products of the offences in case of a conviction whether for the predicate or ML offence. Article 17 of

Law No. 78/IV/1993, provides also for the confiscation of all the products derived, directly or indirectly, from drug trafficking in case of conviction and also foresees the possibility of assets of equal value being provided to the State when it is not possible to apprehend the products of the offence. The AML Law (Articles 7 and 13-1) provides for similar measures concerning other predicate offences.

Provisional Measures to Prevent Dealing in Property Subject to Confiscation (c. 3.2)

131. The goods, funds, profits and advantages subject to a possible and future confiscation can be apprehended, as referred above, and attached to the proceedings or when this is not feasible, they should be entrusted to a court official linked to the proceeding or a trustee, with the drawing of the respective deed, under Article 243-5 of the Code of Penal Procedure. According to Article 23 of the AML Law, financial entities should stay the execution of any operations that they have reasons to suspect are related with the predicate offences or the ML offence and notify those interim measures to the Attorney-General and wait for confirmation of the suspension of the operations for a 24-hours period, or 48 hours when the value of the operation is above 1 million eEcudos (Approx. Euro 9,090).[9]

Ex Parte Application for Provisional Measures (c. 3.3)

132. According to Article 234 of the CPC, no notice to the offender is required prior to the seizure of the products of the offence.

Identification and Tracing of Property subject to Confiscation (c. 3.4)

133. Judicial authorities, such as the public prosecutor or the judge, and also the judiciary police, in cases of urgency, have the power to order and execute searches of any person and premises, apprehend goods and funds, under Articles 234, 235, 242 of the CPC, when there is an indication that an offence has been committed. In addition, Articles 28 and 29 of Law 78/IV/1993 set forth the similar powers regarding drug trafficking and Article 6 of the AML Law refers to the measures stated in the CPC. Article 22 of the AML Law attributes the power of requiring specific and individualized information from financial entities, registries or tax authorities, about property, goods, deposit accounts or any other valuables belonging to the offender in cases of drug trafficking offences or related ML. According to Article 255-1 a) of the CPC, telephone tapping authorized by a judge is allowed to collect evidence on ML offences. It is also possible to secure evidence of ML offence through the interception of electronic mail, with authorization from a judge, if the Public Prosecutor considers these measures of great importance to discover the truth or to collect evidence of offences punishable with a maximum penalty equal to three years. Similar investigative techniques are applicable according Articles 30 and 31 of Law 78/IV/1993 related to drug trafficking and connected ML.

[9] The Escudo has a fixed exchange rate of 1/110 to the Euro

Protection of Bona Fide Third Parties (c. 3.5)

134. Protection of bona fide third parties' rights is provided for through Article 8 of the AML Law. The third party has the power to demonstrate that the goods or property do not belong to the offender and are not related to the offence and in this situation the property will be released and delivered to such person by the court. If the case is considered to be of extreme complexity the judge could decide to refer it to a civil court for decision (Article 8-5 of the AML Law).

Power to Void Actions (c. 3.6)

135. Article 11 of the AML Law provides for an interim measure of seizure of property of the offender according the Civil Procedure Law in order to ensure the effectiveness of the conviction mainly in reference to a future compensation for damages to the State or third persons, avoiding a situation in which the offender might divest himself of the goods or property. This type of measure is foreseen in general terms also in Article 298 of the CPC. In addition, according to the general principles of the Civil Code contracts can be declared void by the Court if they have as objects, goods deriving from criminal offences.

Additional Elements (c. 3.7)

Confiscation of assets from organizations principally criminal in nature
136. Creating or taking part in a criminal organization is an offence punishable under Article 291 of the Penal Code. All the objects used or intended to be used in the organization would be confiscated upon conviction, under Article 243-1 of the CCP.

Civil forfeiture
137. There is no such legal institution in Cape Verde.

Confiscation of property which reverses burden of proof
138. Article 34-1 of the Cape Verdean Constitution sets forth the basic principle of criminal law stating that everyone is presumed innocent unless a conviction is pronounced by the court, therefore only after the conviction is it legally possible to confiscate property. The constitution ensures also that every offender is entitled to a fair trial in the shortest time possible.

2.3.2 Recommendations and Comments

139. The legal framework on freezing, seizure and confiscation seems comprehensive and allows for the functioning of the system. The authorities provided few statistical data on goods, property, and on values frozen, seized or confiscated; therefore, it is difficult to assess the system's effectiveness.

- Cape Verdean 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 offence.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	The legal framework seems to be adequate, however doubts arise about its effectiveness since there is very little data on goods, property, and values frozen, seized or confiscated on ML investigations.

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and Analysis

140. As previously noted, Cape Verde has not yet enacted an autonomous TF criminal offence. Nor does the preventive regime set forth in the AML Law, including the obligation imposed on financial institutions to report suspicious transactions, apply in the case of the TF. However, UN Security Council Resolutions 1267 and 1373 are recognized as applicable in the legal framework in Cape Verde. In addition, provisions of the Penal Code that criminalize terrorism and other conduct as well as provisions in the Criminal Procedure Code that permits proceeds and instrumentalities of crime to be frozen, seized and confiscated, may in some instances, permit funds, property and goods used by terrorist groups or organizations or derived from their activities to be frozen, seized and confiscated.

Legal Framework

141. Article 315-4 of the Penal Code defines the concept of group or a terrorist organization and provides for the punishment of any person who founds, leads or is part of a terrorist organization or group. Article 316 of the Penal Code criminalizes support for, or cooperation with a terrorist organization or group without being part of it. Although an autonomous TF offence has not yet been adopted, there are plans to do so.

Freezing Assets under S/Res/1267 (c. III.1)

142. The UN Security Council Resolution 1267 is mandatory and applicable in Cape Verde under the UN Charter and Article 12-3 of the Constitution of the Republic. This means that Cape Verdean authorities recognize that the organizations and groups referred to in the resolution are terrorists within the meaning of Cape Verdean law. According to the provisions of Article 315 and Article 4-1 a) of the Penal Code when offences occurred in Cape Verde or abroad correspond to the definition of terrorism of the Penal Code, the funds belonging to groups, organizations and persons listed in the resolution might be seized. Therefore, the persons belonging to those groups or organizations should be considered terrorists, according to the Penal Code of Cape Verde, and a person who cooperates willingly without being part of the group or organization could be punishable also under Article 316 of the Penal Code. Then according to Article 243 of the Criminal Procedure Code all the instrumentalities used by a terrorist group or organization and products, goods, funds or property derived from a terrorism offence or provided by any person to support a terrorist group or organization could be frozen and seized under this provision, through a judicial proceeding. They could also be confiscated after a conviction under Article 253-3 of the Criminal Procedure Code. All forms of participation in the offence should

also be punishable as an attempt to commit the offence (Article 21) complicity (Article 27) and co-partnership (Article 25), all of the Penal Code.

143. No other specific measures, legislative or administrative, have been issued or taken to implement Resolution 1267. In practice, no accounts or other funds or property have been frozen in application of Resolution 1267 and regulations applicable to financial institutions have not provided for a mechanism to freeze such funds based upon the lists.

Freezing Assets under S/Res/1373 (c. III.2)

144. UN Council Resolution 1373 is mandatory and applicable in Cape Verde under the UN Charter and Article 12-3 of the Constitution of the Republic. However other than use of the provisions indicated in the previous paragraphs, no specific measures, legislative, or administrative, have been issued or taken to implement Resolution 1373. Therefore the freezing of terrorist assets could only take place in the limited possibility offered by the combined provisions of Articles 315, 316 and 4-1 a) of the Penal Code. No accounts or other funds of property have been frozen in application of Resolution 1373.

Freezing Actions Taken by Other Countries (c. III.3)

145. Regarding the mandatory nature of the UN Security Council Resolutions in the legal system of Cape Verde and combining this with the aforementioned provisions of the CPC, the assessors consider that this action would be possible, in the cases aforementioned. However according to the information received no such requests have been presented to Cape Verde.

Extension of c. III.1-III.3 to Funds or Assets Controlled by Designated Persons (c. III.4)

146. This only applies to persons that might be considered part of a terrorist group or organization or cooperate or collaborate with those organizations as stated in the Penal Code.

Communication to the Financial Sector (c. III.5)

147. The ministry of foreign affairs sent the lists circulated under the UN Council Resolutions to the ministries of justice and internal affairs for implementation. These lists were provided to the financial entities subject to AML Law but implementation was not monitored by the competent authorities. As noted, no accounts or other assets have been frozen in response to the requirements of the resolutions.

Guidance to Financial Institutions (c. III.6)

148. No guidance has been provided to financial institutions regarding implementation of the resolutions by BCV or any other authority.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7)

149. No mechanisms exist for considering requests for de-listing or for unfreezing assets of de-listed persons.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8)

150. No procedures are in place for un-freezing of the assets of persons inadvertently affected.

Access to Frozen Funds for Expenses and Other Purposes (c. III.9)

151. No additional provisions exist in national law.

Review of Freezing Decisions (c. III.10)

152. Since the mechanisms available for freezing are of a judicial nature, the decision to freeze, seize or confiscate property, funds or goods is always subject to appeal under Articles 436 and 437 of the CPC.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

153. Goods, funds, profits and advantages subject to a possible and future confiscation can be apprehended and attached to the proceedings, or where this is not feasible, should be entrusted to a court official linked to the proceeding or a trustee, with the drawing of the respective deed, under Article 243-5 of the CPC. According to Article 234 of the CPC, no notice to the offender is required prior to seizing products derived from such offences. Article 298 of CPC provides for an interim measure for seizing the offender's property according to the Civil Procedure Law in order to ensure the effectiveness of the conviction mainly with reference to a future compensation for damages to the State or third persons, preventing the offender from getting rid of his goods or property.

Protection of Rights of Third Parties (c. III.12)

154. Under the general provision of Article 253-1 of the CPC, apprehended property, when pertaining to third parties and no longer needed for the investigation and collection of evidence, should be provided to the person who proves he/she is entitled to the property.

Enforcing the Obligations under SR III (c. III.13)

155. Considering that the freezing mechanisms available in the Cape Verdean system are of a judicial nature, these powers should be applied either by the public prosecutors or the judges. The judges are independent, impartial magistrates, obliged to enforce the law in accordance with Articles 220-3 of the Constitution and subject to the Superior Council of the Magistrates for disciplinary purposes (Article 220-9 of the Constitution). Regarding public prosecutors they are also obliged to act according to the legality principle, although being part of a hierarchical body of magistrates, and they are subject to the disciplinary power of the Attorney-General, under Article 224- 2, 3, and 9 of the constitution.

2.4.2 Recommendations and Comments

- The system in place should be revised to ensure that all situations referred to in the aforementioned 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.

- Internal mechanisms ensuring that UN Security Council Resolutions are transmitted for implementation purposes to all financial and non-financial entities subject to AML /CFT regime should be established.
- Competent authorities should monitor the implementation of these resolutions and collect data on its application to allow for the establishment of the policy and legal measures in this matter.
- An internal process of listing and de-listing should be implemented according to the UN Security Council Resolutions.
- The authorities should start to develop comprehensive data on goods, property, and values frozen, seized or confiscated.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	Cape Verdean authorities did not demonstrate that the UN Security Council Resolutions 1267 and 1373, although technically applicable within the jurisdiction, are effectively implemented. Provisions in the Penal Code and CPC alone do not provide for effective and immediate freezing, seizure and confiscation of goods, funds, assets and property of designated persons, terrorists, those who finance terrorism or terrorist organizations. In addition, there is no obligation on financial entities or others to monitor for and report accounts or other property of such persons, nor do competent authorities supervise the actions of such entities in this regard.

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

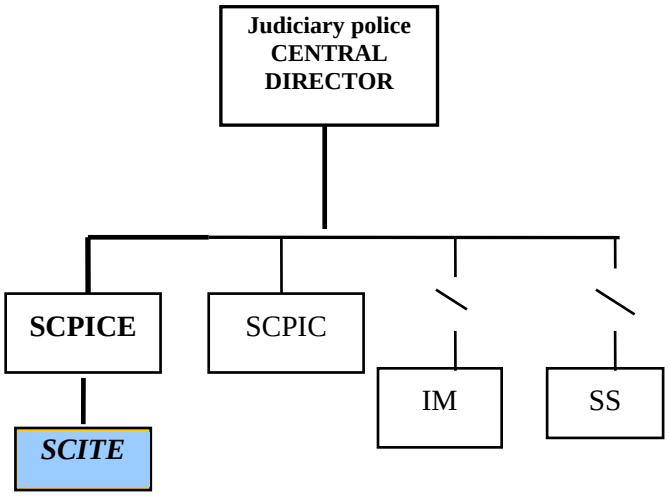
156. **Summary**: The judiciary police centralizes the receipt of STRs, but it does not fulfill all the functions of an FIU. There is consensus among all stakeholders about the need to create such a unit but the authorities have not yet decided what is the type and location most appropriate to their needs. The current legal provisions and institutional framework is being utilized, to undertake some of the functions expected from an FIU, namely, the centralized receipt of STRs and its subsequent dissemination to prosecutorial authorities. Therefore, this section of the report will assess the adequacy of the existing arrangements with a view to assisting the authorities in identifying potential improvements to the current system as well as key requirements for the future FIU.

157. **Relevant legal provisions**: AML Statute (Law 17/VI/2002 of December 16), especially Article 23-1 on the obligation to inform suspicious transactions) and the Statute of the judiciary police (Decree-Law 4 of 1993, especially Articles 2 and 3 about the scope of its authority).

A National Centre for Receipt, Analysis and Dissemination of Information (c. 26.1)

Centre for Receipt of STRs

158. Under the current law, the judiciary police (JP) is the exclusive recipient of STRs in Cape Verde. Reporting institutions must communicate their suspicions to the JP. Article 23-1 of the AML Statute provides that "Financial entities shall immediately inform the judiciary police, in particular by facsimile or electronic mail, if they become aware or have a well-founded suspicion that funds or assets received by them or recorded in their books are derived from offences provided for in Article 3 or whenever they have knowledge of any facts that may constitute indication of the commission of such offences" (for an analysis of the adequacy of the obligation to report suspicious transactions please refer to section 3.7).



SCPICE: *Subdireção Central de Prevenção e Investigação Criminal Especializada*
SCPIC: *Subdirecção Central de Prevenção e Investigação Criminal*
IM: *Inspecção do Mindelo*
SS: *Subinspecção do Sal*
SCITE: *Secção Central de Investigação do Tráfico de Estupefacientes*

159. There is an internal group of the JP responsible for receiving and processing the STRs as instructed by internal administrative directives. This group is the central section for the Investigation of Trafficking of Stupefacients, whose chief reports directly to a deputy director of the judiciary police and has a staff of 13 comprised of 2 sub-inspectors and 11 agents (see chart above). The chief of this group is also the national representative to GIABA.

160. A temporarily suspension of transactions instituted in paragraphs 2 and 3 of Article 23, requires that an additional report be sent to the Prosecutor-General (Head of the Public Ministry) so that he can take the necessary actions to confirm or cancel the suspension. The report sent to the Prosecutor-General does not have the nature of an STR. However, these two distinct

obligations should be more clearly regulated and harmonized (see analysis in section 3.7 of this report).

161. Centre for analysis of STRs and dissemination for subsequent prosecution: The SCITE performs a very limited analysis of the STRs and explained that STRs are handled similarly to criminal accusations, which are verified by means of a preliminary police investigation almost immediately after they are received. Once a report is received, the JP gives a brief notice of it to the prosecutorial authority of Cape Verde, the PM, and then performs a quick search in their criminal-record databases, previous STRs, and public sources available to the police. Once this information is collected, the same staff of the SCITE carries out a field investigation to corroborate or disprove the suspicion reported by the financial institution and passes all the information to the PM. Should the JP need to obtain banking records or any other confidential information at this stage, the SCITE would have to liaise with the PM, which in turn would request a court order from the competent judge (such procedure has not yet been used as a result of an STR).

162. Once the police gather sufficient information using its general police authority, it forwards everything to the PM which, only then, formally initiates the first phase of criminal proceedings (the "preliminary instruction"). During this phase, the judiciary police is authorized (by Article 3 of its Statute, cited below) to collect the necessary evidence to decide whether to submit a formal accusation before the competent judge (see below our comments on criterion 26.6 about operational independence). Therefore, STRs are not treated as one element in the process of producing financial intelligence which is of the essence of an FIU, neither does the SCITE add analytical value to the information provided by reporting institutions.

163. A recently created "information analysis office" within the judicial police is not being used to enhance the financial analysis of STRs. The JP recently restructured its internal organization creating a core group of people with desk review and analysis functions, separated from those carrying out the field investigations (two functions that require very distinct training and competencies). According to the JP authorities, however, this new unit is not intended to deal with the suspicious transaction reports, which will continue to be handled by the SCITE.

Guidelines to Financial Institutions on Reporting STRs (c. 26.2)

164. There are no guidelines or procedures for reporting entities on how to submit STRs and the JP is not authorized to issue them. Informally, it has given orientation to some reporting institutions about the minimum information required in an STR. Neither the Statute of the JP nor the general AML Law gives the JP the power to regulate this matter. BCV and the ministry of finance have such authority for financial institutions and DNFBPs, respectively, according to Articles 4 and 26 of the AML Law 17/2002. However, they have not exercised that authority. Consequently, banks, which are the only institutions so far reporting, send their communications with various forms and degrees of quality. Most revealing is the fact that some financial institutions believe that they are obliged to report suspicious transactions to BCV and not the JP, as clearly mandated in the law.

165. There is a good level of informal communication and cooperation between banks and the JP. AML officers from several banks interviewed and the head of the SCITE (the section responsible for receiving reports within the JP) shared this opinion. However, the final production of bank documents for use by the JP always requires the process of a court order, which does not seem to be speedy enough. It is also necessary to have an adequate and enforceable standardization of the STRs sent to the JP or to any future FIU. Comprehensiveness and good quality of STRs are key to the success of subsequent financial analyses and investigations, and the lack thereof has an even higher impact in the Cape Verdean context where the judiciary police is not empowered to request additional information from the reporting institutions, unless through a court order (see criterion 26.4 below).

Timely Access to Information (c. 26.3) and Additional Information from Reporting Parties (c. 26.4)

166. The JP has ready access to some, but not all the information that an FIU would require to conduct financial analysis. Some of the existing government databases, like credit bureaus and other sources of information from government agencies, are not accessible to the JP without a court order. Others are held directly at the judiciary police (like criminal records), and yet others are accessed only upon request. Most importantly, the JP does not have direct access to reporting institutions when it needs to complement an STR, let alone when it requires information from an institution that did not originate the STR in question. To obtain customer information from financial institutions, or any information protected by professional confidentiality more generally, the JP needs to send a request to the public ministry which, in turn, must obtain an order from a competent judge. It is worth clarifying that indirect means to obtain information could satisfy the requirements of FATF R. 26 only if they guarantee a “timely” analysis of STRs. However, the procedure described seems too cumbersome and the authorities did not provide any practical examples of its actual use.

Dissemination of Information (c. 26.5) and Operational Independence (c. 26.6)

167. The SCITE does not have the autonomy to decide which information should be forwarded to the PM. An FIU should have the necessary operational independence to determine, on its own and on the merits of the information available to it, whether or not a case should be retained or transmitted to the PM for prosecution. However, the JP must disclose all STRs to the Ministerio Publico, at the time of their receipt from reporting institutions, as well as after concluding its preliminary gathering of information. The JP could not, for example, make a decision that the reported suspicion was not confirmed and stop its inquiry without reporting back to the PM. Article 3-4 of the Statute of the judiciary police (Decree-Law 4 of 1993) states that “All the cases investigated by the judiciary police must be communicated to the PM, unless they have been explicitly delegated to it.” Article 2 of the same statute establishes subordination from the PM in the following terms: “1- The judiciary police intervenes during the preliminary instruction phase of the criminal proceedings, or equivalent, under the direction and subordination from the Public Ministry.”

168. However, after informing the PM, the JP has a great deal of autonomy in conducting the investigation. Article 2-3 of Decree-Law 4 of 1993 ("Statute of the Judiciary Police") provides the following:

> Without prejudice to the above provisions, [indicating that the JP acts under the instruction of the PM] the Judiciary Police has autonomy for the operational planning and the technical execution of the investigative actions, as well as administrative autonomy as defined in the laws of public accounting.

169. In practice, as explained by the JP and the PM, the JP simply informs the PM that an STR has been received, and then conducts the preliminary inquiries autonomously, resorting to the PM only when it needs to lift banking secrecy or obtain other confidential information. Such autonomy of the authorities responsible for handling STRs is desirable under FATF Recommendation 26 but it is not formally recognized in Cape Verdean law. As explained earlier, the law does not allow delaying the initiation of formal judiciary proceeding with respect to STRs. More recently, the PM has begun exercising more strictly its powers of instructing all criminal investigations. It is necessary then to find formal mechanisms to allow for the verification, analysis, and enrichment of STRs before initiating police inquiries, let alone before any judiciary proceedings. Discussions with financial institutions suggest that this may be one of the reasons for the low number of reports referenced in Section 3.7.

170. According to Article 5 of Law 17 of 2002, the JP has "exclusive competence … to investigate the offences of laundering of money or other assets provided for herein". As explained both by the JP and PM, this is simply an indication that the JP is the only police force with competence to carry out these investigations, unless other police forces (like the national police) receive an explicit delegation from the PM or by special law. It shall not be construed as limiting the powers of the PM to instruct the criminal proceedings and it simply complements the list of crimes whose investigation was assigned to the JP in Article 3 of the Statute of the Judiciary Police (Decree-Law 4 of 1993, issued before ML was criminalized).

Protection of Information (c. 26.7)

171. The law adequately imposes a duty of confidentiality on the JP. Article 9 of Decree-Law 4 of 1993 provides that (i) "All the acts carried out in the context of a judicial process or when assisting judicial authorities, all actions of criminal prevention and investigation as well as any facts related to them, are of a secret nature; (ii) The staff of the judiciary police who make revelations in breach of the above paragraph are subject to criminal and disciplinary actions."

172. STRs are guarded within the police. Some protection mechanisms additional to those applied to other documents of the JP are in place to prevent information contained in reports of suspicious transactions from being leaked. The reports are kept in a separate, more secure location and a limited number of staff has access to them. Article 22 of Law 17/VI/2002 aims at temporarily protecting the privacy and security of the reporting persons, in the following terms:

> 2. Information furnished pursuant to the preceding paragraph may be used only for the investigation and punishment of offences provided for in Article 3 hereof and may not be employed for other purposes, nor may the identity of the person furnishing it be revealed.
>
> 3. With the aim of preventing disclosure of the identity of employees or managers of financial entities furnishing information as referred to in the preceding paragraphs, only the copy of the banking information shall be kept with the procedural documents, in all cases identifying the transmitting institution without bearing the signature of the person who transmitted the information, and the original shall be filed in secrecy with the criminal police.

173. However, the identity of the institution which files a report is not adequately protected. The JP forwards all the documentation from its preliminary inquiry to the PM, including the STR, and nothing prevents the judge from incorporating the actual STR and let it be seen by the accused. Article 22 of the AML Law contains some measures to protect the identity of reporting persons, but these are only applicable when the PM requests information from a financial institution in the course of an investigation, and not when a financial institutions files an unsolicited STR. Article 22-4 even allows that "The accused may, during the trial and adjudication hearing, request verification of conformity between the original and copy of the information transmitted." Additionally, the prohibition to alert customers or third parties (tipping-off) contained in Article 22-5 is only referred to requests for information from the PM and not to the filing of STRs which is instituted in a separate Article 23.

Publication of Annual Reports (c. 26.8)

174. None of the government agencies in Cape Verde has undertaken the preparation (let alone release) of reports including ML typologies and trends, or statistics based on STRs, amounts of money involved, subsequent investigations, etc. This also reflects the fact that no agency has been assigned FIU responsibilities as such, although the judiciary police could provisionally undertake [part] of these tasks in the context of the National Coordination Committee Against Drugs (NCC).

Egmont Membership (c. 26.9) and Principles of Exchange of Information (c. 26.10)

175. The authorities do not view their current structure as that of an FIU and have, therefore, not considered applying for EGMONT membership. So far the JP has been unable to sign memorandums of understanding with foreign FIUs to facilitate the exchange of information, due to the fact that any information could potentially be used in judicial proceedings due to the blending of police and analysis functions within the SCITE.

176. The judiciary police is authorized to exchange information only with foreign judicial authorities and not with foreign FIUs, even if they are part of a police agency. In fact, all the examples of international cooperation provided by the JP were of exchange of information via rogatory letters and Interpol, and there were no examples of cooperation with foreign FIUs.

Article 6 of Law 17 of 2002 makes the judiciary police a central point for international mutual legal assistance (see section 6.3 for details):

> 1. Upon an individualized and substantiated request by competent foreign judicial authorities addressed to the Central Directorate of the Criminal police, all steps provided for under Cape Verdean law to ascertain whether property or proceeds derived from crimes referred to in paragraph 1 of Article 3 are on national territory, the outcome being communicated to the requesting authority.
>
> 2. If property or proceeds derived from crimes referred to in the preceding paragraph are on national territory, the judicial authorities of Cape Verde shall, in addition to initiating criminal procedures in respect of the offence of laundering of money or other assets, take all necessary steps to prevent the disappearance or dissipation of such property or proceeds, including the freezing or seizure thereof.
>
> 3. International judicial assistance shall in all cases conform to the principles of reciprocity between States and secrecy, it being prohibited to use information furnished at the request of foreign authorities for purposes other than as indicated in the request for information.

177. The reference to “ascertaining whether property is located” (Art. 6-1 cited above) could create additional difficulties for the normal exchange of FIU information. FIUs should be able to share data that may not be linked to the location of an asset, such as the information contained in an STR about whether or not a person has been reported, description of suspicious activities, ID numbers of a person, linkages with other persons or companies, etc. This should be made more clear in the law as part of the process of establishing a new FIU. Meanwhile, this provision can be interpreted broadly, considering the ample range of provisional measures allowed to the judiciary police under the Criminal Procedure Code. It is also worth noting that EGMONT requires their members to be empowered to receive STRs in relation to terrorist financing, therefore the lack of such offence in Cape Verde may compromise their application for membership in the future.

Adequacy of Resources (c. 30.1), Integrity of Authorities (c. 30.2), Training for Staff (c. 30.3), Statistics (applying R.32 to FIU)

178. Significant training efforts and the allocation of specialized staff dedicated only to the functions of an FIU are necessary. Currently, the Central Section for the Investigation of Narcotic Trafficking referred to under criterion 26.1, is comprised of 1 chief and 13 sub-inspectors and agents, which might be enough to deal with the current load of financial analysis work. However, the depth of this analysis is inadequate and, in addition to the functions related to the investigation of STRs, these 14 people perform all the regular police functions of their section, including field investigation of cases (both STR and non-STR related). The combination of police investigation functions with that of producing financial intelligence has been to the detriment of the latter in Cape Verde, and the JP is aware of this. The judiciary police could

create a distinct unit exclusively responsible for desk analysis of STRs and supported by the databases and information available to the police. This would improve the efficacy of the functions that the law already assigns the JP with respect to STRs.

179. The assessors do not express any preference with respect to the location of the FIU. At the time of the assessment mission, several options were being considered for the creation of the FIU. Regardless of its location, several amendments to the AML law and to other legal and regulatory provisions will be necessary to guarantee technical independence of the new Unit. An important investment in staffing, training, specialization and access to adequate information is necessary. It will also be important that the unit not be charged with non-core FIU functions unless exceptionally, if provided with additional resources and only if it does not distract the unit from its core responsibilities of receiving, administering, analyzing reports to produce financial intelligence, sharing information internationally, forwarding valuable cases to the judiciary authorities and cooperating with them effectively. Examples of work that could negatively affect the efficacy of the FIU are the field-investigation tasks currently assigned to the SCITE and, as seen in some countries where the FIU is located within BCV, delegating in the FIU the responsibility of supervising financial institutions for compliance with the AML/CFT regime.

180. Gaining the trust of reporting institutions is critical. A close working relationship with reporting institutions (as well as with the judiciary and the supervisory authorities) is essential for an FIU. Reporting institutions in Cape Verde should be better educated about their reporting obligations, through a combination of outreach, training, oversight and enforcement that has not taken place so far. However, there are also legal impediments to achieving effective cooperation from reporting institutions. For example, the immediate *judicialization* of STRs induced by Article 3 of Decree-Law 4 of 1993 should be avoided, as well as the possibility that a copy of the STR be disclosed to the accused person during a trial (Article 22-4 of the AML Law). Should the FIU be located outside the judiciary police, the authorities should look for ways to give it access to at least the same information and databases that the SCITE currently has. Equally important would be to amend Article 23 of Law 17 of 2002 to make the new Unit the direct recipient of STRs (aside from the other recommendations made in section 3.7 to improve the reporting obligation).

181. Collection of statistics about the number of STRs and subsequent investigations is inadequate, even relative to the low number of STRs received. Except for the summary table below, and the fact that only banking institutions have reported, the authorities did not provide information to determine the source of reports by category and size of banks, the amount of money cited in the reports, the most common predicate crimes suspected, or an indication of the economic activities involved (i.e., related to large deposits of cash, or real estate transactions, or foreign residents, etc).

Table 10. STRs Received by the SCITE of the Judiciary Police

Years	Reports Received	Remitted for Prosecution
2002	-	-
2003	-	-
2004	3	1
2005	5	1
2006	0	3
2007*	0	0

*Year 2007 only from January to April. Three STRs are still pending SCITE's conclusion and remittance to the public ministry.

182. Accuracy and availability of statistics is weak across all sectors of Government involved in AML. In particular with respect to STR-related data, prior to the mission's arrival, the authorities' response to the assessment questionnaire indicated a significantly larger number of reports and subsequent investigations.

183. The authorities are not using their statistics strategically to identify, for example, if there is a reasonable distribution of STRs across all banking institutions or if some institutions might be underreporting. There is little communication between the JP and BCV, where BCV could benefit from input about the quality and characteristics of reports from the institutions that it supervises, and the two institutions could join efforts to standardize the form and minimum content of STRs.

2.5.2 Recommendations and Comments

- Make a prompt decision about the location of the future FIU, taking into consideration the views of all relevant stakeholders (including law enforcement, the judiciary, the financial sector and BCV). The FIU should centralize the reception and administration of STRs, conduct a specialized desk analysis of them and forward the resulting cases to the PM. Adequate operational independence, resources, training and sources of information need to be given to the FIU.

- Amend the law to provide for the establishment of a full-fledged FIU in accordance with the R.26

- 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 having to 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 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.

- Once the new FIU is created, special measures should be taken to prevent its confidential information from being disclosed to offices or agencies other than the competent judicial authorities.

- 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.

- NCC should assign responsibilities to its various members to produce statistical and analytical information that could be used for measuring the progress made in the analysis and effectiveness of STRs.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**NC**	The judiciary police does not fulfill all the functions of an FIU as required by R26: No meaningful analysis is performed before launching a routine police investigation for all STRs. STRs are handled in a manner similar to any criminal accusation, and the only preparatory work is the cross-checking of names in the databases available to the police. The JP does not have timely access to additional information from reporting institutions or access to any confidential information from external sources. The JP is not authorized to exchange information with foreign FIUs, The JP has not issued reporting guidelines to reporting institutions; it is not authorized to establish any procedures for the sending of reports, and does not prepare reports on typologies, ML trends, or any other analytical information to facilitate the private sector's task of detecting suspicious transactions. The JP does not have the necessary operational independence to determine which STRs should be communicated to the PM and when not to prosecute a case. The number of STRs so far received is negligible, which impacts negatively on the effectiveness of any FIU arrangements in CV.

2.6 Law Enforcement, Prosecution and Other Competent Authorities—The Framework for the Investigation and Prosecution of Offences, and for Confiscation and Freezing (R.27, And 28)

2.6.1 Description and Analysis

184. The criminal justice system in Cape Verde is organized in a manner which provides for clear separation of powers between the different criminal functions. Investigation of criminal offences is carried out, depending on the type of offence, by the judiciary police, the public prosecutor, the national police, or the directorate general of customs. The Public Prosecutor's

Office[10] has sole responsibility to prosecute investigations ("accusation") before the courts of law. The enforcement agencies are autonomous bodies which carry out their functions in an independent manner.

185. The national police investigates minor criminal offences, which are known as "contra-ordonances" (contraventions), maintains law and order in the country, and assists the judiciary police in serious investigations on a need basis. It can initiate an investigation into a minor offence. The national police does not, however, have power to investigate serious criminal offences as this is within the competence of the judiciary police. The judiciary police has exclusive, under the AML Law, competence to investigate money laundering offences. Law enforcement authorities in Cape Verde do not have power to investigate financing of terrorism offences as Cape Verde has not criminalized the offence of financing of terrorism. The customs department has the responsibility under the law to ensure compliance with the obligation to declare import of currency.

186. The Public Prosecutor's Office is responsible under the constitution to "represent the State" and "institute criminal proceedings" and participate in the "execution of the criminal policy defined by the sovereign organs of the State" (Article 222). The Public Prosecutor's office is vested with the exclusive power to "institute criminal proceedings" in respect of any criminal investigations, including money laundering investigations conducted by the judiciary police. Although the national police has the power to start investigations into minor crimes on its own, the Public Prosecutor's Office has the final decision on the prosecution of those investigations.

Legal Framework

187. The legal basis for the exercise of general powers of criminal investigation and prosecution is set out in the Penal Code, the Code of Penal Procedure of Cape Verde, and specific laws such as the Drugs Law of 1993. Article 25 of the CPC of Cape Verde, expressly sets the legal basis for the application "on a subsidiary basis to proceedings of a penal nature governed by a specific legislation". With respect to investigation of money laundering offences, Article 1 of the AML law specifically provides that the repressive measures prescribed in the AML Law are "in addition to measures already stipulated on the same issue in respect of assets arising" from the drug trafficking law of 1993.

188. Investigation of money laundering offences is specifically regulated under the provisions of section II, Article 5 of the Money Laundering Act 2002. The investigation of money laundering offences is within the exclusive competence of the judiciary police, which acts under the general direction of the Public Prosecutor's Office (Art.5 AML Law). The powers of the judiciary police with respect to criminal investigation are regulated under its law of 1993 (Decreto Legislativo No. 4/93).

[10] The Constitution provides for the Office of Public Prosecutor and the Office of a Chief Prosecutor as the Head of the Office of Public Prosecutor. The Office of Attorney-General does not exist in the law. However, in practice the term Attorney-General's is constantly used to refer to the Chief Public Prosecutor, and the use of Attorney General in this text is meant to refer to the Chief Public Prosecutor.

189. The public prosecutor's exclusive prosecution mandate and functions provided for in the constitution are confirmed in the Law on the Public Ministry of 1998. Under the provisions of the CPC (Article 64 and following, especially Article 68-2 b), the PM has exclusive authority to initiate criminal proceedings and according to the principle of legality it is its duty to prosecute all crimes, except when the criminal proceedings require a complaint (Article 64) or a private prosecution (Article 65).

190. General powers of seizure and confiscation are set forth in the Penal Code and in the CPC. Articles 98 and 99 of the Penal Code and subsequent Articles allow the seizure of objects that were used or were destined for being used for the commission of a crime. Article 6 of the AML law allows for seizure and confiscation of goods or products resulting from money laundering crimes referred to in Article 3 of the AML Law, pursuant to a request from competent foreign judiciary authorities.

191. Article 7 of the AML Law specifically provides for the confiscation of the assets or products related with the money laundering offence stating that they should be confiscated to the State.

192. Powers to take down evidence in relation to an investigation are provided in the Judiciary Police Law, whereas seizure of relevant documents is regulated under Articles 179-194 of the CPC.

Designation of Authorities ML/FT Investigations (c. 27.1)

193. The authority responsible for the investigation of money laundering is designated in accordance with Article 5 of the money laundering Law which vests exclusive competence for such investigations in the judiciary police. This power is exercisable under the direction of the public prosecutor who has competence to oversee and direct criminal investigations. The judiciary police does not have power to investigate the offence of financing of terrorism which has not yet been criminalized in Cape Verde.

194. The customs department has the responsibility under the Article 15 AML Law, to ensure compliance with the obligation to declare import of currency.

Ability to Postpone or Waive Arrest of Suspects or Seizure of Property (c. 27.2)

195. There are no specific provisions in the CPC or the AML law, that authorizes an investigation authority to waive arrest of a suspect or seizure of property related to an ongoing ML investigation. The power to postpone or waive arrest of suspects related to an ongoing drug-related money laundering investigation is exercised under Articles 33. 1 of the Drugs Law of 1993.

196. Investigation authorities however have power, in relation to investigation for drug offences, to waive arrest and seizure in order to complete the investigation. Article 33 of the Law 78/IV/93 allows the PM to authorize the Public Prosecutor not to interfere with individuals carrying narcotics or psychotropic substances who are in transit through Cape Verde, for the purpose of identifying and charging as many individuals taking part in various trafficking and distribution activities. The public prosecutor may authorize the judiciary police not to interfere

with a suspect, in an attempt to gather evidence relating to other suspects in the criminal activity, and to cooperate with the destination countries or other transit countries (Art.33). This power should be extended to money laundering offences based on predicate offences other than drug offences.

Additional Element—Ability to Use Special Investigative Techniques (Legal Basis) (c. 27.3)

197. The judiciary police can make use of specialized investigation tools available for the purposes of a money laundering offence as defined in Chapters III and IV of the CPC, and more specifically, Articles 234-242 (Inspections and Searches), and Articles 243-254 (Seizures). The special techniques and powers available for investigation into drug offences are also available for money laundering investigation.

198. Article 234 to 242 authorize the use of inspections and searches, in relation to any individual or premises suspected of concealing items that relate to a crime and which may serve as evidence. Inspections and searches require an authorization or order of a competent judicial authority. However, inspections and searches are exempt from the requirement for a judicial authority or order in cases of crimes listed under Article 234-4, which include an offence of ML. There is, therefore, no requirement for a judicial authority in an investigation of a money laundering offence.

199. Chapter V of the CPC allows for the interception of communications and recording of telecommunications for purposes of criminal investigations, under certain procedural formalities. Article 255 of the CPC allows for the use of wiretaps in the investigation of money laundering offences. This provision makes interception and recording by means of electronic mail or other similar forms possible under the authorization of a judge, under the condition that there is reason to believe that the measure will prove critical to discovering the truth or to prove crimes incurring a maximum prison sentence of more than three years. The power is exercisable only in respect of suspects, or in relation to persons who are suspected of receiving communications from the suspect, and under certain strict operational formalities (Article 256).

200. Other special investigative techniques available during the course of an investigation include controlled delivery and undercover operations. Investigating agencies are also empowered under Article 30 to carry out postal inspections.

Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4)

201. The judiciary police has not so far made use of specialized investigative techniques allowed under the CPC, for the interception and recording of communications when these are relevant for the investigation. There is no indication that these techniques and powers, including controlled delivery or undercover operations have ever been used in either the investigation of drug offences or ML offences.

Additional Element—Specialized Investigation Groups and Conducting Multi-National Cooperative Investigations (c. 27.5)

202. Possibilities of cooperation with other jurisdictions in investigations related to money laundering and drug trafficking exist within the AML Law and the Drugs Law (Art.6.3). Article 33 of the Law 78/IV/93 enables the ministry of public prosecutor to conduct controlled delivery where this would facilitate uncovering criminal offences by organized groups of individuals. In the case of drug-related investigation, the PM may authorize the judiciary police to cooperate with the destination countries or other transit countries (Art. 33). However, there are no specialized investigation groups set up to investigate proceeds of crime.

Additional Elements—Review of ML and FT Trends by Law Enforcement Authorities (c. 27.6)

203. No review of ML and FT methods, techniques, and trends are, or have ever been, carried out by law enforcement authorities.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1)

204. The general power to obtain information and evidence during the course of an investigation is derived from the obligation imposed on every citizen to collaborate with the judiciary police in accordance with Article 281 of the CPC. Article 344 and 356 imposes sanctions on any person who obstructs the police in the performance of their duties.

205. The power to carry out inspections and searches for documents and information is generally defined in the provisions of the CPC (Art. 234–242, and 243–251). Searches may be carried out on any premises including lawyers, or other professional offices. Seizures of articles suspected of being related to the commission of an offence, are covered under Article 243. However, any search carried out on the premises of a lawyer or other professional who have a legal or statutory requirement of secrecy, must be supervised by a judge who must inform the professional association prior to the search (Article 239 Code of Penal Procedure).

206. Article 32 of the 1993 Drugs Law is more specifically related to the power to obtain information about the assets, deposits, or any other property belonging to individuals accused of committing crimes in connection with drug trafficking. Under Article 32.2, a bank or financial institution may not refuse a request for such information by the public prosecutor, where the information is necessary for an investigation.

207. The power to compel production and seizure of documents and information more specifically related to money laundering is defined in the provisions of Article 246 of the CPC, and Article 32 of the 1993 Drugs law. The duty to make available information relevant to an investigation into a crime of money laundering is also regulated in Article 22 of the 2002 Law whereby financial entities are under an obligation, when ordered to do so, to furnish the judge or public prosecutor with information, documents or objects in their possession that are necessary for the investigation and prosecution of the money laundering offence. Where the judiciary police requires such information for purposes of investigation, the application should be made by the PM. Such information may only be used for the purpose of investigating and prosecuting the

crimes referred to in the 2002 Law. The exclusion of certain offences as predicate offences for purposes of money laundering offences limits the application of Article 22.

208. Power to compel production of banking information is subject to confidentiality and the provisions of Article 22 of the AML Law. There is no limit on type of information and the process is fairly quick.

Power to Take Witnesses' Statement (c. 28.2)

209. Article 173 of the CPC provides the power to obtain evidence for purposes of investigation and prosecution. The power to take down witness's statements is therefore vested in the relevant authorities.

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1)

210. The investigating and prosecuting agencies are under-staffed and do not have the resources necessary for the proper investigation and prosecution of the money laundering offence. The judiciary police and PM enjoy sufficient operational independence and autonomy in the exercise of their respective investigative and prosecuting functions.

211. The level of awareness of AML issues is low. Adequate resources and training in money laundering should be a priority for national agencies involved in the fight against money laundering. AML training should address both general and specialized skills.

Integrity of Competent Authorities (c. 30.2)

212. The constitution defines the mode of appointment of the Chief Public Prosecutor and the public prosecutors and ensures that such officers are of required probity and merit for appointment. The recruitment of such officers is based on criteria set down in the constitution and requires high integrity. The recruitment of the representatives of the Public Prosecutor's Office shall take place with emphasis on the criterion of merit, in accordance with the law, and they may not serve in any other public or private capacity, except in academic realm or scientific legal research on an unpaid basis (Art. 224). They are expected to act with impartiality and legality and in accordance with established principles of law. The criteria related to integrity requirement in the selection of staff of the PM are reiterated in the ministry's internal regulations.

Training for Competent Authorities (c. 30.3)

213. Officers of the Public Prosecutor's Office and the judiciary police have participated in conferences, seminars, and videoconferences dealing with money laundering topics, but have not had any specialized training or exposure to money laundering investigative techniques or methods. There is a general lack of specialized skills and capacity to investigate and prosecute money laundering crimes.

214. Insufficient knowledge and operational capability for investigating and prosecuting money laundering and financing of terrorism is a matter of concern that should be addressed by the authorities.

Additional Element (Rec 30)—Special Training for Judges (c. 30.4)

215. The judges of Cape Verde have participated in a few workshops on general aspects of AML/CFT. The authorities indicated that there is a need for further and more specialized training.

Statistics (applying R.32)

216. The absence of systematic collection of data hampers the review and monitoring of implementation of compliance with the law. Few statistics are kept or are available regarding criminal investigations and prosecutions. The low level of statistics provided regarding ML investigation and the delay in investigating suspicious transactions reported indicate the system is not implemented effectively.

217. The authorities are conscious of the need for a more organized and structured approach to maintaining statistics for purposes of reviewing the effectiveness of the system.

2.6.2 Recommendations and Comments

218. The law enforcement system in Cape Verde needs to be strengthened in order to ensure the effective implementation of the AML/CFT framework.

- The authorities should give adequate attention to the investigation of ML cases.
- The judiciary police and Public Prosecutor's Office do not have the necessary resources, skills and training to adequately comply with the FATF Recommendations.
- There is need for more specialized staff,and use of specialized investigative techniques.
- The enactment of legislation criminalizing the offence of financing of terrorism should also provide the mandate to law enforcement authorities to investigate and prosecute the financing of terrorism offences.
- The amendment of the list of predicate offences to include all predicate offences listed under the FATF Recommendation 1 is necessary to extend the application of Article 22.
- The power to take down witnesses' statements in relation to AML/CFT investigation should be made more explicit.
- There is 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 and other information should include information on prosecutions, convictions, penalties, freezing/seizing and confiscation. The powers of investigation and prosecution should extend to offences related to FT.

- Both the judiciary police and the Public Prosecutor' Office should consider establishing units specialized in the investigation and prosecution of ML and FT.

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	Law enforcement agencies do not have a mandate to investigate and prosecute FT offences. The power to postpone or waive arrest of a suspect or seizure of property only exists for drug offences. Limited attention is paid to pursuing ML investigation as evidenced by low level of statistics.
R.28	**PC**	Absence of indication of use of existing power to compel production and searches for documents and information in ML investigation. No power to compel production of documents and searches in relation to FT offences since FT is not an offence in Cape Verde.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

219. Cape Verde has a declaration system to control the flow or movement of currency entering its territory. Every person entering Cape Verde in possession of currency or bearer securities exceeding one million escudos, (approx. €9,090) is under an obligation to declare the amount, to the customs authorities. Failure to do so constitutes an administrative infraction which is sanctioned under the law.

220. The General Directorate of Customs, which is under the responsibility of the minister of finance, is responsible for administering the requirements of the law (Article 15.2 AML Law). The responsibility to investigate and prosecute offences related to false declaration in violation of Article15 of the AML Law is imposed on the GDC (Art. 33).

Legal Framework

221. Article 15 of the 2002 Money Laundering Law provides the legal basis for the establishment and operations of a system to detect the physical cross-border transportation of currency and bearer negotiable instruments.

Mechanisms to Monitor Cross-Border Physical Transportation of Currency (c. IX.1)

222. Cape Verde has opted for a declaration system whereby any person entering Cape Verde is under an obligation to declare any local or foreign currency or bearer securities in excess of one million escudos to the customs authorities. The obligation to declare is in respect of local or foreign currency or bearer securities. The law does not apply to passengers leaving Cape Verde and is silent on whether transportation methods such as shipments through containerized cargo or mailing is covered by the Law. Currency includes both banknotes and coins, and bearer

securities include monetary instruments in bearer forms (negotiable instruments) such as checks, traveler's checks, and promissory notes.

223. The law places the obligation to supervise compliance with the requirement to declare currency and bearer securities, in accordance with Article 15 of the 2002 Law on the GDC. No system or mechanism has been put in place to administer the obligation.

Request Information on Origin and Use of Currency (c. IX.2)

224. There is no provision in the AML Law or Customs Law that enables customs to request and obtain from a person in violation of the declaration obligation further information about the origin of the currency or bearer instruments. The authorities claim that the general powers of customs to investigate customs offences include the power to request a person found in possession of currency, to provide information about the origin and use of the currency. However, there in no provision in the customs law that allows for such an interpretation or evidence to that effect. The mission was, therefore, not convinced that the customs law or the AML Law allowed the customs authorities to request and obtain further information related to the false declaration of currency or bearer instruments.

Restraint of Currency (c. IX.3)

225. The AML law does not contain any provision that allows the customs authorities to stop or restrain currency or bearer instruments for the purposes of investigating money laundering or the financing of terrorism. The general customs powers under the customs law allows for power to restrain goods in connection with customs offences such as "contraband" or other customs offences. This power is, however, not applicable to currency or bearer instruments in violation of the declaration obligation or suspected of being linked to money laundering. The mission is therefore of the view that customs officials do not have the legal authority to stop or restrain the currency or bearer negotiable instruments that are suspected to be related to money laundering or terrorism financing or that are falsely declared.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4)

226. Article 15 of Law 17/VI/2002 does not impose a direct obligation on GDC to maintain any information in relation to the monitoring of the inward movement of currency and bearer negotiable instruments. However, Article 15-3 provides that documentation collected by GDC in this regard must be maintained for a period of five years. This provision therefore presumes that a system for the maintenance of information will be established. Since GCD has not however established a system to implement the requirements of Article 15-1 and 15-2 of Law 17/VI/2002, no information of the amount of currency or bearer negotiable instruments or identification data is maintained.

Access of Information to FIU (c. IX.5)

227. The AML law does not contain any provision for information obtained in violation of the declaration obligation, or about suspicious cross-border transportation, to be notified to the FIU. Customs has not implemented the declaration system as required by Article 15-2 of the law.

There is, therefore, no system in place for information obtained in relation to the implementation of the declaration system, to be made available to the judiciary police.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6)

228. There is coordination among the authorities on an as required basis between the customs and judiciary police. Such collaboration only takes place in relation to specific cases related to general customs and drugs offences.

International Cooperation between Competent Authorities Relating to Cross-Border Physical Transportation of Currency (c. IX.7)

229. The customs authority cooperates with their foreign counterparts within the framework of the Nairobi Convention[11] on mutual assistance for the prevention, investigation and repression of customs offences, which includes fraud, smuggling and drug offences. However, the authorities did not clearly indicate the basis upon which Cape Verde could cooperate with countries that are not signatories to the Nairobi Convention. There has also never been any request from a foreign customs authority, including from a country member to the Nairobi Convention, for information or assistance regarding illegal activity involving cross border transactions. While the Nairobi Convention allows for cooperation and exchange of information among member countries on issues related to investigation, prevention, and repression of customs offences such as smuggling and drug offences, such cooperation and exchange of information does not extend to transportation of currency and bearer instruments related to ML.

Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)

230. The sanctions applicable for breach of the declaration obligation under Article 15-1 of the 2002 AML Law are defined in Article 35 of the same Law. Article 35 does not differentiate between a failure to declare and a false declaration. Violation of the duty to declare cash transfers over an amount of one million escudos is punishable by a fine of between 250,000 and 25 million escudos. The minister of finance is responsible for applying fines for noncompliance, and has the power to delegate this authority. There has not been any delegation of such authority. Sanctions have not been applied due to the lack of effective implementation of the system. The absence of implementation of the declaration obligation makes it difficult to assess whether the penalties are effective, proportionate and dissuasive.

Sanctions for Cross-Border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9)

231. The sanctions of imprisonment provided in respect of money laundering offences under 3 of the AML Law are also applicable in cases where a person is carrying out cross-border

[11] The UN International Convention on Mutual Assistance for the Prevention, Investigation and Repression of Customs Offenses came into effect in June 1977. The Convention allows for exchange of information of customs offenses including fraud, smuggling and drugs. The Convention is open to all countries and has been signed by 50 member countries.

transportation of currency or negotiable instruments that may be related to money laundering. However, a violation of the declaration obligation under Article 15 is sanctioned as an administrative offence under Article 35 of the AML Law, by a fine.

Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10)

232. Confiscation of property related to the commission of a criminal offence, including customs offences, is allowed under the provisions of the CPC. The Customs Law allows for confiscation of goods, including currency, related to customs and drugs offences. The Drugs Law of 1993 also enables confiscation of property related to drugs offences. The AML law also enables the confiscation of goods or products related to the offence of ML as well as profits, interests or other products derived from proceeds of crime. However, it is not clear if the term "assets and products" in the AML Law covers the confiscation of currency in violation of the declaration obligation or ML offence. It is therefore not clear if the authorities have the power to confiscate currency related to false declarations that may be related to ML/FT.

Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11)

233. Cape Verde has not yet enacted any law on combating the financing of terrorism. Cape Verde has not implemented UN SCRs 1267 and 1373.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12)

234. Power exists under general customs laws to notify foreign agencies of unusual movement of precious metals and stones. The Nairobi Convention allows for cooperation among its counterparts of member countries and exchange of information regarding the investigation and the prosecution of customs offences, including smuggling, fraud, and drugs offences. As such, it is able to notify foreign agencies of unusual movement of precious metals and stones. There is no indication of any such notification having taken place. However, the customs authority did not clearly indicate the basis upon which such cooperation exists with countries that are not signatories of the Nairobi Convention.

Safeguards for Proper Use of Information (c. IX.13)

235. Generally information is exchanged between law enforcement agencies subject to confidentiality rules and the condition for the information to be used only for the purposes of investigation or prosecution. The law does not provide for safeguards for the reporting of cross border transactions in order to ensure proper use of information. The authorities claim that regulations have to be adopted to provide such safeguards.

Additional Element —Implementation of SR.IX Best Practices (c. IX.14)

236. The authorities have not given consideration to implementing the measures outlined in the FATF Best Practices paper.

Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.15)

237. The customs system is computerized, but it is not currently accessible by all competent authorities. Due to the absence of implementation of the requirements of Article 15 of Law 17/VI/2002, the computerized system does not yet contain information related to cash declaration or money laundering.

2.7.2 Recommendations and Comments

- The law should be amended to cover both incoming and outgoing persons.
- Customs should implement the obligation by establishing a mechanism to monitor and enforce compliance with the law.
- Once the system 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 FT
- Powers should be defined so authorities may request and obtain 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/FT.
- Sanctions should be applied following a case of false declaration.
- Resources and training should be provided to customs officers for an effective implementation of the obligation.
- It should be clarified that the requirement to monitor the movement of currency and bearer negotiable instruments applies to the movement of currency through the mail and through the use of containerized cargo.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	The obligation to declare the cross-border movement of cash and negotiable instruments is not applicable to outgoing movements. Absence of implementation by customs and lack of adequate powers to enforce the obligation. Lack of clarity about powers to seize and retain currency or bearer instruments in violation of the declaration obligation Failure to maintain data related to the amount of currency and bearer negotiable instruments and identification data.

		No power to communicate information related to currency or bearer instruments in violation of the obligation, to the FIU.

3 PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

3.1 Risk of Money Laundering or Terrorist Financing

238. The authorities have not undertaken an assessment of Cape Verde's vulnerability to money laundering and terrorist financing. Discussions with a number of officials during the course of the assessment visit suggest that there is a strong perception that the main vulnerability is through cash transactions performed in the banking sector.

239. The authorities acknowledge that Cape Verde is a transshipment point in the movement of drugs between South America and Europe. As such there are persons in Cape Verde who play various roles in this process and who will, from time to time, be in receipt of some of the proceeds of this form of criminal activity. The authorities indicated that investigations into concerns that Cape Verde might also be used as a transshipment point in the human trafficking trade did not produce any evidence that such activity was taking place. They are, therefore, of the view that the proceeds generated through transshipment activity are primarily related to the drug trade.

240. The banking sector dominates financial sector activity and is considered to be the main vulnerability as a gateway to the financial sector. Discussions with officials and industry indicated that life insurance is a relatively new product in the financial services industry and currently accounts for less than 2 percent of total premium income. Investment products are only offered by the industry to the extent that they are a component of a life insurance product. In relative terms the insurance sector is not, therefore, considered to have a high level of vulnerability to money laundering.

241. While there are modest levels of capital market activity in Cape Verde, there are no entities licensed solely as capital market licensees. All capital market intermediaries are licensed banks, emphasizing that these institutions are the most vulnerable financing institutions, in the context of ML, that operate in the domestic market.

242. International financial institutions represent another source of vulnerability and are channels that are more likely to be used in the layering stages of money laundering. A particular weakness of this sector is the presence of some institutions that are not adequately captured in the global consolidated supervision of home regulators from countries that can be considered to have effective AML supervisory regimes and which are therefore only subject to supervision by BCV, the weaknesses of which are described in this report (see Chapter 3.9).

243. Law 17/VI/2002 applies to credit and para-banking institutions, insurance companies, and enterprises that manage pension funds. It does not cover securities firms and collective investment schemes. The authorities indicated that at the time of drafting the law, there were no entities exclusively undertaking such activities and it was not considered necessary to cover these activities under the framework. Up to the time of the assessment, there were still no entities, other than licensed banks, that were providing these services.

244. While the supervisory strategy adopted by the authorities allocates resources in accordance with perceived prudential and ML risks, it is not based on an objective analysis of ML risk and, as a result, does not adequately address this risk in the financial sector. The authorities focus most of their supervisory resources on banks that operate in the domestic sector. This reflects their belief that within the domestic sector, banks are the financial institutions most vulnerable to abuse in the context of money laundering. This approach however, does not address the vulnerability arising from the activities of IFIs, which are not effectively captured by BCV supervisory regime.

3.2 Customer Due Diligence, Including Enhanced or Reduced Measures (R.5–8)

3.2.1 Description and Analysis

Legal Framework

245. The principal legal instruments that establish the framework for preventive measures are Law 17/VI/2002, Technical Instruction attached to Circular Series A, No. 108 of August 2003 (TI 108) and Technical Instruction attached to Circular Series A, No. 109 of August 2003 (TI 109). TIs are a form of secondary legislation issued by BCV under authority granted by Law 17/VI/2002 and are enforceable. Article 42 of Law 10/VI/2005 (The Organic Law of BCV of Cape Verde), provides that BCV can "approve regulations and other regulatory acts, in the context of Bank's functions, which must be complied with by those institutions subject to its supervision". When this provision is read in conjunction with Article 4 of Law 17/VI/2002 which gives BCV the power to monitor and oversee the application of regulations and measures for the prevention of laundering in the banking and financial sector, it clearly establishes not only the power of BCV to issue the TIs but the obligation of financial institutions to comply with such regulations.

246. Law 17/VI/2002 covers credit and near-banking institutions, insurance companies, and companies that manage pension funds. The law also applies to "entities that explore the public postal service to the extent that they provide financial services." The law applies to branches, agencies, and other forms of representation of these entities located in Cape Verde but headquartered in another country.

247. TI 108 covers credit institutions and para-banks and "entities that explore the public postal service to the extent that they provide financial services." It also covers branches, agencies and other forms of representation of these entities located in Cape Verde but headquartered abroad. TI 109 covers companies that carry out life insurance activity and are based in Cape Verde. The authorities interpret "based in Cape Verde" to mean entities headquartered there. TI 109 also covers branches, agencies and other forms of representation of these entities located in Cape Verde but headquartered abroad. No TI has been issued to cover securities market institutions.

Prohibition of Anonymous Accounts (c. 5.1)

248. Cape Verdean law does not expressly prohibit the use of anonymous accounts or accounts in fictitious names. The authorities indicate that anonymous accounts or accounts in fictitious names are effectively not permitted in Cape Verde as institutions are required to abide

by the provisions of Article 16 of Law 17/VI/2002 (see criteria 5.2) and TIs 108 and 109 (see criteria 5.2). The authorities also believe that there is little likelihood that anonymous accounts could have existed prior to the advent of Law 17/VI/2002. Prior to 1993, the BCV was the only institution that offered banking services to the public and did not itself permit the use of anonymous accounts. The BCV discontinued the provision of these commercial services in 1995. Under the provisions of Circular 96 of August 2000, financial institutions were required to identify their customers or their representatives when they opened deposit accounts. The authorities indicate that similar circulars were issued in 1995 and 1997, but the mission was not provided with copies of these documents. The authorities reported that there were no private insurance companies operating in Cape Verde prior to 1992 but there was a public institute, the Institute of Insurance and Social Welfare that provided insurance services. Since the advent of insurance companies that serve the local market, there has been very little activity in the life insurance market, with insurance entities estimating that life insurance accounts for approximately 2 percent of total premium income in 2006. The authorities therefore conclude that while there was a gap of approximately 10 years between the advent of private financial sector activity and the enactment of Law 17/VI/2002, there was very little opportunity for institutions to provide financial services for products that are vulnerable to abuse in the context of ML and FT, on the basis of anonymity. Discussions with industry generally indicated that anonymous accounts did not exist in Cape Verde.

249. Article 3 of Law 12/2005, which governs the operations of IFIs, states that the use of anonymous or pseudonymous parties, or numbered accounts, when the domiciling financial institution does not have a complete record of the identities of the parties, constitutes a serious violation of the principles referred to as “internationally accepted principles” set out in Article 2 of the law, unless the presumption of such violation is refuted by evidence to the contrary. It is not however stated to be a violation of Law 12/2005. The principles as set out in Article 2 include “safeguarding the soundness, safety, stability and transparency of the international system.”

250. BCV officials indicate that they have not come across anonymous accounts or accounts in fictitious names during the course of their inspections of financial institutions. They also indicate that numbered accounts are not used in Cape Verde. Discussions with financial institutions corroborated this view.

When CDD is Required (c. 5.2)

251. Article 16 of Law 17/VI/2002 requires “financial entities” to demand the identification of their clients, whether regular or occasional, whenever they establish any business relationship. The law goes on to specify that these relationships include the opening of deposit accounts, book savings accounts, funds transfers, currency exchange, providing valuable safekeeping services, providing guarantees, selling insurance policies, or transactions in any type of stock certificate.

252. There is no specific requirement to identify customers when there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity of previously obtained information. Since the law does not establish a threshold for the identification of occasional customers, it is not necessary to have a requirement for CDD measures to be employed when a specific threshold is met. The absence of requirements for the performance of CDD where institutions have doubts about the veracity of previously obtained customer

information and to comply with the measures set out for wire transfers under SR VII are weaknesses in the current arrangements.

Identification measures and verification sources (c. 5.3)

253. Article 16 of Law 17/VI/2002 requires that the identification of a client should be based on an identification card or any other official document containing a photograph and the identification details shall be noted in writing. In addition, TIs 108/2003 and 109/2003 Chapters II (A) require financial entities to identify their customers using **"**a valid official document." The authorities indicated that the term "official document" refers to a government issued identification document such as a national identification card, a passport or an identification card issued by the military, all bearing a unique identifying number. The authorities further indicate that the vast majority of nationals have at least one form of the above-mentioned documents and in instances where someone does not have such a document; one can be very easily obtained.

254. TIs 108/2003 and 109/2003 Chapters II (B) provide requirements in respect of the identity documents to be used for various types of customers. For resident individuals, financial entities are required to verify identity through an identity card or any other official identification document bearing a photograph. The TIs require that the customer's profession and employer(s) should be required through another "original document" that provides "unequivocal proof." The customer's address must also be confirmed by an item confirming the veracity of the information provided or by any other procedures deemed appropriate by the financial entity.

255. TIs 108 and 109 (Chapters II (B) (1.2) require that identification procedures for non-residents should be similar to those adopted for residents. They establish requirements for instances in which one or more of these elements of the documents required for resident individuals are not available. TI 108 requires banks and near-banks to ask their customer to name another bank "of acknowledged reputation" of which they are also a customer to attest to the veracity of the information they have provided. TI 109 requires insurance entities to ask their customer to name an insurance company or financial institution with which they have a contract in force and which is qualified to attest to the veracity of the information provided. In both instances, financial entities are required to immediately take steps to obtain such confirmation in writing before engaging in operations with the customer. TI 109 goes one step further than TI 108 and requires that, where the financial institution has doubts about the authenticity of an identification document obtained in respect of a non-resident customer, the institution contacts the immigration department or the relevant consulate in Cape Verde in order to verify the accuracy of the information presented.

256. A number of the CDD requirements contained in Chapters II (B)(1) of TIs 108 and 109 as outlined above are appropriate for customer identification at the most basic level. The requirement to obtain the customer's address during the CDD process is an example. Under the current arrangements in Cape Verde these provisions are however limited to instances in which an institution is dealing with a customer on a face-to face basis where transactions individually or jointly exceed 1 million Escudos. They are not applicable in the case of transactions below this threshold. The authorities indicate that it is the intention that the requirements set out in TI 108/2003 and 109/2003 (Chapters II (B)(1)) should be seen as enhanced CDD measures to be applied in respect of transactions that are in excess of one million escudos.

257. A major concern with the arrangements for the process of verifying the identity of non-resident customers is the lack of clarity on what meets the test of "a bank of acknowledged reputation" or what is acceptable in the context of other financial institutions that can be relied on to attest to "the veracity of information" provided by someone seeking to become a customer. The authorities are of the view that there are many sources of information available to financial institutions to assist them in making well-informed judgments in this regard. However, they have not provided specific guidance or established specific criteria but indicate that on a case-by-case basis, they are willing to provide information to assist institutions in forming these judgments. During the course of inspections the authorities satisfy themselves that institutions are using appropriate sources of information to verify the identity of all customers.

258. The current arrangements are unsatisfactory. The vague nature of the requirement and the lack of any specific guidance or any established criteria create a situation that is likely to produce very uneven results in terms of the types of institutions that are used to attest to the veracity of information provided by potential customers. Further, The BCV's suggestion that it can provide relevant information to financial institutions on a case-by-case basis is neither practicable nor desirable as it creates a situation where the BCV would become too engaged in operational aspects of the activities of its licensees.

Identification of Legal Persons or Other Arrangements (c. 5.4)

259. Chapter II (1.3) of TI 109/2003 and TI 108/2003 require that in the case of resident legal entities, financial entities must obtain the name of the firm, its main objective or location of headquarters. This information should be confirmed by presentation of original documents which provide unequivocal proof. Information obtained by financial institutions in this regard is verified by the authorities during the course of their on-site inspections.

260. The authorities indicate that the requirement to verify the company's identity with an official document results in financial institutions obtaining information on the company's incorporation and legal status. Customers normally present copies of the Official Gazette to the financial institution as proof of the incorporation details.

261. Financial entities are also required to obtain the tax identity number as verified by documents issued by the Internal Revenue Service. They are also required to verify the powers held by any individual to represent the company in any dealings with financial institutions or to move funds on behalf of the legal entity**.** This should be verified on the basis of an original document that confers such powers.

262. In the case of non-resident legal entities, TI 109/2003 and TI 108/2003 provide that, with the exception of the tax identity number, information as required for resident legal entities should be obtained. Where there are doubts about the veracity of information obtained from non-resident legal entities, banks and para-banks are also required to ask their customer to name another bank "of acknowledged reputation" of which they are also a customer to attest to the veracity of the information they have provided. Insurance entities are required to ask their customer to name an insurance company or financial institution with which they have a contract in force and which is qualified to attest to the veracity of the information provided. Financial entities are required to immediately take steps to obtain such confirmation in writing before engaging in operations with the customer.

263. Trusts are not recognized under Cape Verde law and are not used by customers of domestic financial institutions. However, Article 43 of Decree-Law 12/2005, which regulates the activity of IFIs, requires that special care must be taken when dealing with trusts as well as executives and fiduciary agents, with or without representation, to ensure that institutions are aware of the real client or beneficiary. This legislation is only applicable to IFIs.

264. The requirement to obtain the name of a corporate entity is insufficient to satisfy the requirements of this criterion. There is no express requirement to check the legal status or proof of incorporation and based on information provided by the authorities, the information contained in the Official Gazette will not always be up-to-date and therefore inadequate for these purposes. There is no requirement to verify the legal form and the address of directors.

265. There is no requirement for institutions to verify provisions regulating the power to bind a legal person or arrangement. The provisions of Chapters II (B) (1.3) of TI 109/2003 and TI 108/2003 are too narrow in this regard as they are restricted to verification of the power of an individual and not a legal person and are only related to the power to represent the entity in any dealings with financial institutions or to move funds.

266. The requirements for CDD measures for trusts are inadequate. They are only applicable to IFIs and do not specifically require institutions to verify the identity of trustees.

Identification of Beneficial Owners (c. 5.5; 5.5.1 and 5.5.2)

267. Article 17 1 of Law 17/VI/2002 indicates that where elements pertaining to a banking operation to be carried out reveal that the economic beneficiary of the operation is a person other than the persons who made direct contact with the institution, the institution must demand the identity of the beneficiary of the operation and the proof of such identity. Such proof can be presented in copy and electronic form.

268. Article 17 2 indicates that where operations are carried out internationally without any contact with the beneficiary and doubts about identity persist, and the amounts and nature of the operation justify, institutions may request from the beneficiary that the identity and nature of the operation be proven by a financial institution of proven credibility.

269. Chapters II (B) (1.1) of TIs 108/2003 and 109/2003 also require that, where an institution knows or suspects that a customer is not acting on his own behalf, it should obtain written information from the customer describing the origin and destination of the funds, the identities of beneficiaries, and the justification for the operations in question. These are in addition to the basic requirements described under 5.3.

270. There are no specific legal provisions that require institutions to understand the ownership and control structure of legal persons and legal arrangements or to determine who is the ultimate person that controls the customer.

271. Article 43 of Law 12/2005 requires that special care must be taken when dealing with trusts as well as executives and fiduciary agents, with or without representation, to ensure that institutions are aware of the real client or beneficiary. This legislation is only applicable to IFIs.

272. There are a number of concerns about the provisions of Article 17 Law 17/VI/2002 as it relates to the requirements to establish if a customer is acting on behalf of another party. There is no affirmative obligation for an institution to determine if a customer is acting on behalf of another person. Institutions are only required to take steps to verify the identity of the beneficiary when they become aware of his/her existence. Further, the requirement is limited to banking operations and does not appear to cover other financial sector activity.

273. In the circumstance outlined in Article 172, (where operations are carried out internationally without any contact with the beneficiary and doubts about identity persist), institutions are only required to make further efforts to obtain further CDD information where the amount and nature of the transaction justify. This is not acceptable for CDD requirements for a higher risk customer category. The article also indicates that in these circumstances additional information *may* be requested. This should not be a matter left to the discretion of a financial institution under these circumstances. Also, as previously discussed under the text for criterion 5.3, it is not clear how the proven credibility of the financial institution that will attest to the validity of the customer's ID, will be established.

274. While Article 43 of Law 12/2005 addresses CDD measures related to trusts, it only requires institutions to take special care and ensure that the beneficiaries are identified. There is no requirement to identify the settlor, trustee or other persons exercising effective control over the trust.

Information on Purpose and Nature of Business Relationship (c. 5.6)

275. The Cape Verdean legal framework has no specific requirements for financial institutions to obtain information on the purpose and intended nature of the business relationship. Discussions with financial institutions indicated that they generally try to understand the nature of the business that a new client wants to undertake and his/her reasons for doing so.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 and 5.7.2)

276. Apart from the provision of Article 19 of Law 17/VI/2002 (see para. 417) there are no specific requirements for ongoing due diligence or for CDD records and data to be kept up to date. As there is no legal requirement in this regard a review of measures used by institutions for ongoing due diligence or the updating of CDD records is not undertaken during on-site inspections. Only one institution with which the mission spoke indicated that it has measures in place to achieve this objective.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8)

277. Measures required for non-resident individuals, legal persons, and trusts are as indicated above. The requirements for non-face to face customers are discussed under Recommendation 8.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9)

278. The legal framework does not establish circumstances under which reduced or simplified CDD measures can be applied by financial institutions. However some banks indicated that for companies whose shares were traded on the local stock exchange they did not undertake CDD on

all shareholders. The insurance sector also indicated that it did not require all persons covered by group life insurance to be subject to full CDD measures.

279. While industry appears to be using reduced CDD measures where there is a perception of lower money laundering risk, the authorities have not created a framework that provides guidance on how such an approach should be implemented. It is therefore likely that there is inconsistency in the approach used by financial institutions. Since the legal framework does not contemplate circumstances in which reduced CDD measure can be employed, the above actions taken by financial institutions, though practicable are in effect a breach of the AML law.

Risk—Simplification or Reduction of CDD Measures Relating to Overseas Residents (c. 5.10)

280. In the absence of a framework for the application of simplified CDD measures this criterion is not applicable.

Risk—Simplified or Reduced CDD Measures not to Apply when Suspicions of ML/TF or Other High Risk Scenarios Exist (c. 5.11)

281. In the absence of a framework for the application of simplified CDD measures this criterion is not applicable.

Risk—Based Application of CDD to be Consistent with Guidelines (c. 5.12)

282. The Cape Verdean laws and TIs do not expressly create a framework for the application of a risk-based approach to AML/CFT supervision. The authorities have therefore issued no guidelines in this regard and any measures adopted by FIs occur outside of a framework controlled and monitored by the authorities.

Timing of Verification of Identity—General Rule (c. 5.13)

283. The legal framework does not expressly address the issue of the timing of verification of identity. However Chapter III of the TIs indicate that financial entities must refuse to engage in operations with customers who do no provide identification information for themselves or for the persons on whose behalf they act. The authorities consider that this means that identity processes must be completed before the establishment of all relationships. Institutions generally appear to require the identification process to be completed before any business activity can be conducted. However, one financial institution indicated that in very rare instances it has offered services to customers who were unable to produce satisfactory forms of identification, with the requirement that an official identity document would have to be provided in order for any payments to be made to the customer.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 and 5.14.1)

284. The Cape Verdean legal framework does not expressly create exceptions to the CDD process that would allow the process to be completed after a business relationship has commenced. The authorities expect that the verification of identity will be completed before the

commencement of a business relations and check for this during the course of on-site inspections.

Failure to Complete CDD Before Commencing the Business Relationship (c. 5.15)

285. Chapters III of both TIs provide that if customers fail to provide the identification information required either for themselves or for the person on whose behalf they are acting, the financial institution must refuse to engage in operations with the customer. There is no requirement that institutions should consider filing an STR under these circumstances.

Failure to Complete CDD After Commencing the Business Relationship (c. 5.16)

286. The provisions of Chapter III of the TIs appear to preclude a situation in which a financial institution can commence business with a customer before completion of the CDD requirements. One financial institution did however indicate that in very rare instances it had offered services to customers who were unable to produce satisfactory forms of identification, with the understanding that an official identity document would have to be provided in order for any payments to be made to the customer. Apart from this instance all institutions interviewed indicated that CDD measures are always completed before the commencement of a business relationship.

Existing Customers—CDD Requirements (c. 5.17)

287. There are no specific provisions that address requirements for the identification of customers whose relationship with financial institutions pre-date the establishment of Cape Verde's AML legal framework. Institutions do not generally appear to have reviewed their files to determine if there are any customers whose relationships pre-date the advent of the AML laws and who were not subject to adequate levels of CDD. However one institution indicated that it had undertaken an exercise to review the CDD information held on its customers and discovered a number of accounts for which adequate information was not held. The institution has suspended transactions on these accounts.

Existing Anonymous-Account Customers—CDD Requirements (c. 5.18)

288. There are no requirements for institutions to apply CDD measures to persons who had anonymous accounts or who maintained accounts in fictitious names. As indicated in the discussion under criteria 5.1, the authorities are of the view that no such accounts have ever existed.

Foreign PEPs—Requirement to Identify (c. 6.1)

289. The main AML legal instruments do not contain provisions relating to PEPs. The only reference to PEPs in the legal framework appears in Law 12/2005 which is applicable to IFIs. Article 43-2 f provides that institutions should use special caution in dealing with proposed clients who hold or have recently held high political or public service positions whether military or civilian, in order to prevent involvement with illicitly generated wealth, in particular wealth resulting from corruption.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1)

290. Law 12/2005 does not require institutions to obtain senior management approval for establishing relationships with PEPs. There is also no requirement for institutions to obtain senior management approval for the continuation of a business relationship with someone found to be a PEP or who becomes a PEP after the commencement of the business relationship.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3)

291. There is no requirement for institutions to establish the source of wealth for customers and beneficial owners identified as PEPs.

Foreign PEPs—Ongoing Monitoring (c. 6.4)

292. Institutions are not required to conduct enhanced ongoing monitoring of their relationships with PEPs.

Domestic PEPs—Requirements (Additional Element c. 6.5)

293. While it is not clear that the authorities have made an explicit policy decision to include persons who hold prominent local positions in the definition of PEPs, the provisions of Article 43-2 f of Law 12/2005 do not distinguish between foreign and local PEPs. Further, in accordance with the provisions Article 2 of Law 43/III/88 it is possible, under certain circumstances, for residents to be customers of international banks. (See Overview of Financial Sector, Chapter 1.1) If a local person who holds a prominent public position becomes or attempts to become a customer of an international bank, the provisions of Article 43-2 f of Law 12/2005 would require that he/she be treated as a PEP.

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

294. Cape Verde has signed but not ratified the Merida Convention.

295. The provisions in Cape Verde's legal framework that relate to PEPs are only applicable to IFIs. Entities that operate within the domestic market are therefore not covered. The provisions of Law 12/2005 are very general and even for the institutions subject to the law the framework does not address the specific requirements of Recommendation 6. Further, there is no guidance informing institutions that relationships with close family members and associates of PEPs represent a similar level of risks as that associated with PEPs and should be accorded an appropriate level of oversight.

296. Discussions with financial institutions indicated a low level of awareness, among institutions that operate in the domestic sector and IFIs, of the FATF's requirements in relation to PEPS. There was no indication that enhanced measures are employed when dealing with such persons. In addition, since there is no requirement for institutions that operate in the domestic sector to adopt risk management measures for PEPS, this matter is not addressed during the course of on-site inspections.

Cross-Border Correspondent Accounts and Similar Relationships (c. 7.1, 7.2 and 7.3)

297. The legal framework does not include specific provisions relating to cross border correspondent banking. There is therefore no requirement to obtain information on the respondent institution, assess its AML/CFT controls, seek senior management approval for the establishment of the relationship, document the responsibilities of each institution or takes specific measures to address vulnerabilities associated with payable-through accounts. The authorities indicate that banking institutions do not generally provide correspondent banking relationships. They are more often the respondent bank in such arrangements. This view was confirmed by institutions visited by the mission. The IFIs with which the mission met indicated that this was also the case in their sector. There is no review of arrangements for the management of ML risk associated with the use of correspondent banking arrangements during the course of on-site inspections. While Cape Verde banks do not normally offer correspondent banking relationships to other institutions, a framework that satisfies the requirements of Recommendation 7 should be put in place.

Misuse of New Technology for ML/FT (c. 8.1)

298. The legal framework does not specifically address the risks posed by new technology and the authorities have not provided any guidance or advice to institutions in this regard. Discussions with institutions did not indicate that they have generally adopted specific measures to address such risks.

Risk of Non-Face-to-Face Business Relationships (c. 8.2 and 8.2.1)

299. Chapters II (B) (1) of TIs 108/2003 and 109/2003 require that when financial institutions intend to initiate business relations or carry out occasional transactions in amounts which, individually or jointly, attain or exceed 1 million Escudos and there is no direct contact involving physical presence with the customers or representatives thereof, information provided to the financial institution could be verified by the receipt of notarized copies of all documents verifying the identity sent by registered mail or through written certification provided by a bank or insurance company named by the customer or representative thereof in response to a request made by the financial entity.

300. There are a number of weaknesses in the above requirements. First, the requirements are only triggered in the case of transactions of 1 million Escudos or more. For relationships with non-face-to-face where transactions are less than 1 million Escudos, the only requirement is for identity to be confirmed on the basis of an identity card or other official document bearing a photograph. Second, the measures do not appear to be mandatory as the TIs suggest that the information obtained from the customers ***could*** be verified in one of two ways. In this instance the language of the TIs does not seem to create a specific obligation since it does not require that either option be adopted. Third, as previously discussed in the comments under Recommendation 5, the authorities have not developed a framework or provided any guidance on the types of institutions that would be acceptable to attest to the veracity of the information provided.

3.2.2 Recommendations and Comments

Recommendation 5

- The authorities should consider expressly prohibiting the use of anonymous accounts
- Financial institutions should be required to undertake customer due diligence measures where there are doubts about the veracity of previously obtained information.
- The threshold of one million escudos that is currently associated with the provisions in 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.[12]
- The ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.
- Financial institutions should be required to verify the legal status or proof of incorporation of legal persons or legal arrangement. This can be done by obtaining proof of incorporation or similar evidence of establishment or existence and obtain information concerning the customer's name, the name of trustees, legal form, address, directors, and provisions regulating the power to bind the legal person or legal arrangement.
- Financial institutions should not rely on information contained in the Official Gazette as proof of a company's incorporation details. The authorities could consider the use of certificates of incorporation issued by the national registrar for these purposes.
- Financial institutions should be required to identify beneficial owners and take reasonable measures to verify the identity of such persons. Using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is.
- Financial institutions should determine whether the customer is acting on behalf of another person and should take reasonable steps to obtain sufficient data to verify the identity of that other person.

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

- For customers that are legal persons or legal arrangements, financial institutions should be required to take reasonable measures to understand the ownership and control structure and determine who are the natural persons that ultimately own or control the customer.

- When dealing with trusts, financial institutions should verify the identity of the settlor, trustee or other person exercising effective control over the trust.

- Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship.

- Financial institutions should be required to conduct ongoing due diligence on the business relationship.

- Ongoing due diligence should include scrutiny of transactions undertaken throughout the relationship to ensure that transactions being conducted are consistent with the institutions' knowledge of the customer, their business risk profile, and where necessary, the source of funds.

- Financial institutions should be required 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.

- Financial institutions should be required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

- The authorities can consider, if they wish, to permit financial institutions to complete the verification of the identity of customers and beneficial owners following the establishment of a business relationship; provided that, this occurs as soon as reasonably practicable, is essential not to interrupt the normal conduct of business and the money laundering risks are effectively managed.

- Where a customer is permitted to utilize the business relationship prior to verification of identity, financial institutions should be required to adopt risk management procedures concerning the conditions under which this may occur. These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship.

- Where a financial institution is unable to verify the identity of a customer or beneficial owner, it should consider making a suspicious transaction report.

- Where the financial institution has already commenced the business relationship and is unable to satisfactorily verify the customer or beneficial owner, it should be required to terminate the business relationship and to consider making a suspicious transaction report.

- Financial institutions should be required to apply CDD requirements to persons who were customers before the enactment of Law 17/VI/2002 on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times.

Recommendation 6

- The provisions relating to PEPs should be applicable to all financial institutions, not just IFIs as is currently the case.

- Financial institutions should be required to put in place appropriate risks management systems to determine whether a potential customer, a customer, or the beneficial owner is a PEP.

- Financial institutions should be required to obtain senior management approval for establishing business relationships with a PEP.

- Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, financial institutions should be required to obtain senior management approval to continue the business relationship.

- Financial institutions should be required to take reasonable measures to establish the source of wealth and the source of funds of customers and the beneficial owners identified as PEPs.

- Financial institutions should be required to conduct enhanced ongoing monitoring of their business relationships with PEPs.

Recommendation 7

- Financial institutions should be required to gather sufficient information about a respondent institution, to understand the nature of the respondent's business, and to determine from publicly available information, the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

- Financial institutions should be required to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective.

- Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.

- Financial institutions should be required to document the respective AML/CFT responsibilities of each institution.

- Where a correspondent relationship involves the maintenance of "payable-through accounts," financial institutions should be satisfied that:

    - Their customer (the respondent financial institution) has performed all the normal CDD obligations set out in Recommendation 5 on those of its

customers that have direct access to the accounts of the correspondent financial institution; and

- The respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.

Recommendation 8

- Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.
- Financial institutions should be required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transaction. These policies and procedures should apply when establishing customer relationships and conducting ongoing due diligence.
- The authorities should develop a clear framework for and provide guidance on the types of institutions that would be acceptable to attest to the veracity of the information provided.

3.2.3 Compliance with Recommendations 5–8

	Rating	Summary of factors underlying rating
R.5	**NC**	Use of threshold for instances in which specified forms of identification are required can lead to inadequate documentation being taken in circumstances where threshold is not met. Inadequate arrangements for circumstances in which foreign financial institutions are confirming the authenticity of CDD identification documents or information. Lack of affirmative obligation for institutions to determine if a customer is acting on behalf of another party. Number of weakness in the requirements for the identification of legal persons Lack of a requirement to obtain information on the purpose and intended nature of business relationship No requirement for ongoing due diligence or for CDD records to be kept up to date. Inadequate CDD Requirements for Trusts. No requirement for institutions to apply CDD to customers whose relationship with the institution pre-dated the 2002 law, on the basis of materiality and risk.

R.6	**NC**	No effective framework to address the risk posed by PEPS.
R.7	**NC**	No effective framework to address the risk posed by cross-border correspondent banking relationships.
R.8	**NC**	No requirements for institutions to have policies in place or to take measures to prevent the misuse of technological developments in ML or FT. No adequate framework for circumstances in which institutions are allowed to rely on verification of identity provided by a foreign financial institution

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and Analysis

Legal Framework

301. The principal AML legal instruments do not create a framework for the management of the ML/FT risk in instances where business relationships are created on the basis of an introduction by a third party. Article 43-2 d of Law 12/2005 provides that in the case business are referred by other financial institutions, IFIs may streamline or omit procedures to confirm the identity of clients.

Requirement to Immediately Obtain Certain CDD Elements from Third Parties (c. 9.1)

302. Law 12/2005 does not require institutions to immediately obtain specific CDD data from the introducing institution.

Availability of Identification Data from Third Parties (c. 9.2)

303. Article 43 of Law 12/2005 requires that the referring institution must explicitly state that it has used due diligence in verifying the clients' identity and that the institution's documentation is available to the IFIs on request. It is however not a requirement that such documents be available without delay.

Regulation and Supervision of Third Party (applying R. 23, 24 and 29, c. 9.3)

304. Article 43 of Law 12/2005 requires the referring institution to be one headquartered in an OECD country and subject to normal supervision. However the law does not place an obligation on institutions to be satisfied that the third party has specific CDD measures in place.

Adequacy of Application of FATF Recommendations (c. 9.4)

305. The authorities have limited the countries from which introductions can be made to OECD members countries, since they are of the view that available information indicates that these countries meet the standard of adequately applying the FATF recommendations.

Ultimate Responsibility for CDD (c. 9.5)

306. There is no explicit requirement that the ultimate responsibility for customer identification and verification remains with the Cape Verdean institution.

307. The institutions with which the mission met did not accept introductions on the basis of CDD work undertaken by third parties. The provisions in Cape Verde's legal framework that relate to introduced business are limited to IFIs. The framework provides some mitigation of risk in arrangements for introduced business by limiting introducers to financial institutions from OECD countries. However, the use of the term “normal supervision” to describe what would be an acceptable supervisory framework is vague and is subject to differing interpretations by the covered institutions. Since there is no regulatory framework for third party introducers, related issues are not addressed during the course of on-site inspections.

3.3.2 Recommendations and Comments

308. The current provisions for introduced business should be applied to all institutions and not just IFIs as is currently the case.

- 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.

- The authorities should make it clear to financial institutions that in circumstances of business introductions, they retain the ultimate responsibility for undertaking CDD measures.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	No effective framework to address the risk posed by third party introduced business arrangements.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Legal Framework

309. Secrecy duty on financial institutions is lifted through Article 40 of Law No. 3/V/1996 of July 1 (the Banking Act), also applicable to BCV of Cape Verde, according to Article 62 of Law 10/VI/2002, of July 15, through Article 42-1 of Decree-Law 12/2005, of February 7 regulating IFIs, and also through Articles 22, 23, and 24 of the AML Law.

> Article 39, Law 3 of 1996 (Duty of Secrecy):
>
> 1. Lending institutions and near-banks and the branches of institutions headquartered abroad, together with the respective incumbents of boards of directors, managers, directors, agents, and employees, as well as other persons who, on a permanent or occasional basis provide services to them, either directly or through a third party, may not disclose or make use of facts or information concerning the operation of the institution or branch, or its relations with its customers, of which they have gained knowledge as a result of fulfilling their functions or providing their services.
>
> 2. In particular, the duty of secrecy applies to the names of clients, deposit accounts and movements therein, and other banking, financial or foreign exchange operations.
>
> 3. The duty of secrecy does not expire upon cessation of the said functions or provision of services.
>
> Article 40 (Exceptions):
>
> The facts or elements covered by the duty of secrecy, under the terms of the foregoing Article, may only be disclosed:
>
> (a) With authorization from the client, in cases concerning relations with that client;
>
> (b) With authorization from the institution or branch, when the information exclusively relates to the operations of that institution or branch;
>
> (c) To the Bank of Cape Verde, within the scope of its attributions;
>
> (d) Under the terms of criminal law and criminal process;
>
> (e) Under the terms of any other legal provision that expressly permits such disclosure.

310. All credit institutions, para-banks, branches of foreign institutions, as well as board members, representatives, employees and any persons providing services to such institutions, on a temporary or permanent basis, are bound by a secrecy duty, regarding any information obtained in the course of their professional activity related to facts pertaining to the functioning or the customer relationship with the institution, namely customer's names, deposit accounts and operations, and other banking, financing and exchange operations, according to Article 39 of the Banking Act (Law3/V/1996). This duty is maintained even after the obliged person has ceased all professional relationship with the institution. However this legal duty is waived in several situations, described in Article 40 of the same law, namely relating to information due to BCV in its role as the supervisory authority of the financial sector, and also according to the provisions of the Penal Code and Criminal Procedure Code and also when a legal instrument waives such a secrecy duty. Examples of this legal waiver can be found in AML Law, namely in Article 23 which imposes to the financial entities the duty to report to the judiciary police any funds or goods suspicious of ML or predicate offences referred in Article 3 of the AML Law.

311. IFIs are also bound by a secrecy duty, foreseen in Article 8 of Law No. 43/III/88, of December 27, and also in Article 42 of Decree-Law No. 12/2005, of February 7, amended by Decree-Law No. 44/2005, of June 27. The secrecy duty applicable to IFIs is stricter than the one applicable to credit institutions in general, because the breach of the secrecy duty by the employees of IFIs might be considered as an offence even when the employee acted with mere negligence unlike the breach of secrecy stated in the Banking Law that requires a willful intention to breach the secrecy rule by the employee, to perpetrate the offence. Therefore the stricter liability upon the employee of the IFIs that breaches the secrecy rule contributes to the creation of a major obstacle and possible apprehension to report suspicious transactions that might not be considered grounded and which could give rise to a criminal procedure against the employee for negligent reporting. This regime of secrecy raises clearly more difficulties to employees of IFIs in complying with the duty to collaborate, or even more so, in the context of reporting suspicious transactions, foreseen in Article 23 of the AML Law and in the opinion of the assessors should be reviewed and put into line with the secrecy duty bounding the credit institutions in general. Nevertheless according to Article 42-1 of Decree-Law No. 44/2005 the duty of secrecy is lifted in the situations referred in Section III of Chapter I of AML Law (basic provisions regarding preventive measures).

312. Therefore financial entities, including credit institutions, para-banks, insurance companies and fund pension management companies and branches of foreign companies (Article 23 of AML Law), as well as IFIs, are obliged to report immediately, namely by fax or e-mail, to the judiciary police all suspicious funds or goods they possess or that are registered in their books that they know or have grounds to suspect derive from a predicate offence or that might constitute an indication of those offences, according to Article 23 of the AML Law. Besides that they should provide the judges and public prosecutors, at their request, with information, documents and any other objects in their possession, that might be necessary to the investigation of a ML offence or that should be apprehended, according to Article 22-1 of the AML Law.

313. The BCV is also bound by the secrecy duty in its organic law applicable to the governor, members of the board, fiscal council, and advisory council in similar terms as those applicable to credit institutions. Therefore the situations where the secrecy duty is lifted are similar to those applicable to credit institutions and one is expressed in AML Law (Article 24), which states that BCV should inform the judiciary police when, as a result of its inspections or in any other way, it acknowledges facts that indicate an offence as foreseen in Article 3 of the AML Law.

Inhibition of Implementation of FATF Recommendations (c. 4.1)

314. Since there is a stricter duty of secrecy in respect of IFIs, as compared to that which is in place for other financial institutions in general, employees might be discouraged from filing STR in relation to IFIs. Although not inhibiting the duty to report, the arrangements for compliance with the obligation to file STRs are more burdensome and difficult for the employees of IFIs.

3.4.2 Recommendations and Comments

315. 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 their employees from reporting suspicious transactions of ML and TF.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	The legal secrecy duty regime applicable to IFIs is stricter than the one applicable to domestic financial institutions in general, rendering more difficult and riskier for employees of IFIs to discover and report suspicious operations to the judiciary police.

3.5 Record-Keeping and Wire Transfer Rules (R.10 and SR.VII)

3.5.1 Description and Analysis

Legal Framework

316. The relevant legal provision is Article 20 of Law 17/VI/2002 on record-keeping and those discussed in section 3.2 with respect to CDD requirements.

Record-Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1)

317. Article 20 of Law 17/VI/2002 requires that financial institutions keep records, in any form, of the documents pertaining to the record of the operations carried out for a period of five years after the end of the relationship with the customer.

318. There is no requirement for transaction records to be sufficient to permit the reconstruction of individual transactions to provide evidence for the prosecution of criminal activity if necessary. This is of particular significance since Law 17/VI/2002 allows institutions to keep records in "any form."

Record-Keeping for Identification Data (c. 10.2)

319. Article 20 of Law 17/VI/2002 requires that financial institutions keep records, in any form, of the documents pertaining to the identification of the client. While these provisions relate to documents pertaining to identity, there is no specific reference to account files or business correspondence and therefore no clear requirement for such records to be maintained for a period of five years after the end of the relationship with the client. **T**here is also no requirement for records to be maintained for longer periods as may be requested by competent authorities.

Availability of Records to Competent Authorities (c. 10.3)

320. There is no specific legal requirement for records to be available on a timely basis to domestic competent authorities upon appropriate authority.

321. Discussions with financial institutions indicate that there are various practices in relation to record management and retention. In the absence of clear internal policies for record retention, a number of institutions have retained records since the inception of their operation. At least one

institution has adopted a blanket policy that records should be maintained for 20 years. None of the institutions with which the mission met appeared to have written policies that completely satisfied either the requirements of Article 20 of Law 17/VI/2002 or FATF Recommendation 10. Further, institutions did not have clearly stated policies that established an objective of maintaining records in a manner that would facilitate the production of evidence for the prosecution of criminal activity.

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

322. Customer information must be obtained from all customers, including for wire transfers. The same CDD requirements imposed on financial institutions with respect to all types of customers and transactions (including one-off transactions) apply to the service of money transfers that only these institutions can provide. This information includes the customer's name and national identity number, plus an account number which is always assigned by financial institutions in Cape Verde (please refer to Section 3.2 on customer identification). No threshold exists for the collection of customer data and, therefore, all wire transfers are subject to the same requirements. It is worth noting that Western Union is a major provider of remittance services in Cape Verde, but it can only operate under contractual arrangements with the financial institutions supervised by BCV.

323. The same requirements with respect to keeping of records are applicable to information related to wire transfers (Article 16 of Law 17/VI/2002 which requires the identity of clients when undertaking specific types of activity). The identification requirements are general and not specific to wire transfers. There are therefore no provisions that address the specific record keeping requirements of SR VII.

Inclusion of Originator Information in Cross-Border and Domestic Transfers (c. VII.2, VII.3 and VII.4)

324. Wire transfers are not regulated with respect to the information that must be included in the communication and subsequently transmitted. There are no regulations imposing the obligation to insert the information in the wire transfer message, neither indicating what to do with respect to incoming wires which do not contain full originator information. The only regulations provided by BCV with respect to electronic transfers are those that establish the *International Bank Account Number (IBAN)* standard for Cape Verdean banks (Technical Instruction 126 of 2007). Banks are not required to include information from the originator in national or cross-border wire transfers. No other regulations were provided that could indicate compliance with this aspect of SR. VII.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

325. There are no regulations dealing with this aspect of the FATF Recommendations.

Restrictions on De Minimis Threshold: (c.VII.6)

326. There are no regulations dealing with this aspect of the FATF Recommendations.

Monitoring of Compliance with SR VII (c. VII.6):

327. There are no regulations dealing with this aspect of the FATF Recommendations and, therefore, no supervision of it by the BCV.

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

328. There are no regulations dealing with this aspect of the FATF Recommendations, hence no sanctions are applicable for non compliance.

3.5.2 Recommendations and Comments

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.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	Absence of a requirement for transaction records to be sufficient to permit the reconstruction of individual transactions to provide evidence for prosecution of criminal activity. Absence of a requirement for account files and business correspondence to be maintained. Absence of a requirement that records should be available on a timely basis to domestic competent authorities. No requirement for records to be maintained for such periods as may be required by competent authorities. Uncertainty on the part of a number of financial institutions about the requirements of the law re record keeping
SR.VII	**NC**	No measures in place to address the requirements of SR. VII, except to obtain and verify originator's identification (only one out of seven criteria are complied with). Banks are not required to include originator information in national or cross-border wire transfers. There are no regulations indicating what to do with respect to incoming wires which do not contain full originator information. Some positive practices regardless of the lack of regulation result from the fact that remittance services in Cape Verde are undertaken only by Western Union (under contractual arrangements with financial institutions) which is expected to comply with stricter US regulations albeit not enforceable by the Cape Verdean authorities.

3.6 Monitoring of Transactions and Relationships (R.11 and 21)

3.6.1 Description and Analysis

329. The monitoring obligation is drafted in confusing terms, but the authorities and financial institutions have a more adequate understanding of this obligation as contemplated in R.11. Implementation by financial institutions seems excessively focused on counter/teller operations and not enough resources are dedicated to automated or periodical analysis of customer transactions. This is the only area in which guidance has been given to financial institutions, although BCV does not test specifically the quality of monitoring during inspections. Finally, there is currently no regulatory framework in place to apply countermeasures to countries that disregard the FATF standards, neither are financial institutions required to pay special attention in their transactions with such countries.

Legal Framework

330. Article 19 of Law 17 of 2002 is the basis for the monitoring obligation:

> 1. Financial entities shall pay particular attention to identification of customers and the nature of transactions which, by reason of their frequency, unusual volume, complex structure or irregular character, arouse suspicions of being connected with the commission of offences provided for in Article 3.
>
> 2. In the cases envisaged in the preceding paragraph, financial entities shall, in addition to identification measures, ascertain the origin and destination of the funds and the true nature of the transaction and may not disclose their suspicions to the customer.

331. The same text is repeated without significant variation in Technical Instructions 108 and 109 of 2003 of BCV (Chapter IV in both regulations) except for one important addition to numeral 2, underlined herein:

> 2. In the cases envisaged in the preceding paragraph… and whenever the amount of the operations exceeds 1 million escudos , financial entities shall….” [Note: 1 million Escudos is almost equivalent to €9,090].

332. The Law of IFIs (Law 12 of 2005 especially Art. 43) does not contain any separate provisions in this area, which makes the following analysis also applicable to IFIs.

Special Attention to Complex or Unusually Large Transactions (c. 11.1 and 11.2)

333. Institutions are obliged to pay particular attention to transactions. Article 19 cited above indicates when a financial institution must perform an additional scrutiny and it mentions three criteria for that: being unusual in frequency or volume, of complex structure or of irregular character. According to Article 19-2, these transactions prompt an enhanced review of the customer’s identification, nature of transactions, origin and destination of funds.

334. However, the provisions do not extend this obligation to any transactions which have “no apparent economic or visible lawful purpose” as is the broad requirement of R.11. Instead, Article 19-1 mandates institutions to pay attention only to transactions that could be linked to the specific crimes that are predicate of the ML offence in Cape Verde. In doing so, the law mixes the two distinct concepts of *unusual* and *suspicious* transactions. Besides, the monitoring obligation is limited insofar as the list of predicate offences is not comprehensive enough.

335. The Technical Instructions (regulations) issued by BCV attempt to broaden the scope of the obligation. In fact, the threshold inserted in Chapter IV-2 cited above makes it mandatory to pay special attention not only to transactions when they are suspected of being linked to a predicate offence (repeating the same error of the law commented on earlier), but also whenever a transaction is higher than €9,090. This raises the question of whether this specific provision of the technical instructions is *ultra vires*, which could hinder their enforceability (because they create a more stringent obligation based on a threshold not foreseen in the law).

336. In practice, large-size deposits seem to be the only criterion used for detection. Financial institutions do not have monitoring mechanisms other than the capacity of the teller or the employee handling the transaction to identify its unusual character on the spot. As a consequence, the vast majority of examples mentioned by banks and authorities portrayed a large deposit of money as the only trigger of suspicion. Some internal auditors query their bank's database, on a random and occasional basis, in search of unusually large transactions to test if branch employees are conducting an adequate review. The team was informed of short-term plans, by one of the largest banks, to set up a more automated reporting system that will assist them in detecting unusual transactions as well as in auditing compliance.

The Obligation to Examine Background and Purpose (c. 11.2)

337. Article 19 (2) adequately states that "In the cases provided for in the preceding paragraph, financial entities shall, in addition to identification measures, ascertain the origin and destination of the funds and the true nature of the transaction." However, the same criticism made to 19-1, affects 19-2: if only transactions that are suspicious of being linked to predicate offences have to be monitored, then the scope of the monitoring obligation is too narrow. In fact, financial institutions cannot be expected to decide if a transaction is suspicious or not before they make further inquiries about the nature and characteristics of the transaction.

Obligation to Keep Records of Analysis (c. 11.3)

338. Nothing in the relevant laws or regulations requires institutions to document their review and findings in writing. The process could be, in theory, entirely oral, informal and therefore not covered by any of the record keeping regulations. Not surprisingly, the practice described by all financial institutions interviewed is more according to FATF recommendations. Institutions actually document their internal review process.

339. Even if reviews of suspicious transactions are documented in practice, the obligation to keep records does not apply to them. Article 20 of Law 17, 2002 simply states that "Financial entities shall preserve copies of documents relating to customers' identification and the recording of completed transactions for a period of" The process by which an institution analyzes and internally reports some transactions is not necessarily a "customer identification" document, neither a "record of the transaction".

340. Institutions must furnish an annual summary of "cases detected" to BCV, but this is no substitute for a record keeping obligation. Technical Instructions 108 and 109 of 2003 require institutions to submit an annual report to BCV listing the "suspicious cases detected and notified". It also mandates external auditors to notify the BCV of any suspicion in the following terms, which do not equate to a record keeping obligation:

> Financial institutions are required to submit a yearly report to the competent authorities containing information on cases detected and notified in the domain of prevention of money laundering; this should be sent to the Bank of Cape Verde at the end of June.
>
> External auditors must immediately notify financial entities and the Bank of Cape Verde of any sign of money laundering of which they become aware when discharging their functions.**"** (Chapter IX of both instructions).

Additional observations on implementation of R.11

341. The BCV issued some guidance to assist in the detection of unusual transactions. It is contained in the annex to Technical Instruction 108 of 2003, and provides a list of examples of potentially suspicious operations. However, most of these examples, and BCV's circular letter communicating the technical instructions reflect an almost exclusive preoccupation with the placement stage of money laundering operations:

> The first of these phases, namely placement of the funds, consists of (…).Hence the fundamental role of financial entities in preventing and detecting this criminal practice while it is still in the initial phase, for, by observing the precautions set out in this instruction, such entities become a fundamental element in the fight against money laundering… ." (From the introduction to BCV Technical Instruction 108 of 2003, for Banks).

342. Financial institutions and supervisors need to adapt their practices to the risks stemming from a more complex and internationally connected financial market. Considering the Cape Verdean context, the current emphasis in preventing the potential placement of large sums of cash into the financial system is explicable, but insufficient to meet the challenges of a rapidly developing economy. To guarantee the effectiveness of the monitoring requirements, supervisors should routinely test the quality of the monitoring and analysis functions of banks. Currently, their manuals do not make reference to AML and inspections do not focus on this issue.

Special CDD Attention with Respect of Countries not sufficiently applying FATF Recommendations (c. 21.1)

343. Neither the AML law nor the regulations require the application of enhanced CDD measures based on higher-risk characteristics of customers or on the nature of their business. The Annex to Instruction 108 of 2003 (added in 2005) does not include any mention of the risk associated with countries which insufficiently apply the FATF Recommendations and financial institutions do not have enhanced mechanisms for any type of higher risk relationship (either PEPs, or country related risk). Discussions with financial institutions did not indicate a high level of awareness of international concern about the risk associated with conducting business with persons from such countries and no specific measures were generally adopted by the institutions in this regard.

Transactions that Have no Aeconomic or Visible Lawful Purpose (c. 21.2)

344. As noted in the analysis of R.11, due to the unfortunate wording of Article 19 of Law 17 of 2002, institutions are supposed to examine more closely only the transactions that are "suspicious of being connected with… [the predicate crimes of ML]" which is a much higher bar than the apparent lack of an economic or lawful explanation. Such a high bar cannot include, either, the transactions coming from/to countries not sufficiently applying the FATF Recommendations.

345. Cape Verdean banks seem to apply monitoring policies that are more adequate than the legal requirement. According to bank interviews and manuals observed by the mission, the manager or employee of the *agency* (branch) where a transaction takes place reviews all

transactions which are of an unusual character (regardless of any specific suspicion of a crime) and, based on any other information available, he/she sends his/her conclusions on whether a given transaction is suspicious. His/her recommendation goes to the lead department on AML (usually it is the Internal Audit Office) for a final decision to be taken at the highest level of the institution on whether or not to report. However, while current banking practices may be more in accordance with the requirements of FATF objectives, they are not enforceable.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3).

346. There are no countermeasures under the current legal framework and none of the examples provided for in the FATF Methodology is currently available or has even been considered. There is only a limited power given to the BCV (Article 32 of Law 12/2005) with respect to the closure of subsidiaries that IFIs have established in other countries if their functioning jeopardizes the observance of the following principles: a) safeguarding the soundness, safety, stability, and transparency of the international financial system, and b) combating the laundering of illicit capital.

3.6.2 Recommendations and Comments

347. The legal and regulatory provisions should be amended to explicitly provide for the following :

Recommendation 11

- There should be an obligation 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.
- This obligation should not be limited by thresholds or circumscribed to instances where the obliged institution suspects that the transaction is linked to the commission of a predicate crime.
- Reporting institutions should be obliged to maintain a written record of their review process and their findings.

Recommendation 21

- 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 be able to apply counter measures within the current legal framework (taking into account the examples provided in the assessment methodology) to countries that insufficiently apply the FATF standards, in case the need arises.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**PC**	The monitoring obligation is excessively limited and confusing because the only transactions for which special attention is legally required are those that are considered "suspicious" of being linked to ML or its predicate crimes (which are not a complete list either). Implementation by financial institutions is closer to the objectives of R. 11 than Cape Verdean law itself, but they perform very little automated or periodic analysis of customer transactions. The detection burden is excessively placed on the cashier/teller officers and large-size deposits seem to be the only criterion used for detection. Monitoring not effectively enforced as evidenced by the scarce number of STRs and few supervisory tools to test compliance. There is no obligation to document the analysis in writing.
R.21	**NC**	No special attention is required when dealing with countries that insufficiently apply FATF Recommendations. The same weaknesses of R11 would apply to the obligation to examine background of transactions with foreign countries (monitoring is limited to predicate offence being suspected). No countermeasures are currently available nor have been considered to deal with countries that insufficiently apply the FATF standards.

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

3.7.1 Description and Analysis

348. Institutions have the obligation to immediately inform the judiciary police and suspend the transaction when they suspect that the "funds or goods" are derived from crimes that are predicate of the ML offence (as indicated in R.1, the list of predicate offences does not include TF and some other offences required by FATF). There is no clear prohibition of tipping-off customers. Reporting institutions are legally protected from civil and criminal liability when reporting in good faith but there is a generalized reluctance to report. There is no standard form or procedure for reporting and some financial institutions do not even know which is the competent authority to receive the STRs. The number of STRs has been negligible since the inception of the obligation in 2003 and it dropped to zero in 2006.

Legal Framework

349. The key legal provision on STRs is Article 23 of Law 17 of 2002:

> Financial entities shall immediately inform the criminal police, in particular by facsimile or electronic mail, if they become aware or have a well-founded suspicion that funds or assets received by them or recorded in their books are derived from the offences provided for in Article 3 or whenever they have knowledge of any facts that may constitute indication of the commission of such offences.
>
> Financial entities shall refrain from carrying out any transactions which they reasonably suspect to be related with the commission of the crimes mentioned in Article 3 of this Law and shall inform the request for such transactions to the Prosecutor-General of the Republic or to the judicial officer of the public prosecution department designated by him, who may order the suspension of the operation concerned.
>
> Financial entities may carry out the transactions if the suspension order is not ratified by a judicial ruling within 24 hours from the time (…) , such period being extended to 48 hours in exceptional circumstances and with respect to transactions whose amount exceeds the sum of one million escudos.

350. Other relevant provisions are Articles 22 (information requested by authorities), and 25 (legal protection). The Technical instructions of the BCV (Chapter V) basically repeat what the law prescribes using a different order. Note that the financing of terrorism has not been criminalized, neither is it a predicate offence of money laundering.

Requirement to Make STRs including Related to Terrorism and its Financing (c. 13.1, c. 13.2, and IV.1)

351. Article 23-1 of Law 17 of 2002 cited above establishes a clear obligation to report transactions whenever there is a suspicion of money laundering or its predicate offences. However, the way in which the law describes the transactions that trigger an STR and those that, in addition to the STR, are subject to temporary suspension (paragraphs one and two of Article 23) does not clearly indicate the difference between them. STRs are to be filed whenever financial institutions "have knowledge of any facts that could constitute indication of the commission of [ML]" (last sentence of paragraph 1). On the other hand, financial institutions must abstain from carrying out any operations which they "reasonably suspect to be related with the commission of [ML]" (para. 2).

352. In practice, reporting institutions in Cape Verde have never suspended a transaction at their own initiative, only upon receipt of a court order. Also, according to practitioners, the obligatory suspension has become a deterrent for the filing of STRs because it places on them a burden that should be borne by the authorities and not by the private sector: that of having near-certainty about the commission of a crime, and making the decision about when to restrict their customers' property rights (by not performing the transaction).

353. Paragraphs 1 and 2 of Article 23 also create doubts as to whether there is a subset of "more serious suspicious transactions" that must not be reported to the JP (like regular STRs), but to the PM. This interpretation would be problematic because the JP would not be aware of all

STRs, it might not be informed about the suspension of a given transaction by a financial institution, neither about the Prosecutor General's subsequent decision to lift or maintain said suspension.

354. Only eight reports have been produced since the inception of the obligation in December 16, 2002. All of them came from banks and in relation with predicate offences related to illegal drugs.

Table 11. STRs

YEAR	Reports
2002	-
2003	-
2004	3
2005	5
2006	0
2007*	0

*Year 2007 only from January to April

355. Suspicions related to several crimes required by the FATF standard are not reportable (financing of terrorism being one of them) because they are not included as predicate of the ML offence. To the extent that the list of crimes foreseen in Article 3 of the AML law does not meet the requirements of predicate offences under Recommendation1, the STR provision is also deficient. Where, for example, an institution has a concern that a customer activity may be related to a crime but determines that such activity is not connected with any of the crimes foreseen in Article 3; there would be no requirement to report it. In addition to the need to expand the list of predicate offences, the shortcoming might be addressed by moving to a system of reporting transactions with a lower degree of suspicion (note that the FATF Methodology for assessing SR. IV explicitly states that "systems based on the reporting of unusual transactions rather than suspicious transactions, are equally satisfactory"). This would need to be coordinated with other measures such as issuing authorized guidance on what constitutes an unusual transaction, and reappraising the current treatment of STRs as part of the criminal investigation as distinct to financial intelligence (see assessment of R.26 on FIU).

Dealing with Attempted Transactions and Thresholds (c. 13.3)

356. In line with the standard, there are no reporting thresholds for STRs. However, the prevalent practice of monitoring almost exclusively large cash transactions (see analysis of R.11) limits the possibility of detecting suspicious operations that could be below the excessively large thresholds used in Cape Verde.

357. In addition to training and outreach to facilitate reporting, consideration should be given to lowering the degree of suspicion required. Currently, the requirement of a "well-founded suspicion" may be one of the factors behind the limited number of reports and no guidance has

been issued on what constitutes a well-founded suspicion or the maximum time to file a report (i.e., what does it mean to file "immediately": after the transaction occurs, after the institution determines that it is unusual, or after a conclusion is made that it is linked to a crime?).

358. There is no requirement to report attempted transactions**.** This requirement cannot be inferred from the current framework and the authorities and private institutions, when presented with such a hypothesis, did not consider it to be of a reportable nature.

Reporting Suspicion Regardless of Tax Matters (c. 13.4, c. IV.2)

359. Nothing in the law or regulation allows reporting institutions not to report a suspicion only because the operation involves tax matters, but there is no explicit provision to this effect. Under existing law, if tax matters are believed to justify an irregular transaction, they would not have to be reported because they are not a predicate crime. However, if the institution was suspicious of the bona fides of the tax argument then it would be obligated to report. The requirement to report suspicious transactions, regardless of any relationship to tax matters, should be made explicit via regulation and guidance, especially considering Cape Verde's plans to become an international financial center catering to wealthy foreign customers.

Additional Element—Reporting of All Criminal Acts (c. 13.5)

360. Financial institutions are required to make reports to the judiciary police in all cases where there is suspicion that transactions are linked to the offences referenced in Article 3 of the law. However these offences do not cover all of the offences that, as a minimum, should be predicate offences for money laundering.

Legal Protection for Making STRs in good faith (c. 14.1)

361. Legal Protection for Making STRs in Good Faith: Article 25 states that "The furnishing of information or assistance reasonably and in good faith pursuant to Articles 22 and 23 shall not constitute infringement of the duty of bank secrecy or entail criminal, civil, disciplinary or administrative liability for the person who furnished it or for the institution involved." The fact that this protection is given to any person who files a report (including legal persons) makes it comprehensive enough to cover the reporting institutions, their directors, officers and employees.

Prohibition against Tipping-Off (c. 14.2)

362. There is no clear provision to forbid reporting institutions and employees from making the customer (or another person) aware of the STR. The provision that would have served this purposes is related only to the furnishing of information at the request of the judge or the PM (Art. 22, literal 5), which is different from the unsolicited reports of suspicious transactions.

363. Additionally, should Article 23-2 be interpreted as requiring that all suspicious transactions must be suspended by the financial institution, this could have the unintended effect of involuntary tipping-off all reported customers.

Additional Element—Confidentiality of Reporting Staff (c. 14.3)

364. There are some, largely ineffective measures to keep the names and personal details of reporting staff confidential. Please refer to Section 2.5 on FIU (criterion 26.7).

Consideration of Reporting of Currency Transactions above a Threshold (c. 19.1)

365. The authorities have not studied the feasibility and utility of an obligation to report all cash transactions above a fixed threshold. No system exists, either in law or in operation, in Cape Verde, where banks and other financial institutions and intermediaries report any domestic and international currency transactions above a fixed amount to a national agency with a central database.

Additional Element—Computerized Database for Currency Transactions above a Threshold and Access by Competent Authorities (c. 19.2)

366. Not applicable. There are no cash-transaction reports (CTRs).

Additional Element—Proper Use of Reports of Currency Transactions above a Threshold (c. 19.3)

367. Not applicable. There are no cash-transaction reports (CTRs).

Guidelines or Feedback for Financial Institutions with Respect to STRs (c. 25.1 and c. 25.2)

368. Little formal guidelines and no feedback have been provided to financial institutions with respect to STRs. The capacity to issue guidelines lies with BCV, which could coordinate with the SCITE of the judiciary police to issue much needed guidelines and procedures for the adequate filing of STRs, including a standard report template (see detailed comments in FIU section 2.5). The only guidance issued has been a list of examples of transactions typically considered suspicious in other countries, attached to BCV's Technical Instructions.

369. There is no provision in the AML Law which imposes an obligation on either the supervisory or enforcement authorities to provide feedback to reporting entities on suspicious transactions reported. The supervisory or enforcement authorities have never provided any feedback on any suspicious transaction reported to those reporting entities. An indication of how seriously guidelines and feedback are needed is the fact that some financial institutions mistakenly believe that STRs must be filed with the BCV and not with the JP as required by law.

3.7.2 Recommendations and Comments

Recommendation 13

- Include the financing of terrorism as one of the offences 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.

- It should be clear that all suspicious transactions should be reported to the same central authority, and this authority should also be informed when a suspicious transaction has been suspended by the reporting institution.

- Make it explicit via regulation, and educate using guidelines and outreach to financial institutions, that the obligation to file an STR applies regardless of whether the transaction involves tax matters.

- 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 PM, in the event that they suspend a transaction considered to be suspicious.

Recommendation 14

- Prohibit tipping-off the customer and any third party about a report being filed.

- Revise the requirement for mandatory suspension of 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” in addition to monetary thresholds (not applicable to SRIV reports, once the FT is criminalized).

- Establish procedures, guidelines and templates for the filing of STRs and more precise definitions for timing of their filing.

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 the whether the expected objectives and benefits justify the costs to the government and the financial system, compared to other alternatives (i.e., lowering STR suspicion benchmarks as suggested for R.11). If the authorities opt in favor of a CTR system, the amount of the threshold needs to be set in accordance to 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.

3.7.3 Compliance with Recommendations 13, 14, 19, and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**NC**	Implementation has been ineffectual because, inter alia, the current requirement places too high a threshold for the reporting sector. Extremely low number of STRs since the inception of this requirement in 2003. STR obligation is refers only to list of predicate crimes of ML in CV, which does not address all the FATF required predicate crimes. Some financial institutions are not aware of their obligation to report suspicious transactions, or how to file STRs and what is the competent authority to receive them. Not clear whether all suspicious transactions should be reported to the same central authority, and whether this authority should also be informed when a transaction has been suspended by the reporting institution.
R.14	**NC**	Tipping off prohibition does not exist for filing unsolicited STRs in good faith (it only applies when complying with court-ordered disclosures for information). Mandatory suspension of all reported transactions is tantamount to alerting the customer.
R.19	**NC**	Authorities have not evaluated the feasibility and utility of establishing a CTR system.
R.25	**NC**	Section-specific rating **NC:** No guidelines have been provided for financial institutions with respect to the manner in which STRs should be filed, neither is feedback given to the few banks that have reported.
SR.IV	**NC**	Financing of terrorism is not criminalized and, therefore, not among the list of predicate crimes that could be the subject of an STR. The STR obligation, as described in the law, does not allow reporting the suspicion of any crime (only those predicate of ML).

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and Analysis

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 and 15.1.2)

370. Article 21 of Law 17/VI/2002 provides that financial institutions must create a unit responsible for the observance of norms of the prevention of the laundering of money and other goods proceeding from criminal activities. The law provides that the unit will be responsible for the annual evaluation of the cases reported to the judiciary authorities, the preparation of procedural rules that add efficiency to their operations, as well as providing collaboration that is requested of them by the Bank of Cape Verde. There is neither a requirement that internal procedures, policies, and controls should be communicated to employees, nor a requirement that they should address measures to cover CDD, record-keeping, the detection of unusual and suspicious transactions, and the reporting of obligation. The authorities, however, expect that the procedural rules which the banks are required to develop would cover these issues. Some of the institutions visited have produced internal procedures and guidelines which reproduce the requirements of the Law 17/VI/2002 and the TIs on preventive measures. To the extent that there are weaknesses in the legal framework, as identified in this assessment report, these are repeated in the internal procedures developed by these institutions. On-site examinations undertaken by BCV do not address the adequacy of internal systems and controls.

371. Apart from the provisions outlined above there is no specific requirement for institutions to have compliance management arrangements or to designate an AML/CFT compliance officer at management level. There is also no requirement for any officer or unit to have timely access to customer identification data, other CDD records and other relevant information.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2)

372. There is no specific requirement for institutions to have an independent audit function. The authorities appear to be of the view that the provisions of Article 17/VI/202 require institutions to have both compliance and an internal audit function. They further indicate that institutions often combine the compliance and internal audit functions. This is problematic as it does not meet the test of independence of the internal audit arrangements as its assigns a number of day-to-day operational functions to the internal audit staff.

Ongoing Employee Training on AML/CFT Matters (c. 15.3)

373. Article 21 of law 17/VI/2002 provides that financial institutions must train and keep their personnel up-to-date relative to the prevention and laundering of capital and other goods proceeding from criminal activity. The Articles require that special attention should be given to staff working at the counters and those who provide services to foreigners. There is no specific requirement for staff to be informed of ML and FT techniques methods and trends, or a clear explanation of aspects of the laws and obligations including requirements related to CDD and suspicious transaction reporting. As indicated above some institutions visited by the mission have produced internal AML guidelines which reproduce a number of the provisions of the legal framework including those dealing with issues related to CDD and suspicious transaction reporting.

374. Practices adopted by institutions for the training of their employees are varied. Some institutions have done little by way of specific AML/CFT training. Others have done some level of training but no institution with which the mission met has a comprehensive and consistent AML/CFT training program in place.

Employee Screening Procedures (c. 15.4)

375. There is currently no requirement that institutions should screen to ensure high standards when hiring employees. Most institutions visited have adopted some measures to screen prospective employees. Efforts to asses the integrity of such persons are based on obtaining a police report which reveals if such person has a criminal record. The use of police records in the recruitment process does not however appear to be practice adopted by all institutions. It appears to be a common practice to contact former employers to enquire why the person is leaving his/her job.

Additional Element—Independence of Compliance Officer (c. 15.5)

376. As indicated above there are no specific provisions for the establishment of a position of compliance officer.

377. Discussions with industry suggest that institutions generally do not have strong internal systems and controls to facilitate effective management of their AML/CFT risks. The industry appears to be at a very early stage of establishing such arrangements. One institution had only very recently appointed a compliance officer with AML responsibility while another had no one whose duties included this responsibility. At yet another institution the internal audit department did not appear very familiar with many aspects of the institution's AML risk management systems.

378. The requirements for institutions to establish AML internal systems and controls fall short of FATF standard. The absence of clear compliance infrastructure including the requirement to appoint a compliance officer is a major weakness. Also of concern are the absence of a requirement for an independent audit function and the screening of employees. The measures adopted by the industry also fall short of arrangements that are necessary to effectively manage AML risks.

Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2)

379. TI 108 covers credit institutions and para-banks and "entities that explore the public postal service to the extent that they provide financial services." With respect to these entities it covers branches, agencies and other forms of representation of these entities located in Cape Verde but headquartered abroad. TI 109 covers companies that carry out life insurance activity and based in Cape Verde. The authorities interpret "based in Cape Verde" to mean entities headquartered there. With respect to these entities it covers branches, agencies and other forms of representation of these entities located in Cape Verde but headquartered abroad. No TI has been issued to cover securities market institutions.

380. On the basis of the above references, there appears to be no requirement for Cape Verde's AML legal framework to be applied to foreign branches and subsidiaries of institutions headquartered in Cape Verde. There is therefore also no requirement for institutions to pay particular attention to branches and subsidiaries located in countries that do not or insufficiently

apply the FATF recommendations nor for institutions to apply the higher standard where difference exist AML/CFT requirements. This weakness is mitigated to some extent, in the current circumstances in which no Cape Verde licensed institutions have foreign branches and subsidiaries. However the laws that regulate activity across all financial sectors allow institution to open branches and subsidiaries and it is therefore important that these weaknesses be addressed.

Requirement to Inform Home Country Supervisor if Foreign Branches and Subsidiaries are Unable to Implement AML/CFT Measures (c. 22.2)

381. There is no requirement for institutions to inform the home country when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3)

382. There is no requirement for institutions to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

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.
- Financial institutions should be required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries that do not or insufficiently apply the FATF recommendations.
- 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.

3.8.2 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**NC**	Weaknesses in current requirements for institutions to maintain internal policies, procedures and controls to manage ML/FT risks. No clear requirement for institutions to establish AML/CFT compliance function including the designation of a compliance officer at managerial level. No requirement for institutions to have an independent audit function. No requirement for the screening of employees.
R.22	**NC**	Current arrangements are not applicable to foreign branches and subsidiaries of Cape Verde financial institutions.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Prohibition of Establishing Shell Banks (c. 18.1)

383. Law 3/96 does not expressly prohibit the establishment of shell banks in Cape Verde. Article 12-1 of Law 12/2005, which is applicable to IFIs, provides that an autonomous financial institution may not be authorized unless the founding partners include a financial institution that holds a minimum of 15 percent of shares of the institution to be authorized and that the financial

institution holding such shares is headquartered in an OECD country or another country that BCV deems to have proper supervisory mechanisms.

384. Article 12-2 of Law 12/2005 provides that in exceptional cases, when the qualification of the backers and interest of the Republic of Cape Verde justify it, "the government official responsible for financial matters," (minister of finance and public administration), may waive the requirements set forth Article 12-1. In such cases the minimum capital requirement for the institution will be doubled.

385. Article 44 of Law 12/2005 provides that IFIs must have a duly empowered representative in Cape Verde authorized to carry out the acts entailed by their activities in the country. The representatives can be professionally qualified individuals such as attorneys or accountants or entities that carry out similar functions.

386. There are further requirements that IFIs headquartered in Cape Verde must meet including the following:

- Maintain accounting records and handwritten books at headquarters.
- Own facilities at which their Cape Verde headquarters operate, beginning, at a minimum, with the third year of full activity. This requirement can be waived by the government official responsible for financial matters.
- Hire accountants who are residents of Cape Verde and are accredited there.
- Hire external auditors accredited in Cape Verde or in any OECD country.

387. Article 10 of Law 43 of 1988, which also regulates the operation of IFIs, provides that the management of IFIs must be the responsibility of persons who are permanent residents of Cape Verde. The law requires that such persons should have sufficient powers to commit the institution in matters related to the performance of its activity. The authorities indicate that they are currently looking into the circumstances under which two IFIs have appointed Cape Verde attorneys to perform the function of managers. The authorities want to determine if the nature of the engagement meets the requirements of the relevant laws.

388. There are a number of concerns about the above arrangements. BCV has not reached a decision on the countries, other than OECD countries, that meet the test of having "proper supervisory mechanisms" and which would therefore be appropriate to be a home country of the foreign financial institution having the minimum of 15 percent ownership interest in IFIs domiciled in Cape Verde. Notwithstanding this, there is already one IFI that is owned by a financial institution from a non-OECD country. The authorities were unable to specify the criteria that were applied in the process of assessing the adequacy of the consolidated supervision to which this entity is subject from the home regulator of its parent organization.

389. The provisions of Article 12-2 of Law 12/2005, which allow the minister of finance and Public Administration to waive the requirements of Article 12-1 "when the qualification and the backers and interest of the Republic of Cape Verde justify it," is of significant concern as it creates an option that removes the safeguards, limited though they may be, that are established in

the previous Article. Where the provisions of Article 12-2 are utilized, there are no mechanisms to ensure that international banks are captured by a sound framework of global consolidated supervision. Apart from the IFIs that are subsidiaries of financial institutions, five of the licensed IFIs are owned by individuals and are therefore not subject to global consolidated supervision. At the time of the assessment one of these institutions was already operational.

390. The provisions of Article 44 of Law 12/2005 are ineffective at creating sound arrangements to ensure that IFIs meet the test of having a physical presence in Cape Verde. The acid test for "physical presence" is "meaningful mind and management" and this does not appear to be satisfied by the measures required by the provisions of Article 44. While the requirement to maintain accounting records and handwritten books in Cape Verde addresses some concerns related to "physical presence," the ability of these entities to nominate a representative such as an attorney or an accountant, makes it difficult to conclude that there is a sound requirement for effective mind and management of these institutions to be in Cape Verde.

391. In light of the above, it is possible for a Cape Verde financial institution to both operate outside of a sound consolidated supervisory framework and also avoid having effective mind and management in Cape Verde. In fact, one IFI is currently operating outside of this framework and the authorities have not ascertained if its meet the mind and management test. Four institutions that have already been granted licenses will not be captured by global consolidated supervisory arrangements when they commence operations. These institutions will become shell banks if on commencing operations they do not maintain their mind and management in Cape Verde.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2)

392. There is no provision that prohibits Cape Verde banks from maintaining correspondent banking relationships with shell banks.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3)

393. There is no requirement that Cape Verde financial institutions satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by a shell bank.

3.9.2 Recommendations and Comments

- 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.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**NC**	Current arrangements do not preclude the operation of shell banks in Cape Verde. There are no requirements for financial institutions to satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks. No requirements that prohibit Cape Verde banks from maintaining relationships with shell banks.

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

Key Legal Provisions

394. AML Act (Law 17/VI/2002, Articles 4, 30, 33, 35, 36, and 38); Organic Law of BCV (Law 10/VI/2002, Article 23); Banking Act (Law 3/V/1996, Articles 47, 48, 49, 82, 83 and 84); and Law of IFIs (Decree-Law 12 of 2005, Articles 28 to 32).

395. The BCV has legal powers of regulation with respect to financial institutions covered by the AML Law, and to supervise their compliance with such law and regulations. It performs AML inspections on a regular basis but its effectiveness is limited by inadequate training of staff and a limited regulatory framework. The menu of administrative sanctions seems to be broad, proportionate and dissuasive but supervision is not strict and so far no serious violations have been found, neither have penalties been imposed. The BCV can instruct and recommend sanctions, but it lacks the autonomy to impose them as the ultimate power in this regard lies with the minister of finance.

Regulation and Supervision of Financial Institutions (R.23.1)

396. The two regulators of financial institutions in Cape Verde are the BCV and the General Auditor of Securities Markets (AGMVM), which is a unit within BCV. As a unit within BCV, AGMVM's regulatory and supervisory powers have been vested in the office of the Governor of the BCV. The BCV is the regulator for banks, para-banks, insurance companies and IFIs while AGMVM is the regulator of capital market intermediaries and the stock exchange. The AML supervision of its licensees is undertaken by BCV. Since the four entities licensed to undertake

capital market intermediation are banks, AGMVM does not carry out any AML supervisory functions.

397. Law 3/V/1996 regulates the activity of lending institutions and para-banks. Lending institutions are considered to be banks, special lending institutions and other entities classified as such by law. Special lending institutions are described as entities that exist to undertake banking activity as defined under the terns of applicable special legislation. They are restricted to being credit cooperatives and savings banks. Only lending institutions are allowed to accept deposits or other reimbursable funds from the public.

398. The law also establishes a regulatory framework for para-banks. These include the following institutions:

- Investment companies;
- Venture capital companies;
- Regional development corporations;
- Foreign exchange agencies;
- Investment fund management companies;
- Factoring companies;
- Hire purchase companies;
- Credit card issuance or management companies; and
- Other entities classified as such by law.

399. Securities intermediation is governed by the provisions of Law 53/V/1998 while insurance institutions operate subject to the provisions of Law 52-F/1990.

400. Law 12/2005 sets out the regulatory framework for IFIs. Article 4-2 provides for the establishment of the following types of operations:

- Banks
- Insurers
- Financial services firms
- Collective investment organizations

401. Article 2 of Law 17/VI /2002 provides that the law is applicable to credit and para-banking institutions, insurance companies and enterprises that manage pension funds.

402. Where any of the activities that can be undertaken by para-banks (see Para. 399) are undertaken by entities that are not licensed as para-banks they are not covered by Law

17/VI/2002. The law does not, for example, extend coverage to securities firms and collective investment schemes licensed under Law 53/V/98 and all of the activities that can be undertaken by IFIs. Law 43/88 provides that IFIs can engage in activities in the areas of banking, insurance and securities and also contains a general provision that these entities can engage in other areas of activity as may be determined by the minister of finance. IFIs can also undertake factoring, brokerage of securities, intermediation in money and exchange markets and wealth management. The absence of explicit coverage of all of the activities in which Cape Verde financial institutions can engage is of concern.

Designation of Competent Authority (c. 23.2)

403. Article 47 of Law 3/V/96 gives BCV supervisory responsibility for banks, para-banks and branches of foreign institutions. Article 48 of the Law provides that in exercising its supervisory function BCV shall, among other things:

- Monitor the activities of entities subject to supervision;
- Enforce regulations governing the activity of the entity;
- Inspect the establishments and conduct on-site reviews of accounts and other elements it deems relevant; and
- Issue recommendations for the purpose of correcting any irregularities detected.

404. Article 29 of Law 12/2005 designates BCV as the supervisor for IFIs licensed under that legislation. BCV is given the power to supervise the Cape Verde entities as well as subsidiaries and branches if the latter's countries of origin do not exercise consolidated prudential supervision or do so in a form that BCV considers to be inadequate.

405. Article 28 of Law 12/2005 provides that BCV can undertake consolidated prudential supervision of IFIs and their subsidiaries and branches if the regulator in the institutions' country of origin does not perform consolidated supervision, nor does so in a manner that BCV considers to be inadequate. The article also provides that BCV may also supervise subsidiaries and branches in Cape Verde even if these are subject to supervision by another entity. This provision creates a situation in which supervision of IFIs is undertaken at BCV's discretion and is not mandatory on the part of BCV. This is applicable not only to branches but also to subsidiaries which are distinct legal entities from their parent organizations. These supervisory arrangements are inadequate, particularly in the case of subsidiaries.

406. The Bank of Cape Verde (BCV) is the AML regulatory and supervisory authority for financial institutions. Article 4 of Law 17 of 2002 gives the BCV broad authority to impose AML requirements in accordance with the law and to supervise their compliance:

> The Bank of Cape Verde shall, as the banking and financial supervisory body, be empowered to issue rules of good banking practice with a view to combating laundering of money and other assets and to monitoring and overseeing the application of regulations and measures for prevention of laundering in the banking and financial sector.

407. The Organic Law of BCV restates this authority**.** Article 23 of Law 10/2002, which governs the exercise of all central banking functions not specifically covered by other laws, emphasizes its authority to issue enforceable "directives", undertake inspections and administer sanctions with respect to the institutions under its supervision:

Table 12. Types of Institutions

Type of Institution*	AML supervision and regulation assigned to BCV by:
Credit	Law 17/02 (AML law), Article 4. Law 3/ 96, Article 47 (Banking Act) Law 10/02, Article 23 (Central Bank Act)
Para banking	Law 17/02 (AML law), Article 4. Law 3/ 96, Article 47 (Banking Act) Law 10/02, Article >> (Central Bank Act)
Insurance Co.	Law 17/02 (AML law), Article 4. Law 52-F/1990, Article >>>
Pension Fund Management Co.	Law 17/02 (AML law), Article 4.
International Financial Institutions	Decree-Law 12 of 2005 (IFIs), Article 28, in connection with: Law 17/02 (AML law), Article 4.

* The AML Law 17, 2002 applies to institutions headquartered in CV, as well as to local branches, agencies and other forms of representation of foreign institutions (Art. 2-2). It is worth reminding at this point that Cape Verde's incipient securities industry, while subject to supervision from the BCV, is not covered by the AML Law.

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 and 23.3.1)

408. Article 26 of Law 3/V/1996 which is applicable to banks and para-banks establishes fit and proper criteria for directors and managers of these institutions. Fit and proper criteria for persons holding qualified shareholding are outlined in Article 32. Qualified shareholding is defined as direct or indirect holdings representing at least 10 percent of an institution's equity or voting rights or holdings that allow a significant influence in its management. Persons holding these positions are required to have aptitudes that ensure sound and prudent management. The law also provides that the following conditions are deemed to disqualify a person from holding any of these positions.

- Bankruptcy, insolvency, declared in a national or foreign court ruling, of the person or a firm in which he or she was a partner, administrator, director or manager.

- Sentencing or indictment in Cape Verde or abroad for crimes of falsification, theft robbery, fraud, abuse of trust, issuance of unfunded checks, corruption, money laundering or acts detrimental to the national economy.

- Serious or repeated violations of regulations governing the activity of lending institutions, para-banks and other financial institutions, either in Cape Verde or abroad.

409. The provisions of Article 10 of Law 3/V/1996 represent a significant weakness in the framework for the ownership of banks and near-banks financial institutions since under a provision in this Article it is possible for a licensee to issue bearer shares. The authorities point out that banks do not issue bearer shares and that the vast majority of the shares of existing banks

in Cape Verde are held by large, well know institutions, including three Portuguese financial institutions. The authorities do not however have a systematic way of checking to ensure that licensees have not issued bearer shares. To the extent that any licensee takes advantage of this provision, it would be impossible to have an effective regime for the application of fit and proper criteria for shareholders of these entities.

410. Article 6 of Law 53/V/98 which governs the operation of securities intermediaries indicates that persons shall not hold any position of responsibility for the management or supervision of a financial intermediary either in their personal capacities or as members of the corporate bodies of the financial intermediaries that are legal entities where the said persons:

- Have been declared bankrupt insolvent or responsible for the bankruptcy or insolvency of companies that they headed or of which they were directors, executives or managers.

- Have been found guilty of crimes involving forgery, larceny theft, fraud, hindrance of creditors, extortion, embezzlement, breach of trust, or usury.

411. Article 5 of Law 53/V/98 also requires that such persons have suitable qualifications and experience to perform their duties but does not specify the nature of the qualifications.

412. Law 53/V/98 does not require fit and proper test to be applied to person who participate in the ownership of capital market licensees.

413. Article 23 of Law 52-F/1990, which regulates the activity of insurance companies, requires that directors of licensees should be persons of integrity. The law establishes a similar requirement for shareholders in Article 9-2 b) but does not provide fit and proper requirements for managers. The authorities acknowledged that the insurance law is out-dated and in need of significant amendment.

414. Article 32 of Law 12/2005 authorizes BCV to :

- Prevent unsuitable entities or groups of interest from acquiring majority or controlling positions in a business corporation or subsidiary;

- Force liquidation of majority or controlling positions in a business corporation or subsidiary if the holders of the position are deemed unsuitable; and

- Immediately stop operations or financial activities that violate the following principles:

    - safeguarding the soundness, safety, stability and transparency of the international financial system; and

    - combating the laundering of illicit capital.

415. Article 32 represents the framework for establishing a regime for assessing the fitness and propriety of persons who own shares in IFIs. The framework is far less precise than that which is in place for banks and para-banks and as a result would be far more difficult to implement. Unlike Law 3/V/1996 it is not clear that a person who has engaged in specific types of conduct or who has been convicted of specific offences would be ineligible to own shares in

an IFI. Further, the framework does not establish criteria to assess the fitness and propriety of managers and directors.

416. There is inconsistency in the fit and proper criteria contained in the laws that regulate different types of financial sector activity. While the provisions of 3/V/1996 and Law 53/V98 cover directors and managers, the coverage of Law 52-F/1990 is limited to shareholders and directors. Of additional concern is the fact that Law 52-F/1990 only requires this person to be of integrity without further defining the term.

Application of Prudential Regulations to AML/CFT (c. 23.4)

417. BCV is in effect, the only regulator of financial institutions in Cape Verde. While AGMVM has regulatory responsibility for capital market intermediaries, it is a unit within BCV and its regulatory and supervisory powers are, in effect, vested in BCV. The unit does however have supervisory powers arising from the Securities Market Code law 50/V/98.

418. BCV has broad regulatory and supervisory powers for banks and para-banks as expressed in Article 47 of Law 3/V/1996. These are described in the analysis under Recommendation 23.2. The powers are not specific to prudential issues and are applicable for the purpose of AML regulation and supervision.

419. BCV's supervisory powers for international banks appear to be more specific. Article 29 of Law 12/2005 provides that prudential supervision shall be carried out on an ongoing, regular basis by BCV through:

- the analysis of financial and other reports that institutions are required to produce;
- questionnaires;
- onsite inspection of accounting records and procedures; and
- contact and exchange of information with supervisory authorities and institutions.

420. These provisions are not as wide as those contained in Law 3/V/1996 which empowers BCV in respect of banks and para-banks. In its inspection powers, for example, in the case of banks and para-banks, BCV can "inspect the establishments and conduct on-site reviews of accounts and other elements it deems relevant". In the case of IFIs, BCV's inspections powers are limited to "onsite inspection of accounting records and procedures."

421. A number of issues highlighted in this report have the potential to create a regulatory framework for IFIs that is weaker than the one applicable to institutions that operate in the domestic market. The concerns include the following:

- the ability of the minister of finance to override the eligibility criteria established for IFIs established under Art 12 (1) of Law 12/2005 (see discussion in chapter 3.9);
- the vagueness in the description of BVC's power in relation to fitness and propriety of IFIs (see discussion in chapter 3.10);

- the possibility for shell banks to be established under Law 12/2003 (see discussion in chapter 3.9);

- the stricter confidentiality rules related to IFIs. (see discussion in chapter 3.4);

- limited inspection powers as explained in the preceding paragraph with respect to IFIs; and

- the requirement of BCV to give prior notice to an IFI before information about the institution can be provided to a foreign supervisor can be provided to another supervisor is unnecessarily restrictive (see discussion Chapter 6.5).

422. In addition to these concerns the arrangement for the treatment of trusts, PEPs and introduced business arrangements fall short of the requirements of the FATF Recommendations.

423. The DSU did not articulate a clear AML supervisory strategy. The department appears to place a high priority on supervision of the four commercial banks due to their relative size in the domestic financial sector. It does not appear that consideration was given to other factors appropriate to determine the general level of AML risk. There was no indication, for example, that the high level of remittances received by Cape Verde were considered to represent a vulnerability to ML, neither was there an indication that institutions operating in the international financial sector were considered to represent a higher level of risk. Institutions within this sector that are not adequately covered in a global consolidated supervisory arrangement by a supervisor from a country that adequately applies the FATF recommendations, should be considered to represent a higher AML risk.

424. The assessors are also concerned about the poor level of coordination and consultation between BCV and JP. BCV issued a circular to financial institutions providing a list of typically suspicious transactions without consulting with JP, which is the entity that receives STRs. There has also been no discussion between these entities on concerns related to the quality of STRs being submitted by financial institutions. In the absence of such consultations BCV is therefore not properly prepared when undertaking on-site inspections to assess the adequacies of the measures and practices adopted by financial institutions to recognize and report STRs.

Licensing and Monitoring of Value Transfer/Exchange Services (c. 23.5 and 23.6)

425. All remittance services (and exchange services) in Cape Verde must be performed by financial institutions that are licensed and prudentially regulated by BCV. For additional details please refer to the assessment of SR.VI in section 3.10 below.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7)

426. There are no other institutions providing financial services in Cape Verde outside the scope of BCV’s licensing and supervision.

Guidelines and Feedback for Financial Institutions (c. 25.1 and 25.2)

427. BCV issued guidelines on money laundering in a document annexed to Circular Series A, No 117 of April 13 2005. The document essentially provides examples of transactions that could be considered to be suspicious. They cover cash transactions, bank deposits, and activities conducted by non-financial institutions. ACMVM has not issued any ML guidelines. No other type of guidelines were available,

428. There was a strong sentiment expressed by the institutions with which the mission met, that BCV should provide more comprehensive guidance. This relates not only to guidance to assist entities to understand the existing legal framework and the requirements for its implementation but also on relevant international developments.

429. The judiciary police has not provided reporting institutions with feedback on the quality of their STRs, current money laundering techniques, etc.

Powers to Monitor AML/CFT Requirements (c. 29.1) and to Conduct Inspections (c. 29.2)

430. All the financial institutions covered by the AML Law are under the supervision of the BCV. The institutions generally described in Article 2 of Law 17, 2002 fall under the authority of the BCV (credit and para-banking institutions, insurance companies, and enterprises that manage pension funds). In addition to Article 4 of the AML cited above, Article 47 of Law 3 of 1996 provides that "The supervision of banking and para-banking institutions, as well as branches of foreign institutions, is the responsibility of the Bank of Cape Verde in accordance to its Organic Law and the terms of this Act."

431. Article 48 of Law 3/V/1996 gives BCV the power to inspect the establishments and conduct on-site reviews of accounts and other elements it deems necessary. Article 29-c of Law 12/2005 provides that BCV may carry out its prudential supervision of IFIs through on-site inspection of accounting records and procedures. As previously indicated in the discussion under criterion 23.2, limiting BCV's on-site inspection powers in respect of IFIs to "accounting records and procedures" is not appropriate and inconsistent with the range of supervisory powers that should be at BCV's disposal. It is also narrower than the on-site supervisory powers that are created by Article 48 of Law3/V/1996 which regulates the activities of banks and para-banks.

432. The BCV has adequate powers to compel production of records (c. 29.3 and 29.3.1). Article 49 of Law 3 of 1996 gives the BCV broad powers to compel the production of all documents and information it may need to carry out its functions, without the need for a Court order:

> Article 49, Duty of Information:
>
> 1. The institutions subject to supervision shall be obliged to furnish to the Bank of Cape Verde the information that the Bank deems necessary to verify.....compliance with the remaining legal and regulatory norms that govern their activity, their administrative organization and the efficacy of their internal controls.

2. The aforementioned institutions must also allow the inspection of their establishments by the Bank of Cape Verde, and the examination in situ of the elements which the Bank may consider relevant.

3. The Bank of Cape Verde may extract copies of all pertinent documentation.

4. The owners.....are obliged to furnish to the BCV any elements or data that the Bank may consider relevant for the supervision of said institutions.

5. The provision of the previous numeral (4) is applicable also to the members of the fiscalization bodies of the institutions mentioned, as well as to their internal and external auditors.

433. BCV's power to obtain information from IFIs is less specific than the powers contained in Law 3/V/1996 in respect of banks and para-banks. Article 29 (a) of Law 12/2005 provides that BCV shall carry out its prudential supervision through the analysis of financial and other reports that institutions are periodically required to produce, submit and publish. The law does not create a direct obligation for institutions to submit information as may be required by BCV, but infers through this Article that institutions can be required to provide BCV with such information.

434. The same provisions give the BCV Powers to review how well financial institutions oversee foreign branches and subsidiaries (footnote of c.29.1). However, at the moment, financial institutions headquartered in Cape Verde do not have foreign branches and subsidiaries.

Powers of Enforcement and Sanction (c. 29.4); Designation of Authority to Impose Sanctions (c. 17.2)

435. The BCV is responsible for instructing administrative sanctions, but it is the minister of finance who decides its imposition. This lack of autonomy of BCV to impose penalties for violation of the AML regime is not consistent with R. 29 which expects supervisors to be authorized "to impose adequate administrative sanctions for failure to comply."

Article 33 of Law 17, 2002. "Authority to institute proceedings and impose penalties:

The investigation of administrative offences provided for herein and institution of corresponding proceedings shall be entrusted to the entity having authority to supervise or oversee the business sector concerned.

The minister of finance shall have authority to impose sanctions provided for herein with powers of delegation.

436. The inclusion of a political review in the AML sanctioning regime is even more puzzling considering that the BCV has full autonomy to impose penalties for breach of prudential requirements.

Availability of sanctions for violation of AML requirements (17.1)

437. The AML Law establishes administrative sanctions for violation of its requirements. Under the provisions of the Penal Code and the AML Law, sanctions are applicable to both natural and legal persons. Sanctions are applied depending on the nature and gravity of the offence and the type of criminal intent with which the offence was carried out. Criminal sanctions include fines and imprisonment sentences, whereas administrative sanctions, applied for preventive failures, also known as *contra-ordencoes*, range from an administrative fine to withdrawal of certain rights, such as suspension of a right or revocation of a right (i.e., barring of individuals from employment within the sector).

Applicability of Sanctions to Natural and Legal Persons (c. 17.1), to Directors and Senior Management of Financial Institutions (c. 17.3)

438. The AML Law 17/2002 prescribes the sanctions applicable to institutions for violation of its requirements**.** Article 30 states in broad terms that "Financial entities shall be liable for the commission of administrative offences involving non-observance of their rules of conduct insofar as their managers, employees or representatives have acted within the scope of their duties, even if unlawfully, or in the name and on behalf of those institutions." The sanctioning regime prescribed in the AML law is therefore applicable to all the institutions obliged under this law. For the avoidance of doubt, Article 28 clarifies that negligence in connection with administrative offences provided in the law is also punishable, and Article 27 states that the general administrative regime shall be applicable on a subsidiary level.

439. Legal persons can be forced to liquidate. Article 257 of the Code of Commercial Companies (Decree-Law 3 of 1999) establishes that the PM must make a request to the competent judge for the judicial liquidation of a company (including financial institutions) if its purpose becomes illicit, or contrary to the public order. No statistics or other information was provided to evaluate how these sanctions are being implemented.

440. The General Directorate of Registrar has the competence to take appropriate actions and impose sanctions on those companies that have been registered and subsequently fail to comply with the formalization requirements, in accordance with the Commercial Law and Central Registry Law. Notaries and registrars who fail to carry out their obligations are also subject to disciplinary action under the Public Administration Law which regulates discipline of public servants.

441. Managers and employees can also be sanctioned**.** The ability to sanction directors and senior management of financial institutions for non-compliance with the obligations under the AML Law is based on the provisions of Articles 30 and 38 of the Law. Besides the imposition of fines on the institution, officers can be disqualified and their sanction may be made public. Article 38 of Law 17, 2002 creates ancillary sanctions that can be imposed on offenders in addition to the fines provided for in Articles 35 and 36: "a) Disqualification from discharging the corporate positions and duties of administrator, director, manager or head of financial entities for

a period of 1 to 10 years …; b) Publication of the verdict by the Bank of Cape Verde at the expense of the offender."

442. The same fines can be imposed on the employees of the institution. Article 30-2 indicates that "The provisions of the preceding paragraph shall not suspend the disciplinary liability of managers, employees or officials of financial entities, where arising, or the right of recourse for loss caused to financial institutions by their managers, employees or representatives." Also, the ancillary provisions of Article 38 are clearly addressed to employees "in addition to the fines provided for in Articles 35 and 36."

443. However, some of the AML requirements are left without the possibility of a sanction. When Articles 35 and 36 of Law 12/2002 list the conducts that "shall constitute administrative offences punishable by a fine of…" (instead of making reference to *any* breach of the AML law) they leave out two requirements: to refuse the transaction when identification is not possible (Article 18) and to create an AML [compliance] unit within financial institutions (Article 21). Therefore, the breach of those two requirements is, inexplicably, not subject to any administrative penalty.

Effectiveness, Proportionality, and Dissuasiveness of Sanctions (c. 17.1 and 17.4)

444. Fines, ranging from 250,000 to 50,000,000 Escudos appear dissuasive (approx. €2,272 to €454,545). In the context of the Cape Verdean economy, where the salary of a mid-career, senior public officer is around €700 per month, assessors consider these fines dissuasive for employees of financial institutions. They also appear dissuasive for the financial institutions considering that the second largest bank in terms of deposits has a capital of about US$3,480,000. The fines are also proportional when compared to those applicable for violation of prudential requirements (as prescribed in Chapter IX of the Banking Act, Law 3 of 1996).

445. It is not possible to assess the effectiveness of the sanctioning regime given its recent introduction and the lack of sanctions imposed. The lack of cases in which sanctions have been imposed cannot be considered a reflection of the dissuasiveness (or effectiveness) of the sanctioning regime, considering the consensus among the institutions with which the mission met, that BCV should reinforce its supervisory practices and better train its staff in order to target AML risks more adequately.

Adequacy of Resources for Competent Authorities (c. 30.1)

446. The Supervision Department of the BCV (DSU) has 14 employees, including the director of the department, two coordinators, six technical advisors, one legal advisor, two assistant technicians, and two administrative support technicians. The banking area coordinator leads a team of five technical advisors responsible for the supervision of four credit institutions, seven IFIs, and four banks. Another coordinator is responsible for the insurance area that supervises two insurance companies and three brokerage companies. Also operating within the DSU are a credit risk rating office with two technicians and a motor vehicle guarantee fund that is managed in part by the insurance area coordinator with assistance from an administrative technician.

447. The AGMVM is a unit within BCV. It has two full time staff members and the services of two members of staff of BCV who are considered to be non-executive members of the staff of AGMVM. Their services are available to AGMVM whenever they are required. AGMVM recognizes that it needs to develop its capacity to undertake AML regulation since it will be required to do so if an entity other than one already supervised by BCV, is given a license to undertake capital market intermediation. It has started to consider the measures that will be needed to be put in place to achieve this objective but has not yet developed a plan of action in this regard.

448. The authorities indicate that BCV receives 0.75 percent of the premium income from insurance companies on an annual basis. In relative terms these are insignificant amounts and are not meant to cover the cost of providing supervisory services. Banks are also required to pay a fee equivalent to 0.1 percent of initial capital at the time of licensing. Because these are one-time fees they are also not meant to assist in meeting for cost of ongoing supervision. The banks do not pay an annual license fee. Banks are required to pay BCV a fee when making certain administrative changes such as changes to the membership of the board of directors. Banks also pay a fee to BCV when they open a new branch. Such fees are currently fixed at 50,000 Escudos (Euro 4,045). DSU is therefore effectively funded out of the BCV's general resources. It considers that is has a high degree of ''technical" autonomy in the performance of its duties meaning that it has a free hand in deciding its overall supervisory strategies and methodologies.

449. There are different arrangements for the licensing of financial institutions. BCV has complete autonomy with regard to near-banks as it is the licensing authority for these institutions. The minister of finance is the licensing authority for banks and IFIs. Applications for licenses are submitted to BCV which makes a recommendation to the minister of finance. BCV reports that the Minister virtually always acts in accordance with its recommendation.

450. All fees payable by IFIs are paid to the Ministry of Finance and Public Administration.

Integrity of Competent Authorities (c. 30.2)

451. The BCV, and by extension AGMVM, requires their employees to be of high integrity. One of BCV's internal statutes requires employee's to be competent to undertake their job and also to be of "good civic behavior." In recruiting staff BCV relies on their own knowledge of the prospective staff members and the recommendation of others. The authorities indicate that because Cape Verde has a relatively small population it is easy to find out if a prospective staff member has a history that is inconsistent with the requirement to have "good civic behavior".

452. DSU staff have academic qualifications in law, management and economics. Most staff have graduate degrees. DSU tries where possible to recruit persons that have at least three years work experience in the financial sector.

453. Article 62 of Law 10/VI/2005 provides that members of the executive bodies of BCV and any persons who directly or indirectly render service to it are subject to the duty of secrecy under the terms applicable to credit institutions and bank-like institutions. This covers all BCV staff and contractual employees.

Training for Competent Authorities (c. 30.3)

454. The director of DSU has received AML/CFT training including programs sponsored by the Bank de France, GIABA and a study tour to Brazil organized by UNODC. DSU reports that all of it staff have received some level of AML/CFT training including attendance at a number of training events held outside of the country. However, it does not appear that there has been a systematic program of training to ensure that all members of the staff of DSU have received comprehensive AML training to enable them to undertake their supervisory responsibilities. This view was shared by the DSU head who indicated that staff is in need of further training in AML supervisory strategies and practices.

455. There has generally been weak implementation of AML supervisory arrangements. DSU has focused its inspections on institutions that operate in the domestic sector and since 2003 has undertaken only five exclusive AML/CFT inspections and one that focused on AML/CFT and prudential risks. Inspections of domestic banks are limited to headquarters operations in the capital, Santiago. No inspections have been undertaken of branches in other islands despite the fact that much of the economic activity in the tourism and real estate sectors is taking place outside of Santiago.

3.10.2 Recommendations and Comments

Recommendation 23

- Law 17/VI/2002 should be amended to ensure that the following activities are covered irrespective of the type of entity undertaking the activity.
    - Financial leasing
    - The transfer of money or value
    - Issuing and managing means of payment
    - Financial guarantees and commitments
    - Trading in money market instruments, foreign exchange, exchange rate and index instruments, transferable securities, commodities futures trading
    - Participation in securities issues and the provision of financial services related to such issues
    - Individual and collective portfolio management
    - Safekeeping and administration of cash or liquid securities on behalf of other persons
    - Otherwise investing, administering or managing funds or money on behalf of other persons

- Money and currency changing

- 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 guidance should cover:

    - the FATF Recommendations and relevant aspects of other international standards for financial sector regulation;

    - the Cape Verde legal framework including guidance on measures required to effectively implement various aspects of the framework;

    - guidelines on determining what countries are appropriate as domiciles for financial institutions that can be used to provide assistance in the CDD processes for non fact-to face customers; and

    - information on countries that do not or insufficiently adequately apply the FATF Recommendations.

- 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.

- The BCV should update its inspection manual to incorporate procedures and tools for supervision of compliance with AML requirements.

- BCV should undertake inspections of branches of institutions operating in the domestic sector as well as IFIs.

- BCV staff should receive additional training on AML supervisory strategies and practices.

Recommendation 17

- The AML Law, including its sanctioning regime, should be fully implemented for any breach of the AML requirements.
- The BCV should be given autonomy to impose (not only to instruct and recommend) the administrative sanctions for breach AML regulations by financial institutions and its employees.
- 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).

3.10.3 Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	There is a wide range of criminal and administrative sanctions available against legal and natural persons, but absence of actual imposition of sanctions makes it difficult to assess the effectiveness, proportionality and dissuasiveness of the regime. Administrative sanctions do not apply to breach of the obligation to create an ML compliance unit and to refuse transactions when identification is not possible. The BCV can only instruct and recommend (not impose) sanctions for AML violations.
R.23	**NC**	Lack of comprehensive coverage of all forms of financial activity undertaken by different types of financial institutions. Absence of a clear supervisory strategy and outlook on risk inherent in lines of business of various financial institutions. Lack of consistency in approach in assessing fitness and propriety across the banking, insurance and securities sectors. Absence of inspections of branches of institutions operating in the domestic sector and IFIs. Less robust legal framework to support effective supervision of IFIs.
R.25	**NC**	No effective guidance has been provided to financial institutions.
R.29	**PC**	BCV's inspections powers as set out in Law 12/2005 are not sufficiently broad.

3.11 Money or Value Transfer Services (SR.VI)

3.11.1 Description and Analysis

456. All remittance services (and exchange services) in Cape Verde must be performed by banking or para-banking institutions that are licensed and prudentially regulated by BCV. Informal remittances are, therefore, illegal and subject to the administrative penalties provided for in the Exchange Law. According to authorities and private institutions interviewed, informal (illegal) remittance providers are not prevalent in Cape Verde. There are, however, informal currency exchange operators, mostly of a small scale (street vendors). Some cash couriers have been occasionally caught entering or exiting the country carrying significant amounts of undeclared cash (please refer to analysis of SR. IX for this last topic). The large size of workers' remittances relative to national GDP (about 20 percent in 2004) entails the potential for misuse for ML/FT purposes and, therefore, BCV should step up efforts to oversee compliance with preventive requirements by remittance operators.

Legal Framework

457. The most relevant provisions are the exchange regulations of Decree-Law 30 of 2000 (as amended by Decree-Law No. 24/2003) which lists the types of institutions authorized to carry out foreign exchange transactions (value transfer and currency exchange being two of them) and BCV Notice No. 3/2003 establishing the conditions for those activities. Other relevant pieces of legislation are Decree-Laws No. 25/98 and 26/98, known as the "Exchange Law".

Designation and Registration of Licensing Authority (c. VI.1)

458. Only financial institutions under the prudential regulation of the BCV are authorized to provide money transfer services Remittance services outside the formal market are illegal and subject to administrative penalties. Article 14 of the AML Law 17, 2002 clearly states that: "International transfers of national or foreign currency, means of payment abroad or bearer securities may be effected only through banking or financial institutions authorized to carry out such transactions." In addition, the foreign exchange regulations of Cape Verde only authorize licensed banking and para-banking institutions to provide money transfer services. Currency exchange businesses can also be licensed to provide money transfer services, but they must do it only through credit institutions.

Application of FATF Recommendations (applying R.4-11, 13-15, 21-23, SRI-IX)(c. VI.2).

459. The same AML requirements of financial institutions apply with respect to their money transfer service**s** being an integral part of the regular services of financial institutions which are subject to the AML law (Article 2 of Law 17, 2002), the same analysis made under Chapter 3 of this report is applicable with respect to the remittances services, even in terms of implementation.

Monitoring of Value Transfer Service Operators (c. VI.3)

460. The exchange regime (Decree-Law 30 of 2000) clearly assigns BCV the authority to regulate, supervise and oversee the foreign exchange market. As these legal provisions address the detailed and regular prudential supervision of financial institutions they go beyond the more general requirement of SR.VI to "monitor" money-value-transfer operators. However, weaknesses in the supervisory framework of the BCV also affect compliance with c.VI.3, albeit to a lesser extent.

List of Agents (c. VI.4)

461. Agencies must be registered by the BCV according to the Banking Act and the exchange law. This applies to all the outlets through which a financial institution may provide money transfer services.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5).

462. The same sanctioning regime discussed in Section 3.10 of this report is applicable to remittance businesses. Breach of ML provisions will be sanctioned under the same provisions already analyzed (no such sanctions have been applied in practice). In addition, there are sanctions applicable for violating the exchange regulations of the BCV, including the provision of services of money or value transfer without the required license. The team was able to confirm the existence of administrative sanctioning proceedings against illegal money exchanges, led by the BCV.

Additional Element—Applying Best Practices Paper for SR.VI (c. VI.6)

463. Considering that remittance services in Cape Verde are only provided by prudentially regulated banking and para-banking institutions, the system goes beyond the best practices paper which deals with informal remittances.

3.11.2 Recommendations and Comments

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	Licensing and preventive requirements are in place, although monitoring of MVT services (which are only provided by financial institutions) is negatively affected by the same weaknesses of the supervisory framework of the BCV described in Chapter 3.10.

4 PREVENTIVE MEASURES —DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer Due Diligence and Record-Keeping (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

464. The same requirements for financial institutions contained in the AML statute are imposed on some DNFBPs, but there has been no implementation. Law 17 of 2002 extends all its requirements and sanctioning regime, except with respect to record keeping, to some but not all the activities required by FATF Recommendation 12 (see summary table below). The ministry of finance has authority to regulate and oversee compliance with AML obligations by DNFBPs, but it has not yet issued any regulations or guidance or commenced AML/CFT supervision of covered persons/entities.

Legal Framework

465. The only specific reference to DNFBPs is Article 26 of Law 12/2007:

> Individuals or corporations engaged in the operation of gaming establishments or real estate brokerage or property buying for resale or dealing in precious stones or metals, antiques, works of art or motor vehicles shall be subject to the principles and obligations imposed on financial entities hereunder, except as provided for in Article 20 [record keeping], mutatis mutandis.
>
> Non-fulfillment, including through negligence, of the aforementioned obligations shall be punished by imposition of fines as provided for herein.
>
> The government department responsible for matters of finance shall have authority to regulate the application of this law to persons referred to in paragraph 1 of this Article and to oversee compliance with these provisions.

Practical Implementation

466. The authorities (ministry of finance) have not issued any type of regulation or guidance to assist in the implementation of the AML Law 17 of 2002, with respect to DNFBPs, and there are no reports of suspicious transactions filed. These businesses are not aware of their obligations under the AML Law. Most of them are unregulated and operate informally, without commercial licenses. Therefore, the formal businesses with whom the mission met would welcome the enforcement of AML mechanisms not only as a contribution to prevent ML and to protect the reputation of their country, but also as a step towards greater formalization and oversight of their respective activities.

467. There is no regulation and oversight of DNFBPs. The mission could not identify and meet with the authorities responsible for regulating and overseeing DNFBPs within the ministry

of finance. No information is therefore available about their plans and strategies in this area, if there are any.

Analysis of the Scope of the law

Company service providers (CSP): not covered

468. In practice, however, there is no such industry in Cape Verde, which constitutes a mitigating factor when considering the risk of ML/FT in this area. Services like the use of the provider's name as registered agent, nominee director or partner, are not offered, neither are dormant companies maintained by Cape Verdean professionals for future resale. The tax regime, in addition, does not contain any particular incentives for the incorporation of holding companies. The public registry of companies is neither systematized nor centralized. Liberal professionals are not known to be dedicated to forming and administering noncommercial associations either, except as part of the services provided to regular civil associations, foundations and cooperatives. The authorities are not aware of a market for this type of service but they could benefit from an analysis of the information on the professionals regularly forming companies on behalf of others at the registrar's office, to determine whether there is an industry that should be regulated.

Lawyers, notaries, and accountants: not covered

469. Our previous comment describing a low risk for the CSPs also applies to the lack of AML obligations of all professions typically associated with services of incorporation or administration of companies, legal persons or "other legal arrangements". However, lawyers and notaries play an instrumental role in the process of foreign investment in real estate. Please refer to the specific section on lawyers below, for more information.

Trusts service providers (TSP): not applicable

470. Trusts, even foreign, are not recognized in Cape Verde. Therefore, the lack of inclusion of TSPs in the AML legislation is not considered a gap.

Real estate agents: Covered

471. There is growing concern among the authorities and private businesses interviewed about the possible misuse, by money launderers, of the booming real estate market in Cape Verde. Some even indicated that there are instances in which houses are sold to at below-cost prices, by new and short-lived construction companies. According to them, legitimate developers cannot compete in this environment. At the same time, Cape Verdean residents are being priced-out due to the influx of foreign (and *Diaspora*) buyers with a higher purchasing power.

472. Except for licensing requirements for the construction of buildings, the real estate market is unregulated and highly informal, and this includes the activity of real estate agents. However, the vast majority of intermediation is performed by large foreign and multinational agents who bring in foreign buyers (mostly from the UK) who are heavily investing in tourist developments and resorts for personal use and for investment purposes.

Casinos: Covered

473. Although there are no casinos of any kind in Cape Verde and, to the best of the authorities' knowledge, no internet casinos operated from within Cape Verde, they are not prohibited either. No legal limitations exist for residents in Cape Verde to have access to online

casinos. There have been press reports of contacts between the Government and foreign investors for a casino development near Praia in the near future. The AML Law does not establish a threshold for the identification of casino customers and therefore requires that CDD be undertaken on all customers.

Dealers in precious metals or stones: Covered

474. No information was made available to the mission about these activities but the general opinion of interviewees is that these businesses are of a very small scale in Cape Verde. The AML Law does not establish a cash transaction threshold for the identification of customers and would therefore require dealers in precious metals and stones to undertake CDD on all customers.

Car dealers, antique and art dealers are also covered

475. Demand for newer and higher-end motor vehicles has surged in recent years presumably motivated by bank lending policies which actively target this market and by the existence of high tariffs on the importation of used cars. However, there is also a generalized concern among authorities and the public about recent unexplained display of wealth through new cars. The AML law's coverage of motor vehicle dealers extends to all dealers and not only to those who sell high-end vehicles.

Additional Information on Lawyers, Notaries, and Independent Legal Professionals

476. The qualification and practice of law in Cape Verde is based on Law 91/VI/2006 and the statutes adopted by the Bar Association. There are around 120 private lawyers practicing law in the nine islands in Cape Verde. To qualify as a practicing lawyer, a person must complete a degree in law for five years and a mandatory internship of one and a half year with a more senior lawyer of the Bar Association. Before the recent foundation of a law school in Praia, all lawyers had obtained their professional degree in a foreign country, mostly in Portugal. It is not common practice for lawyers to manage client money, securities, or other assets.

477. The Bar Association is the regulatory and supervisory authority for lawyers. The Bar Association administers the disciplinary code regulating the conduct of lawyers in the exercise of their profession. It is responsible for taking disciplinary action and administering sanctions against lawyers for violation of the disciplinary code. Sanctions provided in the code include suspension from practice, written warning, and expulsion from the Association which amounts to a revocation of the right to practice. A number of lawyers with whom the mission met indicated that the actual imposition of sanctions is very rare.

478. While there is a profession of solicitadores in Cape Verde, the only person so licensed no longer practices.

479. Notaries in Cape Verde do not act as intermediaries between clients in the sale and purchase of property. They are public officers (employees of the ministry of justice) responsible for the authentication of deeds. Notarial deeds concerning the purchase and sale of property are sworn before them. In the performance of such functions, they do not receive money from the persons involved in the purchase and sale of property. They are also not involved in any of the activities listed in FATF Recommendation 12. They are, however, well placed and motivated to contribute to the detection of many suspicious transactions especially where there are contracts

involving the transfer of real property, which must be notarized. Notaries informed that sometimes there are transactions and people which raise their suspicions but that they feel impeded to communicate that to the authorities for the lack of legal protection against potential suits. Making them obliged to report under the AML law would afford them the same legal protection created for other reporting institutions.

4.1.2 Recommendations and Comments

- The same recommendations of Section 3 to improve the preventive requirements for financial institutions apply with respect to DNFBPs.

- Take the necessary administrative and regulatory steps to implement the AML law with respect to DNFBPs and outreach to these sectors to educate them and engage them in the process of issuing regulations and guidance according to the nature of their business. Priority should be given to implementation by real estate businesses.

- Expand the scope of the AML law to include lawyers and accountants when they engage, on behalf of their client, in preparing for or carrying out transactions for their client concerning the following activities: buying and selling of real estate; managing clients money, savings accounts, and other assets; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements.

- 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.

- Consider gathering data on the persons forming companies (through incorporation/registration documents at the registrar's office) to determine whether there is an emerging industry of CSP that should be regulated.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	Not all DNFBPs are subject to the AML law. There has been no implementation of the law since its enactment in December 2002. The authorities have not enacted (or even drafted) any regulations or guidance, and the businesses are unaware of their obligations under the law. The deficiencies of the preventive regime described for financial institutions are applicable to the DNFBPs almost entirely (especially a limited scope of the CDD, monitoring and STR requirements).

4.2 Suspicious transaction reporting and Internal controls for DNFBPs (R.16) (applying R.13 to 15 and 21)

4.2.1 Description and Analysis

480. Some DNFBPs are subject to the same reporting requirements of financial institutions but no implementation has taken place. Please refer to Section 4.1 for the available information.

4.2.2 Recommendations and Comments

- Lawyers, notaries, *solicitors*, and accountants should be required to report suspicious transactions when they engage in the activities described in FATF Recommendation 16-a.
- 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.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	Same as for R.12: Not all DNFBPs are subject to the AML law. There has been no implementation of the law since its enactment in December 2002. The authorities have not enacted (or even drafted) any regulations or guidance, and the businesses are unaware of their obligations under the law. The deficiencies of the preventive regime described for financial institutions are applicable to the DNFBPs almost entirely (especially a limited scope of the CDD, monitoring and STR requirements).

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

481. The supervisory authority for the covered DNFBPs is the ministry of finance, which has the responsibility to issue regulations for the implementation of the AML Law to those persons/entities. Article 26 also enables those entities to be sanctioned by a fine for non-compliance with the law (same sanctioning regime as the one applicable to financial institutions). No fine has been imposed so far and the ministry did not provide any evidence of having the capacity to pursue its AML responsibilities. Please refer to Section 4.1.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 and 24.1.3)

482. There are no casinos operating in Cape Verde but the authorities indicated that a group of foreign investors have indicated an interest in establishing an operation. Casinos are regulated

under Article 26 which extends the preventive obligations imposed on financial institutions and the ministry of finance is the designated AML supervisor (as for all DNFBPs).

Monitoring Systems for Other DNFBPs (c. 24.2 and 24.2.1): Guidelines for DNFBPs (applying c. 25.1)

483. The power to issue guidelines to DNFPs is covered under Article 26 (cited above), but no such guidelines have yet been issued in respect of the entities covered under the AML Law, neither are there other measures or legal provisions in place to monitor compliance of covered DNFBPs. None of the divisions or staff of the ministry of finance have been assigned the responsibility to follow up on its obligations as supervisory and regulatory authority under Article 26 of Law 17 of 2002.

484. The AML Law does not impose any obligation for competent authorities to provide feedback to financial and non-financial entities. Nor has any feedback been provided by the supervisory authority. It is worth noting that the criteria related to self-regulatory organizations (SROs) are not applicable given that the regulatory authority for DNFBPs is clearly assigned to the ministry of finance.

485. Except for the Bar Association mentioned in Section 4.1.1 (for lawyers), there do not seem to exist other industry associations with enough organization and breath to assist the Government in future outreach efforts, or which could potentially be designated as SROs for AML/CFT purposes.

4.3.2 Recommendations and Comments

- Regulations should be issued by the ministry of finance to implement the law with respect to the DNFBPs, having regard to the special characteristics of each of them.
- The ministry of finance should carry out supervision of compliance with the AML law for DNFBPs. Adequate training and resources should be provided for 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.
- Guidelines should be developed for DNFBPs, especially on how to identify suspicious transactions or operations in their respective activities, and there should be efforts to elevate the level of awareness of ML/FT risks and regulations by the private sector.

4.3.3 Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	The ministry of finance was designated as the competent authority to regulate and supervise all DNFBPs but it has not taken any action in this respect.

R.25	**NC**	Section-specific rating NC. No guidelines or feedback have been issued.

4.4 Other Non-Financial Businesses and Professions and Modern-Secure Transaction Techniques (R.20)

4.4.1 Description and Analysis

486. Car dealers, art dealer, and antique dealers are subject to the obligations of Law 17/2002. The ministry of finance has not exercised its authority to regulate and supervise these sectors from an AML perspective (please refer to section 4.1).

487. The Cape Verdean economy is cash-intensive and its financial system is at its early stages of development. There is no information available about any plans to encourage the use of advanced technologies in the financial system to minimize ML risks posed by the intensive use of cash, and there was little evidence of such technologies being in place.

4.4.2 Recommendations and Comments

- 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.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**PC**	Cape Verde considered and decided on the application of AML requirements to other businesses (namely car dealerships, antique dealers and art dealers) but there has been no implementation of an AML regime for these activities. There was no evidence or information available on efforts to develop modern and secure techniques of money management that are less vulnerable to money laundering.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

5.1 Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1 Description and Analysis

Legal Framework

488. Legal persons may be of a civil or commercial nature according to the activities they perform. With reference to legal persons that take the form of companies, the company code (Código das Empresas Comerciais), which is Legislative Decree No. 3/99 of March 29, contains provisions regarding the type of companies, by-laws, incorporation, registration, issuing of shares, type of shares, requirements for the transferability of shares, amongst others. A company must be created according to one of the types of companies provided for in the company code, as stated in Article 104 of the company code (*tipicidade* principle).

489. The most common types of companies in Cape Verde are partnerships (*sociedades em nome colectivo*), limited liability companies (*sociedades por quotas*), and cooperative companies (sociedades cooperativas), while joint-stock companies (*sociedades por acções*) are still in a very limited number. All types of companies are legal persons, as stated by Article 107 of the company code. Actually, companies, which in principle, should at a minimum have two shareholders (although exceptionally individual limited liability companies and individual joint stock companies are provided for in the Code), may be set-up either by public deed in the Notary Office (when they acquire immovables) or by private document, but every company must be registered at the commercial registry to obtain legal personality. Cape Verde Authorities did not present any statistics on the numbers and types of corporations and legal persons established in the country but indicated that there were very few joint stock companies.

490. According to the commercial registry Law, the *Conservador* of the registry verifies if the company whose registration is demanded is in conformity with the law in general and the company code in particular, and must refuse the registration otherwise. For instance, the registration would be denied with the grounds that the company has an illegal object, when according to the by-laws of the corporation the business activity that the corporation aims to develop consists of a criminal activity of any kind. In general terms, there is a *Conservador*, who is a public official, in every municipality, who frequently performs also the role of Notary, under the supervision of the Directorate of Registries and Notaries within the ministry of justice. The registration of companies is mandatory and the registered information is available to the public, meaning that any interested person may obtain a certificate with the main elements of the legal person registered and the copy of the by-laws. The names and identification of the shareholders and the identification of the physical persons dominating the shareholder, the name of the company, the object of the company, the place of incorporation, the amount of capital, stakes of each shareholder, the composition of management and the identification of the persons acting on behalf of the company can be obtained from the registry where the information is recorded. However, it is not possible to obtain the registered information of a legal person or a company from an office registry other than the one where the company or legal person is registered.

491. When a foreign company whishes to do business in Cape Verde it must set up a permanent representation in the country following one of the types provided for in the company code and register the company in the commercial registry.

492. The Civil Code contains provisions on legal persons in general and on associations, foundations and unincorporated associations. The associations and foundations, which are subject to the main principle of total freedom of association, under Article 51 of the Constitution of the Republic, must also be registered in the commercial registry to obtain legal personality.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1)

493. The registration of companies in the commercial registry is mandatory for all legal persons, associations, foundations and companies of any type and it is required that the registered data 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, stakes of each shareholder, the composition of management and persons acting on behalf of the company. Registration of any changes in these elements is mandatory, according to the Code of commercial registry. The failure to register is punishable by fines stated in the commercial registry Code. Under Article 253 of the company code, when a legal person must register certain actions without complying with the registration requirement, such actions are not legally recognized or enforceable to their benefit. For instance before the registration of the incorporation of the company all it's shareholders are unlimitedly and personally liable for all the debts of the corporation (Article 139-1 of the company code).

Access to Information on Beneficial Owners of Legal Persons (c. 33.2)

494. As the information recorded in the commercial registry is available to the public. Any interested person may have access to the identification of the physical shareholder owning or controlling the company, directly or indirectly, and its share in the capital of the company. In situations where a company holds shares in another company the physical persons who own or control the shares must also be identified and information on their identity maintained in the Registry. This information is also available to the interested persons. Nominative shares issued by a joint stock company are registered in a special book maintained in the company and the identification of the first owner is registered there (Article 371 of the company code) if the shares are materialized in paper form, if they are not materialized they must be registered within the company (Articles 371 and 367 of the company code). This information is available to competent authorities and also to interested persons through a court order and also according to the legal duties of the company.

Prevention of Misuse of Bearer Shares (c. 33.3)

495. Joint-stock companies may issue nominative or bearer shares according to the decision of the general assembly of the company. Bearer shares are characterized by a special regime of transfer and legitimacy: holding the securities grants the legitimacy to exercise embodied rights and the transfer of ownership results in the transmission of the share, without registration. In case of non-materialized shares they must be nominative (Article 379 of the company code). Bearer shares are issued in paper form and are registered in the book of registration of shares maintained within the company, according to Article 371 of the company code, which includes the numbers

of all the issued shares and the name and address of the first owner of each share. However the holder of bearer shares must be identified when participating in general assembly meetings of the company and when receiving dividends (Article 413-2 company code). Obtaining information held in the registration books of the company, such as the identity of shareholders can only be achieved through a court order. In Cape Verde the number of joint-stock companies is very small and the number of companies issuing bearer shares is even smaller. In light of this situation and the provisions of Art. 371 of company code, assessors consider the regime of bearer shares does not provide any noticeable risk of ML.

496. Although the legal framework seems to be comprehensive the absence of statistics regarding the number of companies of each type and of those issuing bearer shares prevents assessors from getting a clear view of the effectiveness of the system.

Additional Element —Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4)

497. As the information recorded in the Registry is publicly available and the identification of the physical owner of shares is required and must be registered, financial entities can have access to it. However it was not possible to assess in practice if financial institutions demand this information and the timeliness with which they receive a response from the Registry.

5.1.2 Recommendations and Comments

- It would be important to promote the interconnection of the Registries Offices in order to allow for a comprehensive and effective public knowledge of the records on companies and legal persons and enhance the accessibility of the registered information.
- It would be highly important to 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.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	The inability of the authorities to provide statistics to substantiate the arrangements as described above cast doubt about the effectiveness of the system.

5.2 Legal Arrangements—Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

498. The concept of express trusts and other similar legal arrangements, such as "fiducie", "treuehand" or "fideicomisso" does not exist in the Cape Verdean legal system and therefore,

express trusts and other legal arrangements can't be created or recognized as such, according to national law.

499. Article 43 of Decree-Law 12/05 mentions trusts as a special risk that IFI's must be aware of, and it mandates the institutions to identify the "real or final" client, whoever he/she may be. This does not amount to recognition of foreign trusts in Cape Verde. It does not allow the bank, for example, to open the account on the trustee's name or to consider the funds as not belonging to the real client. The following text of the Hague Convention of 1985 on the Law Applicable to Trusts and on their Recognition (of which Cape Verde is not a party) gives an indication of what would entail to recognize a foreign trust: "Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity". Given the absence of any of these situations, the assessors consider FATF R.34 as not applicable in Cape Verde.

5.2.2 Recommendations and Comments

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NA**	Express trusts and other similar legal arrangements, such as "fiducie", "treuehand" or "fideicomisso" are not provided for or recognized in the internal legal system of Cape Verde .

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Legal Framework

500. In accordance with the principle of freedom of association stated in Article 51 of the Constitution of the Republic all citizens are entitled to constitute associations, freely and regardless of prior authorization, once these associations are not promoting violence, racism, xenophobia, dictatorship, or have military or similar purpose, and their aims are not contrary to penal law. Besides that, the Civil Code encompasses the legal regime applicable to associations, foundations and unincorporated associations, providing for the constitution, basic internal organization, legal motives for extinction and effects of this act, relating to these civil non-profitable legal persons (NPO). Associations and foundations should also be subject to registration in the commercial registry to obtain legal personality.

501. Before the registration of the legal person, the *Conservador* of the registry should verify whether the legal person has been constituted according to the Constitution of the Republic and the Civil Code and that its aims are legal, otherwise the registration should be prohibited. The registration of the main elements of legal persons, such as associations and foundations, in the commercial registry is mandatory and available to the public, meaning that any interested person may obtain a certificate with the main elements of the person, such as its by-laws, the name, the

name of the management, the place of incorporation, the object, the identification of persons acting on behalf of the legal person, and the capital and property attributed to the legal person if it is a foundation.

502. Associations perform various activities such as promoting healthcare, education, sport, religion, social solidarity, cooperation and development and they work at local, national and international level. In Cape Verde associations devoted to cooperation and development, such as NGOs, are extremely important and they established, on a voluntary basis, a platform of NGOs, in 1996, associating more than 100 NGOs in the country. Using this platform they have prepared assistance programs related to economic and social development, cooperation and training, to enhance skills among low-income citizens in a variety of economic and social activities, based on financing coming from European and Canadian NGOs. The NGOs are accountable exclusively to their donors and not to any governmental agency. Where they receive any grants, loans or subsidies from Governmental agencies they are obliged to report their financial status to the ministry or agency involved.

503. Some NGOs are also involved in micro-finance activity. They receive mainly public funds from Europe and North America which are used to provide small loans to their associates, usually not higher than 500,000 Escudos (approx. €4,545) per associate. Currently a draft law is under discussion in the National Assembly providing for the regulation of micro-finance in particular. According to this draft law micro-finance entities will be authorized by BCV and will be subject to its supervision. BCV will maintain a special registry of these entities. The lending activity of the micro-finance institutions meets the definition of financial institution as set out in the glossary to the FATF Recommendations. It also appears to fit into the category of "credit institution" set out in Article 2 of the Law 17/VI/2002. The authorities should therefore ensure that these institutions are effectively captured in the AML regulatory framework.

504. According to the Cape Verde authorities considering the type of financing received by the NPOs in Cape Verde, coming generally, from European and North American countries and mostly from governmental agencies or from NGOs accredited with the European Community and the monitoring of the use of the funds by their donors and regarding also the dimension of the country and the social ambiance and criminality trends where terrorism acts were never present, they do not consider the NPO sector as particularly vulnerable for TF.

Review of Adequacy of Law and Regulations of NPOs (c. VIII.1)

505. The authorities have not undertaken a comprehensive review of the laws and regulations related to NPOs. The assessors concluded also that Cape Verde does not have in place a system that allows for the comprehensive knowledge of all types of NPOs established in the country, including information on their size, funds received and spent, donors, managing officials, or activities undertaken. The authorities are therefore not currently in a good position to assess the risks that might arise from the abuse of these entities by terrorists.

Protecting the NPO Sector from Terrorist Financing Through Outreach and Effective Oversight (c. VIII.2)

506. The authorities have not undertaken, in general, any outreach to the NPO sector aiming at raising the awareness of the vulnerabilities of these entities to be abused by terrorists. They have

not demonstrated also that there are processes in place to promote transparency, accountability and integrity in the management of the NPOs, that should be applied at least to the most relevant NPOs in terms of size and funds received and distributed.

507. **(c.VIII.3.1)**There is no integrated approach in acknowledging the purpose and objectives of the activities of the whole NPOs sector and also the identity of the persons that control their activities, including board members, whose data were not publicly available. It seems that there is no general register applicable to NPOs.

508. **(c. VIII.3.2)** It was not demonstrated as well the existence of a set of sanctions applicable to NPOs failing to comply with existing laws and regulations.

509. **(c VIII 3.3)** The registration of the main elements of legal persons, such as associations and foundations, in the commercial registry is mandatory and available to the public, meaning that any interested person may obtain a certificate with the main elements of the person, such as its by-laws, the name, the name of the management, the place of incorporation, the object, the identification of persons acting on behalf of the legal person, and the capital and property attributed to the legal person if it is a foundation.

510. **(c. VII 3.4)** 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 to clarify, if necessary, how funds have been spent.

Targeting and Attacking Terrorists Abuse of NPOs through Effective Information Gathering, Investigation (c. VIII.4)

511. **(c. VIII 4.1)** It was not demonstrated either, the existence of a coordinated system among the national authorities relevant to TF prevention that might share useful information on TF threats and implement investigative actions in a rapid manner. It should be noted however, that all the information on foreign funds incoming to the NGOs is communicated by credit institutions to BCV of Cape Verde.

Responding to International Requests for Information about an NPO of Concern (c.VIII 5)

512. It was not demonstrated that there are points of contact or procedures in place to respond to international requests on NPOs that might be suspected of being involved in any form of terrorist support.

Additional Element—Implementation of Best Practices Paper for SR VIII (c. VIII.4)

5.3.2 Recommendations and Comments

- Cape Verde should conduct an express 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 to prevent and cope with those threats.

- Measures should be implemented to collect information in a comprehensive manner concerning all the NPOs existing in the country, including information on their size, what

activities they perform, how their management is conducted, their sources of their funding and the use of their resources.

- Measures should be taken also to license or register NPOs and require them to maintain records of transactions for a period of at least five years.

- A domestic authority should be charged with the responsibility to monitor the activity of NPOs and also mechanisms should be put in place to allow for cooperation between domestic and international authorities and the exchange of information at national and international levels, regarding any forms of suspicious activities that may be linked to the financing of terrorism.

- The authorities should ensure that entities undertaking micro-finance activity are effectively captured in the AML regulatory framework.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	Cape Verde did not conduct an express review of its NPO sector with the aim of verifying in depth any vulnerability to the misuse of NPOs for TF and ML and has not instituted adequate measures to prevent and cope with these threats.

6 NATIONAL AND INTERNATIONAL COOPERATION

6.1 National Cooperation and Coordination (R.31)

6.1.1 Description and Analysis

513. There are significant weaknesses in the mechanism(s) used to facilitate coordination and collaboration among agencies involved in the fight against money laundering.

514. There is some level of interaction between the judiciary police and the public prosecutor's office, which are, by the very nature of their functions, compelled to collaborate on investigation and prosecution. There is, however, no mechanism or structure which ensures such coordination and collaboration on money laundering investigations and prosecution. There is also no effective collaboration or coordination between the supervisory authorities, law enforcement, or financial and non-financial entities.

515. The authorities admit that the absence of strong coordination and collaboration on AML/CFT issues, at a national level, can impact negatively on the implementation of the law. The provision of a legal obligation to collaborate and coordinate AML activities, and the establishment of a national mechanism which has the specific responsibility to coordinate AML actions and strategies among agencies, would improve the effectiveness of implementation.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1)

516. There is no mechanism specifically provided under the law for coordination and cooperation among entities involved in the fight against money laundering. Formal cooperation and coordination among national agencies involved in the fight against ML is weak. However, while the mandate of the National Coordination Committee (NCC), set up by Legislative Decree in 1995 focuses on the coordination of activities related to the fight against drug offences and organized crime, the fact that its membership is comprised of a number of agencies that play important roles in Cape Verde's AML regime, makes the committee a useful avenue for some level of coordination on AML issues. The committee's membership includes the ministries of justice, internal affairs, foreign affairs, the public prosecution office, the Bank of Cape Verde, the general directorate of customs, and the registry of companies and notaries.

Additional Element—Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2)

517. No mechanisms exist for consultation between competent authorities and the regulated institutions. This has been seen as a matter of some concern which needs to be addressed.

Statistics (applying R.32)

518. There is no centralized system of collecting and maintaining statistics on money laundering and the financing of terrorism. A few statistics were provided by the judiciary police on the number of prosecutions related to ML and the number of foreign requests for assistance.

6.1.2 Recommendations and Comments

- 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 national mechanism should ensure that appropriate statistics are maintained on investigations and prosecution related to money laundering and the financing of terrorism.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	Coordination and cooperation among domestic institutions involved in fighting ML is low. No coordination or cooperation presently exists on issues related to FT.

6.2 The Conventions and UN Special Resolutions (R.35 and SR.I)

6.2.1 Description and Analysis

519. The legal system of Cape Verde enables direct application of international conventions duly signed and ratified, into its domestic laws. The obligations contained in those international treaties and Conventions have direct effect and are enforceable in the domestic legal system, according to Article 12-2 of the constitution and prevail over domestic ordinary legislation, according to Article 12-4 of the constitution. International conventions which create criminal obligations sanctioned by penalties require domestic legislation to be applicable and enforceable. These require implementation measures at national level.

520. The Vienna and Palermo Conventions have been signed and ratified and most of the provisions related to criminalization of offences and sanctions defined in those conventions have been incorporated into domestic legislation.

521. Cape Verde has signed and ratified the UN International Convention for the Suppression of the Financing of Terrorism; however, it has not yet enacted legislation criminalizing the financing of terrorism, or put in place the necessary framework to implement the convention.

522. Although UN Security Council Resolutions (UNSCRs)1267 and 1373 form part of Cape Verde's national legal system, these have not yet been implemented, and no measures enabling the freezing of terrorist funds have been put in place, although assets related to UNSCR 1267 can be subject to freezing procedures in Cape Verde. Freezing and seizure procedures also apply in relation to offences linked to terrorist organizations under Articles 315 and 316 of the Penal Code.

Legal Framework

523. The recognition of international rules and instruments in the domestic legal system of the Republic of Cape Verde is regulated under Title II, Articles 11 and 12 of the constitution. International treaties and agreements duly ratified or passed shall come into force in Cape Verde internal law once they have been officially published and entered in force in the international legal order. However international conventions that create criminal obligations such as criminalization of offences require national legislative instruments to have effect in the domestic legal system.

524. There are no specific provisions in the AML Law of 2002 related to international cooperation, except for the provisions of Article 6 (3) in relation to provisional measures, stating that the principle of reciprocity and the principle of secrecy apply in the framework of requests sent by foreign authorities to the Criminal police.

Ratification of AML Related UN Conventions (c. 35.1)

525. Cape Verde is party to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 19, 1988 (Vienna Convention), adopted by the National Assembly by means of Resolution 71/IV/94 of October 19, published in the Series I of Official Gazette No.34, and the UN Convention Against Transnational Organized Crime (Palermo Convention), as well as the Additional Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol Against the Smuggling of Migrants by Land, Air and Sea; the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their parts and components and ammunition approved by means of Resolution No. 92/VI/04, published in Series I of Official Gazette No.16 of May 31, 2004.

526. Most of the provisions related to criminalization of offences and sanctions defined in those conventions have been incorporated into domestic legislation.

Ratification of CFT-Related UN Conventions (c. I.1)

527. Cape Verde has acceded to and approved the UN International Convention on the Suppression of the Financing of Terrorism. It has also signed and approved the following international conventions related to the financing of terrorism:

- International Convention for the Suppression of Terrorist Bombings;
- Convention on the Making of Explosives for the Purpose of Detection;
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf;
- Convention on the Physical Protection of Nuclear Material;
- International Convention Against the Taking of Hostages;

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- 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;
- OAU Convention on the Prevention and Combating the Financing of Terrorism;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; and
- Convention for the Suppression of Unlawful Seizure of Aircraft.

Implementation of Vienna Convention (Articles 3-11, 15, 17 and 19, c. 35.1)

528. Cape Verde has taken appropriate steps to incorporate Articles 3–11 of the Vienna Convention into its domestic legal system, through a series of laws and provisions in different laws, including the Drugs Law, the AML Law, the Protection of Witnesses Law, the Extradition Decree and the Mutual Legal Assistance Decree. Provisions of the Penal Code and CPC, the Judiciary Police Law and the Public Prosecutor Law complement the special legislative instruments referred to above.

529. Law 78/IV/93 (Drugs Law) incorporates the essential provisions of the Vienna Convention on the control and regulation of drugs and narcotics into Cape Verdean domestic law, including the criminalization of narcotic drugs, narcotics trafficking and drug related offences, confiscation, and sanctions.

530. The criminalization of drug offences and drug-related offences incorporated in the Drugs Law of 1993, (Articles 3–13 of the Drugs Law),corresponds to a large extent, to the various types of offences provided for in Articles 3 of the Vienna Convention including money laundering. Drug related offences and drug trafficking are classified as a predicate offences for the purposes of the money laundering offence.

531. The different types of conduct that are criminalized under Article 3 of the Vienna Convention are regulated through the provisions of Articles 3–7 and 20 of the Law on Drugs. Participation in an organized manner in committing an offence, ancillary offences, intention, sanctions, use of violence, availability of enforcement institutions, defenses available to, and presence of accused at hearing are covered in the Drugs Law, the AML Law and the Penal Code which deals with different forms of intent and sanctions.

532. Intent in the manner provided for in Article 3 of the convention, is not expressly defined in the Drugs Law but the practice of the court allows that evidence or the assessment of facts. Sanctions applicable in respect of specific offences under the drugs Law adequately meet the

requirements of the Convention. These provisions include a broad range of sanctions, ranging from 1 to 20 years imprisonment, depending on the type of offence. Article 11 of the law criminalizes the different types of criminal organization that may exist behind the commission of any offence under the law, in accordance with the convention. Cooperation between states in the fight against illicit trafficking in drugs is covered under Article 41-42.

533. Territoriality principles included in the convention are adopted in the Drugs Law and the AML Law (Art. 3.3), and the CPC (Chapter II, Art. 35-38) which ensure that offences committed outside Cape Verde but on aircraft or vessels registered in Cape Verde, fall within the criminal jurisdiction of Cape Verde. Confiscation powers in respect of property, assets, or proceeds derived from those crimes, and income derived from proceeds, property into which proceeds have been transformed or converted, or property with which proceeds have been intermingled (Art. 7 AML), contained in the CPC (Arts. 243–) and the AML Law (Arts. 6–14), match to a large extent the provisions of the convention. The provisions include the offence of organizing, managing or financing of any of the listed offences, which are forms of participation in the commission of an offence. Articles 24–35 give effect to the provisions of Article 4 of the convention regarding the application of general principles of criminal law in the investigation and prosecution of offences under the law. Specialized methods of investigation such as controlled delivery and interception of communications for purposes of investigation are covered under Articles 31 and 33 of the law.

534. The obligations defined in the provisions of Articles 6 and 7 of the convention related to extradition and mutual assistance are covered in Article 42 of the law which gives effect to the provisions of international treaties and conventions to which Cape Verde is a party.

535. The provisions of Article 15, 17, and 19 of the convention, relate to the need to regulate the means of transportation and their use in the commission of offences, the obligation for the appropriate documentation in respect of exports of drugs, and possibilities for traffic by sea. These have not been incorporated into national law. International cooperation on extradition of all offences is regulated under the Constitution (Art. 37), the Penal Code (Art. 4.b,c, and 84), and Resolution of the National Assembly 98/VI/2004, the cooperation agreement with ECOWAS on civil and criminal matters, Resolution 159/2000 of September 12, Resolution 7/2000 of 12 May, and Article 42 of Drugs Law (1993).

536. Mutual legal assistance cooperation is covered under AML Law (Art. 6) related to police cooperation, Article 84 of Decree 6/97, and Article 4.b, c of the Penal Code, and generally provisions of the Drugs Law.

Implementation of SFT Convention (Articles 2-18, c. 35.1 and c. I.1)

537. The provisions of the UN International Convention on the Suppression of the Financing of Terrorism which criminalizes the FT offence have not been incorporated into national laws and, as such, remain without effect in the national legal system.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 and 34, c. 35.1)

538. Implementation of the provisions of the Palermo Convention has to be construed in the context of both the AML Law and the Law on Drugs.

539. Provisions have been enacted at national level to criminalize the participation in an organized criminal group (Art. 291 Penal Code), the different types of money laundering offences (Art. 6 AML Law), and legislative measures to combat money laundering have been adopted (Arts.4, 5, 15, 24, 26, 30, and 33 AML Law). The measures are not fully consistent with the provisions of the Convention and implementation has remained a challenge. Not all the regulatory and institutional framework has been set up and the measures have not been implemented. Previous chapters on law enforcement, supervision, and the FIU and cooperation indicate the shortcomings in the level of implementation.

540. Both the material and intentional elements of the offence of money laundering required by paragraphs (1) b) (i) and (ii) of Article 3 of the Vienna Convention and Article 6 (1) a) (i) and (ii) of Palermo Convention are built into Article 3 (1) a) to c) of Law 17/VI/2002 (the AML Law). The territoriality principle is contained in paragraph (3) of the same provision which provides the criminalization of money laundering if the predicate offence has been committed outside of the national territory.

541. The requirement for intention to be gathered from objective factual circumstances is not expressly provided for in the AML Law. However, Article 177 of the CPC allows that evidence or the assessment of facts to be taken into consideration. Court's jurisprudence allows for the intentional element of the money laundering offence to be inferred from objective factual circumstances.

542. Under Cape Verdean law, money laundering is considered a willful offence. Article 13 of the Penal Code makes different forms of willfulness admissible. Negligent money laundering is not admissible in accordance with the general principle of the Penal Code.

543. Property is defined in Article 243 of the CPC, as comprising property that has been derived from an unlawful act, as well as the proceeds of crime. This definition is adopted in the AML Law.

544. The AML Law adopts the list approach in defining the predicate offences for money laundering.

545. Not all the offences included in the FATF designated list of offences are covered under the list of predicate offences in the AML Law.

546. The concept of self-laundering is not defined in the current AML Law although the authorities indicate that there are no basic principles preventing money laundering as an offence from being applied to individuals who commit a predicate offence. Money laundering may be concurrent with a predicate offence and the concurrence of offences is provided for in Articles 31 of the Penal Code (Legislative Decree 4/2003) in the following manner:

> In the event of a concurrence of crimes, the perpetrator shall be convicted and given a single penalty, for which the minimum shall be the highest penalty specifically applied to each of the crimes and the maximum shall be the sum of the penalties specifically applied to each of the crimes committed, although in no case may the maximum be greater than 25 years' imprisonment or 800 days' fine.

547. The indication in the law regarding possible ancillary offences is in Article 1-1 which makes reference to the commission of the offence of money laundering "under any form of collaboration" which means any form of co-participation.

548. The provisions of the Penal Code extend liability for money laundering to both natural and legal persons. Under Article 9 of the Penal Code, corporations and legal persons of private nature are criminally liable for the offences committed by their organs or representatives, on their behalf and when committed in the interest of the legal persons, except if the agent acts against an order or an instruction of the legal person's representative.

549. Sanctions for the commission of the offence of money laundering are provided for in Article 3 and for failure to comply with the provisions of the Law are regulated under Articles 35–38. Seizure and confiscation are dealt with under general provisions of the Penal Code and the CPC. These codes allow for objects that were used or were destined to be used for the commission of a crime, to be seized. The seizure can be authorized both by any public prosecutor and by a judge, depending of the case.

550. Articles 98 and 99 of the Penal Code enable the confiscation of objects that were used or were destined to be used for the commission of a crime, as well as any objects that constitute the proceeds of a crime, or are derived from the proceeds of crime.

551. Article 7 of the AML Law specifically provides for the confiscation of the assets or products related to the money laundering offence stating that they should be confiscated to the State. Where the rights, things or benefits previously referred to cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

552. Both the Penal Code and the AML Law provide for the protection of *bona fide* third parties rights (Articles 98 and 99 of the Penal Code and in Article 8 of the AML Law).

553. The relevant law enforcement agencies responsible for money laundering investigation and prosecution are provided for in the law. Law enforcement agencies have some investigative techniques at their disposal including monitoring of correspondence, controlled delivery, videoconference, and interception of communications, surveillance and tracking of a person, surveillance of facilities, and monitoring of criminal activity. These could be strengthened by other specialized techniques necessary for AML investigation and prosecution.

554. Cooperation is regulated under the law providing for cooperation agreements with different countries. Power to entertain foreign request for assistance from other countries are subject to the conformity with Cape Verdean law. Police cooperation in operational matters exists at both an informal and formal level. Assistance to foreign countries is available in the AML legislation for the purposes of confiscation and the law is not subject to unreasonable

restrictions. The PM's office acts as central authority for receiving and sending such requests and entertaining rogatory letters.

555. International cooperation in criminal matters is limited to money laundering predicate offences foreseen in the conventions and additional protocols, such as drugs trafficking, organized crime, corruption, obstruction of justice, trafficking in persons and arms trafficking. Some of the offences set forth in the mentioned conventions and protocols are not a predicate offence for money laundering purposes, for instance the obstruction of justice.

556. The authorities in Cape Verde need to take appropriate steps to ensure effective implementation in respect of law enforcement measures with regards to the participation in an organized criminal group, money laundering, or corruption (Palermo Convention: Article 11, para. 2—prosecution, adjudication, and sanctions).

Implementation of SFT Convention (Articles 2-18, c. 35.1 and c. I.1)

557. Cape Verde has not yet enacted any legislation that incorporates the FATF 9 Special Recommendations. However, the convention on the Suppression of the Financing of Terrorism has been ratified. The Convention has not been implemented as its provisions have not been incorporated into domestic law. The offence of financing of terrorism has, therefore, not been criminalized in Cape Verde law.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)

558. The UNSCRs 1267 and 1373 have not been implemented, although these form part of the internal law. No mechanism has been established to ensure the implementation of those resolutions.

Additional Element —Ratification or Implementation of Other relevant international conventions (c. 35.2)

559. Cape Verde has also in the context of the CPLP—Portuguese-speaking countries community—signed three legal instruments respectively on (i) the transfer of sentenced persons between the member states of CPLP; (ii) extradition between the member states of CPLP; and (iii) mutual legal assistance in criminal matters between the member states of CPLP. These legal instruments potentially constitute additional international tools for Cape Verde in the fight against money laundering and terrorism financing. They still await ratification by three other states to come into force.

6.2.2 Recommendations and Comments

- 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 a need to put in place the necessary measures, including procedures and mechanisms, to implement the UNSCRs 1267 and 1373.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	The provisions of the Vienna Convention and the Palermo Convention have not been fully implemented. The Convention on the suppression of FT has not been implemented.
SR.I	**NC**	The Convention on the suppression of FT has not been implemented. The UN Security Council Resolutions 1267 and 1373 have not been implemented.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Legal Framework

560. Mutual legal assistance in Cape Verde is carried out through: (1) bilateral and multilateral treaties applicable in Cape Verde; (2) the convention signed with the member states of ECOWAS approved by the Resolution of the National Assembly No. 159/2000 of September 4; (3) UN Vienna and Palermo Conventions which are applicable in the internal legal system under Article 12-42 of the Constitution of the Republic; (4) Article 6 of the AML Law and Article 42 of the Law on Drug Trafficking No. 78/IV/1993 of July 12, that refer to the CPC, namely to Articles 234, 238, 239, 242, 243, 244, 246 and 255; and (5) the Legislative Decree No. 6/1997 of May 5 on the legal regime on foreigners and extradition. The PM's Office is the central authority with the ability to render mutual legal assistance in judiciary matters and to coordinate the gathering of the relevant information from the PM and the criminal police. The criminal police also has the ability to cooperate internationally and respond to foreign requests for assistance as mentioned below.

561. Article 6 of the AML Law sets forth the basis for cooperation between Cape Verde and a foreign state in matters of seizure and confiscation of assets and proceeds of crime following a request from a foreign state to the judiciary police. 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 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. There is no provision in the law to ensure that such requests are dealt with in a timely manner and expeditiously although the Attorney General's Office and the criminal police indicated that they deal with those requests on a priority basis.

562. If the enquiries reveal that assets or products are related to the offence of money laundering or the relevant predicate offence, 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 by freezing or confiscating them (Art. 6-2).

563. The reference to assets and products in Article 6 covers proceeds, but not instrumentalities used in or intended for use, in the commission of the money laundering or the respective predicate offence. Article 16 of the Drugs Law, however, allows for the forfeiture of equipment or materials used, or intended for use, in the commission of an offence and is, therefore, the only instance which allows for seizure or confiscation of instrumentalities or facilities used or intended for use, in the commission of an offence related to drugs or ML related to drugs.

564. Article 7 extends the definition of property to property of corresponding value, by ensuring that other assets, and any income, interest, profits or other advantages obtained therefrom, shall, under order of the court, be forfeited in favor of the State.

565. Article 6-3 of the AML Law limits the possibility of providing mutual legal assistance because it requires that in all cases the principle of reciprocity and rules governing confidentiality such as banking secrecy should apply in the context of requests coming from foreign authorities to the Criminal police. Information provided under international judicial cooperation should also not be used other than for the purpose indicated in the request.

Possible Range of Mutual Assistance (c. 36.1)

566. Cape Verde is able to provide mutual legal assistance in matters of investigation and prosecution of criminal cases and exchange of information also on the basis of different bilateral and multilateral treaties, and the Mutual Legal Assistance Convention. MLA can include exchange of information, documents, taking down of evidence, freezing and seizure and confiscation of assets or products relating to the investigation.

567. In addition, international judiciary cooperation is provided in accordance with bilateral agreements signed by Cape Verde, such as one signed with Portugal and approved by the National Assembly Resolution No. 98/VI/2004 of June 7, an agreement signed with the member states of ECOWAS, approved by the Resolution of the National Assembly No. 159/2000 of September 4, and another with the Portuguese-speaking countries community. With regards to criminal matters the agreements establish procedures of cooperation on judicial matters, extradition and transfer of persons sentenced to any penalty involving deprivation of liberty. In international cooperation the agreements provide for (i) the notification of deeds and the service of documents; (ii) the procuring of evidence; (iii) searches, seizure of property, experts examination and analysis; (iv) the service of writs to and hearing of suspects, accused persons, witnesses or experts; and (v) the communication of information on the respective law as well as to the judicial record of the suspect.

568. Apart from the receipt of a grounded and individualized request from a foreign judicial authority, (i.e., a foreign body similar to the judiciary police), the public prosecutor a judge or the judiciary police can: (1) provide information on any goods or property found in Cape Verde and related to an ML offence to a foreign judicial authority, under Article 6-1 of AML Law; and

(2) use all the powers conferred upon it by the Criminal Procedure Code to search for evidence, identify, freeze, and seize funds or any goods suspected of being used in money laundering activity, even when the criminal activity has occurred in a foreign country, according to Article 6-1 and -2 of the AML Law and Articles 234–254 of the CPC. However, no statistical data was provided, although it is recognized that informal cooperation is not always captured in statistics.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1)

569. When a bilateral or multilateral treaty is applicable the judiciary cooperation can be provided directly between public prosecutors, courts, and police forces. The judiciary police and the PM's office indicated that they give preference to the treatment of foreign requests for judiciary and police cooperation and assistance. Between 2003 and March 2007, 17 rogatory letters were received in the PM's office. Responses were provided to 13 letters. Although limited in number, the 13 rogatory letters seemed to be processed within a reasonable length of time.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2)

570. Under Article 6-3 of AML Law international cooperation in criminal matters is subject to principles of reciprocity and secrecy. Cape Verde will provide assistance and cooperation in the light of future reciprocity from foreign countries and the information provided to a judiciary authority should be used exclusively for the purpose presented in the request to the judiciary police. The arrangements do not appear to be unreasonable or unduly restrictive because there is no evidence that the principle of reciprocity has been applied in a strict way incompatible with the assistance required. This is in addition to the fact that banking secrecy can be lifted in cases where confidential banking information is required in a ML investigation or prosecution. However, the same principles are not applicable to TF cases because TF is not criminalized in Cape Verde and is not considered a predicate offence for ML.

Efficiency of Processes (c. 36.3)

571. Whenever it refers to urgent cases foreign judiciary authorities can communicate their demands for assistance through the Interpol Cabinet placed in the judiciary police. However, the specific actions required in the demand should be implemented according to the CPC. Information disclosed to the assessors seems to indicate that the process works reasonably well on an informal basis.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4)

572. According to the Cape Verde authorities mutual legal assistance will not be refused on the basis that an offence is related to fiscal matters, due to Article 18-21 of the Palermo Convention and Article 12-4 of the Cape Verde Constitution which provide for the prevalence of principles and provisions of international treaties and conventions approved by Cape Verde over domestic ordinary laws and regulations. However, there has not been any case which can

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 6.5)

573. Financial entities and DNFBPs should provide to the judge or the public prosecution, information, documents and any other goods that they might have in their possession and might be necessary for the instruction of an ML offence or that should be seized as instruments or proceeds of an offence; lifting the secrecy duty, under Article 22-1 of the AML Law. Foreign authorities when receiving the information and documents are however required to maintain the secrecy on the information received and may only use it for the purpose stated in the request, according to Article 6-3 of AML Law.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6)

574. All the legal provisional measures provided for in the CPC (Articles 234–254) such as the procurement of evidence, searching of premises and vehicles, ability to freeze and seize funds, goods or property are applicable to the investigation of ML offences when there is a request for cooperation presented by a foreign judiciary authority, in accordance with Article 6-1 and 2 of the AML Law.

Avoiding Conflicts of Jurisdictions (c. 36.7)

575. Article 4 of the CP addresses the territorial jurisdiction of Cape Verde Courts relating to offences that even when committed abroad are punishable by the courts in the country in the following cases (when no international convention states otherwise):

- if the deeds constitute the crimes referred to in Articles 244–263 and 307–328;
- if the deeds constitute the crimes referred to in Article 138, paragraphs 2 and 3, or in Articles 268–279 if the perpetrator is found in Cape Verde and cannot be extradited;
- if the deeds are committed against Cape Verde citizens, provided that the perpetrator is customarily resident in Cape Verde and is found in Cape Verde;
- if the deeds are committed by Cape Verde citizens, or by foreign nationals against Cape Verde citizens, provided that the perpetrator is found in Cape Verde, that the deeds are also punishable under the legislation of the place where they were committed, and that they constitute a crime for which the law permits extradition but for which extradition cannot be granted; and
- if it is a case of crimes which are the responsibility of the Cape Verdean State to try pursuant to an international agreement.

576. The provisions of the preceding paragraph shall apply only if the perpetrator has not been tried in the country in which the deed was committed or, if convicted in that country, has avoided fulfilling the penalty imposed.

577. Wherever Cape Verde law applies pursuant to this Article, the deed shall be tried in accordance with the law of the country in which the deed was committed if that regime is more

favorable to the perpetrator. Any penalty shall be converted to the corresponding penalty under the Cape Verde system or, if there is no direct correspondence, to such penalty as Cape Verdean law may provide for the deed.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1)

578. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.36.

Additional Element under SR V (applying c. 36.7 and 36.8 in R.36, c. V.6)

579. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.36.

International Cooperation under SR V (applying c. 37.1-37.2 in R.37, c. V.2)

580. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see below discussion on R.37.

Dual Criminality and Mutual Assistance (c. 37.1 and 37.2)

581. According to the Cape Verdean authorities, as Cape Verde is bound by the UN Palermo Convention which prevails over any domestic law or regulation, Article 18-9 of this Convention is applicable and the international judicial cooperation may be granted, even in the absence of dual criminality.

582. Extradition of Cape Verdean national citizens is forbidden by an absolute constitutional principle stated in Article 37 of the Cape Verdean Constitution. However in this situation it is mentioned by the authorities that where the perpetrator of the offence is a national of Cape Verdean, he must be subject to criminal proceedings in Cape Verde, according to Article 4-1 d) of the Penal Code. Foreigners might be subject to extradition according to international treaties or conventions negotiated with Cape Verde or under Articles 88, 89, and 90 of Decree-Law No. 6/1997 of May 5, which allows for the extradition of foreigners, at the request of foreign states to be submitted to a criminal proceeding or to serve a sentence, even in the absence of a convention or agreement. The extradition is legally possible only if the foreign court has jurisdiction for the trial and the offence is punishable with a penalty of one year or more of imprisonment, under Article 88 of the above-mentioned Decree-Law. However when in the requested country the offence is punishable by a death sentence or life imprisonment or offence to the physical integrity of the person the extradition is forbidden. Extradition is also prohibited

for political grounds or for offences related to the freedom of speech, under Article 90 of the above mentioned decree-law.

583. 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.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1)

584. Article 6 of the AML Law sets forth the basis for cooperation between Cape Verde and a foreign state in matters of seizure and confiscation of assets, products and proceeds of crime. It provides specifically that the provisions of Cape Verde law that address location, freezing and confiscating assets or products from ML, terrorism and predicate offences as defined by the Cape Verde criminal ML offence, may be used in support of a foreign request. The provision does not address instrumentalities used or intended for use in the commission of an ML or predicate offence. Instrumentalities used in or intended for use in the commission of an offence are provided for under Article 16 of the Drugs Law 1993.

585. There are no barriers in the law to the provision of assistance on a timely basis but there are no procedures in place to ensure that assistance is provided in a timely manner and no experience to date with foreign judicial requests for assistance involving freezing or confiscation of goods or property.

Property of Corresponding Value (c. 38.2)

586. The reference to assets and products in Article 6 can be interpreted as sufficiently wide to cover proceeds, in the commission of the money laundering or the respective predicate offence. The provisions of Article 7 extends to property of corresponding value, by ensuring that other assets, and any income, interest, profits or other advantages obtained therefrom, shall, under order of the court, be forfeited in favor of the state. In addition, paragraph 3 of Article 7 confirms that the provisions of Article 7 are also applicable to claims, objects, or advantages obtained through transaction or exchange with the claims, objects or advantages directly obtained from the offence.

Coordination of Seizure and Confiscation Actions (c. 38.3)

587. Under Article 6, following a request by the judiciary police to a competent foreign authority, all enquiries may be pursued under Cape Verdean Law in order to ascertain whether any assets or products arising from the crime of money laundering, are located in Cape Verde. The results of such enquiries shall be forwarded to the requesting authority. There are provisions in the law or procedures in place to determine which country pursues the confiscation action.

588. Although the law enables the cooperation between countries related to foreign requests for seizure and confiscation of assets or property related to ML/FT, there are no coordinating arrangements or mechanisms in place to facilitate such cooperation. There is no indication of such cooperation having taken place.

589. Cooperation exists between Cape Verde and Portugal based on a cooperation agreement between these countries on juridical and judicial matters, approved by Resolution 98/VI/2004 of June 7, regulating the cooperation mechanisms between the two states, specifically mutual legal assistance for seizure and forfeiture of proceeds, objects, and instruments of crime, within the scope of Article 48 of the Penal Code.

International Cooperation under SR V (applying c. 38.1–38.3 in R. 38, c. V.3)

590. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.36.

Asset Forfeiture Fund (c. 38.4)

The authorities have not given consideration to setting up an asset forfeiture fund. The competent authorities do not maintain comprehensive statistics on mutual legal assistance regarding seizures, freezing and confiscation of assets, and extradition. There is no framework in place where statistics are kept with a view to review the effectiveness and efficiency of the AML system. Except for the statistics provided for rogatory requests, no statistics were provided regarding the number of mutual legal assistance requests related to asset seizure, freezing and confiscation.

Sharing of Confiscated Assets (c. 38.5)

591. The AML Law does not allow for the possibility of sharing of confiscated assets. On the contrary, all assets forfeited in accordance with the provisions of Article 7 are in favor of the State. The reference here is to the Cape Verde State and not the requesting foreign state.

Additional Element (R 38)—Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6)

592. The authorities have indicated that foreign judgments are recognized in Cape Verde in accordance with Recognition of Foreign Judgments Law No. 5/2005 of October 3.

Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7)

593. The authorities did not produce any evidence that they have cooperated internationally in matters related to the financing of terrorism. There has not been any cooperation in relation to the fight against the financing of terrorism. In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.38.

6.3.2 Recommendations and Comments

- 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.

- The authorities should establish a system for maintaining comprehensive statistics on mutual legal assistance regarding seizures, freezing and confiscation of assets, and extradition.

6.3.3 Compliance with Recommendations 36 to 38 and SR.V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**PC**	Beyond bilateral and multilateral agreements negotiated by Cape Verde and the provisions of the CPC, Cape Verde has not established a comprehensive framework to regulate mutual legal assistance with foreign authorities in their respective fields of competence that facilitates international cooperation in a comprehensive and timely manner. Cape Verde can not ensure effective international effective cooperation when FT is under investigation by a foreign authority, since this offence has not been criminalized in Cape Verde.
R.37	**PC**	It was not possible for the team to assert that the dual criminality principle applicable in Cape Verde is not an impediment to provide mutual legal assistance in criminal matters.
R.38	**NC**	No coordinating mechanisms to facilitate cooperation on foreign request for seizure or confiscation of assets or property related to FT. No consideration given to the setting up of an asset forfeiture fund No power exists for sharing of confiscated assets related to ML/FT.
SR.V	**NC**	In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

594. The Constitution of the Republic in Article 37 forbids, in absolute terms, the extradition of Cape Verdean citizens, who can be subject to trial in Cape Verde, according to the principle *aut dedere aut judicare* in Article 4-1 d) of the Penal Code. However, the authorities indicate that in such a situation the perpetrator of the offence can be subject to criminal proceedings in Cape Verde, according to Article 4 of the CPC.

Legal Framework

595. The extradition of foreign individuals is allowed and regulated by International conventions and treaties negotiated by Cape Verde and in the absence of treaties or conventions under Articles 88, 89, and 90 of Decree-Law No. 6/1997 of May 5.

596. Foreign citizens or citizens without nationality that commit n ML offence can be subject to extradition because the ML offence is punishable with imprisonment between a minimum of 1 and a maximum of 12 years and according to Article 86 of Decree-Law No. 6/1997 of May 5, extradition may be granted when the offence is punishable with a penalty of one year or more of imprisonment. However when in the requesting country the offence is punishable by a death sentence or life imprisonment or offence to the physical integrity of the person, the extradition is forbidden. Extradition is also prohibited for political grounds or for offences to the freedom of speech, under Article 90 of the above mentioned Decree-Law. Extradition of foreign individuals can be granted either for instituting criminal proceedings or for executing a sanction or measure involving deprivation of liberty for an offence that the courts of the requesting state have jurisdiction to try. There are no provisions in Cape Verde law that allows for extradition of either Cape Verdean Nationals or foreign nationals on the basis of a terrorist financing offence because TF is not an autonomous offence in Cape Verde.

597. The offences of belonging to a terrorist organization (Article 315 of the Penal Code) or cooperation with a terrorist organization (Article 316 of the Penal Code) are also extraditable offences when committed by foreigners, due to the penalties of imprisonment applicable which are all above one year imprisonment, as required in Article 86 of Decree-Law No. 6/1997 of May 5. However, the extradition of foreigners should not be granted for offences of political, religious or freedom-of-speech nature, for offences to which the requiring state applies death penalty, imprisonment for life or violence against the person, or if the offender might be subject to torture or inhuman treatment, according to Article 37-3 of the Constitution of the Republic.

Dual Criminality and Mutual Assistance (c. 37.1 and 37.2)

598. According to UN Palermo Convention applicable in Cape Verde, and prevailing over domestic ordinary legislation, in accordance with Article 12-4 of the Constitution, Cape Verdean authorities claim that international judicial cooperation is legally possible, even in the absence of dual criminality. However, it was not possible for the team to assert that the dual criminality principle, as interpreted by the authorities, is not an impediment to provide mutual legal assistance in criminal matters.

Money Laundering as Extraditable Offence (c. 39.1)

599. Since the ML offence is punishable with imprisonment between a minimum of 1 and a maximum of 12 years it is an extraditable offence, because according to Article 86 of Decree-Law No. 6/1997 of May 5, extradition may be granted when the offence is punishable with a penalty of one year or more of imprisonment.

Extradition of Nationals (c. 39.2)

600. Extradition of Cape Verde nationals is forbidden by an absolute constitutional principle stated in Article 4 of the Cape Verde Constitution. However in this situation he principle *aut dedere aut judicare* inserted in Article 4-1 d) of the Penal Code is applicable and such persons can be subject to trial in Cape Verde (see Section 6.3.1 of the report).

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3)

601. According to the Cape Verdean authorities, when international treaties and conventions have been ratified their provisions are applicable in Cape Verde and it is therefore an expectation that Cape Verde will provide a wide range of cooperation, including on procedural and evidentiary matters. The authorities, however, were unable to demonstrate, on the basis of specific references, that the system has worked effectively.

Efficiency of Extradition Process (c. 39.4)

602. The authorities did not provide any details about specific extradition proceedings and the assessors were therefore unable to gauge the efficiency of the process.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5)

603. Under Article 105 of Decree-Law No. 6/1997 of May 5, the foreign person to whom the request for extradition is applicable can be immediately extradited when he has freely, willingly and before a judge, renounced the formal extradition process, whose existence and terms he knows.

Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)

604. 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 FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.39.

Statistics (applying R.32)

605. No statistics were provided regarding requests for extradition of either Cape Verdean nationals or foreign nationals living in Cape Verde. The authorities do not maintain a system of statistics regarding extradition cases.

6.4.2 Recommendations and Comments

- Cape Verdean authorities should create expressly the FT offence in accordance with the UN Convention on the Suppression of Terrorism Financing and consider this offence an extraditable one and also ensure that even before FT is criminalized they can extradite foreigners that have committed this offence in the requesting State.
- Cape Verdean authorities should ensure that requests for extradition are dealt with expeditiously.
- Cape Verdean authorities should ensure that nationals whose extradition has been requested for offences committed abroad are subject to trial in Cape Verde in a manner comparable to similar domestic prosecutions for serious offences.

6.4.3 Compliance with Recommendations 37 and 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**PC**	In the absence of references to specific cases in which the extradition of a national was requested, the assessment team was unable to gauge if such cases were prosecuted in a manner comparable to similar domestic prosecutions for serious offences. There was no evidence of cooperation with other countries in the context of a request for extradition of a Cape Verdean national.
R.37	**PC**	It was not possible for the Team to assert that the dual criminality principle applicable in Cape Verde is not an impediment to providing mutual legal assistance in criminal matters.
SR.V	**NC**	In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA.

6.5 Other Forms of International Cooperation (R.40 and SR.V)

6.5.1 Description and Analysis

606. Channels of cooperation exist between the police and customs authorities of Cape Verde and their counterparts of foreign countries, in relation to investigation of crime and customs offences in general. While the police of Cape Verde can cooperate on money laundering

investigations with their counterparts, customs can only cooperate with its counterparts on customs offences.

607. Exchange of information related to money laundering investigation exists at the level of the judiciary police and the public prosecutor's office. Such exchanges may relate to any information relevant to a ML investigation. The judiciary police and the public prosecutor are able to entertain request for information from their counterparts of any country on a matter related to a money laundering investigation.

608. There is no indication of any cooperation or channels of cooperation between the supervisory authority, namely BCV and its foreign counterparts on matters relating to money laundering.

609. The judiciary police are not able to consider a request for assistance or exchange of information from foreign FIUs that are not police FIUs. Such requests can only be addressed through formal legal assistance.

Legal Framework

610. The Constitution of Cape Verde allows for cooperation with different international organizations and countries, to ensure international peace and justice, and supports all efforts of the international community to guarantee respect for the principles of the United Nations (Art.11 and 12).

Widest Range of International Cooperation (c. 40.1)

611. Cape Verde law authorities are able to provide for a wide range of collaboration with other countries either bilaterally or through multilateral channels. Cooperation is facilitated through instruments such as the Nairobi Convention and regional organizations such as GIABA. Cape Verde is also a member of the Dublin Mini Group which cooperates through regional subgroups on developing common strategies on fighting drugs and drugs-related crime.

612. The judiciary police, under the direction and in accordance with the public prosecutor, has the capability to search premises and vehicles in searching for evidence of an offence and seize any funds, goods or property that could be used to perpetrate it or are considered to be a product of the offence.

613. The judiciary police is not allowed to provide information to FIUs of an administrative nature, because they are not considered to be "judiciary authorities" and the judiciary police is not considered by the authorities to be a formal FIU. Although the judiciary police receives suspicious transaction reports, it cannot cooperate or exchange information with a foreign FIU. In the view of the assessors, this situation constitutes a major shortcoming in the AML international cooperation system.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 40.1.1)

614. The authorities claim that any request for assistance or exchange of information is carried out diligently and in a timely and constructive manner. Statistics provided by the authorities

related to foreign requests for assistance indicate that such requests are dealt within a reasonable period of time.

Clear and Effective Gateways for Exchange of Information (c. 40.2)

615. Channels for exchange of information exist between the Cape Verde competent authorities and their foreign counterparts although there are no laws that allow for such cooperation. The Cape Verde police, including the national and judiciary police, cooperate with their counterparts in foreign countries and are able to provide information to other foreign police forces through the interpol cabinet that is placed within the judiciary police, according to Article 42 of Legislative Decree No. 4/93 of May 12. The judiciary police is also able to provide informal cooperation to police counterparts, subject exclusively to the principle of reciprocity and secrecy stated in Article 6-3 of the AML Law.

616. Customs can, through the Nairobi Convention, exchange information with its foreign counterparts on investigation related to customs offences. Such cooperation also covers drugs and drug-related offences.

617. Laws 3/V/1996 (banks) 53/V/1998 (capital markets) and 52/F/1990 (insurance) do not contain clear gateways for supervisory cooperation. While these laws contain provisions that require licensees to provide information to BCV and AGMVM, they do not expressly allow the supervisors to share any information they hold in respect of licensees, with other supervisory authorities. Article 29 of Law 12/2005 provides that BCV can contact and exchange information with supervisory authorities from licensees' countries of origin and "host" countries.

Spontaneous Exchange of Information (c. 40.3)

618. The Cape Verdean authorities indicate that the judiciary police is able to exchange information related to a money laundering investigation both spontaneously and upon request. The information may relate to money laundering and to the underlying predicate offence matters. The customs, on the other hand, is able, through the Nairobi Convention, to exchange information only in relation to the investigation of customs offences. The mission was, however, not able to verify whether such exchanges have taken place in the past. The judiciary police is not able to exchange information with a foreign FIU that is not a police-type FIU.

619. BCV indicates that it is willing to cooperate both spontaneously and upon receiving request from foreign supervisors. However as indicated above most of the supervisory laws do not provide specific gateways for the outward flow of information held on licensees.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4)

620. The Cape Verdean competent authorities are able to carry out inquiries on behalf of their foreign counterparts through cooperation agreements with police forces of other countries. Under these agreements, foreign police can make enquiries on behalf of their foreign counterparts, and can come to Cape Verde, for purposes of gathering information related to an investigation or prosecution of a criminal offence, under the coordination of the Cape Verde police. Such agreements exist with Portugal, Spain, and Holland. Customs are also able to carry out such

enquiries on behalf of its foreign counterparts but only in respect of customs offences. The Nairobi Convention allows for such a possibility.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1)

621. Although the judiciary police receives suspicious transaction reports, it is not able to make enquiries on behalf of foreign FIUs.

Conducting Investigations on Behalf of Foreign Counterparts (c. 40.5)

622. The public ministry is able, through the judiciary police, to conduct investigations on behalf of its foreign counterparts. There is no indication that competent authorities, other than the public ministry, are able to carry out such investigations on behalf of their counterparts.

Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6)

623. Exchange of information among police counterparts is based on condition of reciprocity, confidentiality, and provided the request is made in accordance with Cape Verde law. Otherwise, there are no unreasonable or unduly restrictive restrictions for such exchange.

624. Article 48 of Law 12/2005 provides that the communication of materials, data and information in respect of IFIs to another supervisory authority, must observe the Cape Verdean Law concerning banking confidentiality and requires prior notification to the financial institution in question. This requirement for prior notification to the financial institution condition is unreasonable and has the potential to reduce the effectiveness of supervisory cooperation In respect of matters related to IFIs.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7)

625. There is no provision in the law that ensures that foreign requests for cooperation are not refused on the sole ground that the requests are also considered to involve fiscal matters. The authorities claim that such requests for cooperation have never been refused on the sole ground that the request is also considered to involve fiscal matters. In the absence of any specific example, it is difficult to assess whether such requests are actually refused on this ground.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8)

626. International cooperation regarding information concerning investigation and prosecution of money laundering offences is carried out on the basis of reciprocity and subject to confidentiality rules as provided in Article 6 of the AML Law. Article 22 of the AML Law, however, allows for the provision of confidential banking information which is necessary for the investigation and prosecution of money laundering offences irrespective of banking secrecy. The law does not provide clear gateways for the sharing of any kind of information with foreign supervisors about institutions operating in the domestic financial sector. The judiciary police cannot share information with foreign FIUs that are not of a police nature.

Safeguards in Use of Exchanged Information (c. 40.9)

627. Article 22 of the AML law establishes safeguards regarding the use of banking information in carrying out investigation into money laundering. Exchange of information between counterparts is based on the condition that such information will be used only in connection with the purpose upon which the request is made, which is restricted to the use for investigation and prosecution of such crimes.

628. Article 48 of Law 12/2005 provides that a foreign supervisor should be placed under an obligation of confidentiality when receiving information on a financial institution, from BCV.

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 and c. 40.10.1)

629. There are no provisions in the law which allow for exchange of information with non-counterparts, and no mechanisms exists for a prompt and constructive exchange of information with such agencies.

630. BCV cooperation is generally limited to foreign supervisors of financial institutions.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)

631. According to the authorities, a request from a foreign FIU cannot be considered by the judiciary police unless such request is made by a foreign police agency using customary police channels.

International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c.V.5)

632. The authorities did not produce any evidence that they have cooperated internationally in matters related to the financing of terrorism. There has not been any cooperation in relation to the fight against the financing of terrorism. In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA. Please see above discussion on R.40.

Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9)

633. There are no mechanisms in place which would allow for exchange of information with foreign non-counterparts in matters relating to investigations, enquiries or proceedings related to the financing of terrorism. There is no indication that such cooperation exists in relation to investigations, or enquiries related to terrorist acts or terrorist organizations.

Statistics (applying R.32)

634. No statistics are maintained, by the competent authorities regarding exchanges related to money laundering investigation or prosecution.

6.5.2 Recommendations and Comments

- Cape Verde should develop cooperation mechanisms which will assist 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 International Convention on the Suppression of the Financing of Terrorism, and related 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 between law enforcement and other 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.
- Law 12/2005 should be amended to remove the requirement for financial institutions to be informed when BCV provides information about that institution to another supervisor

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	Channels for cooperation between law enforcement and supervisory authorities of Cape Verde and their foreign counterparts, including MoUs, bilateral and multilateral arrangements, and exchanges on matters related to ML/FT are weak. Possibilities of law enforcement and other competent authorities of Cape Verde to conduct investigation on behalf of their foreign counterparts should be reinforced. Law enforcement agencies cannot provide information to foreign FIUs that are not police FIUs. Exchanges of information between Cape Verde law enforcement and other competent authorities of Cape Verde and their foreign counterparts are limited. Lack of clear gateways for sharing of information with other supervisors in Laws 3/V/1996, 53/V/1998, and 52/F/1990.
SR.V	**NC**	In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA.

7 OTHER ISSUES

7.1 Resources and Statistics

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	The investigating and prosecuting agencies are under-staffed and do not have the resources necessary for the proper investigation and prosecution of money laundering offence. There is a lack of skills to investigate and prosecute money laundering and the financing of terrorism offences. The JP lacks adequate resources and training to perform comprehensive analysis of STRs. The resources are also stretched by having to perform regular police functions including the investigation of cases (both STR and non-STR related). AML training provided to BCV staff appears to have been at a very basic level. As a result staff resources and capacity need to be enhanced.
R.32	**NC**	Maintenance of statistics is weak across all government agencies involved in AML. The authorities have not collected sufficient information related to judicial proceedings of ML, namely concerning judicial accusations and convictions and also the specific penalties applied in the proceedings, and the amount of funds and goods frozen seized or confiscated. Where statistics are available they are not used strategically to identify, for example, if there is a reasonable distribution of STRs across all banking institutions or if some institutions might be over/underreporting.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[13]
Legal systems		
1. ML offence	**PC**	• The predicate offences for ML set forth in Article 3 of Law n 17/VI/2002 are insufficient and do not include some serious offences, that according to FATF Recommendation 1 should be included as predicate for ML. • No evidence that a conviction for the predicate offence is not necessary before issuing a ML conviction • It has not been fully established within the Cape Verdean legal system that the author of a predicate offence can also be convicted for laundering the proceeds of the predicate offence. • The number of ML investigations seems low relative to the number of predicate offences, and none has resulted in accusations (let alone convictions) for ML.
2. ML offence—mental element and corporate liability	**LC**	• There are doubts on the effective implementation of the existing legal framework because since the enactment of the AML Law in 2002, there have been few investigations on ML and no accusations before the courts.
3. Confiscation and provisional measures	**LC**	• The legal framework seems to be adequate, however doubts arise about its effectiveness considering the very low data on goods, property, and values frozen, seized or confiscated on ML investigations.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	• The legal secrecy duty regime applicable to IFIs is stricter than the one applicable to domestic financial institutions in general, rendering more difficult and riskier for employees of IFIs to discover and report suspicious operations to the judiciary police.
5. Customer due diligence	**NC**	• Use of threshold for instances in which specified forms of identification are required can lead to inadequate documentation being taken in circumstances where threshold is not met.

[13] These factors are only required to be set out when the rating is less than Compliant.

		• Inadequate arrangements for circumstances in which foreign financial institutions are confirming the authenticity of CDD identification documents or information. • Lack of affirmative obligation for institutions to determine if a customer is acting on behalf of another party. • Number of weakness in the requirements for the identification of legal persons. • Lack of a requirement to obtain information on the purpose and intended nature of business relationship. • No requirement for ongoing due diligence or for CDD records to be kept up to date. • Inadequate CDD Requirements for Trusts. • No requirement for institutions to apply CDD to customers whose relationship with the institution pre-dated the 2002 law, on the basis of materiality and risk.
6. Politically exposed persons	**NC**	• No effective framework to address the risk posed by PEPS.
7. Correspondent banking	**NC**	• No effective framework to address the risk posed by cross-border correspondent banking relationships.
8. New technologies and non face-to-face business	**NC**	• No requirements for institutions to have policies in place or to take measures to prevent the misuse of technological developments in ML or FT. • No adequate framework for circumstance in which institutions are allowed to rely on verification of identity provided by a foreign financial institution.
9. Third parties and introducers	**NC**	• No effective framework to address the risk posed by third party introduced business arrangements.
10. Record-keeping	**PC**	• Absence of a requirement for transaction records to be sufficient to permit the reconstruction of individual transactions to provide evidence for prosecution of criminal activity. • Absence of a requirement for account files and business correspondence to be maintained. • Absence of a requirement that records should be available on a timely basis to domestic competent authorities. • Absence of a requirement that records should be maintained for such periods as may be required by competent authorities.

		• Uncertainty on the part of a number of financial institutions about the requirements of the law re record keeping.
11. Unusual transactions	**PC**	• The monitoring obligation is excessively limited and confusing because the only transactions for which special attention is legally required are those that are considered "suspicious" of being linked to ML or its predicate crimes (which are not a complete list either). • Implementation by financial institutions is closer to the objectives of R. 11 than Cape Verdean law itself, but they perform very little automated or periodic analysis of customer transactions. The detection burden is excessively placed on the cashier/teller officers and large-size deposits seem to be the only criterion used for detection. • There is no obligation to document the analysis in writing. • Monitoring not effectively enforced as evidenced by the scarce number of STRs and few supervisory tools to test compliance.
12. DNFBP–R.5, 6, 8–11	**NC**	• Not all DNFBPs are subject to the AML law. • There has been no implementation of the law since its enactment in December 2002. The authorities have not enacted (or even drafted) any regulations or guidance, and the businesses are unaware of their obligations under the law. • The deficiencies of the preventive regime described for financial institutions are largely applicable to the DNFBPs.
13. Suspicious transaction reporting	**NC**	• Implementation has been ineffectual because, inter alia, the current requirement places too high a threshold for the reporting sector. • STR obligation is referred only to list of predicate crimes of ML in CV, which does not address all the FATF required predicate crimes. • Make it explicit via regulation, and educate using guidelines and outreach to financial institutions, that the obligation to file an STR applies regardless of whether the transaction involves tax matters. • Some financial institutions and DNFBPs are not aware of their obligation to report suspicious transactions, or how to file STRs and what is the competent authority to receive them.
14. Protection and no tipping-off	**NC**	• Tipping off prohibition does not exist for filing unsolicited STRs in good faith (it only applies

		when complying with court-ordered disclosures of information). • Mandatory suspension of all reported transactions is tantamount to alerting the customer.
15. Internal controls, compliance and audit	**NC**	• Weaknesses in current requirements for institutions to maintain internal policies, procedures and controls to manage ML risks. • No clear requirement for institutions to establish AML/CFT compliance function including the designation of a compliance officer at managerial level. • No requirement for institutions to have an independent audit function. • No requirement for the screening of employees.
16. DNFBP–R.13–15 and 21	**NC**	• Not all DNFBPs are subject to the AML law. • There has been no implementation of the law since its enactment in December 2002. The authorities have not enacted (or even drafted) any regulations or guidance, and the businesses are unaware of their obligations under the law. • The deficiencies of the preventive regime described for financial institutions are applicable to the DNFBPs almost entirely (especially a limited scope of the CDD, monitoring and STR requirements). Not all DNFBPs are subject to the AML law.
17. Sanctions	**PC**	• There is a wide range of criminal and administrative sanctions available against legal and natural persons, but absence of actual imposition of sanctions make it difficult to assess the effectiveness, proportionality and dissuasiveness of the regime. • Administrative sanctions do not apply to breach of the obligation to create an AML compliance unit and to refuse transactions when identification is not possible. • The BCV can only instruct and recommend (not impose) sanctions for AML violations.
18. Shell banks	**NC**	• Current arrangements do not preclude the operation of shell banks in Cape Verde. • There are no requirements for financial institutions to satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks. • No requirements that prohibit Cape Verde banks from maintaining relationships with shell banks.

19. Other forms of reporting	**NC**	• Authorities have not evaluated the feasibility and utility of establishing a CTR system.
20. Other NFBP and secure transaction techniques	**PC**	• Cape Verde considered and decided on the application of AML requirements to other businesses (namely car and antique dealers) but there has been no implementation of an AML regime for these activities. • There was no evidence or information available on efforts to develop modern and secure techniques of money management that are less vulnerable to money laundering.
21. Special attention for higher risk countries	**NC**	• No special attention is required when dealing with countries that insufficiently apply FATF Recommendations. • The same weaknesses of R11 would apply to obligation to examine background of transactions with foreign countries (monitoring is limited to predicate offence being suspected). • No countermeasures are currently available nor have been considered to deal with countries that insufficiently apply the FATF standards.
22. Foreign branches and subsidiaries	**NC**	• Current arrangements are not applicable to foreign branches and subsidiaries of Cape Verde financial institutions.
23. Regulation, supervision and monitoring	**NC**	• Lack of comprehensive coverage of all forms of financial activity undertaken by different types of financial institutions. • Absence of a clear supervisory strategy and outlook on risk inherent in lines of business of various financial institutions. • Lack of consistency in approach in assessing fitness and propriety across banking insurance and securities sectors. • Absence of inspections of branches of institutions operating in the domestic sector and IFIs. • Less robust legal framework to support effective supervision of IFIs.
24. DNFBP—regulation, supervision and monitoring	**NC**	• The ministry of finance was designated as the competent authority to regulate and supervise all DNFBPs but it has not taken any action in this respect.
25. Guidelines and Feedback	**NC**	• No Guidelines have been provided for financial institutions with respect to the manner in which STRs should be filed, neither is feedback given

		to the few banks that have reported.
Institutional and other measures		
26. The FIU	**NC**	The judiciary police does not fulfill all the functions of an FIU as required by R26: • No meaningful analysis is performed before launching a routine police investigation for all STRs. STRs are handled in a manner similar to any criminal accusation, and the only preparatory work is the cross-checking of names in the databases available to the police. • The JP is not authorized to exchange information with foreign FIUs. • The JP is not authorized to establish any procedures for the sending of reports, and does not prepare reports on typologies, ML trends, or any other analytical information to facilitate the private sector's task of detecting suspicious transactions. • The JP does not have the necessary operational independence to determine which STRs should be communicated to the Public Ministry and when not to prosecute a case. • The number of STRs so far received is negligible, which impacts negatively on the effectiveness of any FIU arrangements in CV.
27. Law enforcement authorities	**PC**	• Law enforcement agencies do not have a mandate to investigate and prosecute FT offences. • The power to postpone or waive arrest of a suspect or seizure of property only exists for drug offences. • Limited attention is paid to pursuing ML investigation as evidenced by low level of statistics.
28. Powers of competent authorities	**PC**	• Absence of indication of use of existing power to compel production and searches for documents and information in ML investigation. • No power to compel production of documents and searches in relation to FT offences since FT is not an offence in Cape Verde.
29. Supervisors	**PC**	• BCV's inspections powers as set out in Law 12/2005 are not sufficiently broad.
30. Resources, integrity, and training	**PC**	• The investigating and prosecuting agencies are under-staffed and do not have the resources necessary for the proper investigation and

		prosecution of money laundering offence. There is a lack of skills to investigate and prosecute money laundering and the financing of terrorism offences. • The JP lacks adequate resources and training to perform comprehensive analysis of STRs. The resources are also stretched by having to perform regular police functions including the investigation of cases (both STR and non-STR related). • AML training provided to BCV staff appears to have been at a very basic level. As a result staff resources and capacity need to be enhanced.
31. National cooperation	**PC**	• Coordination and cooperation among domestic institutions is low. • No coordination or cooperation presently exists on issues related to FT.
32. Statistics	**NC**	• Maintenance of statistics is weak across all Government agencies involved in AML. • The authorities have not collected sufficient information related to judicial proceedings of ML, namely concerning judicial accusations and convictions and also the specific penalties applied in the proceedings, and to the amount of funds and goods frozen seized or confiscated. • Where statistics are available they are not used strategically to identify, for example, if there is a reasonable distribution of STRs across all banking institutions or if some institutions might be over/underreporting.
33. Legal persons–beneficial owners	**LC**	• The inability of the authorities to provide statistics to substantiate the arrangements as described above cast doubt about the effectiveness of the system.
34. Legal arrangements – beneficial owners	**NA**	• Express trusts and other similar legal arrangements, such as “fiducie”, “treuehand” or “fideicomisso” are not provided for or recognized in the internal legal system of Cape Verde.
International Cooperation		
35. Conventions	**PC**	• The provisions of the Vienna Convention and the Palermo Conventions have not been fully implemented. • The Convention on the Suppression of FT has not been implemented.

36. Mutual legal assistance	**PC**	• Beyond bilateral and multilateral agreements negotiated by Cape Verde and the provisions of the CPC, Cape Verde has not established a comprehensive framework to regulate mutual legal assistance with foreign authorities in their respective fields of competence that facilitates international cooperation in a comprehensive and timely manner. • Cape Verde can not ensure effective international effective cooperation when FT is under investigation of a foreign authority and requests are received in the country, because this offence has not been criminalized.
37. Dual criminality	**PC**	• It was not possible for the team to assert that the dual criminality principle applicable in Cape Verde is not an impediment to provide mutual legal assistance in criminal matters.
38. MLA on confiscation and freezing	**NC**	• No coordinating mechanisms to facilitate cooperation on foreign request for seizure or confiscation of assets or property related to FT. • No consideration given to the setting up of an Asset Forfeiture Fund • No power exists for sharing of confiscated assets related to ML/FT.
39. Extradition	**PC**	• In the absence of references to specific cases in which the extradition of a national was requested, the assessment team was unable to gauge if such cases were prosecuted in a manner comparable to similar domestic prosecutions for serious offences. • There was no evidence of cooperation with other countries in the context of a request for extradition of a Cape Verdean national.
40. Other forms of cooperation	**PC**	• Channels for cooperation between law enforcement and supervisory authorities of Cape Verde and their foreign counterparts, including MoU and bilateral and multilateral arrangements, and exchanges on matters related to ML/FT are weak. • Possibilities of law enforcement and other competent authorities of Cape Verde to conduct investigation on behalf of their foreign counterparts should be reinforced. • Law enforcement agencies cannot provide information to foreign FIUs that are not police FIUs. • Exchanges of information between Cape Verde

		law enforcement and other competent authorities of Cape Verde and their foreign counterparts are limited. • Lack of clear gateways for sharing of information with other supervisors in Laws 3/V/1996, 53/V/1998, and 52/F/1990.
Nine Special Recommendations		
SR.I Implement UN instruments	**NC**	• The Convention on the Suppression of FT has not been implemented. • The UN Security Council Resolutions 1267 and 1373 have not been implemented.
SR.II Criminalize terrorist financing	**NC**	• The financing of terrorism, terrorist acts, terrorist organizations and individual terrorists is not criminalized in accordance with Article 2 of the UN Convention on the Suppression of TF and FATF SR II. • Terrorism financing is not considered a predicate offence for ML as required by FATF SR II.
SR.III Freeze and confiscate terrorist assets	**NC**	• Cape Verde Authorities did not demonstrate that the UN Security Council Resolutions 1267 and 1373, although technically applicable within the jurisdiction, are effectively implemented. Provisions in the Penal Code and CPC alone do not provide for effective and immediate freezing, seizure and confiscation of goods, funds, assets and property of designated persons, terrorists, those who finance terrorism or terrorist organizations. • In addition, there is no obligation on financial entities or others to monitor for, and report accounts or other property of such persons, nor do competent authorities supervise the actions of such entities in this regard.
SR.IV Suspicious transaction reporting	**NC**	• Financing of terrorism is not criminalized and, therefore, not among the list of predicate crimes that could be the subject of an STR. The STR obligation, as described in the law, does not allow reporting the suspicion of any crime (only those predicate of ML).
SR.V International cooperation	**NC**	• In the absence of the criminalization of FT, the lack of clarity about the application of the dual criminality principle creates doubt about the authorities' ability to cooperate on FT matters, using the existing framework for MLA.

SR.VI	AML/CFT requirements for money/value transfer services	**PC**	• Licensing and preventive requirements are in place, although monitoring of MVT services (which are only provided by financial institutions) is negatively affected by the same weaknesses of the supervisory framework of the BCV described in Chapter 3.10.
SR.VII	Wire transfer rules	**NC**	• No measures in place to address the requirements of SR. VII, except to obtain and verify originator's identification. • Banks are not required to include originator information in national or cross-border wire transfers. • There are no regulations indicating what to do with respect to incoming wires which do not contain full originator information. • Some positive practices regardless of the lack of regulation result from the fact that remittance services in Cape Verde are undertaken only by Western Union (under contractual arrangements with financial institutions) which is expected to comply with stricter US regulations albeit not enforceable by the Cape Verde authorities.
SR.VIII	Nonprofit organizations	**NC**	• Cape Verde did not conduct an express 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 prevent and cope with these threats.
SR.IX	Cash Border Declaration and Disclosure	**NC**	• The obligation to declare the cross-border movement of cash and negotiable instruments is not applicable to outgoing movements. • Absence of implementation by customs and lack of adequate powers to enforce the obligation. • Absence of powers to seize and retain currency or bearer instruments in violation of the declaration obligation. • Failure to maintain data related to the amount of currency and bearer negotiable instruments and identification data. • No power to communicate information related to currency or bearer instruments in violation of the obligation, to the FIU.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2)	The scope of the ML offence should be broadened to encompass, at a minimum, a catalogue of offences included in the list of "designated categories of offences" referred in Recommendation 1 and the Glossary. It should be clearly provided in law that a conviction for the predicate offence is not necessary before issuing a ML conviction in connection with that predicate offence.
Criminalization of Terrorist Financing (SR.II)	Terrorism Financing should be expressly and autonomously criminalized in accordance with Article 2 of the UN International Convention on the Suppression of TF. It should be considered in law also that TF is a predicate offence for ML and all steps should be taken to ensure that the offence 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)	
Freezing of funds used for terrorist financing (SR.III)	The system in place should be revised to ensure that all situations referred in the aforementioned 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. Internal mechanisms ensuring that UN Security Council Resolutions are transmitted for implementation purposes to all financial and non-financial entities subject to AML /CFT regime should be established. Competent authorities should monitor the implementation of these Resolutions and collect data on its application to allow for the establishment of the policy and legal measures in this matter. An internal process of listing and de-listing should be implemented according to the UN Security Council Resolutions.
The Financial Intelligence Unit and its functions (R.26)	Amend the law to provide for the establishment of a full-fledged FIU in accordance with the R.26.

	Make a prompt decision about the location of the future FIU, taking into consideration the views of all relevant stakeholders. The FIU should centralize the reception and administration of 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. 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 that Article 22-4 be interpreted as to allowing accused persons in a trial from having access to the actual STR filed by a reporting institution. STRs should be treated as intelligence and not as evidence in court. Once the new FIU is created, special measures should be taken to prevent its confidential information from being disclosed to offices or agencies other than the competent judicial authorities. 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 (R.27, 28)	The authorities should give adequate attention to the investigation of ML cases. The judiciary police and Public Prosecutor's Office do not have the necessary resources, skills and training to adequately comply with the FATF Recommendations. There is need for more specialized staff, specialized investigative techniques including tracing and training to be made available. The enactment of legislation criminalizing the offence of financing of terrorism should also provide the mandate to law enforcement authorities to investigate and prosecute the financing of terrorism offences. The amendment of the list of predicate offences to include all predicate offences listed under the FATF recommendation 1 is necessary to extend the application of Article 22. The power to take down witnesses' statements in relation to AML/CFT investigation should be made more explicit. There is 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 and other information should include information on prosecutions, convictions, penalties, freezing/seizing and confiscation. The powers of investigation and prosecution should extend to offences related to FT. Establishment of a unit specialized in the investigation and prosecution of ML and FT should be considered respectively in the judiciary police and the Public Prosecutor' Office.
Cross Border Declaration or disclosure (SR IX)	The law should be amended to cover both incoming and outgoing persons. Customs should implement the obligation by establishing a mechanism to monitor and enforce compliance with the law. Once the system 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/FT. Powers should be defined so authorities may request and obtain 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/FT. Sanctions should be applied following a case of false declaration. Resources and training should be provided to customs officers for an effective implementation of the obligation. It should be clarified that the requirement to monitor the movement of currency and bearer negotiable instruments applies to the movement of currency through the mail and through the use of containerized cargo.
3. Preventive Measures–Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures	**Recommendation 5**

(R.5–8)	The authorities should consider expressly prohibiting the use of anonymous accounts. 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 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.[14] Measures should be taken to give effect to all other requirements of FATF Recommendations 5, 6, 7 and 8. (see detailed recommendations in main text)
Third parties and introduced business (R.9)	The current provisions for introduced business should be applied to all institutions and not just IFIs as is currently the case. 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** The authorities should make it clear to financial institutions that in circumstances of business introductions, they retain the ultimate responsibility for undertaking CDD measures.

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

Financial institution secrecy or confidentiality (R.4)	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 to report suspicious transactions of ML and TF.
Record keeping and wire transfer rules (R.10 and SR.VII)	**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 and 21)	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. • This obligation should not be limited by thresholds or circumscribed to instances where the obliged institution suspects that the transaction is linked to the commission of

	a crime. • 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, 14, 19, 25, and SR.IV)	**Recommendation 13** Include the financing of terrorism as one of the offences 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. It should be clear that all suspicious transactions should be reported to the same central authority, and this authority should also be informed when a suspicious transaction has been suspended by the reporting institution. Clarify via regulation (and educate using guidelines and outreach to financial institutions) that the involvement of tax matters must not be justification not to file an STR. Consider amending the definition of suspicious transactions to allow for the filing of STRs with a lower degree of suspicion. **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, protect the institution and facilitate the filing of reports. Consider possibly limiting the suspension to exceptional cases such as when there is “fear of flight of funds” in addition to monetary thresholds (not applicable to SRIV reports, once the FT is criminalized). Consider also that the notification of suspension be sent to the same authority as the

	one receiving the STR. Establish procedures, guidelines and templates for the filing of STRs. **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 the 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 to 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 and 22)	**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. Financial institutions should be required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries that do not or insufficiently apply the FATF recommendations. 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)	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.
The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17,	**Recommendation 23** Law 17/VI/2002 should be amended to ensure that the following activities are covered irrespective of the type of entity undertaking the activity:

25)	• Financial leasing; • The transfer of money or value; • Issuing and managing means of payment; • Financial guarantees and commitments; • Trading in money market instruments, foreign exchange, exchange rate and index instruments, transferable securities, commodities futures trading; • Participation in securities issues and the provision of financial services related to such issues; • Individual and collective portfolio management; • Safekeeping and administration of cash or liquid securities on behalf of other persons; • Otherwise investing, administering or managing funds or money on behalf of other persons; and • Money and currency changing. 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 guidance should cover the FATF Recommendations and relevant aspects of other international standards for financial sector regulation, the Cape Verde legal framework including guidance on measures required to effectively implement various aspects of the framework, guidance on determining what countries are appropriate as domiciles for financial institutions that can be used to provide assistance in the CDD processes for non fact-to face customers, information on countries that do not or insufficiently adequately apply the FATF Recommendations. 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 AML regulations by financial institutions and its employees. The AML Law should be fully implemented including its sanctioning regime for any breach of the AML requirements. Law 17 of 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)	
4. Preventive Measures–Non-financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	Take the necessary administrative and regulatory steps to implement the AML law with respect to DNFBPs and outreach to these sectors to educate them and engage them in the process of issuing regulations and guidance according to the nature of their business. Priority should be given to implementation by real estate businesses. Expand the scope of the AML law to include lawyers and accountants when they engage, on behalf of their client, in preparing for or carrying out transactions for their client concerning the following activities: buying and selling of real estate; managing clients money, savings accounts, and other assets; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements. 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. 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)	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 and 25)	**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 of the AML law and its future regulation by the DNFBPs. Adequate training and resources should be provided for it, including the designation of clear AML responsibilities to its various departments. 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, and there should be efforts to elevate the level of awareness of ML/FT risks and regulations by the private sector.
Other designated non-financial businesses and professions (R.20)	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.
5. Legal Persons and Arrangements and Nonprofit Organizations	

Legal Persons–Access to beneficial ownership and control information (R.33)	It would be important to promote the interconnection of the Registries Offices in order to allow for a comprehensive and effective public knowledge of the records on companies and legal persons and enhance the accessibility of the registered information.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Nonprofit organizations (SR.VIII)	Cape Verde should conduct an express 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 to prevent and cope with those threats. Measures should be implemented to collect information in a comprehensive manner concerning all the NPOs existing in the country, what activities they perform, how their management is conducted, what are the sources of their funding and the application of its resources, with the purpose to prevent the funds from being used for criminal activities information keeping. Measures should be taken also to license or registry NPOs and maintain records of its transactions for a period of at least five years. There should be also ensured that there are domestic authorities charged of monitoring the activity of NPOs and also mechanisms in place to allow for cooperation between domestic authorities and international ones and exchange of information at national and international level, regarding any forms of suspicious activities of FT or terrorism. The authorities should ensure that entities undertaking micro-finance activity are effectively captured in the AML regulatory framework.
6. National and International Cooperation	
National cooperation and coordination (R.31)	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 national mechanism should ensure that appropriate statistics and data are maintained on investigations and prosecution related to money laundering and the financing of terrorism.
The Conventions and UN Special	The authorities are encouraged to implement fully the provisions of the Vienna and the Palermo Conventions.

Resolutions (R.35 and SR.I)	The implementation of the UN International 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 UNSCR 1267 and 1373.
Mutual Legal Assistance (R.36, 37, 38, SR.V)	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. The authorities should establish a system for maintaining comprehensive statistics on mutual legal assistance regarding seizures, freezing and confiscation of assets, and extradition.
Extradition (R. 39, 37, SR.V)	Cape Verdean authorities should create expressly the TF offence in accordance with the UN International Convention on the Suppression of Terrorism Financing and consider this offence an extraditable one and also ensure that even before FT is criminalized they can extradite foreigners that have committed this offence in the requesting state. Cape Verdean authorities should ensure that requests for extradition are dealt with expeditiously. Cape Verdean authorities should ensure that nationals whose extradition has been requested for offences committed abroad are subject to trial in Cape Verde in a manner comparable to similar domestic prosecutions for serious offences.
Other Forms of Cooperation (R. 40, SR.V)	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 International Convention on the Suppression of the Financing of Terrorism and the UNSCRs on FT 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, conducting investigations on behalf of foreign counterparts, should be developed. The setting up of the FIU should provide an avenue for more cooperation on issues related to the fight against money laundering and the financing of terrorism. The law should be amended to allow for possibilities of cooperation between Cape Verde competent and law enforcement 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. Law 12/2005 should be amended to remove the requirement for financial institutions to be informed when BCV provides information about that institution to another supervisor.
7. Other Issues	
Resources and statistics (R. 30 and 32)	**Recommendation 30** There are a number of areas in which Cape Verde needs to strengthen the resources of agencies within its AML regime. 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 and other information 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, the is a false declaration or there is a suspicion of ML or FT. 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.
Other relevant AML/CFT measures or issues	
General framework – structural issues.	