INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

LIBERIA

MAY 5 2011

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Table of Contents

LIST OF ABBREVIATIONS AND ACRONYMS 5

PREFACE 7

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF THE REPUBLIC OF LIBERIA 7

MUTUAL EVALUATION REPORT 8

1. GENERAL 8

1.1 General information on Liberia and its economy 8
1.2 General Situation of Money Laundering and Financing of Terrorism 16
1.3 Overview of the Financial Sector and DNFBP 18
1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements 23
1.5 Overview of strategy to prevent money laundering and terrorist financing 26

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES 38

2.1 Criminalization of Money Laundering (R.1 & 2) 38
2.2 Criminalization of Terrorist Financing (SR.II) 50
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) 52
2.4 Freezing of funds used for terrorist financing (SR.III) 62
2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32) 64
2.6 Law enforcement, prosecution and other competent authorities – framework for the investigation and prosecution of offences, confiscation and freezing (R.27, 28, 30&32) 70
2. 7 Cross Border Declaration or Disclosure (SR.IX) 98

3. PREVENTION MEASURES – FINANCIAL INSTITUTIONS 106

3.1 Risk of money laundering and terrorist financing 108
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8) 109
3.3 Third Parties and Introduced Business (R. 9) 129
3.4 Financial Institution Secrecy or Confidentiality (R.4) 131
3.5 Recording keeping and wire transfer rules (R.10 & SR.VII) 134
3.6 Monitoring of transaction and relationships (R11 and 21) 140
3.7 Suspicious Transaction reports and other reporting (R13-14, 19, 25 and SR IV) 144
3.8 Internal Controls, Compliance, audit and foreign branches (R.15 and 22) ... 152
3.9 Shell Banks (R.18) 158
3.9 Shell Banks (R.18) 158
3.10 The supervisory and oversight system – Competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25) 159

3.11 MONEY OR VALUE TRANSFER SERVICES (SR VI) 186
3.11 MONEY OR VALUE TRANSFER SERVICES (SR VI) 186

4. PREVENTIVE MEASURES – DESIGNATED NO-FINANCIAL BUSINESSES AND PROFESSIONS (DNFPBS) 189

4.1 CUSTOMER DUE DILIGENCE AND RECORD KEEPING (R.12) 190
4.2 MONITORING SUSPICIOUS TRANSACTION REPORTING, R. 16 (APPLYING R13 – 15 & 21) 190
4.3 REGULATION AND SUPERVISION 193
4.4 OTHER NON- FINANCIAL BUSINESSES AND PROFESSIONS (R.20) 194

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS . 195

5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33) 195
5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34) 204
5.3 NON PROFIT ORGANISATIONS (SR VIII) 208

6. NATIONAL AND INTERNATIONAL COOPERATION 217

6.1 NATIONAL CO-OPERATION AND CO-ORDINATION (R31 & 32) 217
6.2 THE CONVENTION AND THE UN SPECIAL RESOLUTIONS (R.35 AND SR.1) 220
6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR V, R. 32) 223
6.4 EXTRADITION (R.39, 37 & SR.V) 231
6.5 OTHER FORMS OF INTERNATIONAL COOPERATION (R.40, SR.V & R. 32) 235

7. OTHER ISSUES 238

7.1 RESOURCES AND STATISTICS/ 238

TABLE 2: RECOMMENDEDACTION PLAN TO IMPROVE THE AML/CFT SYSTEM 252

ANNEXES 267

ANNEX 1: DETAILS OF BODIES MET ON THE MUTUAL EVALUATION ON-SITE MISSION: MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS 267

ANNEX 2: LIST OF LAWS, REGULATIONS AND OTHER GUIDANCE RECEIVED 269

LIST OF ABBREVIATIONS AND ACRONYMS

ACCA	Anti-Corruption Commission Act
A-G	Attorney-General
AU	AU African Union
C	Compliant
CBL	Central Bank of Liberia
CBLA	Central Bank of Liberia Act
CDD	Customer Due Diligence
CGRs	Corporate Governance Regulations
DEA	Drug Enforcement Agency
DNFBPs	Designated Non-Financial Businesses and Professions
EA	Extradition Act
FATF	Financial Action Task Force
FIs	Financial Institutions
FINCEN	Financial Crimes Enforcement Network
FINSSIP	Financial Sector Strategic Plan
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
GDP	Gross Domestic Product
GIABA	Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest) (Inter -Governmental Action Group against Money Laundering in West Africa)
IAIS	International Associational of Insurance Supervisors
ICT	Information and Communication Technology
IMF	International Monetary Fund
INTERPOL	International Police
KYC	Know Your Customer
LACC	Liberian Anti-Corruption Commission
LBCE	Liberian Bureau of Customs and Excise
LC	Largely Compliant
LEA	Law Enforcement Agency
LEO	Law Enforcement Officer
LNP	Liberian National Police

LTD/GTE	Limited Liability Companies/Companies Limited by Guarantee
MDAs	Ministries, Departments, Agencies
MFIs	Micro Finance Institutions
ML	Money Laundering
MNS	Ministry of National Security
MOJ/A-Gs	Ministry of Justice and Attorney-General's Office
MOFEP	Ministry of Finance and Economic Planning
MVTs	Money Value Transfer services
NBI	National Bureau of Investigations
NC	Non compliant
NCCT	Non- Cooperating Country and Territory
NFIA	New Financial Institutions Act
NGO	Non-governmental organisation
NIC	National Investment Commission
NSA	National Security Agency
OFIs	Other financial institutions
PC	Partially Compliant
PEPs	Politically Exposed Persons
PMFCBN	Physical Movement of Foreign Currency Bank Notes
PMLL	Prevention of Money Laundering Law
R.	Recommendation
SAR	Suspicious Activity Report
SR	Special Recommendation
SRO	Supervisory Regulator Organization
STRs	Suspicious Transaction Reports
TF	Terrorist financing
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
W.C.O	World Customs Organization

PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF THE REPUBLIC OF LIBERIA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Liberia was conducted based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004 updated as at February 2009. The evaluation was based on the laws, regulations and other materials supplied by Liberia, and information obtained by the evaluation team during its on-site visit to Liberia from 1 to 12 November, 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Liberia government agencies and the private sector. A list of the bodies met is set out in Annex 1 to this report.

2. The evaluation was conducted by an assessment team, which consisted of members of the GIABA Secretariat and experts in criminal law, law enforcement and regulatory issues: Mrs. Yvonne Atakora Obuobisa, Principal State Attorney, Ministry of Justice and Attorney-General's Department, Ghana, Legal Expert; Madam Yeabu Debora Mariama Kamara, Sierra Leone, Financial Sector Expert; Mr. Swaibou Barry, Principal Fiscal Officer, Ministry of Finance and Economic Affairs, The Gambia, Financial Sector Expert; Mr. Theophilus Akinbo, Director, Special Control Unit against Money Laundering, Nigeria, Law Enforcement Expert. Dr. 'Buno E. Nduka, Head of Programmes and Mrs. Gina Wood, Principal Legal Assistant of the GIABA Secretariat coordinated the evaluation. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Liberia as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Liberia 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).

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Liberia and its economy

1. Liberia is situated on the West Coast of Africa and is bordered by Cote D'Ivoire to the northeast, Guinea to the north and Sierra Leone to the west. It is also bordered by the Atlantic Ocean on the south. The country has 579 kilometres of coastline and a land area of 11,369 square kilometres.

2. Liberia, referred to as Africa's oldest democracy, was founded in 1822 by United States of America President James Monroe as a safe haven for emancipated slaves. There are 15 counties in the Republic of Liberia, namely: Bomi, Bong, Gbarpolu, Grand Bassa, Grand Cape Mount, Grand Gedeh, Grand Kru, Lofa, Margibi, Maryland, Montserrado, Nimba, River Cess, River Gee and Sinoe. The Capital City of Liberia is Monrovia. The principal towns are Ganta, Buchanan, Kakata and Voinjama. There are about 16 ethnic dialects spoken in the country, though the national language is English. Liberia population was estimated in July 2010 to be 3,685,0761. Liberia is rich in natural resources including gold, timber, diamonds, and iron ore. It also has extensive rubber plantations.

3. Liberia became an Independent state in 1847. The country was founded by emancipated slaves from the United States of America. Prior to the abolition of slavery by the British Parliament and because of pressure from abolitionists, President Monroe repatriated descendants of African slaves who had the willingness to return to Africa. These founders brought common law with them to their new territory, along with the institutions of parliamentary democracy and the English language.

4. Liberia experienced an internal armed conflict which spanned 1989 to 2003, and is perceived as one of the bloodiest civil conflicts in Africa. War broke out in the country in 1989, led by Charles Taylor's National Patriotic Front. The start of the war marked the end to about 10 years of dictatorial military rule and was characterized by widespread atrocities and human rights violations. At the end of the conflict, Charles Taylor – a former warlord – was elected president of the Republic of Liberia after the United Nations monitored democratic elections held in 1997.

5. Liberia also instituted a national Truth and Reconciliation Commission (TRC) as a transitional justice mechanism to deal with past atrocities. The TRC is the result of the comprehensive Peace Agreement signed in Accra, Ghana. The Agreement was passed into law by the National Transitional Legislative Assembly in June 2005. The mandate of the TRC is to

[1] Central Intelligence Agency, World Factbook,

investigate the root causes of the conflict, establish human rights violations, review the history of Liberia and record all human rights abuses that occurred from 1989 to 2003.

Foreign Relations

6. Liberia has maintained traditionally cordial relations with the West. China and Libya are prominent international partners in Liberia's reconstruction efforts. Liberia also maintains diplomatic relations with Cuba. It is a founding member of the United Nations and its specialized agencies. Liberia is a member of the African Union (AU), ECOWAS, the African Development Bank (AfDB), the Mano River Union (MRU) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).

7. During the administration of Charles Taylor, relations between Liberia and its West African neighbours became seriously strained. West African countries backed by the African Union and the United Nations negotiated a peace agreement in Accra, Ghana that subsequently led to the exile of Charles Taylor to Nigeria in August 2003. With the assumption of office by Mrs. Ellen Johnson Sirleaf in January 2006, Liberia has seen significant improvements in relations with its West African neighbours and the wider world. Relations between Liberia and its immediate neighbours in the Mano River region are back on track, and efforts are underway to strengthen relations with other countries. Liberia currently holds the chairmanship of the reinvigorated Mano River Union. Liberia signed a non-aggression pact with Sierra Leone when newly elected President of Sierra Leone, Ernest Bai Koroma visited in September 2007. Liberia is a major proponent of regional integration.

Economy

8. Liberia was traditionally noted for its academic institutions, iron-mining, and rubber. Political upheavals beginning in the 1980s and the 14-year civil war (1989-2003) largely destroyed Liberia's economy and brought a steep decline in living standards. The Liberian economy relied heavily on the mining of iron ore and on the export of natural rubber prior to the civil war. Liberia was a major exporter of iron ore on the world market. In the 1970s and 1980s, iron mining accounted for more than half of Liberia's export earnings. Following the coup d'état of 1980, the country's economic growth rate dipped as a result of a decline in the demand for iron ore on the world market and political upheavals.

9. The 1989-2003 civil war had a devastating effect on the country's economy. Most major businesses were destroyed or heavily damaged, and most foreign investors and businesses left the country. Iron ore production stopped completely, and the United Nations banned timber and diamond exports from Liberia. Diamond sanctions were terminated by the UN Security Council in April 2007, and Liberian diamond exports have resumed through the Kimberley Process Certification Scheme. Gold deposits, some of which are currently nearing production, should soon begin to contribute to government revenues and provide additional employment.

10. Currently, Liberia generates bulk of its revenues come primarily from rubber exports and its maritime registry program. Liberia has the second-largest maritime registry in the world; there were over 3,000 vessels totalling about 100 million gross tons registered under its flag, earning $18

million in maritime revenue during 2008/2009 (July 1 - June 30). There is increasing and prospect in the possibility of commercial exploration of offshore crude oil deposits along Liberia's Atlantic Coast.

11. With a democratically elected government in place since January 2006, Liberia seeks to reconstruct its shattered economy. The Governance and Economic Management Assistance Program (GEMAP), which started under the 2003-2006 transitional government was concluded in September 2009 after helping the Liberian Government raise and spend revenues in an efficient and transparent way. In addition, the Liberian Government is striving to improve the business climate, has formed a commission to deal with land tenure issues, and is reviewing the tax and tariff regimes to harmonise them with those of neighbouring ECOWAS countries. The Liberian National Investment Commission reported $130 million in new investment in 2008 and has set a target of at least $100 million a year for subsequent years. Investors are finding opportunities in mining, rubber, agro-forestry, light industry, and other sectors.

12. Years of conflict and mismanagement also left Liberia with a large debt burden of $3.4 billion, owed to multilateral development banks, bilateral creditors, and commercial creditors. In April 2009, most commercial creditors agreed to accept three cents on the dollar for $1.2 billion in outstanding debt. Liberia improved public financial management under the Heavily Indebted Poor Countries (HIPC) Initiative; it reached HIPC completion point in 2010, thus qualifying for irrevocable debt relief.

13. The Government of Liberia and its development partners continue to focus on creating jobs, attracting investment, and providing education and other essential social services to Liberia's communities. The Government attracted substantial donor support for its new poverty reduction strategy at the June 2008 Liberia Poverty Reduction Forum in Berlin, Germany. In order to maintain stability through the post-conflict period, Liberia's security sector reform efforts have led to the disarmament of more than 100,000 ex-combatants, the wholesale U.S.-led reconstruction of the Armed Forces of Liberia, and a UN-led effort to overhaul the Liberian National Police.

System of Government

14. The 1986 Constitution of the Republic of Liberia guarantees the three arms of government, namely: the Legislature; the Executive; and the Judiciary.

15. The Legislature of Liberia is a bicameral body with an upper chamber, the Senate lower chamber, and the House of Representatives. Each county is represented by two senators at the legislature for a total of 30 senators, while the 64 seats in the House are distributed among the 15 counties in proposition to the number of registered voters, with a minimum of at least two from each county. Senators serve nine-year terms (only six-year terms for junior senators elected in 2005) while members of the House serve six-year terms. The leadership of the legislature consists of a Speaker in the House and a President Pro Tempore in the Senate. Liberia's Vice President serves as the President of the Senate.

16. Article 30 of the Constitution provides that a citizen who has attained the age of 30 years or 25 years qualifies to be elected to the Senate. The qualifying age for election to the House of Representatives is 25 years. As part of the pre-requisites for election, the candidate needs to be domiciled in Liberia or the constituency which he or she will represent for not less than one year prior to the time of the election, and be a taxpayer. A member elected to fill a vacancy due to dearth, resignation or otherwise of another member, serves only the reminder of the unexpired term of the office of the deceased or resigned member.

17. Under Article 33 of the Constitution, the quorum for transaction of business in the Senate or House of Representatives is a simple majority. The presiding officer of the House of Representatives presides over joint sessions of the House of Representatives and the Senate.

18. The executive power of the Republic of Liberia is vested in the President, who is the Head of State, Head of Government and Commander–in–Chief of the Armed Forces of Liberia. The elected President holds office for a term of six years and is eligible for a second term. A person qualifies to be elected President or Vice President of Liberia if that person is a natural born citizen of Liberia of not less than 35 years of age; is the owner of unencumbered real property valued at not less than twenty five thousand dollars ($25,000); and, has been a resident of the Republic ten years prior to his election, provided that the President and the Vice President shall not come from the same county.

19. Article 54 empowers the President to appoint and commission Cabinet Ministers, Deputy and Assistant Cabinet Ministers; Ambassadors, Ministers, and Consuls; the Chief Justice and Associate Justice of the Supreme Court and Judges of subordinate courts; Superintendents, other county officials and officials of other political sub-divisions; Members of the military from the rank of lieutenant or its equivalent and above; and Marshals, deputy marshals and sheriffs with the consent of the Senate.

20. The President is also empowered under Article 55 to appoint and commission Notary Publics and Justices of the Peace who are to hold office for a term of two years but may be removed by the President with cause.

21. Under Article 56 (a), Cabinet Ministers and their Deputies, Ambassadors, Ministers and Consuls, Superintendents of counties and other government officials, both military and civilian, appointed by the President pursuant to the Constitution, are to hold their offices at the pleasure of the President. Paramount, Clan and Town Chiefs are elected to serve for a term of six years. They are eligible for re-election and may be removed only by the President for proved misconduct.

22. Other key powers or functions of the President as listed under Article 58 include the power to conduct the foreign affairs of the country, including the conclusion of treaties, conventions and similar international agreements with the concurrence of a majority of each House of the Legislature. The President may also remit any public forfeiture and penalties, suspend fines and sentences, grant reprieves and pardons, and restore civil rights after conviction for all public offences, except impeachment.

23. Article 52 of the Constitution creates the office of the Vice President, who is to assist the President in the discharge of the President's functions. The Vice President is elected on the same political ticket as the President and is to serve the same term as the President. The Vice President presides over the Senate's deliberations and does not have the right to vote, except in the case of a tie.

24. Judicial power in Liberia is vested in a Supreme Court and such subordinate courts as the Legislature may from time to time establish. The Supreme Court is headed by the Chief Justice, the Circuit Courts by the Circuit Court judges, Magistrates Courts by stipendiary magistrates, and Justices of the Peace Courts are headed by Justices of the Peace. Article 65 empowers all courts to apply both statutory and customary laws. At the judicial level, all of the formal courts are part of the national system and are under the supervisory purview of the Supreme Court.

25. Article 66 designates the Supreme Court as the final arbiter of constitutional matters. This means the court has the power to determine the ultimate constitutionality of legislation. The Supreme Court can declare legal rules unconstitutional if the rules conflict with the provisions in the Constitution. The Supreme Court also has powers to exercise final appellate jurisdiction over all cases, whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, ministries, or cases in which a county is a party.

26. The Supreme Court is constituted by the Chief Justice and four Associate Justices who are appointed and commissioned by the President with the consent of the Senate. A person qualifies to be appointed as Chief Justice or Associate Justice if that person is a citizen of Liberia, of good moral character and a counsellor of the Supreme Court Bar who has practiced for at least 5 years.

27. The court system in Liberia is divided into four levels, justices of the peace, courts of record (magistrate courts) courts of first instance (circuit and specialty courts), and the Supreme Court. Traditional courts and lay courts exist in rural areas of the country. Trial by ordeal, though officially outlawed, is practiced in various parts of Liberia. The formal judicial system remains hampered by deaths of qualified judges and other judicial officials.

28. According to Section 8.3(a) and 8.3(b) of the Liberia Judiciary Law, Justices of the Peace are to adjudicate on a very limited range of civil and criminal cases.

Legal system and hierarchy of laws

29. Liberia operates a dual Legal System consisting of statutory law based on Anglo American Common law for the modern sector and customary law based on unwritten customary practices for the indigenous people.

30. **Sources of Law**: Sources of Law in Liberia are the Constitution, Legislation, Statutes, Customary Law, Court Precedents and Liberian Law Reports. Liberian Statutes can be accessed online. The most detailed list of these statutes can be found at the University of Cornell Law

Library. Some of the primary materials for researching Liberian Law include the Constitution of Liberia, the Revised Civil Procedure Law, and the Model Penal Code 1956 as amended.

31. **The Constitution**: The Constitution is the supreme law of the Republic of Liberia. Article 2 of the Constitution states that, all laws and decisions by the state institutions must be in strict conformity with the Constitution. According to Article 91 of the Constitution, the initiative to amend the Constitution may come from either two-thirds of the membership of both the Senate and the House of Representatives or a petition submitted for approval to the Legislature by not fewer than 10,000 (ten thousand) citizens.

32. **Legislation**: Article 35 of the Constitution outlines the process for the passage of Bills in the Legislature. Specifically, Article 29 states that both houses must pass all legislation. Article 92 of the Constitution mentions the publication of an Official Gazette in Liberia.

33. **Delegated Legislation**: A wide variety of bodies, including government departments, local authorities, public corporations and private corporations are entrusted with powers by the legislature to implement and administer the requirements of laws in Liberia.

34. **Statutes**: The Primary Statutes are the Model Penal Code 1956 amended. Volume 1of the Liberia Code of Laws (Revised), 1974, contains legal provisions for both Civil and Criminal Law.

35. **Customary Law**: Article 2 of the Constitution of Liberia recognizes customary law. Therefore, customs are a recognized source of law in Liberia. According to the Constitution, statutory laws and common law of the formal legal system govern all Liberians, whereas the old Rules and Regulation Governing the Hinterland refer to the adjudication of cases for "civilized people" and "natives." According to Article 65 of Chapter V11 of the Liberian Constitution, the courts are empowered to apply statutory law as well as customary law in accordance with the standards enacted by the Legislature. The Rules and Regulations Governing Local Government officials of the Political Sub-Divisions of Liberia (Revised Edition 2000) provide a procedural framework for the adjudication of customary law cases. Local Commissions and Superintendents perform the functions of executive oversight over customary law in Liberia.

36. **Court Precedents**: Case law can serve as a source of law or it can help to interpret the law. According to Article 66 of the Constitution, judgments of the Supreme Court are final and binding and shall not be subject to appeal or review by any other branch of government.

37. **Legal Education**: Liberia's law school was founded by Rudolph Grimes, who was the 1st Dean of the Louis Arthur Grimes School of Law at the University of Liberia. The entry requirement for the Law School is a first degree from a recognised university. A person who completes a course of study at the Law School is required to pass an examination to qualify for admission to the Bar and practice at the lower courts, the Magisterial and Justice of the Peace courts. After at least three years of practice as an Attorney of Law, another bar examination can be taken to allow admission to practice in the Supreme Court of Liberia and to be considered a Counsellor at Law.

38. **Treaties**: International treaties signed and ratified by the State of Liberia are to be domesticated before they have the force of law in the country. This means that in order to become part of the national legal system or order, international treaties have to be approved and adopted by the legislature. According to Article 57 of the Constitution, the President is empowered to conclude treaties, conventions and similar international agreements with the concurrence of a majority of both the Senate and the House of Representative. It is further provided in Article 34 (d) (iii) (b). that the Legislature has the power to approve treaties, conventions and such other international agreements negotiated or signed on behalf of the Republic of Liberia. The President of the Republic signs international treaties on behalf of the State, subject to approval of the legislature.

39. Liberia is a member of many international organizations, participating in the African Union (AU), the Economic Community of West African States (ECOWAS) and its institutions, the International Labour Organization (ILO), UNESCO, the World Health Organization (WHO), International Bank for Reconstruction and Development (IBRD), the World Bank, the World Intellectual Property Organisation (WIPO), and the International Monetary Fund (IMF).

Transparency, good governance, ethics and measures against corruption

40. One of the main priorities of the new political dispensation of Liberia is the strengthening of democratic governance based on the principles of meritocracy, participation of citizenry, accountability and transparency. Responding to the yearnings of the nation, the Government of Liberia has declared corruption as public enemy number one and has resolved to avail the required resources to tackle it comprehensively.2 To this end, Liberia has acceded to the United Nations Convention against Corruption (UNCAC), ratified the African Union Convention on Prevention and Combating Corruption (AUCPCC) and is signatory to the ECOWAS Protocol on the Fight against Corruption and the African Peer Review Mechanism.

41. Article 90 of the Constitution of the Republic of Liberia prohibits persons who are elected or appointed to public offices from engaging in any other activity which shall be against public policy or constitute conflict of interest. Additionally, such persons are prohibited from demanding and receiving any other perquisites, emoluments or benefits directly or indirectly, on account of any duty required by Government. The Constitution empowers the legislature to prescribe a Code of Conduct for all public officials and employees stipulating the acts which constitute conflict of interest or are against public policy, and the penalties for violation of the Code of Conduct.

42. In December 2006, Liberia adopted a National Anti-Corruption Strategy with the objective to fight corruption in Liberia in a holistic, systematic and sustainable manner that promotes the effective participation of all Liberians and other stakeholders and assures the most efficient use of

[2] Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia, Forward to the National Anti-Corruption Strategy of Liberia, December 2006.

available resources and opportunities. The President has pledged her personal commitment and the collective resolve of the Government to the full implementation of the Anti-corruption strategy.

43. Key elements of the Strategy are: Sound Economic Planning and Policy; Public Sector Reforms; Capacity Building/Strengthening of key institutions, including particularly the judiciary; Implementation of preventive measures, including enforcement of Codes of Conducts; Promotion of Transparency and Enactment of Freedom of Information Laws and Whistleblower Statute; Enactment and rigorous enforcement of anti-corruption laws and rules; Creation of an anti-corruption Commission; and Public awareness/Sensitization.

44. In furtherance of the objectives of the Strategy, Liberia has enacted the Freedom of Information Act, 2008 with the principal object to grant members of the public the right of access to information in the possession of public authorities or private bodies performing public functions in accordance with the procedures laid down in the Act by, among others, removing unjustifiable restrictions on access to information for members of the public and enhancing, facilitating and promoting the prompt disclosure of information at the lowest reasonable cost to members of the public.

45. Liberia has established an Anti-Corruption Commission (LACC) with the mandate and functions to implement appropriate measures and undertake programmes geared toward investigating, prosecuting and preventing acts of corruption, including educating the public about the ills of corruption and the benefits of its eradication. All officials of the LACC are required to subscribe to a solemn oath or affirmation as required by the Constitution of Liberia before assuming their offices.

46. Recognising that corruption and other criminal conduct in public institutions and private organisations undermine democratic rule and good corporate governance, which in turn affect the interest of individuals and society, and lead to disaffection and instability, and to encourage persons, both legal and natural, to disclose and expose acts of corruption and criminal conduct in an orderly manner and without prejudice to the security and general wellbeing of the person, Liberia issues annual Executive Orders for the protection of whistleblowers. The objective of the Executive Orders is to, among others; protect the persons employed in both public and private institutions who disclose information about action against the public interest or good in any public or private institution.

47. The Orders cover disclosures in which the person making the disclosure tends to show that, a criminal offence has been committed, is being committed or is likely to be committed; that corruption, dishonesty or serious maladministration in a governmental body or on the part of an official of that body has taken place, is taking place or is likely to take place. These include abuse of power by a governmental body or an official or an improper or unauthorised use of funds or other assets of the State or governmental. It applies whether or not the impropriety occurred, occurs or will occur in Liberia or elsewhere but has an effect on Liberia, whether the law applying to it is that of Liberia or another country, where the subject is a Liberian, or where the activity was done in Liberia or directly affects Liberia, whether the subject, legal or natural, is a Liberian or of another nationality.

48. A disclosure of information is not protected if the person making the disclosure is in violation of the law and does not make the disclosure in good faith, has no basis for the accusation or suspicion, and/or does so out of spite, revenge or other unlawful motive.

49. The Executive Orders also provide for non-protected disclosures, which may make a protected disclosure, persons to whom disclosures may be made, general requirements for receiving and processing disclosures, investigations, protection of whistleblower against retaliation or liability, rewards on recovery of money and prohibit interference with disclosures.

50. Liberia's anti-corruption efforts that are to comprehensively monitor government activities to promote transparency and accountability are not being effectively impeded due to lack of resources.

1.2 General Situation of Money Laundering and Financing of Terrorism

51. Money laundering as an offense has not featured prominently on police records over the years and so too is the case with the Drug Enforcement Agency, an institution that came into existence on 25th January, 1999. This in no way suggests the non occurrence of the laundering of monies acquired from criminal conducts such as illicit drug trafficking and arms trade in Liberia. During the crisis, many criminals took advantage of the breakdown of authority, or its weakness and trafficked both drugs and weapons in Liberia. A fairly limited number of those involved are settled in Liberia, and have huge business establishments. Some other nationals who traded in arms with warring factions are in the country making business in the areas of logging and mineral mining.

52. Liberia is considered a trans-shipment point for Asian heroin and South American cocaine for the European and US markets. Corruption, criminal activities, arms-dealing, the overwhelming dominance of the use of the US dollar as an accepted medium of exchange, and the illegal diamond trade and timber logging along the porous borders outside the security cover of the UN Mission in Liberia provide a significant potential for money laundering and the illicit drug trade in Liberia.

53. The manifestation of the risk and threats of money laundering and possibility of terrorist financing became evident in Liberia following revelations that the prolonged war in Liberia was prosecuted through ill-gotten wealth from illegal diamond trade and other illicit activities. The extent of money laundering related offences in Liberia and the quantum of proceeds of underlying crimes cannot be readily determined, but the ubiquity of the informal sector of the economy, preponderance of cash as means of effecting transactions, the thriving parallel foreign exchange market encouraged by the co-existence of the Liberia and US Dollars as legal tenders, weak AML/CFT legal framework, lack of supporting AML/CFT institutions especially the financial intelligence unit (FIU) and dearth of skilled and competent personnel to undertake investigation, prosecution and conviction of money laundering and terrorist financing cases as well as breakdown of socio-cultural norms have provided opportunities for money laundering activity to thrive.

54. Money laundering started receiving the attention of Liberia during the Liberian Civil War in early 2000. International voice mounted at and over what was said to be "Money gotten from illicit sale of gemstones and precious metals, as well as timber, to fuel the war machinery". Pressure mounted to stop the illicit activities so that the war machinery may be grounded and the war abated.

55. The pressure included the imposition of UN sanctions and threats of more sanctions against Liberia unless the government, which was also accused of aiding the war in Sierra Leone, took action to prohibit illicit mining and logging.

56. Driven by these, Liberia, under the elected government enacted the Prevention of Money Laundering Law (PMLL) in January 2002. In 2009, the Compliance Committee and Banking Reform Committee of the Central Bank of Liberia sustained the momentum of their efforts to ensure adequate recapitalization of the banks and improve supervision and regulation of financial institutions. Liberia has adopted a National Strategy for Financial Inclusion spanning 2008 to 2012. The modernization of the payment system got a boost in 2009 following the introduction of SMS and internet banking in 2008. Several stakeholders' meetings were organized to promote public support to the supervisory agencies in its reform process.

57. Liberia has begun the process of amending and upgrading the PMLL and other related legislation to bring them to parity with international standards. During a seminar supported by GIABA, stakeholders reviewed the initial draft law and made recommendations. The Seminar and the subsequent discussion between GIABA and relevant authorities in Liberia on the redrafting of the revised AML laws has created awareness on the need for adequate legal framework for fighting the money laundering menace.

58. In Liberia, money laundering is derived principally from corruption, tax evasion, drug trafficking, smuggling, robbery, prostitution and forgery. ML activities are facilitated through the banks, cross-border cash movement, real estate, casinos and other gambling sites, and insurance companies. The prevalence of ML is due to inadequate or lack of supervision of relevant entities, lack of political commitment and lack of capacity in the appropriate authorities. Investigating agencies have so far investigated only three (3) cases relating to money laundering: Weimi Benson vs the International Bank Liberia (Ltd) and the Central Bank of Liberia; Valentine Ayika vs Central Bank of Liberia and Government of Liberia; and The Sovereign Church Elohiym International vs the International Bank Liberia (Ltd), leaving one to ask why the police and the other investigating agencies could institute investigations into those suspected instances of money laundering. The inability of security agencies to investigate money laundering related cases have been attributed to the lack of capacity; as gathered, it has proved difficult for law enforcement agencies to approach banking institutions to collect intelligence on money laundering simply because bank executives would prefer to protect the interest of their bank, rather than assist state security agencies with information about particular customers when those agencies got little or nothing to offer.

59. Secondly, that banks are ignoring the Know-Your-Customer (KYC) and Customer Due Diligence (CDC) principles, which encourages the reporting and sharing of intelligence on suspicious transactions carried out by customers between commercial banks and the Central Bank

on one hand, and between the Central Bank and investigating agencies on the other hand. The third factor is the lack of coordination between the investigating agencies themselves.

60. The three cases provided good lessons that guided the revision of the existing AML law, especially in the area of using NPOs and/or charitable organization in perpetrating money laundering.

1.3 Overview of the Financial Sector and DNFBP

The financial sector

61. The Central Bank of Liberia Act (CBL Act) and the New Financial Institutions Act, 1999 (NFIA) constitute the legal framework for the financial sector of Liberia. The NFIA classifies financial institutions as bank financial institution and non-bank financial institutions. A brief overview of the financial sector of Liberia is provided below:

62. *Bank financial institutions* may engage in financial transactions consisting in the business of banking, the acceptance of deposits payable on demand and subject to transfer by check, credit, loan making, or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, or from the Government of Liberia or from any foreign or international financial institutions, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business and lending or rendering non-banking financial services and any other activity or activities recognized as a customary banking practice which a financial institution engaging in the activities described in Section (a) (i) may additionally be authorized to engage in by the Central Bank.

63. Eight banks currently operate in Liberia, seven of which are foreign owned. This provides a ratio of one branch for every 113,333 inhabitants. Gross assets, which registered a 35.4 percent growth in the 2007-2008 period, stand at over 40 percent of GDP. Remittances play a large role in the Liberian economy. 2008 estimates indicate that annual remittances totalled 69 million USD or the equivalent of 8.1 percent of annual GDP. Deposits rose by 9.9 percent and gross loan portfolio by 3.5 percent for the same 2007-2008 period. The industry's capital adequacy ratio continued to be in excess of the minimum Basel requirement, at 22 percent. However, non-performing loans as a ratio of total loans in the sector stood at 19 percent as of end 2008. As an indication of increased public confidence, the sector experienced a 43 percent increase in deposits, between 2007 and 2008. Bank customers in Liberia are today using visa cards, automated teller machines (ATMs), internet banking and other modern bank products and services to facilitate the movement and flow of cash across the country.

64. *Non-bank financial institutions* are authorised to carry out the business of thrift operation and loan association; broker and dealer operations in securities and commodities; currency exchanging and encashment of checks; redeeming, encashing, or otherwise dealing in money orders or other similar financial instruments; issuance of credit cards; underwriting of insurance; loan or

financing agency business; operation of building societies; remittance of money but not accepting from the general public money payable on demand or after a fixed period.

65. *Credit institution* are authrorised to provide non-deposit-based lending services without accepting from the general public deposits payable on demand or after a fixed period.

66. Financial institutions in Liberia are local financial institution (organised under the law of Liberia to do banking business in Liberia) or foreign financial institution (organised abroad and doing business in Liberia, whether such business be banking or other business). The NFIA permits offshore banking, being banking business denominated in foreign currencies and transacted between banking institutions in different countries of the world.

67. For the purpose of the NFIA, unless the context otherwise requires, all offices and branches of a financial institution in Liberia are considered to be one financial institution.

68. *The capital markets* sector is in its nascent stages of development: no stock market operates in the country, and government bond issuance has been limited. Section 3 of the CBLA empowers the CBL to facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy. Among the powers granted to the CBL in Section 5 of CBLA is the power to purchase and sell securities. There is yet no functional capital market, but arrangements are far gone for the Treasury Operations Unit to commence Treasury Bills auction on behalf of Government. The Treasury Operations Unit was established in February 2010 with the functions of managing the country's reserves, carrying out investment and spearheading the development of a capital market. The rules and regulations governing the auction of Treasury Bills have already been drafted.

69. *Insurance*: There are 23 registered insurance companies but 3 of them are dormant. Products offered by the insurance companies are both life and non-life but the most popular product is the motor insurance. The supervisor of the insurance industry is the Commissioner of Insurance stationed in the Ministry of Transport. Supervision of the insurance industry is however ineffective. The laws are not enforced. The Insurance Commissioner informed Assessors that reform of the insurance industry commenced in 2008 and the Insurance Act has been reviewed and a draft sent to the Law Reform Commission.

70. Currently, the CBL, in furtherance of its mandate to ensure the soundness, viability, and safety of the country's insurance industry as provided for by the CBLA, has commenced the process of major reforms of the Liberia's insurance sector, focusing on adequate capitalization, enhanced corporate governance structure, strong risk management systems to protect policy holders, and adequate re-insurance, amongst others. Lack of adequate liquidity of companies is a major challenge as dozens of insurance companies that operated in the country have collapsed over time.

71. *Foreign exchange bureaux*: Foreign exchange bureau businesses are licensed to engage in the purchasing of foreign currency including US Dollars and traveller's checks, and the sale of foreign currency. Currency refers to coins and banknotes. A foreign exchange bureau may be established by any person, partnership or company upon receiving a license from the Central Bank

of Liberia to engage in the business or functions of foreign exchange bureau. The bureaux are not regulated for purposes of AML/CFT. There are a number of unregulated money changers in Liberia, popularly referred to as side-walk money exchangers whose activities have raised much concern among foreign exchange bureaux operators and the general populace. The Association of Foreign Exchange Bureax has appealed to the CBL to strictly enforce the CBL Regulations for the Licensing and Supervision of Foreign Exchange Bureaux.

72. The range of financial services available in Liberia remains narrow despite improvements. Weak physical infrastructure impedes expansion of the banking system and limits the range of services. Rudimentary payment and settlement systems reduce the benefits of using the banking system while the nonbank sector—particularly microfinance, leasing, insurance, and pensions—remains underdeveloped. However, increased competition from new bank entrants is leading to the introduction of new services including e-banking, automated teller machines, and mobile money.[3]

Other types of financial services

73. *Microfinance and Informal Finance*: Microfinance plays an important role in Liberia's economy. A wide range of providers offer microfinance services, including commercial banks, private microfinance institutions, NGOs, credit unions, rotating savings and credit institutions, and other informal credit providers such as money lenders. However, access is limited as most services are confined to Monrovia, and mostly provided by two NGOs, Local Enterprise Access Program (LEAP) and American Refugee Committee (ARC)/Liberty Finance. 2008 data shows that these two programs combined have no more than 15,000 active clients.

74. In 2004, the United Nations Capital Development Fund (UNCDF) estimated demand for micro financing to be around 62,000 households and at US$13.7million. A 2005 UNCDF report assessed that 'a lack of current government microfinance strategy' was a major hurdle for the industry. In 2008, the CBL completed the National Strategy for Financial Inclusion (2008-2012), which provides the framework for developing the microfinance industry within a five year period. There is also a specific task force dedicated to related policy development.

75. There is scarce data on the size and number of providers in the informal finance sector. However, the sector remains an important part of the existing finance system but is still vastly inadequate to meet demand. The type of informal financial service providers include "Susu" or rotating savings and credit associations (ROSCAs), moneylenders, and legal power of attorney arrangements for salaried workers.

76. *Private Sector Guarantees*: The National Investment Commission (NIC) implements the Investment Incentive Code of 1973, which prohibits the nationalization of private enterprises. These measures are designed to attract foreign investment, and to ensure that future Liberian governments maintain the spirit of free enterprise. Additional incentives include the granting of 100% duty

[3] IMF Liberia: 2010 Article IV Consultation and Fifth Review Under the Three-Year Arrangement Under the Extended Credit Facility—Staff Report; Public Information Notice and Press Release on the Executive Board Discussion; and Statement by the Executive Director for Liberia.

exemption on imported machinery, equipment, spare parts, construction materials, and even raw materials for qualified projects and companies. In Liberia, there are also tax exemptions on profits that are reinvested into fixed assets in order to encourage operational capacities of companies. Enterprises are also allowed to apply for preferential rates for the long-term leasing of land for manufacturing facilities in certain economic zones. It should be noted that only Liberian citizens can technically own land in Liberia, but this merely creates a market for very long-term leases which serve the same purpose.

77. *Free Ports and Trade Zone*: In 1976, the government created the Liberia Industrial Free Zone Authority in order to include the placement of manufacturing facilities in and around the port areas by designating numerous free trade zones. Companies located in these zones are exempt from import duties and income tax. As a result of the political instability that emerged soon after the debut of this initiative, the free trade zones were never implemented outside of the Free Port of Monrovia. With the return of peace, stability, and infrastructure, the government is contemplating to once again resuscitating earlier legislation in order to attract value added enterprises into Liberia as a source of employment for its citizens. Although the exemption from import duty and income tax may boost economic opportunity in Liberia, these incentives can result in a reduction in revenue and trade controls and enforcement, and create opportunities for money laundering and the financing of terrorism as the same characteristics that make free trade zones attractive to legitimate business also attract abuse by illicit actors. The absence of robust AML/CFT safeguards in Liberia makes this free zone vulnerable to money laundering and terrorist financing.

Designated Non-Financial Businesses and Professions

78. The DNFBP sector includes accountants, lawyers, real estate agents, casinos, dealers in motor vehicles, and dealers in precious metals and precious stones.

Forex Bureau Association

79. The Government of Liberia Gazette No.9 Vol.I of December 5, 2000 was issued pursuant to the mandates under Section 55 of the CBL act of 1999 setting out Regulations for the Licensing, Supervision of Foreign Exchange Bureaux in Liberia. In terms of Part II, section 3 of the New Financial Institutions act of 1999, no person in Liberia shall provide non-banking financial services in the form of currency exchange without a license from the Central Bank of Liberia.

80. Section 2.00 of the Regulation Guideline defines a forex bureau business as the purchasing of foreign currency including US Dollars and traveller's checks, and sale of foreign currency. Currency refers to coins and banknotes. The guideline further outlined supervisory procedure to ensure that forex bureau are regulated. Assessors were informed that in practice there are over 7000 (Seven thousand) forex bureau that are not licensed operating across the country, mainly within the vicinity of Monrovia.

81. Although Section 15.00 of the guidelines provides for on-site examination of forex bureau from time to time Assessors confirmed that not one of such examination has been carried out. The Bureaux formed an Association to provide a platform for their members to comply with the law, but

it was confirmed on-site that only the Chairman of the Association has knowledge of the requirements of the law, while the rest carry on business as usual. The Association has however provided a platform for dealing with customer complaints where there are conflicts with members. The Association also represents members to make bloc bidding for forex from the CBL. This relationship with the regulatory authorities entails that the Association submit returns on the disbursement of fund sourced from the CBL. However, due to lack of follow-up on the part of the CBL officials, rendition of monthly returns to CBL has since stopped.

82. Operators of forex bureaus informed Assessors that the regulatory framework on the forex bureau has not been ineffectively applied to them and they rendered their last returns to the CBL in 2003. [4]Under the circumstance, the operators have not complied with the required preventive measures, including KYC/CDD. . Forex is sold to anybody without identification or verification of the person's identity or business profile. This sector poses a high level of vulnerability to money laundering and terrorist financing if left to continue to operate without supervision.

83. **Accountants**: Accountants in Liberia are not regulated for AML/CFT purposes. The country did not provide information on accountants in the Mutual Evaluation Questionnaire. Assessors did not have the opportunity to interview officials of the body in-charge of training Accountants despite prior confirmation of appointment.

84. Lawyers: Lawyers in Liberia are not regulated for AML/CFT purposes.

85. **Dealers in Precious Metals and Precious Stones**: Dealers in Precious Metals and Stones are regulated by the Inspectorate Division of the Ministry of Land, Mines, and Energy, but not for purposes of AML/CFT. Details on the structure and modus operandi of inspectors overseeing the sector are provided under AML/CFT implementation institutions in respect of the Ministry of Land, Mines and Energy.

86. **Real Estate Dealers**: Real Estate Dealers have no known self regulatory body due to absence of any clear-cut government policy on this issue. More details have been recorded under the information provided on the National Housing Authority.

87. **Casinos**: Casinos are part of the gambling sector in Liberia. There are presently 2 casinos in Liberia, Casino Oceano and Palm Springs Casino, both of which are located in Monrovia. Casinos Operators have no regulatory body overseeing activities of the sector. Efforts to interview officials of the two Casinos in Monrovia were thwarted through deliberate avoidance of Assessors who visited the Casinos.

88. Trust and Company Service Providers: Company service providers are not regulated as a separate industry. Company formation and related services may be provided by lawyers or private company service providers. Section 20.4 of the Business Corporation Act empowers a not-for-profit

[4] The CBL in its response to the draft MER indicated that it continues to receive returns from operators (about 18) but did not provide any evidence to confirm the assertion.

corporation organised under Chapter 20 of the Act and subject to any limitations provided in the Act or other statute of Liberia or its articles of incorporation to act as trustee under any trust incidental to the principal object of the corporation, receive, hold, administer, and expend funds and property subject to such trust.

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

89. The formation and regulation of legal persons and legal arrangements in Liberia are governed by the Associations Law of 3 January, 1977. The Law comprises the Business Corporation Act (BCA), the Not-for-Profit Corporation Act (NCA) and the Partnership Act. The Law also regulates unincorporated associations and corporative societies. The BCA applies to domestic and foreign corporations authorised to do business or doing business in Liberia. Such corporations are to be organised for any lawful business purpose or purposes. Corporations to which Banking Law or Insurance Law apply are also subject to the BCA, but the Banking Law and Insurance Law prevail over conflicting provisions of the BCA. A person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organise a corporation under the Business Corporations Law. There are a number of different types of legal persons in Liberia most of which are regulated under the Associations Law as follows:

90. ***Corporation***: This means a corporation for profit formed under the Business Corporation Act, or existing on its effective date and also formed under any other general statute or by any special Act of the Republic of Liberia. Shareholders and directors are not personally liable to debts and obligations of a corporation, which is usually incorporated with the purpose of conducting a business in Liberia, and which has perpetual duration.

91. ***Foreign Corporation***: A corporation for profit registered under the laws of a foreign jurisdiction, which obtains permit to conduct business in Liberia, by submitting all the requested documents to the local authorities.

92. ***Hybrid Corporation***: It is a corporation that conducts a for-profit business, issues shares, and along with shareholders, has non-shareholding members.

93. ***Non-Resident Corporation***: This type of company is incorporated for purposes of international trade and investment, and is generally not liable to pay taxes in Liberia if it is not beneficially owned by a person who is liable to pay tax in Liberia. Moreover, this company cannot conduct business in Liberia and cannot own a property in Liberia. This structure is not appropriate for conducting banking, insurance or mutual fund business. This entity can be managed from any country of the world, its directors and shareholders need not be residents or citizens of Liberia. A company must have its registered office within the jurisdiction. Beneficial ownership need not be disclosed to the authorities.

94. ***Registered Business Company***: This type of company may be incorporated by at least one person, whose liability is limited by shares or by guarantee. Each shareholder is required to specify the number of shares he holds. The company name must end with the word "Limited" or "Ltd". It is restricted to transfer its shares and the number of shareholders must not exceed 50 at any time.

95. **Limited Liability Company (LLC)**: A limited liability company may conduct any lawful business activity, for and not for profit, excluding banking, insurance and several other types of financial activities. Its name must end with "Limited Liability Company" or "LLC". Such a company can re-domicile to and from Liberia, following a precisely outlined procedure.

96. ***General Partnership***: In Liberia, a partnership is a structure, within which two or more persons cooperate under a single name. Rights of each partner must be precisely specified. In order to be formed, a partnership agreement must be created and signed by all the partners. A partnership usually conducts a for-profit business. All the partners are fully liable for all the debts and obligation of a partnership.

97. ***Limited Partnership***: At least one general partner with unlimited liability and at least one limited partner with liability limited up to the capital invested can form a limited partnership. This partnership may conduct the same types of activities as a general partnership.

98. ***Private Foundation***: Private foundation is a registered legal entity, which may not conduct any trading activities, may not become a general partner of a partnership and director of a company. Charitable purpose need not, but may be the main existence and operations objective of a foundation. The assets of a foundation must be irrevocably transferred by one or more donors. Its name should end with the words: "Private Foundation". At least three officers must be assigned to administer a private foundation. Beneficiaries and persons directly related to them may not become officers.

99. ***Non-for-profit corporation***: A not-for-profit company may be formed by grant of a charter by special act of the Legislature or by filing articles of incorporation as provided by the provisions of Chapter 21 of the Associations Law. A not-for-profit company may make contracts, receive properties and other assets, and professionally act as a trustee to the principal object of the corporation. Its administrators should execute all the necessary activities in order to preserve and enlarge the capital of the corporation. An administrator of a not-for-profit corporation, whether a corporate entity or a private person, is required to be resident in Liberia. If at any time a non-for-profit corporation fails to have a registered agent in Liberia, it may no longer conduct any kind of activities in Liberia and/or must be dissolved.

100. Corporations in Liberia are required to file articles of incorporation and other documents with the Ministry of Foreign Affairs. The information required may depend on the nature of the corporation being incorporated. The articles of incorporation of profit making organisations are to contain:

a. The name of the corporation;

b. The duration of the corporation;

c. The purpose for which the corporation is organised. It is sufficient to state that, either alone or with other business purposes, that the purpose of the corporation is to engage in any legal act or activity for which the corporations may be organised under the BCA, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for the express limitation of any;

d. The registered address of the corporation in Liberia and the name and address of its registered agent;

e. The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par values, or if such shares are to be divided into classes, the number of share of each class, and the statement of the par value of the shares of each class or that such shares are to be without par value;

f. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

g. The number of shares to be issued as registered shares and as bearer shares and whether registered shares may be exchanged for bearer shares and bearer shares for registered shares;

h. If the bearer shares are authorised to be issued, the manner in which required notice shall be given to shareholders of bearer shares;

i. If the corporation is to issue the share of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

j. The number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors shall be elected and qualify;

k. The name and address of each incorporator; and

l. Any provision not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including the designation of initial directors, subscription of stock by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors than are otherwise prescribed in the BCA, and any provision which under the BCA is required or permitted to be set forth in the by-laws.

101. The original copy of the articles of incorporation, signed and acknowledged, together with a duplicate signed copy of the articles of incorporation, as well as other relevant documents are to be delivered to the office of the Minister of Foreign Affairs accompanied by a receipt showing payment to the minister of Finance of all fees required to be paid in connection with the filing of articles of incorporation and relevant documents.

102. A not-for-profit corporation is required to file articles of incorporation providing information to the effect that:

a. The name of the corporation;

b. The duration of the corporation if other than perpetual;

c. That the corporation is organised pursuant to the provisions of the Not-for-Profit-Corporation Act;

d. The purpose or purposes for which the corporation is organised;

e. The registered address of the corporation in Liberia and the name and address of its registered agent;

f. The number of directors constituting the initial board of directors and if the initial board of directors and if the initial board of directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors shall be elected and qualify;

g. If an existing unincorporated association is being incorporated, the name of the existing unincorporated association; and

h. A designation of the Minister of Foreign Affairs as agent of the corporation upon who process against it will be served in accordance with section 3.2 of the Associations Law.

103. Each domestic and foreign corporation authorised to do business in Liberia is required to designate a registered agent, on whom process against the corporation or any notice or demand required or permitted by law to be served may be served on. In the case of a corporation having a place of business in Liberia, the agent is to be a resident domestic corporation having a business in Liberia or a natural person, while the registered agent for a domestic or foreign corporation not having a place of business in Liberia is required to be a domestic bank or trust company with a paid up capital of not less than fifty thousand United States dollars ($50,000).

104. Information on legal persons registered in Liberia is available to competent authorities and the public on request.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

105. Liberia is in the process of adopting a national AML/CFT strategy. The strategy stipulates what the specific areas of priority are in the development and implementation of its AML/CFT policies, including review and enactment of AML/CFT legislation, establishment of a Financial Intelligence Unit (FIU), national coordination, international cooperation and ML/TF risk assessment. The strategy spans a 4-year period from 2011-2014 and is developed against the backdrop of the emerging global trends of ensuring that financial system of Liberia are not left to the vagaries of money laundering and terrorist financing. It is anchored on the principles of ***effectiveness, proportionality*** and ***engagement***.

106. The strategy is designed to promote sustainable political will and commitment at all levels; existence of comprehensive implementation of AML/CFT laws and regulations; establishment and strengthening of supporting institutions particularly the FIU, facilitate inter-agency coordination among competent authorities, adequately resource and empower the regulators and supervisors to fight against money laundering and terrorist financing; effective enforcement of the Law; enhance financial inclusion and foster international cooperation and building strategic partnerships.

107. A component of the strategy is an action and implementation plan which provides a breakdown of several actions designed to combat money laundering on a range of initiatives, key priority goals, expected outcomes, overall impact, implementing agencies, success indicators, timelines and monitoring responsibility. The Ministry of Finance is coordinating the preparation, implementation and monitoring of the Strategy.

b. The institutional framework for combating money laundering and terrorist financing:

108. The following institutions and/or agencies are responsible for implementing various segments of the AML measures in Liberia:

109. **Ministry of Finance**: The Ministry of Finance is responsible for matters relating to economic policy, the central government budget, taxes, banking, security and insurance, international economic work, central, regional and local government. It is responsible for formulating and implementing fiscal and financial policies and the evaluation and review of the following governmental programs and the expenditure associated with them:

- Governmental financial administration and accounts;
- Budget Formulation and Analysis;
- Printers and Stationery -printing and publishing services
- Supplies -procure, handle store, arrange, through Customs, and distribution of all materials and supplies needed by Government and appointment of Boards of Survey;
- Information Technology and Computing Services - promote and facilitate high quality information technology services to ministries and departments.

110. The Ministry of Finance performs tasks in the areas of the: Treasury function; Public accounting; Budgets; Public contracts; Tax and customs systems; General government revenue and the system of finance; Prevention and discovery of money laundering; Regulating gaming activities; State aid and macroeconomic analyses.

111. **Ministry of Planning and Economic Affairs**: The Ministry of Planning & Economic Affairs (MPEA) is one of the newest cabinet-level departments in the Liberian government. Originally established by Legislative Act on February 14, 1976, as the Ministry of Planning & Economic Affairs (Chapter 32; Executive Law), the defined role of the new Ministry was “to

undertake economic studies for planning and economic policy to foster, promote, and develop the Liberian economy."

112. The main mandate of the Liberian Ministry of Planning and Economic Affairs is to create future-oriented conditions for growth for citizens and companies in an increasingly globalised world. Its vision is to achieve the best conditions for growth in Liberia in order to make Liberia an attractive place to live, work and run a company. These include, initiating and coordinating the development of policies, plan and programs for the economic, financial, social, cultural and physical development of Liberia; undertaking research on national development issues; providing technical and research support to the Cabinet; undertaking consultant activities for local and foreign government entities; managing external cooperation agreements and programs; collaborating with external funding agencies in the identification and implementation of development projects that support Liberia's Poverty Reduction Strategy; and maintaining a national socio-economic library.

113. The Ministry also, advises the Government on major issues relating to economic and social policy, interprets decisions on economic and social policy and integrate them into the national development program, prepares economic models for the guidance of policymakers, investors and other planners, assesses existing and projected social, economic and manpower resources and formulate plans for the most effective use of such resources; coordinates national, regional and sectoral development planning to facilitate the consistent and efficient implementation of projects and programs, determines the economic, financial and technical feasibility of new development projects, coordinates the implementation of ongoing projects, plays an instrumental role in conceptualising investment projects for national development, collects, compiles, analyzes and monitors social status and economic performance data, and prepares population projections.

114. The Ministry is also responsible for assessment of requirements, programming and negotiations of external economic assistance related to the Government of Liberia and its constituent units from foreign Governments and multilateral agencies.

115. The Ministry has the mandate to register, license and regulate the activities of Non-Governmental Organizations operating in Liberia. Over 900 NGOs are in the register of the Ministry, however, there is no Act of Parliament guiding the operation of NGOs apart from the Ministry's registration requirements. Registration is free. There is no provision for sanction and how to implement against malpractices by NGOs. Indeed, the Ministry is unable to determine if an NGO is being used for money laundering or terrorist financing. There is no awareness programme for NGOs on their potential vulnerability to being used as conduit for terrorist financing.

116. Assessors were informed that due diligence is carried out as part of the requirements for licensing an NGO. These include incorporation of a company with the Ministry of Foreign Affairs with the attendant requirements. The main function of the Ministry of Planning is to certify the NGOs after they must have complied with laid down guidance. The NGO is required to align itself with one of the line Ministries dealing with the area of its interest. The line Ministry will issue Certification to the NGO as to authentication of the Promoters experience in that field. The NGO Section of the Ministry of Planning will carry out its validation of all documents submitted for

registration, including ascertaining the physical office of the NGO and other details before recommending the particular NGO the Deputy Minister of Planning for approval.

117. A registered NGO is expected to carry out development work in the allocated area of interest and submit annual report on projects and sources of funds to the Ministry. Assessors were informed that NGOs certified in Liberia are operating in 13 thematic areas of interests with those involved in social services, education and health sectors being more in number. In terms of monitoring system in place Assessors were informed that foreign NGOs are usually contracted to team up with local NGOs. Church-based NGOs are not required to submit annual reports and are therefore not monitored as to the sources of their funds. International NGOs are required to provide evidence of incorporation in Liberia, certificate of projects done elsewhere but there is no mechanism in place to verify the NGO's claims except through the Internet.

118. Assessors confirmed that no vetting is carried out on staff working in the NGO registration Section of the Ministry even though officers' remuneration is higher than that of the regular civil servant. The NGO Registration Unit currently has staff dispensation of 225 Field Monitors in the 15 Counties. There are 15 Monitoring and Evaluation Assistants in all the Counties in addition to 15 County Development Officers who serve as Supervisors. The Supervisors hold monthly meetings with NGOs and render reports on projects monitoring and evaluation in the 15 Counties. Assessors were informed that monitoring of project qualities is a challenge for the Ministry.

119. **Ministry of Foreign Affairs**: The function of the Ministry of Foreign Affairs is to assist the Governments in realising its overall goals in matters on foreign policy. The Ministry is therefore responsible for coordinating Liberia's foreign policy in the Government Offices. The Ministry is endorsed with the maintenance and promotion of friendly relations between Liberia and her foreign partners. The Ministry seeks to secure maximum political, economic and cultural benefits to the nation.

120. The Ministry communicates directly with Foreign Governments through its own Missions overseas or through their diplomatic agents in Liberia on matters of prime concern to the Government. These include its Diplomatic relations, Regional and international political issues, Treaties and conventions, and aid and economic issues. Through its mission overseas, the ministry plays a consular role, particularly in respect of Liberia citizens overseas.

121. **Ministry of Justice**: The Ministry of Justice is responsible for legislation concerning the Constitution and general administrative law, civil law, procedural law and criminal law. The Ministry also handles matters relating to democratic issues, human rights, integration and minority issues, metropolitan affairs, sports issues and non-governmental organisations.

122. The Justice Department is responsible for enhancing the quality of justice in the community by ensuring an effective and accessible Court System and as cornerstone of Justice; the court system will uphold the principles of equality, fairness and access while protecting the dignity and rights of all members of the community.

123. The Ministry of Justice performs tasks relating to legislation in the fields of criminal law, general offences law, property law, contract law, and law of succession; to legislation on judicial procedures; organisation of legislation in the field of the judiciary, public prosecutors, state attorneys, lawyers, notaries public and implementation of penal sanctions; systemic organisation and coordination of de-nationalisation procedures; preparation of proposals and drafts for international agreements; on cooperation in the field of criminal and civil law; financing and provision of human, technical and spatial resources for the activities of judicial bodies.

124. **Ministry of National Security (MNS)**: The Ministry was established on 6 September 1979. The functions of the MNS are enshrined under the duties of the Minister and include the following: "prepare intelligence and security briefs for the President, monitor and give guidance to the operational activities of the various security services, primarily Presidential security operations and counter intelligence and counter espionage operations of the security services". It shall also "coordinate the activities of all security services and shall prepare and implement rules and regulations pertaining to personnel, finance, logistics, training, operations and organisations necessary for the efficient operation of the security services subject to approval by the President".

125. **Ministry of Commerce and Industry**: The Ministry of Commerce and Industry was established by an Act primarily to implement government Commercial law, and the General Business law. Its mandates include register companies and business names; act as the central registry for companies except registration or certification for specialized professional businesses like Pharmaceutical, Precious stones like diamond, Food and other agricultural products.

126. Procedure for registering corporate organizations requires that the Ministry put in place a system for disclosure of identities and other details of the legal persons seeking registration. These include verification of the proposed name to be registered, done manually; type of business, where the promoters of the company reside and their identity. The Ministry also issues license for importation of commodities and maintains company records which is available to public on request through appropriate procedure. Enquiries about registration process are also possible via http://zodwoca.page.tl while business database is in the process of being computerized.

127. Access to information on company records is guided by the confidentiality clause which restricts type of information that can be given out. It was also indicated that information may not be readily shared with competent authorities except with the consent of the company owner. The process of registration requires that due diligence be carried out by other Ministries like that of Foreign Affairs, Planning and Economic Affairs, Agriculture etc depending on the needs of the promoters before the actual registration is done by the Ministry of Commerce and Industry. Each registration of company in Liberia is valid for a period of 12 months renewable annually after relevant information and updates on the company's status is made available for verification.

128. **Ministry of Lands, Mines & Energy**: The Executive Law that established the Ministry was signed in 1982. It among others grants the Ministry the mandates to regulate the activities of mineral exploration companies and ownership of land. The Ministry in March 2010 issued regulatory guidelines governing the administration of exploration licenses issued under the Liberian Minerals and Mining Law of 2000, being Part 1 of Title 23 of the Liberian Code of Law Revised,

including those granted under the authority of Regulation No.002 of the Public Procurement and Concessions Commission.

129. Regulation and supervision of dealers in precious metals and stones being a key requirement to guard against money laundering the role of the Ministry of Lands, Mines and Energy is significant. Assessors were informed that all mineral resources including gold, diamond, iron ore etc are subject to regulatory guidelines issued by the Ministry. In the area of general mining the Licensees that are granted right to explore for precious stones are divided into three major categories or classes, namely the Class A, that is, big concessionaire who are corporate organization given more than five mining fields; Class B comprises of medium-sized companies given 4-5 mining fields; and Class C known as alluvial miners who are given maximum of 25 plots. Many alluvial miners are not registered and are therefore largely illegal miners. In the area of gold and diamond mining there are two categories of Licensees A & B. Dealership license is given to exporters of gold while brokers' license is given to local operators. Diamond export is subject to the Kimberly Agreement which requires that each karat of precious stone is identified, documented and licensed before being exported abroad.

130. Regulatory functions of the Ministry include weighing the gold or diamond, determining the price, monitoring the activities of the miners by Field Inspectors. Liberia subscribes to the Extractive Industry Transparency Initiative (LEITI) under which it discloses the products extracted. Procedures for supervision of exploratory activities include establishment of a Bureau of Mines which has an Inspectorate department staffed with Inspectors who are charged with the responsibility to enforce the Mining law in collaboration with other LEAs mainly the Customs and Immigration arms of the government. There is also a mechanism for collaboration under the Mano River Union arrangement.

131. The functions of the Mining Inspectors include carrying out due diligence on the Licensees. They document the personal data of the Miners, keep record of the mining output in a database. However, miners are free to sell diamond and other precious stones to anybody within the country e.g. brokers. Where malpractices such as smuggling of diamond/gold are suspected or reported the Ministry does not have the capacity to carry out comprehensive investigation as such it usually refers matters to the Ministry of Justice. The penalty for attempted smuggling of diamond out of the country is US$20,000 (Twenty thousand) or six months jail term. Nobody has yet been convicted of any precious stone smuggling related offence even though there are cases of smuggling across the borders with Sierra Leone and Guinea.

132. The Inspectorate department is constrained by lack of training and technical know-how to cope with situation of things. The Bureau of Mines has only 40 officers and two coordinators. There is obvious need for adequate funding since the Ministry takes budget from the same source as other government agencies. Moreover, the Ministry generates 3% of the total value of declared diamond or gold as royalty to the government.

133. **Liberian National Police**: The Liberian National Police (LNP) is responsible for the maintenance of law and order, preservation of peace, protection of life and property, the prevention

and detection of crime and the enforcement of all laws it is directly charged with. The LNP has an Economic Crimes Unit but is not responsible for investigation of money laundering related cases.

134. **Drugs Enforcement Agency (DEA): Established by an Act of Legislature on 23** December 1999, the DEA emerged after the National Inter-Ministerial Drug Committee (NIDC) was dissolved. The functions of the DEA are enshrined under Section 22.102 of the Act, which describes the activities of the Director. Hence, implicitly, the DEA has the duty to "conceive and formulate anti-drug policies; coordinate, collaborate and facilitate the efficient and effective enforcement of all domestic anti-drug legislations". Section 22.105 of the Act transferred all the functions and specialised personnel of the narcotic divisions of the Liberia National Police Force and the National Security Agency to the DEA. This section of the Act is interpreted to mean that the DEA is not performing overlapping duties with the police and the NSA because the functions of these agencies were legally transferred under the December 1999 Act but without corresponding changes to the Acts that established the NSA and the Police to this effect.

135. **Financial Intelligence Unit (FIU)**: Liberia has not established a Financial Intelligence Unit (FIU). No institution has been designated to receive, analyse and disseminate suspicious transaction reports (STRs). The Central Bank of Liberia (CBL) receives suspicious transaction returns from licensed banks based on its Regulations on Know Your Customer and Customer Due Diligence issued in 2005, According to officials of the CBL, such reports are analysed for internal purposes. However, the CBL is not designated to act as the FIU of Liberia.

136. **Central Bank of Liberia**: The Central Bank of Liberia (CBL) was established on October 18, 1999 by an Act of the National Legislature of the Republic of Liberia. It became functional in 2000 and succeeded the National Bank of Liberia (NBL).

137. The principal objective of the CBL is to achieve and maintain price stability in the Liberian economy. To this end, it seeks to preserve the purchasing power of the national currency; promote internal and external equilibrium in the national economy; encourage the mobilization of domestic and foreign savings and their efficient allocation for productive economic activities; facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy, and foster monetary, credit and financial conditions conducive to orderly, balance and sustain economic growth and development.

138. The powers of the Bank are vested in a Board of Governors, responsible for the formulation and implementation of policy. The Board consists of five Governors who are appointed by the President of Liberia subject to confirmation by the Liberian Senate.

139. In terms of corporate governance for the Central Bank itself, the CBL is supervised by a Board of Governors appointed by the President of Liberia subject to confirmation by the Liberian Senate. Formally, it seems that the CBL has functional independence but needs to seek senate approval for money printing, though there have been disputes between the Bank and the government on this matter. In practice, it appears that the Bank acts in close collaboration with the government and executive branch, which is highly regarded.

140. Section 5 of the CBLA 1999 empowers the CBL to supervise bank-financial institutions, non-bank financial and authorized non-bank financial services dealers and brokers. The NFIA 1999 Section 2(3) defines non-bank financial institution to mean any person or institution whose activities and transactions are in the form of non-bank financial services rendered without accepting from the general public deposits payable upon demand or after a fixed period. Section 2(16) of the NFIA 1999 defines non-bank financial services as the business of thrift operation and loan association; broker and dealer operations in securities and commodities; currency exchanging and encashment of checks; redeeming, encashing, or otherwise dealing in money orders or other similar financial instruments; issuance of credit cards; underwriting of insurance; loan or financing agency business; operation of building societies; and remittance of money but not accepting from the general public money payable on demand or after a fixed period.

141. The CBL improved its transparency and internal financial controls significantly in 2008, passing an audit assessment that it had previously failed in securing a confirmation that the data it submits to international partners is accurate.

142. **Bureau of Customs and Excise (BCE)**: The Bureau of Customs and Excise (BCE) is located within the Ministry of Finance and has been conceived as a revenue collecting agency. It collects import and export duties, and safeguards the borders from smuggling and other illegal activities that impede taxation on goods. In this light, it classifies and evaluates goods entering the country at the various points of entry and exit.

143. **Bureau of Immigration and Naturalisation (BIN)**: The BIN was established on 28 August 1955 by an Act of Legislature and duly charged with the responsibilities to prevent illegal entries of persons into Liberia; apprehend foreigners found in the country without legal status; and investigate foreigners who violate the Alien and Naturalisation Laws of Liberia. Similarly, the BIN also has the mandate to investigate illegal entry into the country. Thus, the BIN is responsible for the administration of immigration functions throughout the country. This includes the formulation and implementation of policies relating to work permits, investments, passports, citizenship and for maintaining services at ports of entry. It provides statistics through its computerised system that is used by various government departments and the private sector for planning purposes.

144. **National Security Council (NSC)**: The Council was created on 12 March 1999 by an Act of Legislature with the following duties:

a. To identify and define the National Security goals of the Republic in relation to national power;

b. To initiate or discuss proposed national security policies, including the consideration of alternative courses of action and to submit policy, recommendations for approval and timely action of the President;

c. To constitute, organize and supervise under the direction of the President the security and other agencies of government in a manner as to ensure their provision of intelligence, counter-intelligence and other information that shall be necessary to fulfil the responsibilities of the Council;

d. To see to it that security policy decisions, made by the Council are implemented in a coordinated and integrated manner by all agencies of government involved;

e. To consider policies on matter of common interest to the agencies of government concerning national security and to make recommendations to the President as may be warranted; and

f. To make from time to time, such recommendations and other reports as may be deemed appropriate by the Council or may be required by the President.

145. The Act provides for an Advisor to the President on Security Affairs who, among other things, coordinates the activities of the Council including the planning of meetings, preparation of Agenda, and recording of minutes of Council meetings. Similarly, the MNS coordinates the activities of other agencies within the sector. The Advisor serves the Council as secretary.

146. **Liberia Anti-Corruption Commission (LACC)**: Realizing that corruption in both the public and private sectors of the Liberian society has continued to undermine the institutional framework of good governance, and, as a consequence, has hampered sustainable socio-political tranquility and retarded economic growth and development of Liberia, the Government of Liberia declared corruption as public enemy number one and subsequently adopted an Anti-Corruption Strategy. This was followed by the establishment of an autonomous and independent Anti-Corruption Commission on August 28, 2008, known as the Liberia Anti-Corruption Commission (LACC).

147. Part IV of the Anti-Corruption Commission Act (2008) gives the LACC broad functions to implement appropriate measures and undertake programs for investigating, prosecuting and preventing acts of corruption in both the public and private sectors of the Liberian society, including educating the public about the ills of corruption and the benefits of its eradication, confiscate assets adjudged to be the proceeds of convicted person's acts of corruption and establish counterpart and technical relationships with similar and other agencies, institutions and organisations in Liberia and abroad as may be necessary for the performance of its functions.

148. The specific functions of the LACC as provided in Part V of the ACCA , among others, are to:

a. Investigate all acts of corruption discovered or reported to have occurred in the public, private, and civil society sectors of Liberia subsequent to the passage of this Act with the aim of identifying the person(s) and the extent of the loss of or damage to any public and/or private property as a result of the subject act of corruption;

b. Investigate the conduct of any person, irrespective of office or status, natural or otherwise, if the conduct of the person(s) constitutes corruption;

c. Examine and investigate any information, matter or report that indicates or raises suspicion that the conduct, action or decision of a public or private official in line of official duty and in the context of the definition of corruption [provided in the Act];

d. Cause the prosecution in coordination with the Ministry of Justice, all cases of corruption;

e. Develop and/adopt appropriate measures consistent with law to identify, trace and freeze any assets and/or proceeds of acts of corruption and ensure the confiscation, in court of law, the said assets and proceeds from the assets;

f. Serve as the agency of Government of Liberia authorized to make and receive requests for the purpose of international mutual legal assistance in the fight against corruption;

g. Adopt, design and/or implement appropriate administrative and legal measures as well as educational programmes aimed at eradicating and preventing corruption;

h. Serve as the agency of Government of Liberia with primary responsibility for the investigation of all acts of corruption and, in so doing, to promote and coordinate the collaboration of all law enforcement agencies of government in the discharge of their activities as they relate to combating corruption including, tracing and monitoring the movement and whereabouts of persons accused of being involved in acts of corruption and building data-banks, maintaining databases, and sharing the contents of the data on persons or organizations convicted of acts of corruption without violating their fundamental rights as enshrined in the Constitution of the Republic of Liberia.

149. The LACC is composed of five (5) Commissioners; one of whom serves as Executive Chairperson and one as Vice Chairperson. They are nominated and subsequently appointed by the President of Liberia after confirmation by the Liberian Senate. The Executive Chairperson and Vice Chairperson are appointed for a term of five (5) years each, and are eligible for reappointment for one additional term of five (5) years. The other three Commissioners are appointed on a staggered basis with one (1) Commissioner appointed for an initial term of four (4) years, while the other two (2) for three (3) and two (2) years each.

150. The LACC has a Secretariat headed by an Executive Director who is recruited through a competitive and transparent recruitment process accompanied by appropriate public writing and is prohibited from holding membership of any political party. The Secretariat has three (3) Divisions: Administration, Enforcement & Prosecution and Education & Prevention.

151. The LACC is financed through the national budget by legislative appropriation and may also request and receive technical assistance, donations and grants from Liberia's Development Partners and other international multilateral institutions in furtherance of its operations, provided that no such assistance, donation or grant is requested or received on condition that the Commission performs any function or discharge any duty determined by the donor against the interest of a Liberian which is not a priority of the Commission.

152. **Liberian Investment Commission**: The National Investment Commission (NIC) was established by an Act of the National Legislature on September 6, 1979 and mandated to execute the responsibilities of: "encouraging, promoting and coordinating" all investment activities in Liberia with the aim of accelerating the economic growth and development of Liberia. The NIC is to also manage, among other things, the Monrovia Industrial Park and all Government's investment related assets. The functions of the Commission, among others, include entering into, perform and modify contracts, leases, agreement, or other transactions on such terms as rudimentary to the Government of Liberia with any person, partnership, association, corporation, organization, or other

unincorporated association. This puts the Commission in a position to apply preventive measures including KYC/CDD in its operations as well as issue guidelines to local and foreign investors to abide by anti-money laundering/countering the financing of terrorism regime of Liberia.

153. Assessors were informed that the NIC is expected to monitor the activities of Investors who are granted one form of incentives or the other. However, it was confirmed that due diligence procedure is carried out by third party on whom the NIC has no control. This according to the management is compensated for by the establishment of an Inter-Ministerial Technical Committee, which oversees the investment inflows into the country. There are no regulatory guidelines to check the activities of potential investors who may use illicitly-acquired fund for investment. A case involving fake investments into the Liberian Forestry during the administration of former President Charles Taylor was cited as indication of how vulnerable the system could be to criminally-minded investors. The concessions granted on the forestry investment have had to be withdrawn and subjected to review by succeeding administration.

154. Currently, the NIC has 166 staff out of which 11 are engaged in monitoring of investment programs. Thus, Assessors were informed that the Commission is facing challenges of inadequate funding as well as duplication of its functions with that of other organs of government. The Commission publishes annual reports which are made available for public awareness. A total investment worth US$18 billion has been signed since the inception of the incumbent government. NIC has no restrictions placed on sharing information under the existing Mutual Legal Assistance with foreign countries.

155. **National Housing Authority**: The National Housing Authority was established to provide low cost houses for poor people, including government workers who could not afford to build their own houses. Assessors were informed that there is currently no regulatory framework for both public and private housing sectors. In the same vein, there is no national housing policy in place. This gap has created a lucrative environment for criminally-minded developers to thrive. A case was cited involving a Chinese Estate Developer who allegedly obtained US$250 million bank facilities to provide low cost houses but disappeared with the funds and cannot be traced till date due to lack of regulatory framework or due diligence on operators in that sector of the economy.

156. Assessors were informed that government has tried to put in place ad-hoc measures in the wake of the ugly experience with the Chinese developer. Thus interested developers seeking to go into estate development is required to submit documentation, including letter of expression of interests, assessment of previous projects, transaction through local bank and identification evidence for the investors. There is yet to be a mortgage law in place that spells out the requirements for funding, foreclosure etc. A draft Housing policy initiated with the collaboration of Experts from Habitat International is being prepared.

157. As far as issues related to land tenure system are concerned assessors were informed that the Ministry of Land, Mines and Energy documents the ownership of land in the country. The Ministry Surveyors under the Commissioner for Land are responsible for identifying, demarcating and validating ownership of land.

158. As presently constituted the National Housing Authority is headed by a Managing Director assisted by Head of Administration, one Evaluator, one Engineer, and one Banking Expert. The total staff strength of the Authority is 99.

159. **Real Estate Agents**: Article 22(a) of the Constitution of Liberia confers the right to own real property within Liberia on only Liberian citizens. There is no established real estate market and transactions are mostly performed through the direct contact of buyer and seller (who in this case is the property owner). On relatively few occasions, surveyors act as contact person but mostly to the point of passing information on to prospective buyers at no extra charge. There is no association or regulatory body in the real estate sector.

c. Approach concerning risk

160. The PMLL does not specifically identify risk in determining the levels of requirements for the different financial and DNFBP sectors, nor have sectors or activities been excluded based on proven low risk. However, the CBL Regulation requires bank financial institutions to put in place appropriate risk management mechanisms to take risk factors into account when determining their supervision matrices and supervisory visits. Paragraph 4.5 of the Regulations, Risk Management System, requires the Board of each bank- financial institution, to adopt the KYC Policies for implementation by senior management consistent with general risk management practices. The KYC Policies are to ensure board and management oversight, systems and controls, training, and other related policies.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

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

Description and Analysis

161. The Prevention of Money Laundering Law (PMLL) approved on 8 January, 2002, is the primary legislation for the prevention and control of money laundering in Liberia. The PMLL is an Act to amend the new Penal Law, Title 26 as amended, of the Liberian Code of Revised Laws by addition of a new Sub-Chapter G to Chapter 15, making the laundering of the proceeds of criminal conduct a criminal offence. Other related provisions may be found in the Penal Law approved on 19 July, 1976 as well as other pieces of legislation.

Recommendation 1

Physical elements of the offence

162. Sections 15.101, 15.102 and 15.103 of the PMLL criminalise money laundering. Section 15.101.1 of the PMLL provides for the offence of assisting another to retain tainted benefits. This section applies if a person enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another ("A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise, or A's proceeds of criminal conduct are used to secure that funds are placed at A's disposal or are used for A's benefit to acquire property by way of investment, knowing or suspecting that A is a person who is or has been engaged in criminal conduct or who has benefited from criminal conduct.

163. In order to secure a conviction under section 15.101, the prosecution must prove that the defendant knew or suspected at the time he entered into or otherwise became concerned with the arrangement that A had benefitted from criminal conduct. The prosecution does not need to establish which particular criminal conduct was committed. Although the PMLL does not define arrangement, the Liberian authorities indicated that the Courts of Liberia will interpret "an arrangement" broadly to cover any act that facilitates or is intended to facilitate the laundering of proceeds of criminal conduct.

164. Under section 15.101, it is a defence for a person accused of assisting another to retain the benefit of criminal conduct to prove that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct or that he did not know or suspect that by the arrangement, the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used. It is also a defence for an accused person to prove that he intended to disclose to a Law Enforcement Officer (LEO) or Customs Officer such a suspicion, belief or matter, but there is reasonable excuse for his failure to make the disclosure to a LEO.

165. Section 15.102.1 criminalizes the acquisition, use or possession of property knowing that the property is in whole or in part, directly or indirectly represents another person's proceeds of criminal conduct. Under section 15.102 .2, it is a defence to a charge of acquiring, using or possessing property that represents another person's proceeds of criminal conduct if the person charged acquired or used the property or had possession of it for adequate consideration. Under section 15.102.3 a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property.

166. Similarly, a person uses or possesses property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property. Section 15.102.3 provides that the provision for any person of services and goods which are of assistance to him in his criminal conduct shall not be treated as consideration for the purposes of determining that the person charged acquired, possessed or used the property for adequate consideration. Section 15.102.6 provides that having possession of any property shall be taken to be doing an act in relation to it.

167. It is a defence for a person accused under section 15.102 to prove that he intended to disclose to a LEO or Customs Officer a suspicion, belief or matter that any property is, or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct but there is reasonable excuse for his failure to make the disclosure.

168. The provision in section 15.102 covers the physical element of money laundering, acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of section 15.102 or from an act of participation in an offence or offences, elaborated in Article 3(1)(b)(ii) of the Vienna Convention and Article 6(1)(a)(ii) of the Palermo Convention. It does not indicate when a person is expected to know whether property is the proceeds of crime. The provisions in these Conventions require a person who acquires, possesses or uses property to know the origin of the property at the time of receipt of that property. Officials at the Ministry of Justice explained that Section 15.102 covers knowledge at the time of receipt and that, the Courts will interpret the law to cover such a situation.

169. Section 15.103.2 criminalises the offence of assisting another to conceal or transfer property. This provision applies where the person knows or has reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct and conceals or disguises that property or converts or transfers that property or removes it from the jurisdiction for the purpose of assisting any person to avoid prosecution for a money laundering offence or the making or enforcement in his case of a confiscation order. Section 15.103.3 provides that references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership of any rights with respect to it.

170. The provisions in sections 15.101, and 15.103 of the PMLL cover the physical elements of the offences enumerated in the Vienna and Palermo Conventions.

Definition of property

171. The offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of criminal conduct. Section 15.101.2 provides that references to any person's proceeds of criminal conduct include reference to any property in whole or in part, directly or indirectly represented in his hands his proceeds of criminal conduct. "Proceeds of criminal conduct" is also defined in section 15.139 of the PMLL in relation to any person who has benefited from criminal conduct to mean "that benefit". Section15.139 also defines property to include money and all property, real or personal, heritable or movable, including things in action and other intangible incorporeal property. The definitions do not specify the value of property to be considered the proceeds of criminal conduct and impliedly this means property of any kind regardless of its value. Also, they do not specifically mention legal documents or instruments evidencing title to or interest in the property. However, the definition of property and proceeds are broad enough to cover legal documents or instruments evidencing title to or interest in property.

Proving Property is the Proceeds of Crime

172. Proving that property is the proceeds of crime does not require that a person be convicted for the predicate offence.

Scope of predicate offences

173. Liberia has adopted the threshold approach in the description of the scope of predicate offences. Sections 15.101.7 and 15.103.3 of the PMLL extends the money laundering criminal conduct which if it occurs in Liberia constitutes a non-bailable first degree felony; if it does not occur in Liberia would constitute such an offence if it had occurred in Liberia. To ascertain the scope of predicate offences of money laundering in Liberia, one has to resort to the Penal Law of Liberia which deals with most criminal offences in Liberia and other statutes. The Penal Law establishes a system of prohibitions and penalties to deal with conducts that unjustifiably and inexcusably cause or threaten harm to individuals or public interests to which government protection is appropriate. The provisions of the Law, among others, define the acts and mental state which constitute offences and prescribe the penalties which are proportionate to the seriousness of offences and which are appropriate in applying the different methods of ensuring public safety.

174. Chapter 50.1.d. of the Penal Law of Liberia defines 'felony' to mean 'an offence for which a sentence of death or a term of imprisonment of more than one year is authorised'. Under section 50.5.2(a) a person who has been convicted of a felony of the first degree may be sentenced to death or life imprisonment where such a penalty is specified by statute, or where not so specified, to an indefinite term of imprisonment, the maximum of which is to be fixed by the court at not more than ten years. Section 13.1 of the CPL states that 'a person in custody for the commission of a capital offense shall, before conviction, be entitled as of right to be admitted to bail unless the proof is evident or the presumption great that he is guilty of the offense. On the hearing of an application for admission to bail made before indictment by a person in custody for the commission of a capital offense, the burden of showing that the proof is evident or the presumption great that he is guilty of the offense is on the Republic. After indictment for such an offense, the burden is on the defendant

to show that the proof is not evident or the presumption not great. After conviction for a capital offense, no person shall be continued at large on bail or be admitted to bail except in accordance with the provisions of paragraph 3 of this section'.

175. Paragraph 3 of section 13.1 of the CPL mandates a court to grant bail to a person convicted of a capital offence when the court where an offence is triable is satisfied on investigation that a person in custody for the commission of an offence is in such physical condition that the continued confinement of that person in the place where he is confined would result in his death or permanent serious injury to his health. The court may at any time before sentence is commenced order the removal of the person to some other place of confinement where his health may be better preserved or may admit him to bail when satisfied that any confinement will endanger the person's life.

176. Although the Penal Law and other legislation criminalise some of the designated categories of offences, a review of the relevant statutes revealed that only murder, robbery and Illicit trafficking in narcotic drugs and psychotropic substances fall within the ambit of the definition of criminal conduct provided in the PMLL. Thus, Liberia may be considered to have designated only three out of the twenty predicate offences of money laundering designated by the FATF.

Relevant Statutes

177. The predicate offences of ML in Liberia may be found in the Penal Law and other laws criminalising those offences. These include a range of offences listed in the glossary of FATF but given the definition of criminal conduct in the PMLL, these offences cannot be considered as money laundering predicate offences if they are not non-bailable first degree felonies. The table below specifies the designated categories of offences covered by the Penal Law and other laws of Liberia, as well as their status in relation to the PMLL.

SN.	Predicate Offence	Legislation	Section	Punishment	Status in relation to PMLL
1.	Illicit traffic in stolen and other goods				
2.	Corruption and Bribery	Penal Law	12.50	2nd degree for bribery	Does not qualify as predicate offence
3.	Fraud				
4.	Counterfeiting of currency	Penal Law	15.70	2nd degree and 3rd degree	Does not qualify as predicate offence
5.	Counterfeiting				

SN.	Predicate Offence	Legislation	Section	Punishment	Status in relation to PMLL
	and piracy of products				
6.	Environmental crime				
7.	Murder and grievous body injury	Penal Law	14.1	1st degree felony	Qualifies as predicate offence
8.	Kidnapping, illegal restraint and hostage taking	Penal Law	14.50 – 14.52	1st degree and 2nd degree where victim is released alive and in a safe place prior to trial, in which case it is a felony of the second degree.	Does not fully qualify as predicate offence
9.	Robbery or theft	Penal Law	15.30 and 15.51	Felony of the second degree but becomes felony of the 1st degree if in the course of the committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury	Robbery qualifies as a predicate offence but theft does not qualify as predicate offence
10.	Smuggling	Penal Law	12.11	3rd degree if value of object exceeds $500.00, otherwise misdemeanour of 1st degree	Does not qualify as predicate offence

SN.	Predicate Offence	Legislation	Section	Punishment	Status in relation to PMLL
11.	Extortion				
12.	Forgery	Penal Law	15.70	2nd degree if money is legal tender in Liberia, or involves amount of over $50,000.00, otherwise 3rd degree.	Does not qualify as predicate offence
13.	Piracy	Penal Law	15.31	1st degree if actor attempts to kill, inflicts or attempts to inflict serious bodily injury, otherwise 2nd degree.	Does not qualify as predicate offence unless there is an attempt to kill, there is an infliction or an attempt to inflict serious bodily injury
14.	Insider dealing and market manipulation	Not criminalised			
15.	Participation in organised criminal group and racketeering	Penal Law	10.4.1 [5](under conspiracy)	Punishment is same as that of a criminal attempt. Attempt of an offence of a felony of a first degree is considered as a felony of a second degree	Does not qualify as a predicate offence
16.	Terrorism including terrorist financing				

[5] Footnote 3 of Methodology (reproduced) - Note to assessors: R.1 does not require countries to create a separate offence of ―participation in an organised criminal group and racketeering‖. In order to cover this category of ―designated offence‖ (c.1.3), it is sufficient if a country meets either of the two options set out in the Palermo Convention i.e. either a separate offence or an offence based on conspiracy.

SN.	Predicate Offence	Legislation	Section	Punishment	Status in relation to PMLL
17.	Trafficking in human beings	Anti-Human Trafficking Act, 2005	Section 2	From one year to life depending on gravity of the offence	Does not qualify as predicate offence
18.	Sexual exploitation, including sexual exploitation of children				
19.	Illicit trafficking in narcotic drugs and psychotropic substances	Public Health Law	Sections 41.13.4, 41.14.4	Felony in the first degree	Qualifies as a predicate offence
20.	Illicit arms trafficking				

Self-laundering

178. Section 15.103.1 of the PMLL criminalizes self-laundering as follows:

A person is guilty of an offence if he:

a) Conceals or disguises any property which is, or in whole or in part directly or indirectly represents proceeds of his criminal conduct; or

b) Converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offence to which this Part applies or the making or enforcement in his case of a confiscation order.

179. Section 15.103.3 states that, in sub-sections 1 and 2 the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership of any rights in respect of to it.

Ancillary offences

180. Ancillary offences to money laundering such as conspiracy, attempt, aiding and abetting, facilitating and counselling the commission of crimes are substantive offences under the Penal Law of Liberia and apply to all offences created in Liberian statutes, in the absence of any provision to the contrary. Attempt and conspiracy are provided for in section 10 of the Penal Law as follows:

181. **Attempt**: Section 10.1.1 of the Penal Law criminalises the offence of criminal attempt. This applies to a person who, acting with the kind of culpability otherwise required for the commission of an offence, purposefully engages in conduct constituting a substantial step toward the commission of the offence. A substantial step is considered to be any conduct, whether an act, omission, or possession, which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offence. This step cannot be negated by factual or legal impossibility of committing the offence had the attendant circumstances been as the actor believed them to be.

182. It is a defence to a person accused of attempting to commit an offence to prove that the circumstances manifesting the voluntary and complete renunciation of his culpable intent, the person avoided the commission of the offence attempted by abandoning his culpable effort and, if were the abandonment was insufficient to accomplish such avoidance, by taking further steps which prevented the commission thereof. However, a renunciation is not considered to be "voluntary and complete" if it is motivated in whole or in part by the belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or an accomplice or which makes more difficult the commission of the offence or by decision to postpone the offence until another time or to substitute another victim or another similar objective.

183. Section 10.1.4 of the Penal Law states that criminal attempt is an offence of the same class as the offence attempted, except that an attempt to commit a felony of the first degree shall be a felony of the second degree. Section 50.2.2(a) of the Penal Law provides that a person who has been convicted of a second degree felony should be sentenced to an indefinite term of imprisonment and requires the Court to fix a maximum term at not more than five years.

184. The authorities informed assessors that the Liberian Courts will apply the penalties provided in the PMLL. Assessors considered the substance of the ancillary offence of attempt and found it to be adequate. However, the authorities did not provide additional information to enable the Assessors to determine how the Courts have applied this provision.

Aiding and abetting, Facilitating, Counselling the commission

185. Section 15.101 criminalizes the offence of assisting another to retain tainted benefits. This section applies where a person enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another (A) person's proceeds of criminal conduct is facilitated, whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise or the proceeds of the criminal conduct of another person used to secure that funds are placed at A's disposal or are used for A's benefit to acquire property by way of investment, knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct.

186. Under section 15.101.4 it is a defence for a person accused of a money laundering offense to prove that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; he did not know or suspect that the arrangement, the retention or control on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property

was used; that he intended to disclose to a law enforcement officer such a suspicion, belief or matter but there is reasonable excuse for his failure to make disclosure.

187. With regard to facilitation, section 10.2 of the Penal Law states that, a person is guilty of criminal facilitation who, believing it probable that he is rendering aid to a person who intend to commit a crime, engages in conduct which provides such a person with means or opportunity for the commission thereof and which in fact aids such a person to commit felony. It is not a defence in the prosecution for facilitation that the person whose conduct was facilitated has been acquitted, has not been prosecuted or convicted, has been convicted of a different offence, he is immune from prosecution, or for some other reason cannot be brought to justice. Facilitation of a felony of the first degree is felony of the third degree and attracts an indefinite term of imprisonment, the maximum of which is to be fixed by the Court at not more than three years.

Conspiracy

188. The ancillary offence of conspiracy is provided for under section 8.10.4 of the Penal Law. It states that a person is guilty of conspiracy to commit a crime, if with the purpose of promoting or facilitating its commission, he agrees with one or more persons to engage in or cause the performance of conduct which constitutes the crime, and any one or more of such persons does an act to effect the objective of the conspiracy. This applies if the person knows that the one with whom he agrees or has agreed or will agree with another to effect the same objective and he shall be considered to have agreed. Where conspiracy exists for multiple criminal objectives, a person may be convicted for only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship. It is considered to continue when the crime which is the object is committed or the agreement that it be committed is abandoned by the defendant and by those with whom he conspired.

189. It is a defence if the criminal object were achieved the defendant would not be guilty under the statute defining the offence. It is not a defence that the person with whom such person is alleged to have conspired with has been acquitted, has not been prosecuted or convicted, has been convicted of a different offence, is immune to prosecution or for some other reason cannot be brought to justice. Additionally, it is an affirmative defence that the defendant after the agreement with another one or more of the conspirators will engage in criminal conduct, persuaded him or them not to engage in such conduct or otherwise prevented the commission of the crime under circumstances manifesting a voluntary and complete renunciation of his criminal conduct. Penalty for conspiracy is the same as the penalty for the offence of attempt, discussed above.

Additional Elements

190. As indicated in the definition of criminal conduct under section 15.101.7 of the PMLL, where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, this constitutes a money laundering offence in Liberia.

Recommendation 2

Liability of Natural Persons

191. The offence of money laundering applies to natural persons that knowingly engage in money laundering activity. Under section 15.101.6,15.102.9 and 15.103.4 natural persons who commit the offence of money laundering are liable to non-bailable first degree felony, seizure of the proceeds (goods) and imprisonment for a period of not less than five (5) years and not more than ten (10) years.

The Mental Element of the Money Laundering Offence

192. The intentional element for the offence of money laundering is enunciated in Sections 15.101.1-15.101.3 of the PMLL. These provisions apply to persons who engage in those activities "knowing or having reasonable grounds to suspect, "knowing or suspecting" that any property is the proceeds of criminal conduct or that a person is or has been engaged in criminal conduct or has benefited from criminal conduct. By reference to knowing or suspecting A is a person who is or has benefited from criminal conduct, if knowing that any property is, and for the purpose of and the fact that the absence of knowledge or suspicion that an arrangement may result in the retention or control by or on behalf of A of any property is a defence to an accusation for a money laundering offence indicates that knowledge and intended purpose of one's action is incorporated in determining the criminal liability of that person.

193. Section 2.2 (b) of the Penal Law provides that "A person engages in conduct "knowingly" if, when he engages in the conduct, he knows or has a firm belief unaccompanied by substantial doubt that he is doing so whether or not it is his purpose to do so. The PMLL and Penal Law appear to deal with the *"mens rea"* or the mental element of the offence of money laundering to be inferred from objective factual circumstances. Section 2.2 of the Penal Law also provides for situations where a person may have acted purposely, recklessly, negligently, wilfully and with culpability. Under section 2.3.1 a person is not guilty of an offence unless he acted purposely, knowingly, recklessly or negligently as the law may require with respect to each material element of the offence, except as generally provided in given circumstances. In this regard, the laws of Liberia allow for the mental element of money laundering to be determined from objective factual circumstances.

Liability of Legal Persons

194. The PMLL extends criminal liability for money laundering to legal persons. Liberian authorities informed Assessors that in Liberian jurisprudence, "person" includes both natural and legal persons. The authorities cited section 1.7 of the Penal Law which defines "person" to mean "a human being, where relevant, an organisation." Section 15.109 of the PMLL extends liability to legal persons, bodies corporate, partnerships and unincorporated associations where an offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any officer of the body corporate or any person who was purporting to act in such a capacity.

195. Furthermore, under section 3.2 of the Penal Law a legal person may be convicted of the commission of an offence if the conduct constituting the offence is engaged in by an agent of a corporation while acting within the scope of his employment and on behalf of the corporation, unless the offence is one defined by a statute which indicates a legislative purpose not to impose criminal liability on corporations. This also applies if the law governing the offence designates the agent for whose conduct the corporation is accountable or the circumstances under which it is accountable or where the offence consists of omission to discharge a specific duty of affirmative performance imposed on a corporation by law or the conduct constituting the offence is engaged in, authorised, solicited, requested, commanded or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation. The provisions in section 3.2 of the Penal Law apply to partnerships, joint stock companies or unincorporated associations, including corporative associations.

196. Section 3.3.2 defines an agent as an officer of a corporation or any other agent having duties of such responsibilities that his conduct may fairly be assumed to represent the policy of the corporation.

197. Criminal liability also extends to a person responsible for supervising relevant activities of an organisation if the person's willful default in supervision within the scope of that responsibility contributes to the occurrence of an offence for which the organisation may be convicted. The penalty against legal persons is in accordance with Chapter 50 of the New Penal Law.

198. It is a defence, in any prosecution of a corporation for the commission of an offence committed by an agent of a corporation other than that for which an absolute liability is imposed, if the defendant proves by supervisory responsibility over the subject matter of the offence, employed due diligence to prevent the occurrence of the offence.

199. The level of penalties for legal persons under the PMLL is the same as those for natural persons. They are all liable to non-bailable first degree felony, seizure of the proceeds (goods) and imprisonment for a period of not less than five (5) years and not more than ten (10) years. Liberia has not imposed any penalty on a legal person in relation to a money laundering offence.

Sanctions for money laundering

200. The PMLL provides for sanctions against natural persons in sections 15.101.6, 15.102.9 and 15.103.4. A person guilty of an offence under these sections is liable to a penalty in accordance with Chapter 50 of the New Penal Law as follows:

a. non-bailable first degree felony,

b. seizure of the proceeds (goods), and

c. imprisonment for a period of not less than five years and not more than ten years.

201. Assessors were of the view that a person guilty of a money laundering offence is liable to all the penalties specified since the conjunctive word "and" has been used in the penalty sections. The Liberian authorities informed Assessors that Liberian Courts would apply the penalties on a case by case basis and that where a law provides a Court with discretion to apply a maximum or minimum sentence, the Court would apply the penalty that it considers befitting to the offence. The authorities provided 3 cases to support their claim on this matter. However, a scrutiny of those cases did not confirm the claims of the authorities.

Recommendations and Comments

202. Liberia has designated three out of the twenty designated money laundering offences. This is a major deficiency in the AML system of Liberia as implementation of the PMLL will be impeded by the absence of ascertainable designation and criminalisation of offences. The lack of conviction since the PMLL entered into force in January, 2002 is evidence that the Law is not being applied. Almost all the institutions visited informed Assessors about a particular case allegedly involving money laundering and were not aware of the existence of the PMLL. They were however aware of the draft AML/CFT Bill. This demonstrates a very low level of attention being given to the menace, given the mentioned ML risks in the country. Liberia should take a number of measures to effectively apply AML measures in the country. Specifically, Liberia should prioritise the following:

- Expedite action to enact the AML/CFT Bill and effectively disseminate and implement the Act;
- Specify which offences are first degree non-bailable felonies to make them ascertainable as to whether they constitute predicate offences, to avoid the interference of jurisdictional and procedural requirements consistent with prosecution of money laundering cases;
- Take concrete measures to investigate, prosecute and convict criminals for money laundering.
- Incorporate the outstanding offences into the Penal Law or other criminal laws, so that they would become predicate offences for money laundering.
- Provide for criminal liability of the legal persons as there is not a fundamental principle of domestic law that prevents this.

Compliance with Recommendations 1 & 2

FATF REC.	Rating	Summary of factors underlying rating
R. 1	**PC**	• Most offences are not first degree non-bailable offences and therefore do not fall within the bracket of 'criminal conduct' required for the money laundering offence. A number of offences designated as predicate offences to money laundering by the FATF are not criminalised by the Penal Law. Only murder, robbery and Illicit trafficking in narcotic drugs and psychotropic substances fall within

		the ambit of the definition of criminal conduct provided in the PMLL. • The PMLL has not been implemented since its enactment in 2002.
R.2	**PC**	• There is no system of administrative liability of legal persons. • The sanctions provided have not been tested. While the sanctions provided are proportionate and dissuasive none has been applied. • No criminal, civil or administrative sanctions have been imposed by the for ML

2.2 Criminalization of Terrorist Financing (SR.II)

203. Legal Framework: There is no legislative or regulatory framework criminalising the financing of terrorism. Liberia has prepared a draft AML/CFT Bill to address the issue of terrorist financing in a comprehensive manner.

204. Liberia has a new Armed Robbery Law titled "An Act to amend Chapters 14and 15 subchapter C, Title 26 of the Liberian Code of Laws Revised, known as The Penal Law of 1976, by adding thereto four new sections, thereby making the crimes of Armed Robbery, Terrorism and Hijacking capital offences and providing punishment thereof." The new section 14.54 provides that 'a person has committed a felony of the first degree, a capital offence, if he unlawfully, deliberately or intentionally attempts to discharge, or discharges fire-arm, grenades bombs, time-bombs, missiles, explosives, or other lethal devices which are likely to cause bodily injury, or place such person or group of persons in a building, outdoors or in the open space, or in a vehicle, whether or not such explosive cause bodily injury or death to another.

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

205. Liberia has not criminalized FT.

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

206. This is not applicable in the absence of a legal framework dealing with financing of terrorism.

Terrorist Financing as a Predicate Offence for Money Laundering (c. II.2)

207. FT is a not a predicate offence for money laundering as it has not been criminalised under Liberian law and designated as such. Section 1.5.1 of the Penal Law provides that no conduct constitutes an offence unless it is a crime under the General Provisions of the Penal Law or another Statute of Liberia.

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

208. There is no legal or regulatory framework requiring that the offence of terrorist financing should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred or will occur. This is however permitted by fundamental principles of Liberian laws.

The Mental Element of the TF Offence (c.II.4) (applying c. 2.2 in R.2)

209. This requirement is not being applied in Liberia, in the absence of legislation criminalising the financing of terrorism in Liberia. However, the legal principles enumerated in the Liberia's Penal Law require proof of mental element in a criminal conduct in order to secure a conviction.

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

210. There is currently no requirement to extend legal liability against legal persons for committing the offence of terrorist financing.

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

211. In the absence of any framework or other evidence dealing with terrorist financing, it is not possible to apply sanctions.

Analysis of Effectiveness:

212. In the absence of a legal, regulatory or institutional framework to combat the financing of terrorism, Assessors were not in a position to analyse and determine the effectiveness of CFT system of Liberia. Liberia had drafted a CFT Bill, but the authorities could not confirm when the Bill is likely to be passed into law. Liberia has not investigated or prosecuted any cases involving terrorist financing and does not have any statistics to that effect.

Comments and Recommendations

213. The Assessors commended Liberia for developing a CFT Bill with the aim to combat the financing of terrorism in accordance with acceptable international standards. This is a demonstration of Liberia's commitment to ensure that its financial system is not used for purposes of financing terrorism. However, the Assessors noted that most agencies that are likely to be involved in the implementation of the Bill, when passed into law, are not aware of the threats of terrorist financing. The NSA, by its enabling legislation, is more focused on gathering intelligence on developing plans, collecting, analyzing and disseminating overt political, economic, cultural and sociological intelligence for the Republic of Liberia. It is also focused on providing possible means

for the adequate protection of the Government and people of Liberia against subversion, espionage, sedition, adverse propaganda and sabotage.

214. The Assessors recommend that Liberia should consider:

- Training and adequately resourcing and funding relevant agencies that may be involved in combating the financing of terrorism in Liberia to enable them to effectively respond to the threat that terrorist financing poses to Liberian and global security;
- Intensify its efforts to pass the draft CFT Bill into law; and
- Ratify the 1999 Convention for the Suppression of the Financing of Terrorism.

2.2.3 Compliance with Special Recommendation II

FATF Rec.	Rating	Summary of factors underlying rating
SR II	**NC**	• There is no legal and regulatory framework to deal with FT. • • Most agencies that are likely to be involved in the implementation of the CFT Bill, when passed into law, are not aware of the threats of terrorist financing and their role under the Bill

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

Recommendation 3

Legal Framework

215. Liberia has a criminal system of confiscation which allows its competent authorities to confiscate the proceeds of money laundering or other predicate offences, instrumentalities used in or intended for use in the commission of these offences, without prejudicing the rights of bona fide third parties. Such provisions are found in the PMLL, the Criminal Procedure Law, the LACC Act and the Revenue Code.

Confiscation of laundered property and instrumentalities

216. Confiscation of laundered property and instrumentalities is possible under the Criminal Procedure Law (CPL). Under section 11.9 of the CPL, property lawfully seized under a search warrant or lawfully seized upon an arrest is to be confiscated under the direction of the magistrate, justice of the peace, or judge if possession of the property is prohibited by law. Such property include stolen or embezzled property; illicit, forfeited, or prohibited property; contraband; and

instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offense.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value

217. Sections 15.119 and15.122 of the PMLL provide for the confiscation of the proceeds of criminal conduct. Although termed confiscation of proceeds of criminal conduct, orders under section 15.119 are in fact pecuniary penalty orders that attach to the convicted person rather than to specific property derived from criminal conduct. As such, they are enforceable in the same way as fines. Section 15.119.1 empowers the Court, in addition to dealing with an offender in any other way, make an order requiring the offender to pay such sum as the Court thinks fit. This operates on the presumption that the defendant obtained benefits or pecuniary advantage from the commission of the offence. Under section 15.119.3, a person is considered to have benefited from an offence if the person obtains property as a result of or in connection with the commission of the offence, and his benefit is the value of the property so obtained. The value of all such property will therefore be considered as the amount to be recovered unless the defendant can demonstrate that the assumption is not correct. Thus, section 15.119 applies to property of corresponding value. A person is also considered to have derived pecuniary advantage.

218. Under the PMLL, the Court may make a confiscation order against an offender where a defendant is guilty of the relevant offence and the Court is satisfied that the defendant had benefited from the offence or from any other offence from which the Part applies of which the defendant is convicted in the same proceedings or which is taken into consideration in determining the defendant's sentence or to assessment of the value of the defendant's benefit from the offence for which the defendant is convicted or which is taken into consideration. The prosecutor is to tender to the court, copy to the defendant, a statement as to matters relevant to determining whether the defendant has benefited from the criminal conduct. If the defendant accepts to any extent any allegation in the statement, the court may treat as conclusive the defendant's acceptance of the matters to which the acceptance relates.

219. Where the court is satisfied that a copy of the statement has been served on the defendant, the court may require a defendant to indicate to what extent he accepts each allegation in the statement tendered by the prosecution regarding the benefits acquired by the defendant, and so far as he does not accept any such allegation, indicate any matters he proposes to rely on. If the defendant fails to accept or deny each allegation in the statement of the prosecutor, the court may treat the defendant as accepting every allegation in the statement except those in respect of which the defendant has accepted or denied and every allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.

220. A defendant may tender a statement in relation to matters relevant to determining the amount that might be realised at the time the confiscation order is made and the prosecution may accept to any extent any allegation in the statement. In this case, the Court may for the purposes of the determination treat the prosecutor's acceptance as conclusive of the matters to which it relates.

The acceptance may be oral, before the Court or in writing in accordance with rules of court. If the Court is satisfied as to any matter relevant for determining the amount to be realized at the time the confiscation order is made, the Court may issue a certificate giving the Court's opinion as to the matters concerned or if it is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's benefit from the offence or, if more than one offence, all the offences in respect of which the order may be made.

221. Under section 15.121 of the PMLL, the Court is given the power to postpone making a determination of the value of a defendant's benefit for a period as the Court may specify, if the Court requires further information. The Court may postpone the determination more than once in relation to the same case. In exceptional circumstances, the Court is not required to specify the period of the postponement which by itself or where there have been one or more postponements, including for purposes of appeal, when taken together with the first postponement, exceeds six months beginning from the date of conviction. However, unless the Court is satisfied that there are exceptional circumstances, any postponement after the date on which an appeal is concluded is not to exceed three months after the conclusion of the appeal. Postponement may be made on application by the defendant or the prosecution or by the Court on its own motion.

222. The Courts of Liberia can order the confiscation of proceeds of criminal conduct regardless of whether it is held or owned by a third party if it is established that, in the case of a gift, the defendant made it at any time after the commission of the offence. If the defendant is accused of more than one offence, the Court will make the order in respect of the earliest of the offences to which the proceedings for the time being relates and the court considers it appropriate in all circumstances to take the gift into account. A defendant is to be treated as making a gift where the defendant transfers property to another person directly or indirectly for a consideration the value of which is less than the value of the consideration provided by the defendant. In this regard, the provision will apply if the defendant had made a gift of such share in the property the same proportion as the difference between the values of the consideration provided by the recipient of the gift and the value provided by the defendant.

223. Property or amount referred to in the PMLL relating to confiscation orders are referred to in section 15.123.1 as "realisable property" or "realisable amount". "Realisable property" is defined to mean any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by the PMLL. "Realisable amount" is defined as the amount that might be realised at the time a confiscation order is made, being the total of the values at that time of all the realisable property held by the defendant, less where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total values at that time of all gifts caught by the PMLL.

224. The Court is to apply the civil standard of proof in determining whether a person has benefited from a criminal conduct, whether the benefit is at least the minimum amount, or the amount to be recovered. Minimum amount is not defined in the law.

225. Section 4.1.f of the ACCA provides the LACC with the power to cause the confiscation of assets of convicted person (s) upon a judicial determination that the assets to be confiscated are the proceeds of the act or acts of corruption of which the person or person is convicted of, provided that the confiscation is ordered at the end of all judicial proceedings, including, if taken, necessary appeal to the Supreme Court of Liberia.

226. Section 62 of the Revenue Code empowers the Minister of Finance to may sue in any court of competent jurisdiction for payment of tax that has not been paid when due and payable under Section 74, unless the period for collections has ended. The Minister has power to seize assets subject to tax lien. In this regard, section 65 (a) requires the Minister to notify a tax debtor, in writing, of the Minister's intention to seize and sell property held by the debtor which is subject to a tax lien. In furtherance of section 65 (d) of the Revenue Code, the Minister may:

a) Take possession of tangible property referred to in a notice under subsection (a) at any time after the notice is served;

b) For the purpose of taking possession, enter at any time any premises described in the notice and request the assistance of the police;

c) Where the property is tangible property other than land or buildings, store the property, at the cost of the tax debtor, at any place that the minister considers appropriate; and

d) Where the property is money in the hands of another person, take possession of the money subject to the restrictions imposed under section 64.

227. The Minister may sell the property seized within a given period of time depending on the nature of the property. In the case of land or building, the sale is to be effected within thirty days after taking possession, while perishable, tangible and other property are to be sold one to ten days after taking possession or serving of notice.

228. The proceeds of the sale are to be used to pay the cost of the lien and sale of property and the tax due, together with interest accrued on the tax. Where the proceeds of a sale are not sufficient to satisfy the accrued tax and other incidental charges, the Minister may in furtherance of section 65 (g) collect the outstanding amount through a written communication to the taxpayer in accordance with section 58 or 65 of the Revenue Code.

229. According to the Liberian authorities, the Courts in Liberian will only confiscate property after all judicial proceedings in respect of the defendant, including the property involved, are concluded. The authorities supported their argument with Article 20 of the Liberian Constitution which provides that "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law.

Provisional Measures to Prevent Dealing in Property subject to Confiscation

230. Provisional measures to prevent dealing in property subject to confiscation are found in the PMLL and Criminal Procedure Law. Section 15.126 of the PMLL provides for restraint orders to prohibit any person from dealing with realizable property subject to such terms and conditions as

may be specified by the order. A restraint order may apply to all realizable property held by a specified person, whether property is described in the order or not and to realizable property being those transferred to him after making the order.

231. The power to make restraint orders are exercisable where proceedings have been instituted in Liberia against a defendant, the proceedings have not been concluded and either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them. The power is also exercisable where the court is satisfied that a person is to be charged with an offence under the law and it appears to the court that a confiscation order may be made in proceedings for the offence. It does not have effect in relation to property for the time being subject to a charge for securing payment to the court.

232. A restraint order may be made only on application by the prosecutor. A restraint order may be discharged or varied in relation to any property and shall be discharged when the proceedings for the offence are concluded. An application for the discharge or variation of a restraint order may be made by any person affected by the order.

233. A restraint order may be enforced through the appointment of a receiver to take possession of any realisable property and in accordance with the court's directions, manage or otherwise deal with any property in respect of which the receiver has been appointed subject to such exceptions and conditions as may be specified by the court and may order any person having possession of property in respect of which a receiver is appointed to transfer the property to the receiver. The court may also empower a receiver to realise any realisable property in such a manner as the court may direct.

234. Section 15.128.6 of the PMLL provides the court with the discretion to order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by Part IV of the PMLL as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property. The requirement to transfer property to a receiver or make payment instead of transfer of property does not apply to property subject to a charge order.

235. Where the court has made a restraint order, a LEO or Customs Officer may for the purpose of preventing any realizable property from being removed from Liberia, seize the property and deal with it in accordance with the court's directions. Under section 125.4 of the PMLL, the court is to discharge a restraint order if the proceedings in respect of the offence for which the person is accused are not instituted within such time as the court considers reasonable.

236. The court and the receiver are to exercise their powers in respect of realisable property with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by the realisation of such property. In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift, the powers are to be exercised with the view to realising no more than the value for the time being of the gift.

While in the case of a third party, they are to be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

237. Section 15.130.5 of the PMLL precludes the court and the receiver from taking into account any obligations of the defendant or of the recipient of any gift which conflict with the obligation to satisfy the confiscation order. Thus, the obligations in a confiscation order have priority over other obligations.

238. Under section 15.127 of the PMLL, the court may make a charging order on realisable property for securing the payment to court. This provision applies to any interest in realisable property being an interest held beneficially by a defendant or by a person to whom the defendant has directly or indirectly made a gift caught by Part IV of the PMLL, being assets specified in subsection 5 of section 15.127 or under any trust or interest in realisable property held by a person as a trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may be imposed by a charging order on the whole beneficial interest under the first mentioned trust. Section 15.127.5 defines "assets" to include land in Liberia, or securities of government stock; stock of any body incorporated within Liberia; stock of any body incorporated outside Liberia or of any country or territory outside Liberia, being stock registered in a register kept at any place within Liberia. Where a confiscation order has not been made, the charging order will be of an amount equal to the value from time to time of the property charged. In any other case, the amount would be an amount not exceeding the amount payable under the confiscation order. The charging order may be extended to any interest or dividend payable in respect of any securities.

239. The court may, on application by any person affected by a charging order, vary or discharge the charging order if the proceedings for the offence are concluded or the amount, payment of which is secured by the charge is paid into court.

240. Section 15.113.2 requires that where a person who holds realisable property is adjudged bankrupt, property for the time being subject to restraint order made before the order adjudging him bankrupt and, any proceeds of property realised by virtue of the PMLL for the time being in the hands of a receiver appointed under section 15.126 or section 15.128, is excluded from the bankrupt's estate for the purposes of the bankruptcy proceedings.

241. Furthermore, section 15.133.1 of the PMLL precludes a liquidator, including a provisional liquidator, from exercising his functions in relation to property for the time being subject to a restraint order made before the relevant time and any proceeds of property realised by virtue of section 15.126.8 or 15.128.5 or 6 for the time being in the hands of a receiver appointed under section 15.126 or 15.128 where realisable property is held by a corporation and an order for winding up of the corporation has been made or a resolution has been passed by the corporation for the voluntary winding up of the corporation.

242. In addition to the powers under the PMLL, there are provisional measures provided in section 4.1.e of the ACCA that empower the LACC to cause the freezing of assets of a person or

persons being investigated for alleged act or acts of corruption based on a prior order or warrant issued by a court of competent jurisdiction.

243. Section 11.2 of the CPL deals with property subject to search and seizure and mandates a magistrate to issue a warrant to search and seize stolen or embezzled property; Illicit, forfeited, or prohibited property; Contraband; and instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offense.

244. Section 11.3 of the Criminal Procedure Law provides that a search warrant shall issue only on an affidavit or written complaint made upon oath establishing the grounds for the issuance of the warrant. If the magistrate, justice of the peace, or the judicial officer empowered to perform this function is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, he should issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant is to be directed to a peace officer of Liberia stating the grounds for its issuance and the names of the persons whose affidavits and sworn statements have been taken in support of the application. It should also command the officer to search the person or the place named for the property specified without unnecessary delay and further designate the court, the jurisdiction of which encompasses the area where the property sought is located, to which the property will be returned.

245. Section 11.4 of the CPL mandates any judge of the Circuit Court of a county in which the justice of the peace or the magistrate exercises jurisdiction may in a summary manner examine an affidavit or the complaint upon which the application for a warrant is based and direct the justice or magistrate to issue such warrant or issue the warrant himself where a justice of the peace or a magistrate neglects or refuses to issue a search warrant.

246. Under section 11.5 of the CPL, a search warrant may be executed at any reasonable time of the day or night. If practicable, however, it shall be executed in the daytime but no property validly seized under a search warrant shall be suppressed as evidence because the warrant was executed during the night time.

247. The search may be conducted on premises or on any person. If a peace officer to whom a search warrant is directed is refused admittance, the peace officer may break open any outer or inner door or window of a private dwelling or other enclosed space, or any part of a private dwelling or other enclosed space, or anything at the premises to execute the warrant.

248. Section 11.6 of the CPL states that unless otherwise provided in the warrant, the warrant may be executed and returned only within twenty days after its date of issuance. It requires the officer taking property under the warrant to promptly give to the person from whom or from whose premises the property is taken a copy of the warrant and the receipt at the place from which the property was taken, accompanied by a written inventory of any property taken. The inventory is to be made in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, or, if they are not present, in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property is taken, and shall be verified by the officer. The magistrate, justice of the peace, or

judicial officer empowered to perform this function, to whom the return is made, is required to, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property is taken and to the applicant for the warrant.

249. An officer seizes property under search warrant or an appropriate prosecuting official is required to safely keep lawfully seized property so long as necessary for the purpose of being produced as evidence at any trial in which it is involved.

250. Under section11.10 of the CPL, a person aggrieved by an unlawful search and seizure may make a motion for the return of the property and to suppress for use as evidence anything so obtained on the grounds that:

a) The warrant is insufficient on its face;

b) The property seized is not that described in the warrant;

c) The purported grounds set forth in the application for the warrant do not exist;

d) There was not probable cause for believing the existence of the grounds on which the warrant was issued;

e) The warrant was illegally executed;

f) The property, if seized upon an arrest, was illegally seized; and

g) The property was seized without a search warrant having been issued for it except when the property was lawfully seized in connection with a lawful arrest.

251. The motion may be made in the court, the jurisdiction of which encompasses the area in which the property involved is seized, or in the court where the trial is to be held. The motion is to be made before the trial unless there was no opportunity or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial. If the motion is granted, the property is to be restored to the person entitled to it unless otherwise subject to lawful detention.

252. There are no provisions in place for the confiscation of proceeds/instrumentalities of terrorist act or terrorist financing. It is envisaged that the provisions in the CPL will apply to confiscation of proceeds/instrumentalities of terrorist act or terrorist financing, in the absence of any provision to the contrary when terrorist financing is criminalised in Liberia.

Ex Parte Application for Provisional Measures

253. Applications for restraint and seizure of realisable property under the PMLL are to be made ex parte before the court in camera. The PMLL requires the prosecution to notify persons affected by the order.

Identification and Tracing of Property

254. Section 15.126.9 of the PMLL empowers a LEO or Customs Officer under to seize property for the purpose of preventing realizable property being removed from Liberia, there is no express power given to LEAs or other competent authorities to identify and trace property that is, or may become subject to confiscation or is it suspected of being the proceeds of crime. Such power is also available under section 11.3 of the CPL which empowers the courts of Liberia to issue search warrants for the purpose of identifying stolen or embezzled property; illicit, forfeited, or prohibited property; contraband; instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offense.

255. Article 12.6 of the Palermo Convention requires State Parties to the Convention to empower their courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Furthermore, State Parties are not to decline to act under this provision on the ground of bank secrecy. This element is missing in the provisions in the PMLL as well as the CPL in relation to confiscation of the proceeds of crime.

Protection of Bona Fide Third Parties

256. Section 15.130 deals with the powers of the court in relation to dealing in realizable property and the order to be applied when dealing with the money in the hands of the receiver. A receiver in exercising powers under the confiscation order in a case of realizable property held by a person to whom the defendant has directly or indirectly made a gift caught by the PMLL is required to exercise his power with the view to realizing no more than the value for the time being of the gift. In relation to third parties, the power is to be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him. Obligations under the confiscation order however take priority over any conflicting obligations of the defendant or of the recipient of any such gift.

257. Also, section 15.133.2 of the PMLL restricts the court or a receiver from exercising the powers conferred on them by section 15.126 to 15.129 in relation to any realisable property held by a corporation in relation to which the functions of the liquidator so as to inhibit the liquidator from exercising his functions for the purposes of distributing any property held by the corporation to the corporation's creditors or so as to prevent the payment out of any property of expenses properly incurred in the winding up in respect of the property.

Power to Void Actions

258. Section 15.126 of the PMLL empowers the court to issue a restraint order to prohibit any person from dealing with any realisable property subject to such conditions as may be specified in the order. The order may apply to all realisable property held by a specified person, whether the property is described or not. It may also apply to realisable property held by a specified person, being property transferred to him after making of the order. A LEO or Customs Officer may, in furtherance of section 15.126.10 and for the purpose of preventing any realisable property from being removed from Liberia, seize the property.

Additional elements

259. There is no specific legal provision that allows for the confiscation of property of organisations that are found to be primarily criminal in nature. Confiscation orders in the context of Liberia are not enforced *in rem* (against property) they are *in personam*, (against the person), orders for payment of a sum equivalent to the assessed value of the proceeds of crime. Assets that are under the effective control of a convicted person or gifted to a third party may be realised in satisfaction of the confiscation order. It is possible that this could extend to of organisations that are primarily criminal in nature.

260. Civil forfeiture of property subject to confiscation without a conviction of any person in addition to confiscation triggered by criminal conviction does not exist in Liberia. According to the Liberian authorities, Article 20 of the Liberian Constitution prohibits the deprivation of right to property except as the outcome of a hearing judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law. The authorities interpreted Article 20 to mean that deprivation of property can only be triggered by conviction of the accused person.

261. The PMLL requires a defendant to demonstrate the lawful origin of property where the prosecution or the defendant tenders to the court a statement on matters relevant to making an order for the confiscation of realizable property.

Analysis of Effectiveness:

262. The Liberian authorities did not provide the Assessors with any statistics or other relevant material to enable the Assessors assess the effectiveness of the provisions. In any case, the law had not been implemented since its enactment in 2002.

2.3.2 Comments and Recommendations

263. The legal framework on confiscation of proceeds of criminal conduct in the PMLL appears to be comprehensive even though it is geared toward payment of money instead of confiscation of the actual benefit from the criminal conduct. This regime may be subject to abuse as offenders may try to use conduits to purchase the proceeds of their criminal conduct. Valuing the proceeds of crime that have been commingled with legitimate property can also be cumbersome. The authorities should consider applying the seizure and confiscation provision in the CPL to money laundering cases. There are no statistics available regarding the amount of property restrained, seized and confiscated relating to money laundering and proceeds of crime. In general, provisional measures have not been applied in Liberia since the enactment of the PMLL in 2002.

2.3.3 Compliance with Recommendation 3

Rec.	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	**PC**	• Liberia has designated only 3 of the predicate offences of

Rec.	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		money laundering. This will impede the effective implementation of freezing, seizure and confiscation measures. • LEOs do not have express powers to identify and trace property that is subject to confiscation or suspected to be the proceeds of crime. • There is no express provision in the PMLL to void actions taken by persons to prevent LEA's from recovering property subject to confiscation • There is no effective implementation of the provisions on freezing, seizure and confiscation of proceeds and instrumentalities of crime.

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

2.4.1 Description and Analysis

Legal Framework:

264. There are no laws and procedures in place for freezing and, where appropriate, seizing terrorist funds or other assets of persons pursuant to the United Nations Security Council Resolutions 1267 and 1373. Despite limited resources, inadequately trained personnel, and a weak judicial system – products of 14 years of civil war – the Government of Liberia demonstrated a willingness to cooperate with the United States and the international community to combat terrorism. Through rule of law and security sector reform assistance programs, the United States supported a number of initiatives that addressed Liberia's vulnerabilities, which included porous borders, rampant identification document fraud, lax immigration controls, wide-scale corruption, and underpaid law enforcement, security, and customs personnel.[6] Liberia is yet to enact legislation that will among others, empower competent authorities and relevant persons and institutions to freeze and seize funds used for or intended for terrorist financing.

2.4.2 Recommendations and Comments

265. The authorities should consider taking the following actions –

- Pass the AML/CFT Bill into law;
- As a matter of urgency, establish the regulatory and institutional framework for implementing the requirements in the 1267 and 1373 Resolutions. The authorities may

[6] Chapter 2 , Country Reports on Terrorism, Office of the Coordinator for Counterterrorism, **30 April, 2008**

consider establishing a Counter Terrorism Committee as a mechanism by which this can be done;

- Establish regulatory and institutional mechanism to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions;
- Set up appropriate and effective systems for purposes of communicating actions taken under freezing mechanisms to the financial sector including the distribution of lists of designated persons;
- Provide appropriate guidance to the commercial banks and other financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. The authorities should, in setting up the regulatory and institutional framework for implementing 1267 and 1373 resolutions, include processes by which
    a) listed persons can be de-listed;
    b) access to funds or other assets that were frozen and have been determined to be necessary for basic expenses, the payment of certain fees, expenses and service charges or extraordinary expenses can be authorised;
    c) the unfreezing of funds of de-listed persons and innocent third parties; and
    d) reviewing of freezing decisions,
- Put in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a Court ;
- Provide protection for the rights of bona fide third parties.
  Such protection should be consistent with the standards provided in Article 8 of the Terrorist Financing Convention, where applicable; and

- Establish appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations governing the obligations under SR III and to impose civil, administrative or criminal sanctions for failure to comply with such legislation, rules or regulations.

2.4.3 Compliance with Special Recommendation III

Rec.	Rating	Summary of factors underlying rating
SR.III	**NC**	• There is no legal or regulatory framework on freezing and, where appropriate, seizing under the relevant UN Resolutions •

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

266. There is no legal framework yet for the establishment of a Financial Intelligence Unit for Liberia. No institution has been designated as the central authority to receive, analyse and disseminate STRs. During the on-site visit, Assessors were informed that a draft AML/CFT Bill had been prepared to, among other matters, provide for the establishment of a FIU and that plans were at an advance stage to place the Bill before the Parliament for passage into law. Assessors were informed that the enactment of the draft Bill will address the issue of FIU even though there is a lingering issue of deciding the type, location and resources of the FIU that will be most appropriate to their needs. All stakeholders expressed the need to create a FIU.

267. Given that the draft AML/CFT Bill is to be passed, the Assessors concluded that no action has been taken by Liberia to establish a functional FIU in accordance with the requirements in Recommendation 26.

Recommendation 26

Functions of the FIU

268. Liberia has not established an FIU or designated any institution that serves as a national centre for receiving (and if permitted, requesting) analysing and disseminating disclosures of STRs and other relevant information regarding potential ML or FT activities. Additionally, there is no legal framework relating to the establishment and functioning of an FIU in Liberia. However, paragraph 9 of the Anti-Corruption Measures issued by the LACC provides that all banks operating in Liberia should be required to issue suspicious activities reports to the LACC or other relevant authorities as a means of averting money laundering and other financial malpractices. The LACC measures do not specify what is to be done on receipt of the STRs.

269. The authorities informed Assessors that the Bill providing for the establishment of the Liberian FIU is still at the drafting stage. The authorities are yet to decide on the type of FIU to be established. The authorities informed Assessors about their commitment to establish the FIU. They however cited financial and logistical constraints for their inability to take immediate action to establish the FIU.

Issuance of guidance to FIs and DNFBPs

270. The PMLL requires persons who carry out relevant financial business to put in place systems as may be appropriate, including disclosure of knowledge or suspicion to a LEO or Customs Officer that a person is engaged in money laundering, for the purpose of forestalling and preventing money laundering. Section 15.107 of the PMLL defines ‘relevant financial business’ to mean the business of engaging in one or more of the following:

a) Deposit-taking business;

b) Investment business;

c) Insurance business, and

d) Any other financial business regulated by the Government of Liberia or prescribed from time to time by the Minister of Finance by order for the purpose of inclusion.

271. The PMLL does not specifically mention non-bank financial institutions (NBFIs) and DNFBPs. However, NBFIs may be subsumed under section 15.107(d) of the PMLL stated above and DNFBPs are indirectly referred to in section 15.108.3 of the PMLL. Section 2(k) of the CBL Act defines "Non-Bank Financial Institution" to mean "any person whose financial transactions are in the form of non-bank financial services rendered without accepting from the general public deposits payable on demand or after a fixed period". Section 2(m) of the CBL Act and section 2(16) of the NFIA define non-banking financial services to mean:

a) the business of the operation of thrift and loan associations;

b) broker and dealer operations in securities and commodities;

c) currency exchanging;

d) check cashing;

e) issuance of credit cards;

f) redeeming and encashing money orders or dealing in any such other

g) similar instruments;

h) insurance underwriting business;

i) loan or financing agency; and

j) Remittance of money but not accepting from the general public money payable on demand or after a fixed period.

272. The PMLL does not expressly require competent authorities, including supervisors and self-regulatory organisations, to issue regulatory guidance on AML standards to persons under their supervision. There is an implied obligation under section 15.108.3 of the PMLL for supervisors and SROs to issue guidance. Section 15.108.3 mandates the court to take account of any relevant supervisory or regulatory guidance or any other relevant guidance issued by a body that regulates, or is a representative of trade, profession, business or employment carried on by that person, which applies to a person in determining whether that person has complied with any requirements to have in place systems, including reporting systems, and training to prevent money laundering before forming a business relationship, or carry out a one-off transaction with or for another person.

273. The CBL has issued Guidelines on CDD/KYC requiring all licensed banks to ensure that accounts or transactions which exceed the threshold, or limit of US$25,000 or its equivalence in Liberian Dollars or other currencies are identified and promptly reported to senior management of the bank. Bank-financial institutions are also required to submit to the CBL promptly, a Suspicious Transaction Return (SAR), where applicable. The CBL has also issued a reporting form to bank-

financial institutions. Section 2 (2) of the NFIA defines "bank-financial institution" to mean "any person engaging in financial transactions consisting in the business of banking, the acceptance of deposits payable on demand and subject to transfer by check, credit, loan making, and lending or rendering non-banking financial services: provided, that for the purpose of the Act, unless the context otherwise requires, all offices and branches of a financial institution in Liberia shall be deemed to be one financial institution". The CDD/KYC Regulations does not extend to NBFIs, including the insurance and securities sector.

274. No guidance has been issued to DNFBPs regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting. The authorities informed Assessors that the draft AML/CFT Bill covers DNFBPs. Therefore, guidance will be issued to DNFBPs when the Bill is passed.

Access to information from other agencies

275. In the absence of an operational FIU, Liberia has not implemented this essential criterion.

Access to additional information

276. In the absence of an operational FIU or other arrangement to this effect, this criterion is not being implemented.

Dissemination of financial information

277. Section 15.117 (d) of the PMLL implies that information or other matter contained in a report is disclosed to a LEO or Customs Officer where the appropriate person has considered the report under the procedures maintained by the relevant business in accordance the provisions of the PMLL. The PMLL does not indicate how information disclosed to the LEO or Customs Officers should be treated. It does not provide for an institutional framework for dissemination of financial information to domestic authorities for investigation or action where there are grounds to suspect ML or FT. In the absence of an FIU, the authorities were advised to expedite action on the pending draft legislation still at the executive level to pave way for the establishment of a functional and viable FIU.

278. Section 4.1 of the CBL Regulation on KYC/CDD requires financial institutions to forward SARs to the CBL. There is no provision of law empowering the CBL or any institution to process, analyze and disseminate STR disclosures in terms of the PMLL and in accordance with the reporting requirements in Recommendation 26.

Terrorism and terrorist-financing related STRs

279. No statistics were provided on TF related STRs. There is currently no law criminalising the financing of terrorism in Liberia. Assessors were informed that the draft PML Bill will address the

issue but the authorities could not provide any timeframe within which the Bill will be passed into law.

Operational independence

280. There is no FIU in place currently. Assessors were informed that when an FIU is eventually established, it will be in line with international requirements in terms of independence and fixed tenure of office for the Head to ensure stability of its operation. According to international best practice, appointment of the head of an FIU should be based on the consent of the Parliament, which also determines the office holder's tenure in case of gross misdemeanour or other malpractices. The Assessors were informed that the FIU will be domiciled in the Central Bank of Liberia. To ensure that the FIU has operational autonomy, when established, the Assessors advised the authorities that the members of the governing body of the FIU should not serve at the sole pleasure of the President. The FIU should be financed through the national budget by legislative appropriation and other sources that may be approved by Parliament.

Protection of information

281. Section 15.104 of the PML Act provides for the offence of tipping-off and prohibits disclosure of confidential information to unauthorized persons. This provision specifically addresses the disclosure of the contents of STRs made and the personal details of the Law Enforcement or Customs officer who received the STR to another person. Although, disclosure can be made to another person if required by law, it may also be made available if the purpose is to carry out the provisions of the Act or if it is for legal proceedings or by an order of a Court.

Public reports

282. There is no FIU in place as such it has not issued any report to the public.

Egmont Group membership

283. Membership of the Egmont Group can only be addressed when an FIU is established and meets the criteria to join the Group.

Mechanisms for exchange of information

284. Liberia has not had regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases. Assessors advised the authorities to consider doing so in order to familiarise themselves with the role and functions of FIUs and the mechanisms for exchanging information between FIUs.

Statistics and records on money laundering

285. Liberia did not provide statistics on ML cases.

2.5.2 Recommendations and Comments

286. Liberia has not established an FIU, either as an independent governmental authority or within an existing authority or authorities, to act as a national centre for receiving (and if permitted, requesting), analysing, and disseminating disclosures of STR and relevant information relating to potential ML and TF.

287. It is recommended that:

- The authorities should intensify efforts to pass the PML Bill to ensure its compliance with Recommendation 26. The authorities should have regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between FIUs for ML Cases. The documents set out important guidance concerning the role and functions of FIUs, and mechanisms for exchange of information between FIUs. Specifically, the FIU should:
    - Be established as a central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to competent authorities, the disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism, in order to combat money laundering and terrorist financing;
    - Have the power to issue guidance to reporting persons regarding the manner of reporting , including specification of forms and procedures that should be followed when reporting;
    - Have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly perform its functions, including analysis of STR;
    - Be authorised, either directly or through another competent authority, to obtain from reporting persons additional information needed to properly perform its functions;
    - Be authorised to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect ML or FT;
    - Have sufficient operational independence and autonomy by ensuring that:
        - The FIU is free from undue influence or interference,
        - Appointment of the Head of FIU is not based on political consideration,
        - The tenure of office of the head of the FIU is secure,
        - The FIU has a separate budget and is adequately resourced;
    - Secure and protect information it holds, and only disseminate the information in accordance with the law;

- Publicly release periodic reports, including statistics, typologies and trends as well as information regarding the activities of the FIU;
- exchange information with foreign counterparts as regards ML and TF activities, as well as similar offences;

- To ensure adequate resources are provided for the take off of the FIU and that the FIU is staffed by experienced officers drawn from various law enforcement, security and intelligence agencies of government, authorities should consider mandating the CBL to facilitate the formation of a temporary Unit within the Banking Supervision Department (BSD) to serve as an FIU. This is important given the central role that an FIU is expected to play in developing guidance and regulating the operations of the reporting entities under the AML/CFT regime;
- The CBL should start developing guidance for non-bank financial institutions and other financial institutions that are not covered by the CBL CDD/KYC Regulations, including procedures for reporting suspicious transactions;
- The authorities should identify self-regulatory organisations that may be required to issue guidance on reporting and task them to develop guidance in collaboration with the CBL pending the establishment of the FIU.

2.5.3 Compliance with Recommendation 26

Rec.	Rating	Summary of factors underlying rating
R.26	**NC**	• No law, including the Prevention of Money Laundering Law of January 2002, provides for the establishment of a Financial Intelligence Unit in Liberia. • There is no guidance to the reporting entities on how to submit AML/CFT related STRs. • There are no mechanisms in place to ensure that Financial and Non-Financial Institutions generate and forward suspicious transaction reports for further analysis. • There is general lack of awareness of the obligation to render AML/CFT STRs across all reporting entities and no efforts to enforce compliance by the authority. • There is no guidance issued on how an FIU will operate in terms of funding, independence etc. • No guidance issued to ensure confidentiality and protection of information reported to FIU. • There are no publications on the activities of the FIU, including statistics, typologies and trends of ML/FT as required.

2.6 Law enforcement, prosecution and other competent authorities – framework for the investigation and prosecution of offences, confiscation and freezing (R.27, 28, 30&32)

2.6.1 Description and Analysis

288. Legislation establishing various investigation and prosecution authorities responsible for law enforcement in Liberia include the Constitution (1986), Anti-Corruption Commission Act (2008), Ministry of National Security Act (September 1979) amended by Decree in (March 1985), Ministry of Justice Act, Drug Enforcement Agency Act (1998), National Bureau of Investigation Act, Liberian National Police Act (1956) and Revenue Codes (2000). The MOJ is responsible for coordinating the activities of all LEOs and related institutions in Liberia.

289. Criminal proceedings, including investigation of crimes, in Liberia are governed by the CPL. The provisions of the CPL are intended to provide for the just determination of every criminal proceeding and are to be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Thus, the provisions of the CPL apply to all offences, including those of economic or financial nature, which includes money laundering and predicate offences.

290. In Liberia, the authority for investigating and prosecuting money laundering is, by implication, vested in LEOs, comprising the Ministry of Justice, Customs Officers, the LNP, the Economic Crime Investigation Department of the Ministry of National Security, the Customs Service, the National Bureau of Investigation (NBI), the Drug Enforcement Agency (DEA) and the LACC. Investigation of predicate offences of money laundering is determined by the type of offence. For instance, section 5.2(a) of the A-CCA mandates the LACC to investigate acts of corruption discovered or reported to have occurred in the public, private and civil society sectors of Liberia with the aim to identifying the person(s) and extent of loss of or damage to any public and/or private property as a result of the subject of corruption but does not have the power to prosecute. The LACC does not have the power to prosecute but it is mandated to cause the prosecution of all cases of corruption in coordination with the Ministry of Justice. However, under section 11.4 of the A-CCA, the LACC may directly prosecute acts or cases of corruption through the courts if the MOJ, for whatever reason(s) does not take action to prosecute a case of corruption forwarded to the MOJ by the LACC within three (3) calendar months of the receipt of the request to prosecute. The Economic Crimes Unit of the LNP also investigates acts of corruption but does not do so in collaboration with the LACC.

291. With regard to investigation of TF, the authorities informed the Assessors that the issue of designation of a competent authority to ensure that FT is properly investigated will be addressed on the enactment of the AML/CFT Bill.

292. Criminal proceedings in Liberia are conducted in accordance with the Criminal Procedure Law. Preliminary investigations as well as prosecutions for offences in Liberia are led by the Ministry of Justice. The MOJ procures the proper evidence for, and conducts, prosecutes all criminal matters and institutes all legal proceedings in Liberia.

293. Offenders are arrested and tried based on arrest warrant in writing and signed by the judicial officer empowered to issue it, stating the title of his office, and shall state the date when and the place where issued. The warrant is directed to all peace officers in the Republic or other authorized persons. It specifies the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty, and states the nature and substance of the offence charged. If the offence charged can be tried in the county in which the warrant was issued, the warrant commands that the person to be arrested be brought before the court that issued the warrant to stand trial. If the offense charged can only be tried in another county, the warrant is to require that the person to be arrested be brought before a designated court of the county in which the offence may be tried.

294. At the time of the on-site, LEOs and Customs Officers were not aware of the existence of the PMLL as well as their functions under the PMLL. The Officers expressed their desire to effectively implement the Law. However, there is the need to build their capacity to effectively respond to ML threats.

Recommendation 27

Money laundering investigations

295. The PMLL does not expressly provide for law enforcement authorities that have responsibilities for ensuring that ML offences are properly investigated. However, sections 15.101(3), 15.102(5) of the PMLL provide that:

"Where a person discloses to a Law Enforcement Officer or Customs Officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which a suspicion or belief is based.……"

296. Furthermore, sections 15.102.10 and 15.104.9 of the PMLL state that:

"No Law Enforcement Officer or Customs Officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Part or Part IV or of any other enactment relating to criminal conduct or the proceeds of such conduct."

297. From the provisions reproduced above, it may be concluded that the drafters of the PMLL intended to confer the power to investigate ML offences on LEOs and Customs Officers as opposed to powers directly conferred on a LEO or Customs Officer by section 126.10 to seize property subject to a restraint order for the purpose of preventing the property being removed from Liberia.

298. Investigations conducted by the MNS, NBI, DEA and LACC on predicate offences of money laundering include tax evasion, currency counterfeiting and smuggling, corruption and

currency round tripping. Assessors were informed that on 9th October 2007, five thousand United States Dollars (USD5,000) counterfeiting scandal was investigated by the Central Bank of Liberia and MNS. Findings were sent to the Ministry of Justice for prosecution. Similarly, on 23rd February 2010 an amount of six thousand three hundred (USD6,300:00) counterfeit bills brought into Liberia by four foreigners were seized and investigated. Findings were forwarded to the Ministry of Justice for prosecution. No person has been convicted in respect of both cases.

Seizure, freezing and confiscation powers

299. The Ministry of Justice has to apply to apply by motion on notice to court of competent jurisdiction to obtain an order before any action could be taken to freeze, seize and confiscate proceeds of crime. The Assessors expressed concerns to the authorities that this procedure could allow offenders to remove the proceeds of their crime from the jurisdiction or otherwise dissipate them, thus prejudicing the ability of competent authorities to recover the assets. However, the authorities informed Assessors that suspects under investigation are subjected to surveillance to ensure that they do not abscond or deal with the proceeds.

300. LEAs, have powers to seize, freeze and confiscate proceeds of crime provided that the seizure, freezing or confiscation of the proceeds is at all times authorised by a prior order or warrant issued by a Court of competent jurisdiction. Under section 11.2 of the CPL, a warrant may be issued to search for and seize stolen or embezzled property; illicit, forfeited, or prohibited property; contraband; instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offense. The warrant is directed at peace officers defined in section 1.5(b) of the CPL to include marshals, sheriffs, their assistants and deputies, constables, and policemen.

301. Police officers have powers to retrieve evidence that can be sighted physically, but if the evidence is hidden a court order in form of search warrant is required. LEOs can also retain the assets or proceeds of crimes strictly for evidence in court and not for seizure, freezing or confiscation without a court order.

302. Section 15.126(10) of the PMLL provides an LEO or Customs Officer the discretion to seize realisable property that is subject of a restraint order, for the purpose of preventing any realisable property from being removed from Liberia. Assessors were of the opinion that the exercise of this power may not serve its intended purpose as the LEO or Customs Officer is to determine whether a restrained property is likely to be removed from Liberia and may end up not exercising the power to seize at all. Assessors therefore advised the authorities to consider empowering the court to, as part of the restraint order, direct LEOs or Customs Officers to seize restrained property.

Investigation of terrorist financing

303. Liberia has no legal or regulatory framework on terrorist financing, which would allow the competent authorities to conduct investigations and prosecutions relating to the offense of terrorist financing.

Additional element

Powers to waive or postpone arrest and seizure

304. It is possible for LEAs investigating money laundering cases in Liberia to waive or postpone the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering activities or for evidence gathering, particularly under the National Security Act and Drug Enforcement Agency Act and the A-CCA. However, there was no written standard operating procedures in place that provide for the postponement or waiver of arrest of suspected persons and/or seizure of laundered money for the purpose of identifying persons involved in money laundering activities or for evidence gathering.

Special investigative techniques

305. The MOJ, LEAs and the LACC have and use special investigation and prosecution, including controlled delivery of the proceeds of crime. Such powers are generally applied in the investigation and prosecution of offences relating to currency smuggling and counterfeiting, currency and narcotic trafficking and smuggling at the Sea Port in order to identify the persons involved in the commission of these offences. These powers have never been applied for purposes of investigating or prosecuting suspected money laundering cases or funds intended for use in terrorism.

Financial investigations by permanent/temporary groups

306. No specialized permanent/temporary law enforcement groups have been constituted for the purpose of investigating the proceeds of crime for purposes of seizing, freezing. Although Section 5.2(j) of the A-CCA mandates the LACC to investigate all acts of corruption and, in so doing, to promote and coordinate collaboration of all LEAs of Government in the discharge of their activities as they relate to combating corruption, the LACC had conducted one investigation on corruption in collaboration with the Ministry of Justice.. Officers of the Economic Crime Unit of the LNP informed Assessors that they investigate acts of corruption but do not do so in collaboration with the LACC.

Review of ML and FT methods, techniques and trends

307. Law enforcement and other competent authorities have not reviewed ML and FT methods, techniques and trends, whether individually or on inter-agency basis. Thus, they have not disseminated resulting information, analyses or studies to staff of LEAs and competent authorities. The Liberian authorities have limited knowledge of ML and FT risks and threats and therefore lack the capacity to review ML and FT methods, techniques and trends. Assessors were informed that LEAs, especially NSA, conduct ML related investigation based on intelligence and have shared information and experience on the following ongoing cases that the NSA has played vital role:

An investigation of tax evasion was commenced on 27th August, 2008into the production and processing of thirty five (35) fake Government of Liberia revenue receipts valued at nine thousand six hundred (USD9,600) through the Motor Vehicle Division of the Ministry of Transport in favour of the Buchana Renewable Energy (BRE) in respect of vehicle registration for 2008. Restitution was made through the Ministry of Finance by BRE and payment made to the Ministry of National Security;

Seizure of USD106,500 on 6th October 2010 at Bo-Waterside port of entry. The suspect attempted to smuggle the money out of Liberia into Sierra Leone. The authorities on tip-off seized the money, which was initially turned over to the Customs at Bo-Waterside and later deposited at the Central Bank of Liberia pending the outcome of investigation by the MNS.

Co-operative investigations with foreign counterpart authorities

308. The National Central Bureau (Interpol) created in the MOJ is mandated under section 22.60 of Executive Law to keep constant contact with the headquarters of the Interpol in Paris and exchange with the Interpol information concerning crimes and criminals in Liberia and other countries. Similarly, the LACC is empowered by section 4.1(g) to establish counterpart and technical relationships with similar and other agencies, institutions and organisations in Liberia and abroad, as may be necessary for the effective performance of its functions. It is also to cooperate with other national and international public and private institutions in the design and implementation of specific measures and programmes. Assessors found that the mechanisms for cooperative investigations with appropriate competent authorities in other countries, including the use of special investigative techniques, have not been used. There are no appropriate safeguards in place for future use of such powers.

309. Assessors observed that there was duplicity in handling of cases by various law enforcement agencies, a situation that sends wrong signals to security personnel on their specific mandates. Assessors were informed that the NSA, which has powers to coordinate all security and intelligence activities of government is in fact not in the picture of cases being handled by other agencies.

310. The officials of LEAs in Liberia have not had enough training and lack the requisite resources to enable them to perform their functions effectively and efficiently. Additional capacity would also be required to strengthen the capacity of security and law enforcement officials to appropriately detect and prevent money laundering and terrorist financing.

Recommendation 28

311. The CPL, the NSA Act and the Anti-Corruption Measures issued by the LACC in May 2010 provide competent authorities with a range of powers to compel production, search and seizure of documents. Thus, it is possible for competent authorities conducting investigations of money laundering and underlying predicate offences to obtain documents and information for use in those investigations, and in prosecutions and related actions, including powers to use compulsory

measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining evidence.

Power to compel production, search and seize

312. The power to compel production under the CPL is based on the issuance of a *subpoena duces tecum*. Section17.2 of the CPL empowers the court to, on motion by the prosecuting attorney or the defendant, direct that books, papers, documents, or other things designated in a *subpoena duces tecum* be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence. The Court may on production of the books, papers, documents, or other things permit them or portions or parts them to be examined and copies to be made by the parties and their attorneys. A person who without adequate excuse, fails to comply with a subpoena served on him is liable to be punished for contempt of court. Although the CPL does not specifically mention transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by FIs, the authorities informed Assessors that the books, papers and documents referred to in the CPL will include transaction records, identification data obtained through the CDD process, account files, business correspondence, and other records, documents or information held or maintained by FIs and other businesses or persons.

313. By virtue of sections 1.1 of the CPL, the power to compel production of records and other relevant information will be available for use in investigation and prosecutions of ML, FT and other underlying predicate offences. There is no provision or evidence of applying such powers to related actions like actions to freeze and confiscate the proceeds of crime.

314. There is no process in place that allows competent authorities to search persons or premises for, and seize transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other business and persons.

315. Paragraph 3 of the Liberian Anti-Corruption Measures issued pursuant to Part V of the A-CCA states that officials of Government who become subjects to financial crimes investigation shall be deemed to have automatically waived their right under bank secrecy laws, so that relevant institutions of integrity charged with the responsibility of investigating acts of financial improprieties can check on their financial transactions in Liberia and abroad should the need arise. This provision presupposes that the LACC can compel financial records for purposes of investigation and prosecution of corruption cases. However, the provision does not indicate the type of information the LACC would request for when checking on the financial tractions. There is the need to amend paragraph 3 of the Anti-Corruption Measures to specify the type of information that may the LACC request for.

Taking of witness statement

316. Section 17.1 of the CPL permits the Court to, at any time after the filing of a complaint or an indictment, on motion made on notice to the other parties, order that the testimony of a prospective

witness be taken by deposition and that any designated books, papers, documents, or portable things, not privileged, be produced at the same time and place if it appears that the prospective witness may not be able to attend or may be prevented from attending a trial or hearing. This provision applies if that his testimony is material, and that it is necessary to take his deposition in order to prevent a failure of justice.

317. The depositions are to be taken on a notice and in the manner provided in the Civil Procedure Law for the taking of depositions in pending actions. However, where a deposition is taken at the instance of the Republic, unless the defendant otherwise requests as provided by the CPL, the examination is to be conducted only by oral questions, and the defendant is to have the right to be present at the taking of the deposition. If the defendant is in custody, he is required to be produced, accompanied by his attorney, at the examination and kept in the presence of the witness during the examination by the officer having the defendant in custody. At the request of a defendant, the court may direct that the examination on a deposition may be taken on written interrogatories in accordance with the procedure provided in the Civil Procedure Law for the taking of depositions outside Liberia. Persons jointly indicted, are to be given notice of the time and place of the taking of a deposition and an opportunity to be present at time and place.

318. The deposition or part of it may be used at the trial or on any hearing, so far as admissible under the rules of evidence, unless the court finds that the: (a) witness is dead; or (b) witness is out of the Republic of Liberia, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment under sentence; or (d) party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may be used by any party for the purpose of impeaching the testimony of the deponent as a witness. If only a part of a deposition is read in evidence by a part, an adverse part may require him to read all of it which is competent and relevant to the part read and any part may read other parts may require him to read all of it which is competent and relevant to the part read and any part may read other parts.

319. Section 21.4 of the CPL provides that any admission or statement, including a confession of guilt, made by a defendant during an interrogation, interview, examination, or other inquiry by a peace officer or other employee or representative of the Republic should not be admissible in evidence in a criminal prosecution against the defendant until it is established by the prosecution that it was made voluntarily, and that the relevant rights to be accorded an accused provided in the CPL have been complied with and that either legal counsel was made available to the defendant if the right was requested by him or that the right was understandingly waived by the defendant.

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

320. Law enforcement and prosecution agencies in Liberia have little or no measures in place to maintain a fair level of integrity standards in dealing with personnel engaged in investigation and prosecution. A major drawback is the lack of sufficient human and financial resources, as well as competent skills to fully and effectively perform their functions. The LEAs charged with investigation and prosecution of crimes in Liberia are as follows:

321. **Ministry of Justice**: The Ministry of Justice (MOJ) is part of the Executive Branch of the Government of Liberia created by Chapter 22, Section 22.1-14 of the Executive Law of Liberia. The MOJ is solely responsible for the prosecution of all criminal cases in Liberia irrespective of the nature and type. Currently, the MOJ has one prosecutor in each of the 15 Counties, while there are 8 Prosecutors within the MOJ headquarters in Monrovia.

322. **Structure**: The MOJ is headed by the Minister of Justice who is appointed by the President on the advice and consent of the Senate. The Minister is assisted by the Deputy Minister of Justice for Administration and Public Safety; the Solicitor General; Assistant Minister of Justice for Litigation; Deputy Minister of Justice for Codification; Assistant Minister of Justice for Rehabilitation; Assistant Minister of Justice for Administration and Public Safety; Assistant Minister of Justice for Taxation; Deputy Minister of Justice for Economic Affairs and Assistant Minister of Justice for Commercial Transactions; Commissioner of Immigration and Naturalisation; County, Territorial and District Attorneys; and Assistant County Attorney for Montserrado County, who perform various functions assigned to them under the Executive Law.

323. Under the Executive Law, the MOJ, is mandated to promote Justice, Peace and Security. The functions of the Ministry are to:

a) Procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the courts in which the Republic or any officer thereof, as to such officer, is a party or may be interested;

b) Institute all legal proceedings necessary for law enforcement;

c) Furnish opinions as to legal matters and render services requiring legal skills to the president and other agencies of the Executive Branch of Government;

d) Oversee the codification of Liberian Statutory Law; administer the laws relating to admission, deportation and naturalization of aliens, and the regulation of aliens within Liberia;

e) Supervise the Correctional System and the commitment and treatment of prisoner;

f) The extent stated in the Aliens and Nationality Law, administer laws relating to the admission, deportation and naturalization of aliens, and the regulations of aliens within Liberia;

g) Supervise the activities of the National Bureau of Investigation, the National Central Bureau and the National Police Force;

h) Oversee all government activities relating to the prevention and control of fires; and

i) Direct the administration of the Vehicle and Traffic Law.

324. Human Resources: Given the enormity of the task of the MOJ, the Assessors observed that the MOJ lacked adequate personnel to perform its functions. Officials of the MOJ informed Assessors that, while they anticipate the implementation of the mandate of the MOJ as provided in the Executive Law and the magnitude of cases in the various criminal courts, there is the need to

equally augment the strength of the Ministry's legal team across the country. The officials recommended that each of the circuit courts should have two competent qualified and efficient legal counsels. They further proposed that:

(a) clerical staff of each department of prosecution must be well equipped with basic knowledge in law (Para-Legal aid);

(b) mobile/roving prosecution teams should include ten (10) experienced lawyers who mentor newly recruited lawyers;

(c) at least, two city solicitors be assigned to each magisterial court in leeward counties ;

(d) three solicitors be assigned to courts of other larger cities where cases are compounded; and

(e) among every set of city solicitors, there should be an experienced city lawyer who will serve as head of team for proper coordination, effective and efficient prosecution of cases.

325. Integrity and confidentiality standards: Staff of the MOJ are generally subject integrity and confidentiality requirements relating to public officials and employees and subscribe to a solemn oath provided in the Schedule to the Constitution to support, uphold, protect and defend the Constitution and laws of the Republic of Liberia, bear true faith and allegiance to the Republic, and faithfully, conscientiously and impartially discharge the duties and functions of their offices of to the best of their ability. Officials of the MOJ emphasised the need for employees of the MOJ, particularly the prosecutions department, to be guided by a comprehensive code of conduct for the purpose of curtailing, minimising or eradicating leakages of information and to ensure information management. They also emphasised on the need for the MOJ to consider integrity of lawyers, especially inexperienced ones and develop daily or intermittent monitoring mechanism to ensure accountability in the performance of employees.

326. Training: Attorneys of the MOJ have not had sufficient training in AML/CFT to enable them to successfully prosecute money laundering and terrorist financing. An insignificant number of Attorneys have participated in a regional training program AML/CFT organized by GIABA. There is the need for the MOJ to provide the Attorneys with comprehensive and periodic training on AML/CFT issues to keep them abreast with current issues on AML/CFT.

327. The MOJ is faced with a number of challenges that impede implementation of its mandate. These include shortage of lawyers, libraries, office and prison space, logistics such as vehicles, communication equipments, and computers. There is also a backlog of the review of antiquated and outdated laws. Prosecutors at the MOJ have no area of specialization, as such there are no prosecutors trained specially to prosecute cases relating to money laundering and terrorist financing. However, some of the attorneys and judges have attended AML/CFT Workshops organised by GIABA in and out of Liberia.

Ministry of National Security

328. The Ministry of National Security (MNS) was created by Chapter 84 of the Executive Law being an Act to Repeal Chapter 2 Sub-Chapter B of the Executive Law Establishing the Office of National Security and to Amend the Executive Law. The Ministry is headed by a Minister appointed by the President, by and with the consent of the Senate. The functions of the MNS are specified in Chapter 84.1 as duties of the Minister. Thus, the MNS is mandated to prepare intelligence and security briefs for the President, monitor and give guidance on behalf of the President to the operational activities of the various security services, primarily the Presidential security operations and counter intelligence and counter espionage operations of the security services and coordinate the activities of all security services and prepare and implement rules and regulations pertaining to personnel, finance, logistics, training, operations and organisations necessary for the efficient operation of the security services, subject to the approval of the President.

329. By virtue of a decree signed on March 18, 1985, the composition of the Ministry of National Security was expanded to include the National Security Agency, Joint Security Commission, National Force for the Eradication of Corruption and Anti-Fraud Unit, Ministry of Finance. The last two components of the Ministry were fused into the Economic Crimes Investigation Department (ECID) of the Ministry. The ECID was mandated to seek out and discover by all legal means corruption whether in the public or private sector and make available to the President all information, facts, articles and other relevant materials collected on acts of corruption and suspicious cases requiring probe and prosecution by the Ministry of Justice.

330. In terms of structure, the Ministry is headed by a Minister, aided by Deputy and Assistant Ministers who oversee the activities of the Ministry. Section 84.7 of the decree provides that the finance and operational activities of the Ministry are not subject to public disclosure. Moreover, S. 84.8 (1) authorises personnel of the Ministry to have immediate access to any person in both the public and private sectors except otherwise exempt by law, including the files, records or documents of Ministries, Agencies, Public Corporations, Business entities or any organized body. S. 84.8 (3) provides the Ministry with Police powers as may be required in the lawful execution of its functions.

331. Personnel of the Ministry are sworn to an oath of secrecy and allegiance as a requirement to ensure that they do not divulge State secrets without lawful authorisation. A person who violates the oath is liable to imprisonment for seven years and a fine of ten thousand United States dollars ($10,000).

332. Although the MNS has a mandate to coordinate the activities of other LEAs, in reality there has not been an effective coordination. Instead there have been overlaps in functions of various investigation authorities with consequent lack of focus and dismal effects on the statutory mandate of the MNS. Except for those related to some predicate offences like currency smuggling and counterfeiting, fake revenue receipts and tax evasion, the MNS is yet to investigate any money laundering case.

333. The operatives of the MNS can seize, freeze or confiscate the proceeds of crime through court orders. They can arrest and detain suspects for maximum of seventy two (72) hours within which the person must be taken to court.

334. Currently, the MNS has about two hundred and eighty (280) Intelligence Officers, which the authorities consider to be quite low given the magnitude of the functions it is performing. The shortfall in capacity is compensated for through vibrant collaboration with the Police in case of need to effect arrest of suspects under surveillance.

335. Funding for both operation and training is grossly inadequate so in-house training programmes have been improvised to assist in capacity building. The MNS needs to be provided with appropriate logistic and technical assistance in capacity building in order to achieve its mandate.

Ministry of Commerce

336. The Ministry of Commerce and Industry was established by an Act of Legislature in 1987. The Ministry was originally established in 1948 as the Department of Agriculture and Commerce. On June 1, 1962 it became the Department of Commerce and Industry. On December 31, 1971 the name was changed to Ministry of Commerce, Industry and Transportation. An Act detaching the Bureau of Transport from the Ministry of Commerce, Trade and Transportation, resulted in the current Ministry of Commerce and Industry. The Ministry of Commerce and Industry is headed by a Minister who is appointed by the president with the advice and consent of the Senate. The President also appoints, with the advice and consent of the Senate a Deputy Minister who is the principal assistant to the Minister of Commerce and Industry and who acts in the absence of the Minister.

337. The roles and functions of the Ministry are to:

- Establish and regulate commodity and trade standards.
- Collect, evaluate, and publish data pertaining to Commerce and Industry.
- Establish and enforce standards for business practices.
- Promote sound dev elopement of foreign and domestic trade.
- Issue Import and Export Permits.
- Control quality of goods and commodity imported into and exported from the Country.
- Implement efficient and effective trade management system including pre-shipment Inspection of imports and exports.
- Monitor and regulate prices of essential goods.

338. The Ministry of Commerce and Industry exercises broad powers with respect to protection of the public interest and the achievement of national goals through the establishment and enforcement of standards for commodities and for trade. Such services as are required by the public

and government agencies in pursuit of these objectives shall be administered by or under the purview of the Ministry. In further execution of its functions it also:

a) Establishes and regulates commodity and trade standards;

b) Collects, evaluates, and publishes data pertaining to commerce, industry and transportation;

c) Establishes and enforce standards of business practice;

d) Promotes sound and development of foreign and domestic commerce;

e) Develops plans for the movements of goods and people within and without the Republic; and

f) Performs such other function as may be assigned from time to time by the President.

National Security Council

339. The National Security Council (NSC) was established by an Act of Parliament approved by the Senate and the House of Representatives on 12 March, 1999. The NSC is headed by the President and Vice President as Chairman and Co-Chairman, respectively. The Minister of National Defence, Minister of Justice, Minister of Internal Affairs, Minister of National Security, Director of National Security Agency are members, while the National Security Advisor is the Secretary.

340. The NSC is mandated to advise the President of the Republic of Liberia on integrated domestic and foreign policies that will ensure National Security. In particular, it is the duty of the NSC to:

a) Identify and define the National Security goals of the Republic in relation to national power;

b) Initiate or discuss proposed national security policies, including the consideration of alternative courses of action and to submit policy, recommendations for the approval and timely action of the President;

c) Constitute, organize, and supervise under the direction of the President the security and other agencies of government in a manner as to ensure their provision of intelligence, counter-intelligence and other information that shall be necessary to fulfil the responsibilities of the Council;

d) See to it that security policy decisions, made by the Council are implemented in a coordinated and integrated manner by all agencies of government involved;

e) Consider policies on matter of common interest to the agencies of government concerning national security and to make recommendations to the President as may be warranted; and

f) Make from time to time, such recommendations and other reports as may be deemed appropriate by the Council or may be required by the President.

341. Each member, personnel or employee of the NSC is considered a trustee of the secrets of the Republic and when entering upon the duties of the NSC, in case of the members sworn by the Chairman and in the case of personnel and employees, by the Secretary, not to divulge any information which has come to his/her knowledge by reason of such membership or employment

with the NSC except as required in the course of duty. A person who contravenes the Oath liable to a fine of $100,000.00 or up to ten years imprisonment or to both. The Oath is binding and enforceable on each member, personnel or employee of the NSC for a period of twenty years after severance of his or her relationship with the Council.

342. Agencies of government of the Republic of Liberia are required to submit such information as the NSC may require to the NSC through the Office of the Secretary.

343. The President as the Chairman of the NSC has a supporting group that implements policy directives of the NSC. The group is made up of the Minister of Justice, the Minister of National Defence, the Minister of National Security, the Director of National Security Agency, the Director of National Police, the Director of the Special Security Services, the Chief of Staff of the Armed Forces of Liberia, the Commissioner of Immigration, the National Security Advisor to the President and the G-2 Commander of the Military Intelligence.

344. To ensure the protection of the operations of the NSC from public disclosure, section 10 of the NSC Act authorises the NSC to withdraw on a quarterly basis allotment to the extent necessary for the maintenance of secrecy, any or all of the funds appropriated by the Legislature and deposit the funds in a separate account in a bank or banks designated by the NSC with the approval of the Chairman. The accounts of the NSC are audited annually or as circumstances are required by an assigned auditor of the Office of the Bureau of General Auditing.

National Bureau of Investigation

345. The National Bureau of Investigation (NBI) was established by section 22.50 of the New Executive Law approved on December 1998. The NBI is headed by a Director appointed by the President by and with the consent of the Senate.

346. Section 22.51 of the Act specifies the functions of the NBI as duties of the Director. Thus, the NBI is mandated to:

a) Investigate major crimes including homicide (except vehicular homicide), illegal entries into the country, robbery, arson, rape, grand larceny, kidnapping, burglary, embezzlement, forgery, smuggling, violation of the narcotics law, counterfeiting, theft of government property;

b) Conduct such other investigations as may from time to time be assigned;

c) Keep and maintain accurate and current records on all known criminals within Liberia and make such information available to the Police and other security agencies of the Republic on request;

d) Compile and publish annual report containing criminal statistics; and

e) And select, hire and train competent and qualified individuals according to international accepted professional standards to ensure proper and efficient functioning of the Bureau.

347. The Director of the Bureau is assisted by a Deputy Director for Administration who is also the principal deputy to the Director; a Deputy Director for Operations and a Deputy Director for Special Services appointed by the President and with the consent of the Senate.

348. The Bureau recruits its personnel directly by placing advertisement after which a Committee shortlists eligible candidates. After recruitment a background check is carried out concurrently while the recruit is undergoing 8 months training at the Police Academy. Thereafter, the newly-recruited personnel proceeds for induction in a department of Police dealing with specialized crime investigation area to which the recruit will be assigned. A recruit is trained for at least one year before being deployed for field assignments.

349. Members of the NBI are at all times subject to rotation from place to place. Thus, as a pre-requisite to becoming permanent employees of the Bureau, members are required to undergo training programmes prescribed by the NBI.

350. Staff promotion within the NBI is determined on the basis of qualification, experience on the job, performance and written and other tests, which are periodically administered in order to ensure and enhance professionalism in the NBI.

351. The Bureau currently has about 200 staff considered adequate but faces challenges of logistics and facilities to operate. In addition, funding for training of personnel and operational activities are grossly inadequate. Specifically, Assessors were informed that training of personnel on money laundering related issues and ICT would be required if any meaningful progress would be made in investigation of ML by the NBI.

352. Assessors were informed that the NBI has power to trace, locate and identify proceeds of crime. Such proceeds can be confiscated if found at the scene of crime and is handy. Where proceed of crime is hidden then there is need for a court order for confiscation for purpose of retention as evidence to be presented in court. However, the power to freeze, seize and confiscate the proceeds of crime is not specified in the instrument establishing the Bureau, but evidence of vehicles retrieved from a suspect under investigation for currency round tripping was shown to the Assessors.

Liberia National Police

353. The LNP was established by Act of the National Legislature in 1956 in accordance with Section 180 of Chapter 13, Sub-chapter ‘A’ of the Executive Law in the Liberian Code of Laws Volume II of 1956 within the Department of Justice and revised under Section 22.70 of the same Executive Law on 12th June 1975. It is empowered under the Act to perform a number of functions, including prevention and detection of crime, enforcement of all laws and ordinances, recovery of lost and stolen property among others.

354. The LNP is headed by a Director who is directly responsible to the Minister of Justice and subject to the Minister’s control. The Director is assisted by Deputy Directors, Assistant Directors

and other subordinates appointed by the President in accordance with section 22.70 of the Executive Law.

355. Members of the LNP are at all times subject to rotation from place to place. The members receive, as a prerequisite to admission, basic training course of four months at the National Police Training Academy. New recruits are trained for a period of four months and do not become investigators until at least one year after recruitment. The course content does not include financial investigation, including the detection and prevention of money laundering and terrorist financing. Only one officer from the LNP has been provided with training on AML/CFT issues by GIABA. Thus there is a huge capacity gap and lack of understanding of AML/CFT investigation generally among police officers.

356. In its strategic plan for 2009 – 2013 the LNP indicated that over 3,500 officers of the LNP have received training in modern policing methods. Over 700 of these have also received specialised training, including Airport security training, basic crime investigation and tactical operations training among others. However, the capacity to prevent, detect and investigate crimes is limited because the LNP is ill-equipped and under-staffed with requisite trained officers to respond to control of public order situations, demonstrations and riots. The LNP requested that GIABA should consider organising training programmes for the LNP to increase capacity in detecting and preventing ML/FT.

357. Newly recruited police personnel serve a probationary period of two years, including the training period. Promotions in the LNP are determined strictly according to time served within the grades, performance of duty and results achieved on a written examination.

358. Assessors were also informed that the LNP's budget appropriation for 2010 was 70% short of requirements. With offices throughout the 15 counties and the capital city of Monrovia, the LNP has a Special Investigation Unit which investigates bank fraud, smuggling, economic sabotage and other cases.

359. A police officer (referred to as a peace officer) is empowered under section 11of the CPL to search for and seize stolen or embezzled property; Illicit, forfeited, or prohibited property, contraband and instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offence. The officer can also retrieve property during investigation through a lawful arrest or when the property is in plain view.

360. However, the Police have no power to freeze and confiscate the proceeds of crime. Assessors were informed that due to the technical nature of economic and financial crimes the LNP is helpless in the face of growing cases of ML. Assessors were concerned about this situation especially due to lack of knowledgeable manpower to drive investigations on ML/FT offences.

361. The police does not prosecute offences but submits cases to County Attorney's Office for prosecution. The police participate in prosecution as expert witnesses in investigation and can detain suspects for forty eight hours. Furthermore, the police can request for document through the MOJ

on execution of a warrant or subpoena. It can also request for documents in writing but cannot compel the production of such documents.

362. In addition to its traditional role of ensuring the maintenance of law and order in Liberia, the LNP exchanges information with foreign counterparts and helps in the extradition and repatriation of offenders based on information received from Interpol. Extradition of fugitives by the LNP to countries within the West African sub-region is not based on MLATs.

363. The LNP is currently going through a process of restructuring and reforming and is not at the peak of capacity to undertake investigations and other activities to detect and prevent money laundering and terrorist financing. Case numbering system has just commenced, but the filing system is not computerised. Cases are delayed as a result of sources of information avoidance of lawful arrest by accused persons. The LNP however informed Assessors of its commitment in ensuring that the police is capacitated to deal with the scourges.

Drug Enforcement Agency

364. The Drug Enforcement Agency is an autonomous institution created under the Ministry of Justice by an Act of the Legislature in 1998 with specific mandate to enforce all national anti-narcotic drug laws, formulate anti-drug policies and create awareness on the subject. The Agency's statutory mandates derive from the Public Health law of 1956, which essentially deals with control of prescriptive drugs and procedure for procurement of narcotic drugs.

365. Drug trafficking offences in Liberia are subject to bails with option of fine on conviction. The DEA officers have no power to seize, freeze or confiscate proceeds of crime except with court order through the Ministry of Justice.

366. Assessors were also informed that DEA does not have facilities to conduct forensic analysis on narcotics and psychotropic substances. The Agency improvises with basic testing kits for identifying drugs donated by the UNODC long ago, while efforts to acquire forensic laboratory equipment have not yielded positive results. Assessors were informed that narcotics drugs and prescriptive drugs were put on the same level as far as regulatory requirements were concerned. It was indicated that DEA officers were trained to test basic prescriptive drugs as opposed to hard drugs, possession of which is limited to usage. Any quantity above usage does not attract stiff penalty beyond payment of fine. Only one conviction was recorded in 2010. Most cases investigated on possession and trafficking of narcotics drugs ended in the offenders paying on the spot fines and reverting to engaging in the same activities because there is no deterrence.

367. Assessors were informed that there are no DEA agents stationed at entry and exit ports, as such cases handled are those already within the country. There is no technique to detect and intercept incoming or outgoing narcotic drugs except on tip-off from the public.

368. In terms of structure, the DEA has its headquarter and three district offices in Monrovia. The Agency is headed by a Director, aided by two Deputy Directors, one for Administration and one for

Operations. The total staff strength as at the time of on-site was 205. The Agency's budget for 2010 was US$600,000 (Six hundred thousand) including staff emolument and operational logistics.

369. Although the mandates of the Agency is limited to enforcing the Public Health Law for now, there is need to pass a proper anti-drug trafficking law to empower the Agency operatives to deal with growing cases of Liberia being used as transit point for narcotic drug trafficking. (More explanation needed here).

Bureau of Customs

370. The Bureau of Custom and Excise is responsible for the collections of all the duties in relation to Taxes on International Trade such as Customs Import Duties, Customs Surcharge on imports and Customs Export Duties. Additionally, Customs is tasked to counter the spread of narcotics and other prohibited goods; identify and acts against money laundering; and help protect the environment.

371. The Bureau of Customs and Excise Tax (BCE) states in its strategic plan that it intends to "be recognized as a professional, efficient, and modern Customs service which contributes to economic growth and the advancement of social welfare of Liberia." LBCE stated in its strategic plan that whilst issues of enforcement are wide-ranging and must be kept under focus, commercial fraud, trans-national crime and the escalating problem of counterfeiting and piracy is becoming a concern that threatens employment, innovation, economic growth and the health and safety of Liberia. LBCE therefore devised strategies to mitigate the threats that would otherwise adversely impact the economy and social welfare. This requires the use of risk management in all Customs processes supported by targeted intelligence. These will also be enhanced through closer participation and partnership with business, industry and other internal and external stakeholders. In practice, the Bureau is just putting in place reforms to modernize its processes.

372. The Bureau of Customs in its strategic plan for 2010 – 2013 recognized the need to guarantee trade security, risk management and enforcement. The aim of the strategy is to create intelligence- led controls to meet national, regional and international commitments to enhance revenue protection and effective Customs intervention against illicit trade at borders, illicit trafficking of drugs, money laundering, and to protect Intellectual Property Rights (IPR).

373. Professional Integrity and competence (applying R. 30): Recruitment of staff into LBCE is through the Civil Service Agency and the Ministry of Finance. The Assessors were informed that plan was on to put in place mechanisms for carrying out due diligence on new and old Custom staff. This will entail reorganisation of the Bureau's Internal Control Unit to be able to carry out background checks on newly-recruited. Old staff were not vetted, however, there is plan to carry out asset declaration procedure for all staff.

374. Promotion of integrity based on Arusha declaration has been adopted by the Bureau to secure more collaboration with foreign Customs. A collaborative programme under the platform of the Arusha declaration is expected to commence early 2011 to help Liberia improve on its integrity status among staff. As the time of on-site the main challenges highlighted included inadequate staff

for the Compliance Unit of the LBCE; lack of training for staff on ML/FT and lack of logistical capacity to detect concealment of proceeds of crimes.

Bureau of Internal Revenue

375. The Bureau of Internal Revenue (BIR) derives it mandate from the 1984 Constitution and the Revenue Code of 2000. The mandate of the BIR include the collection of tax and enforcement of administrative penalties for violation of the Revenue Code either by evasion or under-payment of accrued tax by individuals and corporate organizations. The Bureau monitors corporate tax payers, investigates tax violations and implements administrative sanctions before transferring its findings to the MOJ for further investigation and prosecution. The Revenue Code also empowers the Bureau to carry out audit inspection on tax payers. It is the stated desire of the Bureau of Internal Revenue (BIR) to "meet international best standards, to raise domestic revenues to help empower government to better meet the needs of our people and the optimism in the potential for economic growth that spurs BIR to improve its performance across the board to be the vanguard of revenue mobilization for the state."

376. Currently, the BIR is undergoing reforms to "broaden the tax base, encourage a culture of voluntary compliance and to create a more efficient and effective revenue business." The goals that the BCE has outlined for itself are; "To enhance revenue collections, facilitate legitimate trade, protect the economy and the environment by adhering to modern Customs standards and procedures and be a repository of trade statistical data."7

377. Assessors were informed that the BIR was aware of incidents of money laundering which manifests itself in the returns filed by tax payers in the form of under-declaration. However the BIR is currently not capable in determining the difference between tax evasion and tax avoidance because of lack of technical knowledge of staff in this area. Thus no audit inspection has been conducted yet even though incidents of tax evasion are prevalent.

378. The law provides that penalty to impose a fine to the tune of 150% of the calculated amount of tax evaded. Evasion of real estate tax has been of particular concern being 40.3% of cases of tax evasion in the country. Despite resistance to payment of tax the real estate sector contributes about 33.3% of total accrued tax. Unfortunately, no tax evader has been sanctioned to date.

379. Section 62 of the Revenue Code empowers the Minister of Finance to may sue in any court of competent jurisdiction for payment of tax that has not been paid when due and payable under Section 74, unless the period for collections has ended. The Minister has power to seize assets subject to tax lien. In this regard, section 65 (a) requires the Minister to notify a tax debtor, in writing, of the Minister's intention to seize and sell property held by the debtor which is subject to a tax lien. In furtherance of section 65 (d) of the Revenue Code, the Minister may:

> (a) take possession of tangible property referred to in a notice under subsection (a) at any time after the notice is served;

[7] Strategic Plan 2010-2012, Internal Affairs Division of Department of Revenue, Liberia

(b) for the purpose of taking possession, enter at any time any premises described in the notice and request the assistance of the police;

(c) where the property is tangible property other than land or buildings, store the property, at the cost of the tax debtor, at any place that the Minister considers appropriate; and

(d) where the property is money in the hands of another person, take possession of the money subject to the restrictions imposed under Section 64.

380. The Minister may sell the property seized within a given period of time depending on the nature of the property. In the case of land or building, the sale is to be effected within thirty days after taking possession, while perishable, tangible and other property are to be sold one to ten days after taking possession or serving of notice.

381. The proceeds of the sale are to be used to pay the cost of the lien and sale of property and the tax due, together with interest accrued on the tax. Where the proceeds of a sale are not sufficient to satisfy the accrued tax and other incidental charges, the Minister may in furtherance of section 65 (g) collect the outstanding amount through a written communication to the taxpayer in accordance with section 58 or 65 of the Revenue Code.

382. According to the Acting Commissioner of BIR, plan is on ground to commence Integrated Tax Administration System (ITAS) through which the Bureau operations, especially collection of tax will be fully automated to facilitate registration of all tax payers. For now, most of the Bureau's operations are manual-based. The challenges of capacity confronting the Bureau require training of staff and provision of technical assistance to operational staff. Meanwhile the Bureau is in close collaboration with other enforcement agencies, including the Anti-Corruption Commission, Police, General Audit Commission etc. It is in the process of signing tax information sharing agreement with other foreign countries apart from the United Kingdom and Netherlands with which it currently has such agreements. Countries with which Liberia intends to sign agreement including Ghana, Nigeria, India, France and seven Nordic countries as a bloc.

383. For the purpose of implementing its sanction regime the legal unit within the Ministry of Finance has mandate to prosecute violators in court. The BIR is in the process of establishing a tax Court/Tribunal (Board of Tax Appeals) to ensure expeditious adjudication of tax cases.

384. The BIR currently has a little over 370 staff, 20 of whom are deployed to the Real Estate sector, including 3 professional valuators. There are 20 BIR collectorates, with 18 being rural offices outside the confines of Monrovia. The Bureau staff are employed through the Civil Service Agency.

Liberia Anti-Corruption Commission

385. The Liberian Anti-Corruption Commission (LACC) was established by section 3.1 of the Anti-Corruption Commission Act (2008) (A-CCA). The LACC has a common seal and powers to sue and be sued in its own name; enter into contracts and acquire, hold and alienate movable or immovable property by lawful means and issue citations in accordance with law requesting the appearance of any persons under investigation but not otherwise arrest.

386. Section 4.1 of the A-CCA empowers the LACC to arrest and detain any person(s) in pursuance of its function, provided such action shall be based on probable cause and on prior warrant issued by a court of competent jurisdiction. Power to freeze assets of person being investigated or prosecuted for alleged acts of corruption shall also be by court order. In the same vein, power to confiscate assets of convicted person shall be exercised subject to an order of court to that effect at the end of all judicial proceedings, including appeal to the Supreme court of Liberia.

387. The Act further mandates the LACC to establish counterpart and technical relationships with similar agencies in Liberia and abroad to facilitate effective discharge of its functions. In this regard, LACC has close counterpart relationship with the Economic and Financial Crimes Commission (EFCC) of Nigeria. It is also in the process of signing an MOU with other LEAs, including the MOJ, NBI, LNP Bureau of Customs, Bureau of Revenue and Immigration Service.

388. Part IV of the Act provides the LACC with broad functions to implement appropriate measures and undertake programs for investigating, prosecuting and preventing acts of corruption in both the public and private sectors of the Liberian society, including educating the public about the ills of corruption and the benefits of its eradication, confiscate assets adjudged to be the proceeds of convicted person's acts of corruption and establish counterpart and technical relationships with similar and other agencies, institutions and organisations in Liberia and abroad as may be necessary for the performance of its functions.

389. The specific functions of the LACC as provided in Part V of the A-CCA , among others, are to:

a) Investigate all acts of corruption discovered or reported to have occurred in the public, private, and civil society sectors of Liberia subsequent to the passage of this Act with the aim of identifying the person(s) and the extent of the loss of or damage to any public and/or private property as a result of the subject act of corruption;

b) Investigate the conduct of any person, irrespective of office or status, natural or otherwise, if the conduct of the person(s) constitute corruption;

c) Examine and investigate any information, matter or report that indicates or raises suspicion that the conduct, action or decision of a public or private official in line of official duty and in the context of the definition of corruption [provided in the Act];

d) Cause the prosecution in coordination with the Ministry of Justice, all cases of corruption;

e) Develop and/adopt appropriate measures consistent with law to identify, trace and freeze any assets and/or proceeds of acts of corruption and ensure the confiscation, in court of law, the said assets and proceeds from the assets;

f) Serve as the agency of Government of Liberia authorized to make and receive requests for the purpose of international mutual legal assistance in the fight against corruption;

g) Adopt, design and/or implement appropriate administrative and legal measures as well as educational programmes aimed at eradicating and preventing corruption;

h) Serve as the agency of Government of Liberia with primary responsibility for the investigation of all acts of corruption and, in so doing, to promote and coordinate the collaboration of all law enforcement agencies of government in the discharge of their activities as they relate to combating corruption including, tracing and monitoring the movement and whereabouts of persons accused of being involved in acts of corruption and building data-banks, maintaining databases, and sharing the contents of the data on persons or organizations convicted of acts of corruption without violating their fundamental rights as enshrined in the Constitution of the Republic of Liberia;

i) Conduct research, survey and related studies about both (1) the dimensions, manifestations, and causes and effects of corruption; and (b) the practices, procedures and systems of governance management that need to be adopted and promoted to combat, eradicate and prevent acts of corruption;

j) Lead the implementation of the Anti-Corruption Strategy of Liberia, including the Code of Conduct for Liberian Public Servants; and

k) Carry out and discharge any and all of its functions and operating procedures to be established by it in accordance with law.

390. Assessors were informed that the LACC has since its establishment in 2008 investigated eight acts of corruption due to manpower and logistics constraints, but only one of them ended in the Jury for retrial. For instance the Commission has only six investigators that are overwhelmed with work. Inadequate funding for training and operations also affects the Commission's pursuit of its mandates.

391. The LACC introduced a comprehensive Asset/Income Declaration form for public officials in 2009 and launched a public awareness campaign in 16 Counties of the country, targeting of secondary school students for purpose of enlightenment. It has been collaborating well with other LEAs like Police, Bureau of Revenue, and Ministry of Justice.

392. Joint investigations are carried out with the MOJ in cases involving indictment of Minister for corruption, one of which was pending in court. Notwithstanding its modest achievements LACC does not have power to subpoena a person or document except when a case is on-going. Its power to detain temporarily is curtailed by the requirement for a court order. The Commission has not used its power of seizure and freezing of assets against any accused and has not found it necessary to arrest accused persons because the latter have always cooperated fully.

393. Section of the A-CCA provides that prosecution of cases is to be carried out by the MOJ in coordination with the LACC. This provision applies where an investigation reported by the LACC finds that there is substantial evidence of corruption and recommends that the person or persons involved be formally charged and prosecuted. The LACC forwards the records to the MOJ,

requesting the MOJ to prosecute the case. The Act gives the MOJ the power to decline to prosecute a case of corruption recommended for prosecution if it determines that the evidence adduced by the LACC is manifestly inadequate or illegally acquired. Where the MOJ decides not to prosecute due to inadequate or illegally evidence, the LACC is given the opportunity to augment the evidence or show that the evidence is in fact adequate or properly acquired. However, section 11.4 of the A-CCA empowers the LACC to directly prosecute acts or cases of corruption through the courts if the MOJ does not prosecute a case forwarded to it by the LACC within three (3) calendar months of the receipt of the request to prosecute. Assessors were of the opinion that this arrangement may cause undue delay in the prosecution of corruption cases, since the LACC can only prosecute when the MOJ does not do so within three months of the request.

394. After the on-site, Assessors became aware that on the occasion of the International Anti-Corruption Day, the Liberian President disclosed plans by her government to formulate the necessary legal legislation empowering the Anti-Corruption Commission (LACC) to prosecute people involved in corrupt practices. The President was quoted have said that fighting corruption in Liberia must not be limited to the Ministry of Justice alone. "LACC must now be allowed to prosecute those accused of corruption in an effort to fast track corrupt cases." Assessors welcome this development which will, indeed fast track the prosecution of corruption cases.

395. LACC renders quarterly reports of its activities to the President and the Parliament in which it documents all matters it was handling at any given time. The report is made public after it is passed by the President.

396. **Structure**: The LACC is composed of five (5) individual members known as Commissioners; one of whom serves as Executive Chairperson and one as Vice Chairperson. They are nominated and subsequently appointed by the President of Liberia after confirmation by the Liberian Senate. The Executive Chairperson and Vice Chairperson are appointed for a term of five (5) years each, and are eligible for reappointment for one additional term of five (5) years. The three are appointed on a staggered basis with one (1) Commissioner appointed for an initial term of four (4) years, while the other two (2) for three (3) and two (2) years each.

397. The LACC has a Secretariat headed by an Executive Director who recruited through a competitive and transparent recruitment process accompanied by appropriate public writing and is prohibited from holding membership in any political party. In accordance with section 8.7 of the A-CCA the LACC is divided into three functional divisions, Administrative, Enforcement and Prosecution and Education and Prevention, with specific responsibilities for the purpose of enhancing the ability of the LACC.

398. The Administrative Division is responsible for the day-to-day affairs of the Commission, including the supervision of personnel and the logistical duties of the Commission.

399. The Enforcement Unit consists of two sub-units, the Investigation Unit and the Prosecution and Legal Unit. The Investigation Unit is responsible for performing investigating functions of the LACC and handling all matters concerning mutual legal assistance in respect of acts of corruption,

while the Legal Unit is responsible for advising and performing the legal functions, including programmes granted under the act.

400. The Education and Prevention Division is responsible for undertaking research into the causes, manifestation and dimensions of corruption, especially in Liberia, and advising on approaches and practices needed to be adopted by public and private institutions to prevent corruption. This Division is also responsible for designing and implementing programmes aimed at educating and sensitizing the public and what can be done to prevent and combat corruption.

401. Each of the Divisions is headed by a line manager appointed by the Executive Chairperson, subject to approval of the LACC.

402. Integrity and confidentiality standards: Recruitment into the LACC is on competitive basis through advertisement and screening, interviewing and recommendation of candidates by an off-site panel. According to the LACC, staff are appointed on contract basis to ensure that they maintain utmost integrity and professionalism. However, Assessors were of the opinion that this arrangement would be counter-productive. Given the permanent mandate of the LACC and the need to ensure freedom from undue influence or interference and the requirement for confidentiality in the mandate of the LACC, there is the need to have permanent staff who are adequately motivated, including having the assurance of job security, to fight corruption.

403. The LACC undertakes background checks on candidates to ascertain their levels of integrity and professionalism. Applicants are required to provide the LACC copies of Police and health reports. The recruitment process is more rigorous for appointment into the managerial level, mostly involving investigation of the person's background at his former place of employment. Assessors were informed that recruitment of LACC officers is currently on contract basis and is done using external Consultants to carry out the recruitment process at all levels. Background checks are carried out on all employees.

404. All officers of the LACC subscribe to a Statement of Understanding and Confidentiality (SUC) which requires them to exhibit professionalism, commitment and diligence in discharging the mandate and functions of the LACC. The officers are precluded from providing information relating to the investigation of accused persons or acts of corruption to persons who are not legally involved in or concerned with a matter under investigation; and keep information confidential, both from the public and accused person involved; work as a team and remain neutral during investigations. Information can only be divulged with the prior written consent of the LACC, where the information is in the public domain, it is required to be disclosed or the disclosure is mutually agreed by the parties concerned.

405. The obligation of confidentiality is binding for the duration of the officers' employment and any extensions made by the LACC. A breach of the SUC constitutes a cause for immediate dismissal from the LACC and possible further legal action.

406. *Resources*: The LACC is financed through the national budget by legislative appropriation and may also request and receive technical assistance, donations and grants from Liberia's

Development Partners, including the United Nations Development Programme (UNDP) and the United States Agency for International Development (USAID), and other international multilateral institutions in furtherance of its operations, provided that no such assistance, donation or grant is requested or received on condition that the Commission performs any function or discharge any duty determined by the donor against the interest of a Liberian which is not a priority of the Commission. Assessors were informed that the LACC has operational independence but this is being eroded due to lack of finance.

407. *Training*: Assessors were informed that training in investigation of corruption was ongoing and that staff have quality training in anti-corruption and have also received some training in AML/CFT. Some staff of the LACC participated in GIABA programmes. Staff of the LACC need more training in anti-corruption and AML/CFT. Officers of the Commission have attended only 2-3 Workshops on anti-money laundering matters as such technical know-how in this area is low.

Statistics on money laundering cases:

408. No specific money laundering cases were investigated by the DEA, LNP, and the CBL. The MNS and NBI reported on-going investigations on some predicate offences of money laundering. MNS reported seven such cases to the Assessors while NBI reported one case of a Bank worker involved in currency round tripping. Proceeds of the bank-related crimes were seized and retained as evidence for court trial which is on-going. The value of proceeds of crime being investigated by the MNS is estimated at US$132,049.08.

Statistics of assets seized, frozen, confiscated and disposed off

409. A total of assets worth one hundred and twenty seven thousand four hundred United States Dollars (USD127,400) seized in the course of investigation of predicate offences of ML in Liberia are given in the table below:

SN	Amount Seized	Date Seized	Reason for Seizure
1	USD5,000	9th October 2007.	Counterfeit money
2	USD9,600	27th August 2008	Fake GOL receipts designed to evade tax
3	USD6,300	23rd February 2010	Counterfeited bills
4	USD106,500	6th October 2010	Being smuggled out of Liberia

Statistics (applying R.32)

410. Since the enactment of the PMLL in 2002, there have been an insignificant number of investigations. The authorities repeatedly informed Assessors of a case involving a West African national who attempted to move currency worth …. US dollars into Liberia by stashing the currency on his body. There have been no prosecutions and convictions in relation to money laundering since the enactment of the PMLL in 2002. Terrorist financing has not been criminalized in Liberia

and there has been no investigation or other action taken in relation to that given the terrorist financing threats that exist in Liberia. There is little or no statistics to justify the effective implementation of the PMLL or implementation of AML/CFT measures in Liberia.

Additional elements:

411. There was no indication that judges at the central and county levels were provided requisite training on the adjudication of ML/FT offences. Few, if any, of members of the judicial arm of the government have participated in regional training program on roles of judges in the prevention of money laundering organized by GIABA.

Recommendations and Comments

412. Virtually no money laundering offences have been investigated and prosecuted in Liberia since the enactment of the PMLL in 2002. This situation raises serious concerns about the importance Liberia attaches to its national and international obligations to fight money laundering. Liberian authorities need to be more proactive in pursuing money laundering offences, the proceeds of crime and taking the profit out of crime.

Recommendation 27

413. There are indications that various investigating authorities are somehow fully engaged, but there is evident lack of knowledge of the PMLL among the LEAs whose mandates actually cover detection, investigation and prosecution of predicate offences of ML. This is compounded by the overlapping and conflicting mandates of key investigating authorities, including the MOJ, LNP, NBI, MNS, DEA and others. The MOJ, which is the sole prosecuting authority in the country, serves as the coordinating institution for LEAs. It is recommended that specific authority be designated as the National Coordinating authority to handle detection, investigation and prosecution of money laundering and terrorist financing.

414. During the on-site visit, some officers of LEAs expressed lack of clear understanding of the relevance of an anti-terrorism financing law to Liberia since, according to them, there has not been a case of terrorist attacks. This misunderstanding of the global nature of the elements of terrorist financing requires that mechanisms be put in place for creating awareness on the techniques of investigating, freezing and confiscating terrorist funds.

Recommendation 28

415. The powers of law enforcement agencies to compel production of documents, search persons or premises for, and seize and obtain transaction documents are solely exercised on orders of courts of competent jurisdiction. The law enforcement agencies have no powers to subpoena document because of the existence of requirement for due process of law under the Constitution of Liberia. Thus, except through administrative procedure laid down for making official request for

information, investigators have to obtain court order to gain access to relevant information. Moreover, evidence of an ongoing case must be shown before information could be released.

416. Assessors were informed that the Freedom of Information Act (FIA) was signed into law in May 2010. Section 4.2 of the FIA permits persons to have access to records or documents that are:

a) Open to public access whether under the provision of the FIA or any other enactment;

b) Available to the public for the purchase in accordance with arrangements made by any public authority; or

c) Applied for in accordance with the FIA or the arrangements made by any public authority on the ground that it contains both general and exempt information, except that the exempt information is deleted from the record or document by the authority.

417. This is expected to change the current state of affairs as far as access to information is concerned.

418. The power to compel production of information from financial institutions is contained in the PML 2002 but the procedure for channelling information through the Central Bank of Liberia is not particularly clear in the case of AML/CFT suspicious transaction report. The provision in the PMLL relating to making disclosures to a law enforcement or customs officer is not specific in the absence of an FIU to which such reports should ordinarily be forwarded to for analysis before investigations are carried out.

419. Access to information from financial institutions is obtained based on legal processes which are also applicable to money laundering and financing of terrorism investigation and prosecution. The power to freeze and confiscate properties derived from proceeds of crime is also limited at the moment due to the absence of a comprehensive legislation to freeze and confiscate such properties. The authorities explained that these will be covered in the amendment to PMLL.

Recommendation 30

420. The officers complained generally of lack of training especially in financial investigation and analytical skills. This inadequacy amongst all the agencies needs to be immediately addressed if ML/FT cases will be successfully investigated. Lack of skills in financial investigation has resulted in unsuccessful prosecution and lack of conviction of money laundering-related offences and fewer confiscated assets.

421. The process of recruiting officers into the LEAs is conventional and in line with civil/public service practise however the need for vetting and on-going due diligence on staff is not given the required priority. This creates a gap in integrity assurance of the personnel of LEAs. Efforts need to be made to institute reforms in view of post-conflict environment in which Liberia operates. In the same vein, there is general inadequacy of funds for operations and training of officers in all the LEAs. This no doubt negatively affects the effective performance of assignments by the officers and achievement of organizational mandates.

Recommendation 32

422. There is need for various LEAs to be sensitized on the importance of maintaining accurate statistics of cases in terms of their type, status and bio-data of suspects and outcome of investigation activities. This will go a long way in demonstrating how effective the activities of the agencies are in fighting ML/FT.

423. Assessors recommend that the authorities should:

a) Intensify training at all levels of the criminal justice and prosecutorial systems in order to integrate AML/CFT into the criminal justice system of Liberia by including basic courses on AML/CFT and confiscation of proceeds of crime should be incorporated into the training programmes of attorneys and law enforcement officers, including those who are not specialised in combating money laundering and terrorist financing;

b) Communicate information on trends, typologies and methods involving money laundering to officers of competent authorities on a regular basis to keep them abreast with current trends in money laundering;

c) Develop comprehensive CFT programmes and intensify efforts to pass the AML/CFT Bill into law;

d) Empower competent authorities to request for documents, seize and freeze suspected proceeds, within appropriate parameters, without resorting to court;

e) Provide leas with a broad range of special investigative techniques;

f) Provide the LACC with the power to directly prosecute corruption cases with minor intervention by the MOJ.

2.6.3 Compliance with Recommendations 27 and 28.

Rec.	Rating	Summary of factors underlying rating
R.27	**PC**	• No specific Law Enforcement Agencies are designated to investigate ML and FT rather there are overlapping mandates for LEAs involved in investigation of crimes. • There is no written provision that allows LEAs to postpone or waive the arrest of suspect and/or the seizure of money for purpose of identifying persons involved in ML offence or for gathering evidence. • LEAs mandated to investigate ML predicate offences do not have clear cut standard operating procedure setting out uniform techniques of carrying out tasks. • Special departments are created to investigate predicate offences of ML but not provided with adequate resources to perform. •

R.28	**PC**	• The PMLL empowers LEAs and Customs to receive reports of suspicious transaction voluntarily given but cannot be compelled to produce except by court order. • LEAs officers are eager to work but lack adequate logistics, including funding for training and operational requirements of the agencies. • LEAs have the power to take witness statements for use in investigation and prosecutions of predicate offences, but have not been applied specifically to ML and FT • There are no defined techniques in place for maintaining integrity amongst personnel of LEAs who are not subject to proper vetting and signing of oath of secrecy and allegiance • There is little or no exposure of LEA officers to technical knowledge on economic and financial crimes. • LACC cannot prosecute corruption cases unless the MOJ fails to prosecute cases referred for prosecution within three months after referral

*Ratings for R.30 & 32 are discussed under section 7.

2. 7 Cross Border Declaration or Disclosure (SR.IX)

Special Recommendation IX

Description and Analysis

Disclosure /Declaration system

424. Liberia is implementing a declaration system for incoming and outgoing cross-border movement of currency and bearer negotiable instruments (BNI) through CBL Regulation Dealing with the Physical Movement of Foreign Currency Bank Notes (PMFCBN), No. CBL/SD/15/2001 published as Gazette No.25 Vol. II of 23rd November, 2001 pursuant to Section 55 of the Central Bank of Liberia Act of 1999. The Regulation sets the threshold for declaration of currency being moved into or outside Liberia. The declaration system is being enforced by the Ministry of Finance through the Bureau of Customs and Excise.

425. The Liberian authorities informed Assessors that Section 14150 of the Liberian Revenue Code titled 'Entry and Examination of Imported Goods' provides for declaration of imported goods ostensibly putting currency and bearer negotiable instruments in the category of goods to be declared. However, the goods referred to in section 14150 of the Code (imported goods) and the Code as a whole, do not extend to currency and bearer negotiable instruments. Moreover, section 1 of the Revenue Code provides that the Code (Phase One) governs taxation in Liberia. Assessors advised the authorities to amend the Revenue Code to define goods to include currency and bearer negotiable instruments if they intend to continue applying the Code to them. Assessors also noted that the draft AML/CFT Bill contains provisions on cross-border declaration of currency and bearer negotiable instrument, which when enacted and effectively implemented, will be in compliance with Special Recommendation IX. The authorities were therefore encouraged to intensify efforts to pass the Bill.

Incoming currency and BNI

426. Under paragraph 2.0 (b) of the PMFCBN, every person wishing to move currency banknotes into Liberia is allowed to bring in any amount, without limitation, provided that physical cash (bank notes/coins) in excess of Ten Thousand United States Dollars (US$10,000.00) or its equivalent in other foreign currencies must be declared to the authorities of the CBL at the port of entry. The PMFCBN does not require persons bringing in currency to carry the excess in bearer negotiable instruments nor provide penalty against persons who fail declare currency being brought into Liberia in excess of the prescribed amount.

Outgoing currency and BNI

427. Under section 2.01 of the Regulation, every person wishing to move foreign currency banknotes out of Liberia is allowed an undeclared limit of up to Seven Thousand Five Hundred

United States Dollars (US$7,500.00) or its equivalent in other foreign currencies. Such persons may carry any amount in excess ofUS$7,500 on his person only in the form of bank drafts, travellers' checks, money orders and/or other similar instruments. Thus, the declaration system relating to incoming persons does not include bearer negotiable instruments. Under paragraph 3.0 of the PMFCBN, any person carrying an amount in excess of US$7,500.00 or its equivalent in other foreign currencies undeclared or under declared is subject to pay to CBL a penalty of not less than 25% of the undeclared or under-declared amount. Persons moving currency into Liberia are allowed to carry the excess of $10,000.00 in other currency. There is no penalty for failure to declare currency being moved into the country in excess of the prescribed amount.

428. Furthermore, the provisions in the PMFCBN do not comply with the requirements in SR IX.1 (i). SR IX.1 (i) requires countries to have in place a declaration system that requires all persons making physical cross-border transportation of currency or bearer negotiable instrument that are of a value exceeding a prescribed threshold that should be required to submit a truthful declaration to the designated competent authorities. However, the Regulation requires persons to declare currency that is of the value exceeding the prescribed threshold. It neither prescribes a threshold for bearer negotiable instruments nor does it require persons to declare bearer negotiable instruments that are of the value exceeding the prescribed threshold. The authorities informed Assessors that the PMFCBN would be reviewed to cover both outgoing and incoming movement of cash and BNI.

429. Assessors observed that the PMFCBN was not being effectively enforced, either by the CBL or the Bureau of Customs which has the mandate to monitor entry of goods, including, by virtue of the PMFCBN, currencies and bearer negotiable instruments for all persons entering or leaving Liberia. The authorities informed Assessors that the Bureau of Customs has Currency Declaration Forms that are to be used at the airports and land ports but has problems with logistics providing the forms at the designated places. Therefore, the declaration system at the ports of entry and exit are not being enforced except through suspicion or tip-off. It is important to state that Liberia has two airports and four sea ports (Buchanan, Greenville, Harper and Monrovia) but two of the sea ports are dormant.

Authority to request and obtain further information from the carrier

430. There is no authority for Customs to request and obtain further information from a carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use on discovery of a false declaration of currency or bearer negotiable instruments. However, Customs informed officials informed Assessors that Customs was investigating a case involving a person who entered Liberia with more than One Hundred Thousand United States Dollars ($100,000.00) on his person. The officials added that the PMFCBN is silent on how to determine the legitimacy of currency and Customs does not have the capacity to investigate issues relating to currency movement.

Power to stop or restrain currency or BNI

431. The Bureau of Customs and Excise does not have express power to stop or restrain currency or BNI for a reasonable time in order to ascertain whether evidence of money laundering or terrorist

financing may be found where there is suspicion of money laundering or terrorist financing or where there is a false declaration. The authorities informed Assessors that in practice, Customs officers may arrest persons who violate the Regulation and turnover the currency to the Central Bank.

Retention of currency and identification data by authorities (c. IX.4)

432. There is no requirement to retain information on the amount of currency or bearer negotiable instruments declared or otherwise detected, and the identification data of the bearer for use by the appropriate authorities when a declaration which exceeds the prescribed threshold is made, or where there is a false declaration or where there is a suspicion of money laundering or terrorist financing. In practice, Customs keeps records of declaration but the declaration system is hardly implemented. The implementation does not extend to terrorist financing.

Access to information by FIU (c. IX.5)

433. The FIU has not been established.

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

434. There is cooperation among Customs, Immigration and other related Authorities though there is on specific law, guideline or regulation by which this is coordinated. Bureau of Customs works closely with immigration, Police and National Security Agency, the MOJ, the CBL, the BIR and other security and related agencies to detect and prevent the illicit importation and exportation of goods. This cooperation is extended to the prevention of illicit movement of currency and bearer negotiable instruments. At the time of the on-site, efforts was being made with the support of the United Nations Office on Drugs and Crime (UNODC) to establish Transnational Crime Unit (TCU), an elite inter-agency unit, trained and equipped to fight transnational organised crime and to coordinate its activities in a national framework.

International Cooperation among Customs, Immigration and Related Authorities (c. IX.7)

435. Liberia is a signatory party to international agreement between Mano River Union Countries in terms of information exchange between Customs and other relevant agencies on cross-border trade. The Bureau of Customs maintains healthy collaboration with foreign counterparts through regular meetings of Customs Commissioners from West and Central African region. In early 2009, the Liberia Bureau of Customs and Excise became an active Member of the World Customs Organisation (WCO) and a signatory to the SAFE Framework of Standards to Secure and Facilitate Global Trade even though Liberia has been a Member of the WCO since 7 January 1975. On 26 June 2010, the Republic of Liberia deposited with the Secretary General of the World Customs Organization (WCO) its instrument of accession to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System). The Harmonized System Convention will enter into force in Liberia on 1 January 2012, unless Liberia decides to specify an

earlier date.8 Given the WCO's active role in championing anti-money laundering programs and enhancing its Members' ability to fight money laundering by increasing awareness, developing training programs, crafting legal instruments, promoting the Customs Enforcement Network (CEN) system including its seizure database, and advocating best practices, it is envisaged that Liberian Customs' collaboration with the WCO will improve its AML/CFT awareness to the benefit of the country's entire AML/CFT system.

436. Customs has signed two MOUs on Mutual Exchange of Information with Sierra Leone and Guinea Conakry. On the basis of similar MOU, LBCE has requested and received assistance from Ghana. Plan is underway to create a New Policy Unit which will take care of LBCE's mutual assistance with other countries.

Sanctions for making false declaration (c. IX.8)

437. Under paragraph 3.0 of the CBL Regulation CBL/SD/15/2001 any person carrying an amount in excess of US$7,500.00 or its equivalent in other foreign currencies undeclared or under declared is liable to pay to CBL a penalty of not less than 25% of the undeclared or under-declared amount.

438. There is no express provision to apply the penalty to legal persons covered by the FATF Recommendations that fail to comply with the declaration requirement. Thus, the possibility of applying sanctions that are broad and proportionate to the severity of a situation, including the power to impose disciplinary and financial sanctions and withdrawing, restricting or suspending a financial institution's licence, where applicable may not be possible. Perhaps, within the framework of its criminal justice, Liberia may apply the definition of person in section 1.7 (k) of the Penal Code to extend the requirements and penalty in the PMFCBN to legal persons.

439. Assessors, as well as some of the authorities did not consider the penalty to be effective, proportionate and dissuasive, but rather encourages money laundering and terrorist financing as offenders will take advantage of the fine to perpetrate money laundering and terrorist financing. Criminals will prefer to part with 25% of the proceeds of their criminal conduct than to risk serving a term of imprisonment or losing all of them.

440. Liberia cannot apply the cross-border declaration requirements to persons and entities designated pursuant to UN Security Council Resolution 1267(1999) and 1373 (2001), suspected to be engaging in terrorist financing due to the absence of a legal framework dealing with terrorist financing.

441. As indicated above, the penalty applies to persons who fail to declare currency when moving currency outside Liberia and not into Liberia, thus limiting the scope of application of the penalty.

[8] WCO Press releases, 2010.

Sanctions relating to terrorist financing or money laundering (c. IX.9)

442. There is no specific legal provision relating to sanctions against person who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX. The PMFCBN may however be applied in the case of money laundering, but not in the case of terrorist financing as it is not criminalized in Liberia.

Confiscation of Currency (c. IX.10)

443. Within the criminal proceedings system of Liberia, the measures described under Recommendation 3.1 to 3.6 would apply in relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to money laundering, but will not apply to those related to terrorist financing since it is not criminalised. The deficiencies in 3.1 to 3.6 and those in IX.9 above will also apply in this regard.

Confiscation of Currency Related to FT (applying c. III.1-III.10 in SR III, c. IX.11)

444. There is no law applying freezing, seizing and confiscation measures to persons who are carrying out a physical cross-border transportation of currency bearer negotiable instruments that are related to terrorist financing.

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

445. The Ministry of Lands, Minerals and Energy works with other competent authorities to like Immigration, Customs and the Mano River Union to ensure that diamonds are not smuggled out of Liberia along the porous borders.

Systems to Ensure Proper Use of Information (c. IX.13)

446. There was no evidence that systems for reporting cross border transactions are subject to strict safeguards to ensure proper use of information or data that is reported or recorded. As integrity is a major issue among staff of competent authorities, the strictness of reporting and proper use of information cannot be guaranteed.

Training, data collection, enforcement developed by jurisdiction (c.IX.14)

447. Liberia has not developed and applied any training, data collection, enforcement and targeting programmes. Some personnel of the government have participated in some regional and international training in AML/CFT. The LBCE has a training plan for 2010 – 2013 to achieve the objectives of capacity development to modernize the Bureau in line with the World Customs Organization's Arusha declarations. It is notable that the course content for training does not cover issues related to anti-money laundering in any specific details. Whether or not such issues will be

integrated into the training programme is not clear to ensure that personnel are sensitized on their responsibility to enforce cross border declaration and disclosure.

Additional Elements

Implementation of measures in the Best Practices Paper for SR.IX (c.IX.16)

448. Liberia is implementing some of the measures in the Best Practice Paper for SR IX. It is implementing the declaration system with a threshold of $7,500.00 for outgoing currency and bearer negotiable instruments and $10,000.00 for incoming currency.

Maintenance of reports in a computerised data base and availability to competent authorities for AML/CFT purposes

449. Liberian Customs maintains reports manually and makes them available to competent for AML but not for CFT purposes. However, this is rarely practiced as the system is not being effectively implemented.

Analysis of Effectiveness

450. Assessors could not analyse the effectiveness of the declaration system in Liberia since it is not being implemented.

Statistics (applying R.32)

451. No statistics on currency declarations and disclosures was made available.

2.7.2 Recommendations and comments

452. Lack of logistics, the dual currency regime of Liberia, weak/ineffective AML/CFT system as well as the existence of porous borders in Liberia makes it vulnerable to abuse of its ports of entry and exit for purposes of money laundering and terrorist financing. There is urgent need to streamline and put in place effective procedure for enforcement of cross border declaration and disclosure of currency at all entry ports into Liberia. Liberia's declaration system is weak and does not cover most of the requirements for the detection of cross-border movement of currency or bearer negotiable instruments. Major deficiencies include:

- Absence of a FIU
- Non-criminalisation of terrorist financing;
- Limited scope of application of the Regulations in relation to requirement to declare bearer negotiable instruments and application of penalty to all violators of the Regulations;

- Lack of express power for Customs to request for further information from carrier on the origin of the currency or bearer negotiable instruments and their intended use;
- Absence of express power of Customs to stop or restrain currency or bearer negotiable instruments for a reasonable time to ascertain evidence of possible money laundering or terrorist financing in case of suspicion of money laundering or terrorist financing or in case of false declaration;
- Inadequate coordination and cooperation among customs, immigration and other authorities on issues related to cross-border currency and bearer negotiable instruments declaration system due to overlapping roles and lack of logistics;
- Lack of effective, proportionate, dissuasive criminal, civil or administrative sanctions against persons who make false declaration contrary to obligations under SR IX;
- Absence of mechanism for safeguarding information obtained from declaration system; and
- Lack of training, data collection, enforcement and targeting programmes.

453. Liberian authorities should consider taking the following actions:

- Establishing the FIU with the necessary powers to undertake obligations under SR IX;
- Criminalising terrorist financing;
- Empowering Customs to request for further information from carrier on the origin of the currency or bearer negotiable instruments and their intended use;
- Providing Customs with express power to stop or restrain currency or bearer negotiable instruments for a reasonable time to ascertain evidence of possible money laundering or terrorist financing in case of suspicion of money laundering or terrorist financing or in case of false declaration;
- Enhancing coordination and cooperation among customs, immigration and other authorities on issues related to cross-border currency and bearer negotiable instruments declaration system and provide the authorities with adequate and relevant logistics;
- Applying effective, proportionate, dissuasive criminal, civil or administrative sanctions against persons who make false declaration contrary to obligations under SR IX;
- Putting in place mechanism for safeguarding information obtained from declaration system;
- Developing and apply training, data collection, enforcement and targeting programmes for competent authorities;
- Giving Customs clear authority to retain, seize or confiscate currency and BNI when they suspect that the currency can be related to money laundering or terrorist financing. Liberia should also consider improving specific training to provide relevant personnel with higher capacities to deal with the identification of currency and bearer negotiable instruments possibly linked to terrorist financing activities, persons, or organisations.
- Applying the penalty for failure to declare outgoing currency and bearer negotiable instruments to incoming currency and bearer negotiable instruments; and

- Requiring Customs to record the amounts of currency/BNI when there is a suspicion of ML/FT, with a corresponding ability to share this information domestically and internationally.

2.7.3 Compliance with Recommendations IX

Rec.	Rating	Summary of factors underlying rating
SR.IX	**NC**	• Liberia has not established a FIU • Terrorist financing is not criminalised • No express power for Customs to request for further information from carrier on the origin of the currency or bearer negotiable instruments and their intended use • Absence of express power for Customs to stop or restrain currency or bearer negotiable instruments for a reasonable time to ascertain evidence of possible money laundering or terrorist financing in case of suspicion of money laundering or terrorist financing or in case of false declaration • Inadequate coordination and cooperation among customs, immigration and other authorities on issues related to cross-border currency and bearer negotiable instruments declaration system due to overlapping roles and lack of logistics • Lack of effective, proportionate, dissuasive criminal, civil or administrative sanctions against persons who make false declaration contrary to obligations under SR IX • Absence of mechanism for safeguarding information obtained from declaration system • Lack of training, data collection, enforcement and targeting programmes.

3. Prevention Measures – Financial Institutions

Overview of legal and regulatory framework

454. The legal framework for preventive measures is found in Part III of the PMLL. There are no provisions on preventive measures relating to terrorist financing. The provisions in the PMLL apply to money laundering in relation to applicant for business, business relationship, one-off transaction and relevant financial business. The PMLL defines "applicant for business" to mean a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Liberia.

455. Section 15.106 provides for requirement to be acting in the course of business. In this regard, a reference to an arrangement between two or more persons is considered to be a reference to an arrangement in which at least one person is acting in the course of a business. Thus, business relationship is interpreted in section 15.106.2 to mean "any arrangement between two or more persons where (a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and (b) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

456. Furthermore, section 15.107 defines relevant business to mean "the business of engaging in deposit taking business; investment business; insurance business; or any other financial business regulated by the Government of the Republic of Liberia or prescribed from time to time by the Minister of Finance by order for the purpose of inclusion in this section." This means that the provision applies to all bank and non-bank financial institutions.

457. The PMLL does not specifically mention non-bank financial services (NBFSs). However, NBFIs are subsumed under section 15.107(d) of the PMLL stated above. Section 2(m) of the CBL Act and section 2(16) of the NFIA define non-banking financial services to mean:

a) The business of the operation of thrift and loan associations;
b) Broker and dealer operations in securities and commodities;
c) Currency exchanging;
d) Check cashing;
e) Issuance of credit cards;
f) Redeeming and encashing money orders or dealing in any such other similar instruments;
g) Insurance underwriting business;
h) Loan or financing agency; and
i) Remittance of money but not accepting from the general public money payable on demand or after a fixed period.

458. Section 15.108.1 of the PMLL prohibits a person from forming a business relationship or carry out a one-off transaction with or for another person, in the course of relevant financial business carried on by that person in Liberia unless that person, in relation to that business, maintains identification procedures; record keeping procedures and other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering. The person is also required to take appropriate measures from time to time for the purpose of making employees or those whose duties include the handling of relevant financial business aware of the identification and record keeping and other internal procedures maintained by that person and which relate to the relevant financial business in question; the enactments relating to money laundering and provide training in relation to the recognition and handling of transactions carried out by, or on behalf of any person who is, or appears to be engaged in money laundering. The PMLL provides for penalty for non-compliance with these requirements.

459. Under section 15.107.3, a court may take into account any relevant supervisory or regulatory guidance which applies to a person held liable for failure to comply with requirements to put in place systems and training to combat money laundering, or where there is no regulatory or supervisory guidance, any other relevant guidance issued by a body that regulates, or is a representative of, any trade, profession, business or employment carried out by that person, in determining whether that person has complied with any of the requirements to prevent money laundering. It is a defence for a person alleged to have contravened these requirements to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

460. Section 4.1 of the Regulations on Know-Your-Customer (KYC) and Customer Due Diligence (CDD) requires all licensed banks to have in place adequate policies, practices and procedures that promote high ethical and professional standards and prevent the bank or the entire banking system from being used, intentionally or unintentionally, by criminal elements. The Know-Your-Customers Policy of each bank or financial institution is expected to, at a minimum, include (1) Customer Acceptance Procedure, (2) Customer Identification and Verification Rules, (3) On-going Monitoring and scrutiny of transactions of High Risk Accounts, (4) Appropriate Risk Management System, and (5) Suspicious Activity Reporting.

461. Generally, the PMLL covers most of the financial activities specified in the FATF Recommendations.

462. The CBLA 1999 and the NFIA 1999 empower the CBL to regulate and supervise the banks, the microfinance institutions and the foreign exchange bureaux. Section 4 of the CBLA 1999 gives power and authority to the CBL to administer the NFIA 1999 and regulate banking activities, non-bank financial institutions, as well as non-bank financial services institutions. Section 5 also empowers CBL to supervise bank-financial institutions and non-bank financial institutions and authorized non-bank financial services dealers and brokers.

463. Section 39(1) of the NFIA 1999 empowers the CBL to issue such regulations and institute such measures as may be required from time to time for giving effect to any and all provisions of the Act. In accordance with section 39(1) of the NFIA, the CBL issued regulations on know-your-customer (KYC) and customer due diligence (CDD) 0n October 14, 2005 to banks, ‘to protect

reputation of banks and integrity of the banking system, promote high ethical and professional standards in the financial sector, and combat the misuse of the bank-financial system by criminal elements'. The CBL also issued to banks, corporate governance regulations on 22nd July, 2008, to help the individual board of directors of banks in Liberia to establish adequate corporate governance practices to ensure the safety and integrity of the banking system.

464. Regarding the regulation and supervision of microfinance institutions (MFIs), the CBL issued a microfinance regulatory and supervisory framework for Liberia, on 5th February, 2010. Section 3.8 of the regulations requires all MFIs to comply with the PMLL 2002 and the principles and procedures of KYC regulations issued by the CBL. However, CBL has not issued KYC regulations to MFIs.

Insurance Sector

465. The power and authority of the CBL to regulate and supervise the insurance sector is derived from the CBLA 1999 Sections 4, 5 and 2(m), and NFIA Sections 8 and 2(16)(vi). The CBLA 1999 Sections 4 and 5 empower the CBL to regulate and supervise non-bank financial institutions as well as non-bank financial services institutions and to administer the NFIA 1999 while Section 2 (m) defines non-bank financial service to include insurance underwriting business. NFIA Section 8 requires that to operate an insurance business, a person must apply in writing to the CBL, and comply with the requirements in NFIA Section 4 (1) and all of the requirements for license under Chapters (3) and (4) of the Insurance Law of Liberia (ILL) 1978.

466. Sections 15.108 and 15.107 of the PMLL 2002 require that no insurance business shall be conducted unless the identification, record-keeping, internal control and other procedures as prescribed by the PMLL are complied with.

Capital Markets Sector

467. Section 3 of the CBLA empowers the CBL to facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy. Among the powers granted to the CBL in Section 5 of CBLA is the power to purchase and sell securities. While there is yet no functional capital market, arrangements are far gone for the Treasury Operations Unit to commence Treasury Bills auction on behalf of Government. The Treasury Operations Unit was established in February 2010 with the functions of managing the country's reserves, carrying out investment and spearheading the development of a capital market. The rules and regulations governing the auction of Treasury Bills have already been drafted.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering and terrorist financing

468. The provisions of PMLL 1999 are reinforced by the KYC and CDD regulations to bank-financial institutions (BFIs) regarding measures BFIs must take to prevent money laundering. Section 4.1 of the KYC and CDD regulations requires BFIs to have in place adequate policies, practices and procedures that promote high ethical and professional standards and prevent the bank or the entire banking system from being used, intentional or unintentionally, by criminal elements. The KYC Policy of each BFI is to include, at a minimum, (1) Customer Acceptance Procedure, (2) Customer Identification and Verification Rules, (3) On-going Monitoring and scrutiny of transactions of High Risk Accounts, (4) Appropriate Risk Management System, and (5) Suspicious Activity Reporting.

469. Regarding customer acceptance procedures, the KYC/CDD regulations require BFIs, to specifically identify politically exposed persons (PEPs), ascertain whether a customer is linked to a high-risk customer by affiliation, or association, or family relations, ascertains the nature, volume and other important characteristic of the business of the customer, and other risk indicators. With regards to on-going monitoring of accounts and scrutiny of transactions, the KYC/CDD regulations Section 4.4 requires BFIs to have adequate management information systems in place to provide senior management and compliance officers with timely information needed to identify, analyze and effectively monitor higher risk customer accounts. Section 4.5 of the KYC/CDD regulations requires BFIs' Boards to adopt KYC policies for implementation by senior management consistent with general risk management practices.

470. The CBL also issued Corporate Governance Regulations (CGRs) to BFIs with the objective of helping individual Board of Directors of BFIs to establish adequate corporate governance practices to ensure the safety and integrity of the banking system. Paragraph 3.2 (h) requires the Boards of BFIs to define what banking practices and what levels and types of risk are acceptable for the operations of their institutions. Paragraph 4 requires all licensed banks to set up board level committees, among which are, the Audit Committee whose functions include reviewing the integrity of the bank's financial reporting and overseeing the independence and objectivity of the external auditor.

471. The CBL developed a risk-based supervision framework on 23rd October 2009, based on a thorough understanding of the banks' businesses and risk management processes. The CBL conducted a risk management survey on banks' risk management structures, practices and procedures and the survey disclosed the need to enhance risk management in banks. The CBL issued risk management guidelines to all banks covering the most common banking risks, such as credit, liquidity, interest rate, foreign exchange rate, and operational risks. However the risk of money laundering was not included.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

472. Section 15.108 of the PMLL 2002 require relevant financial businesses to maintain identification procedures, record-keeping procedures, internal reporting procedures and internal

control and communication procedures before forming a business relationship or carrying out a one-off transaction with or for another person. PMLL defines business relationship as any arrangement between two or more persons where "the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and the total amount of any payment or payments to be made by any person to any other in the course of that arrangement if not known or capable of being ascertained at the time the arrangement is made".

473. Section 15.110 of the PMLL 2002 requires CDD to be carried out as soon as is reasonably practicable after the first contact is made between a relevant financial business and an applicant for business concerning any particular business relationship or one-off transaction. Specifically, section 15.110. 2.3.4. and 5 requires CDD to be carried out in the following four cases:

- **Case 1** – Any case where the parties form or decide to form a business relationship between them;
- **Case 2** – Any case where in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering;
- **Case 3**-Any case in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of US$15,000 or more; and
- **Case 4**- Any case where, in respect of two or more one-off transactions

a) it appears at the outset to a person handling any of the transactions that
   i. the transactions are linked, and
   ii. the total amount, in respect of all the transactions, which is payable by or to the applicant for business is US$15,000 or more, or

b) At any stage, it comes to the attention of such a person that the provisions of paragraph (a) satisfied.

Anonymous accounts or accounts in fictitious names (E.C.5.1):

474. The PMLL does not specifically prohibit financial institutions from keeping anonymous accounts or accounts in fictitious names. However, the PMLL 2002 Sections 15.108 prohibits persons from forming business relationships or carry out one-off transaction with or for other persons unless those persons maintain identification procedures in accordance with sections 15.110 and 15.112 of the PMLL. Specifically PMLL 2002 Section 15.110 provides that, subject to section 15.111 (payment by post) and 15.113 (identification procedures: exemptions), procedures maintained by persons are in accordance with section 15.110 if in the cases enumerated the persons require, as soon as is reasonably practicable after contact is first made between the person and an applicant for business or one-of transaction, the production by the applicant for business of satisfactory evidence of his identity or the taking of such measures specified in the procedures as will produce satisfactory evidence of the applicant's identity. The procedures are also in accordance with 15.110 if they require that where the evidence is not obtained, the business relationship or one-off transaction in question shall not proceed any further. Section 15.112 of

PMLL 2002 requires covered persons to request evidence of identity of the principal where an applicant for business is or appears to be acting for a principal and also verify the identity of the principal.

475. Subsection 6 of section 15.110 provides that the procedures in sub-section 1 are in accordance with section 15.110 if when a report is made in circumstances falling within Case 2 they provide for steps to be taken in relation to the one-off transaction in question in accordance with any direction that may be given by a Law Enforcement Officer or Customs Officer. Section 15.110 (7) defines "satisfactory evidence" in accordance with section 15.114.1 which provides that, evidence of identity is satisfactory if (a) it is reasonably capable of establishing that the applicant is the person he claims to be and (b) the person who obtains the evidence is satisfied, in accordance with procedures maintained in relation to the relevant financial business concerned, that it does establish that fact.

476. Paragraph 4.3 of the CBL KYC/CDD Regulations requires BFIs to obtain all information necessary to establish to their full satisfaction the identity of each new customer.

477. Even though the provisions in the PMLL does not specifically use the words 'anonymous accounts', 'fictitious accounts' and 'numbered accounts', the requirements in the PMLL discussed in the preceding paragraphs do not allow the opening of anonymous or fictitious or numbered accounts. Assessors' discussions with officials of BFIs revealed that banks are not allowed to open anonymous or fictitious or numbered accounts. An examination of their account opening forms confirmed their statements as information requested from potential customers give no room for the opening of such accounts. In fact, one of the banks visited had indicated in its Anti-Money Laundering Policies and Procedures that it does not offer anonymous or unnumbered accounts to any of its clients.

Undertake CDD Measures (E.C.5.2):

478. Section 15.110.2 to 5 of the PMLL requires covered persons to carry out CDD measures in any case where:

- the parties form or decide to form a business relationship between them;
- in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering;
- in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of US$15,000 or more;
- in respect of two or more one-off transactions:
    a) it appears at the outset to a person handling any of the transactions that
        i. the transactions are linked; and
        ii. the total amount, in respect of all the transactions, which is payable by or to the applicant for business is US$15,ooo or more; or

b) At any later stage, it comes to the attention of the person handling the transaction that the provisions of paragraph (a) are satisfied.

479. The requirement for identification relating to occasional transactions that are wire transfers in the circumstance covered by the Interpretative Note to SR VII is covered by section 15.111(1) of the PMLL which provides as follows:

> *Where satisfactory evidence of the identity of an applicant for business would, apart from subsection (1), be required under the identification procedures in accordance with section 15.110 but*
>
> (a) *the circumstances are such that a payment is to be made by the applicant for business; and*
>
> *(b) it is reasonable in all the circumstances:*
>
> > *(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or*
> >
> > *(ii) For the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means; then subject to subsection 2, the fact that the payment is debited from an account held in the applicant's name at a deposit taking institution, in Liberia or elsewhere, subject to like requirements to those placed on such institutions by this Part (whether the account is held by the applicant alone or jointly with one or more other persons) shall be capable of constituting the required evidence of identity.*

480. The provision does not apply where the transaction falls under Case 2, that is, if the person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering.

481. The PMLL does not cover the requirement in R. 5.2 regarding a situation where there is a suspicion of terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations or where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

482. Liberia should review section 15.111 of the PMLL to require financial institutions to apply CDD measures where they have doubts about the veracity or adequacy of previously obtained customer identification data. Additionally, Liberia should criminalise terrorist financing and extend the CDD requirements to cover issues related to terrorist financing.

483. Section 4.2 of the KYC/CDD Regulations issued by CBL to the BFIs on 14th October 2005 requires each bank-financial institution to have and implement customer acceptance policies or procedures that include customer's background, country of origin, linked accounts, business activities, and other risk indicators. This means the KYC-CDD requires identification procedures to be applied when establishing business relations. However, the KYC-CDD does not cover the remaining requirements in FATF R.5.2 on when the BFIs are required to undertake CDD measures.

Identification of Customers (E.C.5.3):

484. Identification requirements under the PMLL: Section 15.110 of the PMLL requires a relevant financial business to identify and verify the identity of an applicant for business by requiring the applicant for business to produce satisfactory evidence of his identity or taking measures specified in the relevant business's procedures that will produce satisfactory evidence of the identity of the applicant for business if the procedures require that where the evidence is not obtained the business relationship or one-off transaction should not proceed any further. Under section 15.114 (1) evidence of identity is satisfactory if it is reasonably capable of establishing that the applicant is the person he claims to be, and the person who obtains the evidence is satisfied, in accordance with the procedures maintained by the relevant financial business concerned to prevent money laundering, that it does establish the identity of the applicant for business.

485. The provisions in section 15.110 apply to permanent and occasional customers who are natural or legal persons. However, the PMLL does not prescribe the type of information and documents that financial businesses should request from a person to confirm that person's identity nor require relevant financial businesses to verify their customer's identity using reliable, independent source documents, data or information.

486. Identification and verification requirements under the CBL Regulations on KYC-CDD: The identification requirements under the CBL KYC-CDD Regulations applies to customers, whether permanent or occasional, and whether natural or legal persons or legal arrangements. Paragraph 3 of the Regulations define customer as 'the person or entity that maintains an account with the bank or the person or entity on whose behalf a bank account is opened and/or maintained (i.e. beneficial owner); (ii) the beneficiary(ies) of transaction(s) conducted by professional intermediaries (e.g. trustee, lawyers, accountants, etc.); and (iii) any person or entity connected with a financial transaction who can pose significant reputational damage or other risk to the bank'. Paragraph 3 also defines transaction as the act or process of deposit-taking, withdrawal, transfer (inward or outward), and/or similar banking relationships. It also refers to transactions conducted through electronic, internet or offshore banking. Collectively, both definitions depict an intention to apply the provisions of the Regulations to natural, legal, permanent and occasional customers.

487. Paragraph 4.2 requires BFIs to have and implement customer acceptance policies or procedures that require information on customer's background, country of origin and business activities. The procedures also require BFIs to enquire about, persons who occupy public or high profile position, linked accounts and take into account other risk indicators as a basis for identification of customers.

488. With regard to customer's background, a BFI is required to make inquiries, and notation of findings, about the background of the customer, including his/her residence, occupation, and line of business to fully understand the customer/business. It also requires that information about the residential addresses must be specific and sufficiently detailed to permit confirmatory inspection.

489. A BFI is also required to make enquiries regarding the country of origin, nationality or incorporation. In the case of a customer of Public or High Profile Position, the BFI is to have specific indication of and information on any person holding important public positions and persons or companies clearly related to them. They include heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations, and religious leaders and other businessmen.

490. In the case of linked accounts, BFIs are to ascertain whether a customer is linked to a high-risk customer by affiliation, or association, or family relations.

491. On business activities, BFIs are to ascertain the nature, volume and other pertinent characteristics of the business of the customer. Finally, the procedures are to permit the BFIs to take into account other risk indicators in identifying their customers.

492. Paragraph 4.3 (i) of KYC/CDD requires BFIs to apply identification measures to all customers – resident, non-resident, private and corporate, trust, nominee etc. With regards to corporate customers, paragraph 4.3 (ii) (b) of the KYC/CDD Regulations requires banks to obtain their articles of incorporation, business certificate/license, identification of incorporators, and other relevant legal and corporate documents.

493. For "private customers", paragraph 4.3 (ii) (a) of the Regulations requires banks to obtain the customer's current valid passport or two recent passport size photos, signed known and reliable employer identification card, current valid driver's license, national identification card. Students and housewives who may not have any of the listed identification documents are to present identification instrument acceptable to a bank.

494. In accordance with the requirements in the KYC-CDD Regulations, banks visited have issued standard operations procedures (SOPs) and KYC-CDD policies which incorporate the identification and verification requirement for opening of new accounts. Bank officials visit residential addresses of a prospective customer to verify that the customer lives at the addresses provided. The physical verification is in addition to the utility bills or other proofs of addresses already obtained from the customer.

Verification of authority to act on behalf of legal persons or legal arrangements and verification of person acting on behalf of legal persons or legal arrangements (E.C.5.4.a)

495. There is no requirement for relevant businesses to verify that any person purporting to act on behalf of a customer is so authorised. With regard to identification of a person purporting to act on behalf of a customer, section 15.112(4) of the PMLL provides that it will be reasonable for a relevant business to accept a written assurance from the applicant for business to the effect that evidence of identity of any principal on whose behalf the applicant for business may act in relation to that person will be obtained and recorded under procedures maintained by the applicant for business. According to subsection (5), the provision in subsection 4 applies where there are reasonable grounds for believing that the applicant for business acts in the course of business in relation to which an overseas regulatory authority exercises regulatory functions and is based or

incorporated in, or formed under the law of a country in which there are in force provisions at least equivalent to those required by any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the Government of Liberia is a party or Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

496. Although section 15.112 purports to deal with identification procedures relating to transactions on behalf of another, the provision in sub-sections 4 and 5 appear to limit the application of section 15.112 to a legal entity that purports to act on behalf of a principal who the applicant for business may have obtained and recorded evidence of the identity of the principal under procedures maintained by the applicant for business. Recommendation 5 requires FIs to verify the identity of natural or legal persons who purport to act on behalf of a customer.

Verification of legal status of the legal person or legal arrangement (E.C. 5.4.b)

497. Paragraph 4.3 (ii) (b) of the KYC/CDD Regulations require BFIs to obtain the following identification documents from corporate customers:

- Articles of incorporation;
- Business certificate/license;
- Identification of incorporators; and
- Other relevant legal and corporate documents.

498. Section 4.4 of the Associations Law provides that contents of Articles of Incorporation should include the following:

- The name of the corporation;
- The duration of the corporation if other than perpetual;
- Purpose/s, indicating for which the corporation is organised. In this case, it is sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any legal act or activity for which corporations may be organised under the Act, and by this statement all lawful acts and activities are to be within the purposes of the corporation, except for express limitations, if any;
- The registered address of the corporation in Liberia and name and address of its registered agent;
- The registered address of the corporation in Liberia and the name and address of its registered agent;
- The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par values, or if such shares are to be divided into classes, the number of share of each class, and the statement of the par value of the shares of each class or that such shares are to be without par value;

- If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
- The number of shares to be issued as registered shares and as bearer shares and whether registered shares may be exchanged for bearer shares and bearer shares for registered shares;
- If the bearer shares are authorised to be issued, the manner in which required notice shall be given to shareholders of bearer shares;
- If the corporation is to issue the share of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- The number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors shall be elected and qualify; and
- The name and address of each incorporator.

499. Although not specified in the KYC-CDD, one of the SOP's cited require a corporation, partnership, cooperative or sole proprietor opening a business account to provide the bank with a board resolution authorising the establishment of the account.

500. Additionally, paragraph 3.9 of the KYC-CDD policy of a bank visited provide that all documents required for individuals and organisations operating in Liberia shall be applicable to those abroad as the case may be to reflect the differences in the operating environment. The Policy further states that the bank will engage the services of its Legal Advisors for the verification of the documents received from all customers who are domiciled. It does not indicate what action the bank will take in relation to customers who are not domiciled. Although Assessors considered this to be vague as it was not clear as to what abroad meant in the context of the Policy, Assessors were informed that this included best practices adopted their foreign counterparts.

Identification of Beneficial Owners (E.C.5.5):

501. The PMLL 2002 Section 15.112 provides that where an applicant for business is or appears to be acting otherwise than as principal, covered persons should take reasonable measures to establish the identity of any person on whose behalf the applicant for business is acting. The KYC/CDD Regulations issued by the CBL do not provide clear guidance to the BFIs regarding identification and verification of beneficial ownership. Paragraph 3 (a) (ii) defines customer to include beneficiary (ies) of transaction(s) conducted by professional intermediaries (e.g. trustee, lawyers, accountants, etc.). Thus, the definition of beneficiary of a transaction is limited to transactions conducted by professional intermediaries on behalf of entities. Paragraph 3 (c) defines beneficial owner as the person who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. By implication therefore, identification requirements under paragraphs 4.2 and 4.3 KYC/CDD Regulations will also apply to beneficial owners who are

legal persons. Thus, the definition of beneficiary of a transaction does not conform to the FATF definition of beneficial owners. For a "private customer" (meaning a natural person), paragraph 4.3 (ii) (a) of the Regulations requires banks to obtain the customer's current valid passport or two recent passport size photos, signed known and reliable employer identification card, current valid driver's license, national identification card. Students and housewives who may not have any of the listed identification documents are to present identification instrument acceptable to a bank.

502. With regard to verification of legal persons or legal arrangement, section 15.112 (2) provides that subject to section 15.113 (on exemptions), identification procedures maintained by a person are in accordance with section 15.112 if, in a case to which section 15.112 applies, the procedures require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting. According to section 15.112.3, in determining what constitutes reasonable measures in any particular case, regard should be had to all the circumstances of the case and, in particular, to best practices which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

Determining whether customer is acting on behalf of another (5.5.1)

503. There is no express requirement for FIs to determine whether a customer is acting on behalf of another and take reasonable steps to obtain sufficient identification data and verify the identity of that other person. However, the provision in section 15.112.2 of the PMLL (discussed under 5.5 above) will apply. The provisions in the KYC-CDD Regulations will apply in the case of BFIs.

Ownership and control structure of legal persons (E.C 5.5.2)

504. The identification requirements in the KYC-CDD Regulations incorporates the requirement for FIs to obtain all information necessary to establish to their full satisfaction the identity of each new customer and the purpose and intended nature of the business relationship Paragraph 4.3 (i) of the Regulations applies to private and corporate customers, and trust, nominee and fiduciary accounts, as well as correspondent banks. Paragraph 4.3(b) of the KYC-CDD Regulations requires BFIs to obtain from corporate customers Articles of Incorporation, Business Certificate/License, Identification of Incorporators, and other relevant legal and corporate documents. These documents provide information on the ownership, control structure and the natural persons who exercise ultimate effective control over legal persons or arrangements.

Information on Purpose and intended nature of business relationship (E.C.5.6):

505. Paragraph 4.2 (v) of the KYC-CDD Regulations require BFIs to ascertain the nature, volume and other pertinent characteristics of the business of a customer, while paragraph 4.3 (i) requires BFIs to obtain all information necessary to establish to their full satisfaction the purpose and intended nature of the business relationship.

Ongoing due diligence on Business Relationship (E.C.5.7; 5.7.1 & 5.7.2):

506. There are no specific requirements in the PMLL, KYC/CDD Regulations or other enforceable means for FIs to undertake ongoing due diligence or to ensure that documents, data or information collected under the CDD process is maintained up-to-date and relevant. However the KYC/CDD Regulations 4.4 require BFIs to establish either separately or within its KYC policies, an effective system to monitor and detect unusual or suspicious activities. Section 4.4 (ii) requires BFIs to put in place adequate management information systems to provide senior management and compliance officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts.

507. The KYC-CDD Policy of one of the banks provides for review of all accounts every six months. The bank indicated that it reviews all customer accounts every six months to: check the existence of any suspicious transaction; check if movements in the accounts are consistent with the declared purpose of opening the account; check whether all the information in the account opening forms are still current and relevant to the accounts; and identify any developments that may cast doubts as to the fitness of the customer to maintain an account with the bank. The results of the review are stated in writing and filed. The policy does not differentiate between high risk and low risk customers, thus all accounts are reviewed every six months. The bank did not provide Assessors with evidence to enable them to confirm the information provided by the bank. Also, the policy only applies to the operations of that bank and does not fall within the purview of law, regulation or other enforceable means envisaged by the FATF Recommendations.

Enhanced due diligence for Higher Risk customers (E.C.5.8):

508. There is no requirement for FIs to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction. The PMLL 2002 does not distinguish between high and low risk customers. Paragraph 4 of the KYC-CDD Regulations require each bank-financial institution to establish, either separately or within its KYC Policies, an effective system to monitor and detect unusual or suspicious activities. Pursuant to the required monitoring system, each bank-financial institution is required to ensure that accounts or transactions which exceed the threshold, or limit of US$25,000 or its equivalent in Liberian Dollars or other currencies are identified and promptly reported to senior management of the bank.

509. Transaction or lodgement in excess of US$ 25,000 or its equivalent in Liberian Dollars fall within the bracket of transactions or accounts designated as high risk in Liberia. Paragraph 3 (e) of the KYC/CDD Regulations defines higher risk account/suspicious transaction to mean any account, transfer, transaction or lodgement in excess of US$25,000 or its equivalence in Liberian Dollars in the case of an individual and US$40,000 or its equivalence, in the case of a body corporate. This is a narrow definition of higher risk customers as the definition does not cover the type and nature of transaction or the person carrying out the transaction. Such persons and transactions include non-resident customers, private banking, legal persons or legal arrangements such as trusts that are personal assets holding vehicles, companies that have nominee shareholders or shares in bearer

form. Furthermore, the ceiling used defining higher risks customer is too high for a country like Liberia where the per capita income is as low as US$ 290.9

510. Paragraph 4.2 (iv), (v) and (vi) of the KYC/CDD Regulations require BFIs to ascertain whether a customer is linked to a high risk customer by affiliation, or association, or family relations and the nature, volume and other pertinent characteristics of the business of the customer, and other risk indicators. The KYC/CDD Regulations do not require BFIs to conduct enhanced diligence for higher risk customers. The risk management guidelines issued to banks do not require them to conduct enhanced due diligence for higher risk customers. The CBL's CGRs issued to BFIs do not provide guidance to boards of banks regarding enhanced due diligence for higher risk customers.

511. The management teams of banks met by the Assessors stated that they do not have accounts such as trusts that are personal assets holding vehicles apart from parents opening accounts for their children or companies with nominee shareholders/shares in bearer form. Some of the BFIs said they offer internet banking in a limited way, that is, for viewing account balances. The Assessors were not able to examine their records to confirm these statements.

Applying Simplified CDD Measures (E.C. 5.9 – 5.12):

512. The PMLL does not distinguish between high risk and low risk transactions, persons or relationships. Thus, FIs are expected to subject customers to the full range of CDD measures, including identifying the beneficial owner. However, section 15.113 of the PMLL provides for total exemption from CDD requirements under certain circumstances. 15.113.1 provides that the identification procedures under sections 15.110 and 15.112 should not require any steps to be taken to obtain evidence of any person's identity, except in a case where in respect of a one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering. The requirements under 15.113.1 further applies in the following cases:

> *(a) Where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions in section 15.108.1 (requirement for AML systems);*
>
> *(b) Where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that the evidence of the identity of all third parties introduced by him will have been obtained and recorded under the procedures maintained by him, where that person identifies the third party and where:*
>
> *(i) That person falls within paragraph (a), or*
>
> *(ii) There are reasonable grounds for believing that the conditions mentioned in sections 15.112 (a) and (b) are fulfilled in relation to him;*

[9] World Development Indicators database, World Bank, 15 December 2010

(c) Where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of the transaction are payable but to whom payment is made because all those proceeds are directly reinvested on his behalf in another transaction:

(i) of which record is kept; and

(ii) which can result only in another reinvestment made on that person's behalf or in a payment made directly to that person;

(d) In relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy:

(i) Contains no surrender clause; and

(ii) May not be used as collateral for a loan;

(e) In relation to insurance business in respect of which a premium is payable in one instalment of an amount exceeding US$2,500; or

(f) In relation to insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed US$1,000.

513. Section 15.112 does not cover pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by deduction from wages and the scheme rules do not permit the assignment of a member‘s interest under the scheme and beneficial owners of pooled accounts held by DNFBP provided that they are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and are subject to effective systems for monitoring and ensuring compliance with those requirements.

514. However, Recommendation 5.9 provides that where there are low risks, countries may decide that FIs can apply reduced or simplified measures. The Recommendation does not provide that FIs should be required to exempt certain customers, transactions or products from application of CDD measures. There is the need for Liberia to amend the PMLL to provide for requirements to apply simplified or reduced CDD measures in accordance with the FATF Recommendation 5.9.

Simplified CDD where applicant resides in FATF Recommendations compliant country 5.10

515. Section 15.112.4 of the PMLL, by implication, permits FIs to apply simplified or reduced CDD measures to customers resident in another country where they are satisfied that the applicant for business resides in a country that is in compliance with and has effectively implemented the FATF Recommendations. In requiring FIs to identify a principal on whose behalf an applicant for business is acting, section 15.112.4 permits FIs to accept a written assurance from an applicant for business to the effect that evidence of identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

516. According to section 15.112.5, the provision in section 15.112.4 is to apply where are reasonable grounds for believing that the applicant for business acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions and is based or incorporated in, or formed under the law of a country in which there are in force provisions at least equivalent to those required by any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the Government of Liberia is a party or Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

517. The provisions in sections 15.112.4 and 5 are limited in scope as they only apply to legal persons that are acting on behalf of principals. Furthermore, a country may be a party to the relevant UN conventions in respect of the prevention of the laundering of proceeds of crime or the Council Directive 91/308/EEC of the European Community but may not be in compliance with and has not effectively implemented the FATF Recommendations. There is the need for Liberia to make express provision for the requirement in 5.10 and apply same to both legal and natural customers resident in other countries.

Where there is suspicion of money laundering or terrorist financing (E.C. 5.11)

518. There is no requirement in law, regulation or other enforceable means which prohibits FIs from applying simplified CDD measures whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply. However, under section 15.113.2 of the PMLL, exemption from identification procedures does not apply where in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering. This provision does not fully meet the requirement in Recommendation 5.11 as it only applies to one-off transactions where there is suspicion of money laundering. It does not provide for specific higher risk scenarios and terrorist financing.

Timing of Verification of Identity (E.C. 5.13 – 5.14 & 15.14.1):

519. There is no express provision in law, regulation or other enforceable means regarding the timing of verification of identity of a customer and beneficial owner before, during the course of establishing a business relationship for occasional customers. However, the identification process includes verification of identity of customers, regardless of the type of customer. By virtue of section 15.112 of the PMLL, relevant businesses are to be required to perform verification measures as soon as is reasonably practicable after the first contact between the relevant business and the applicant for business concerning any particular business relationship or one-off transaction.

520. The KYC/CDD Regulations issued to BFIs do not provide for timing of verification of identity of customers. However the banks' managements informed Assessors that they carry out verification at the commencement of the relationship. Assessors were not able to verify their statement.

521. There is no express requirement in the PMLL and the KYC-CDD Regulations for FIs to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship. However, section 15.114(2) of the PMLL will apply in these circumstances. Section 15.114(2) provides that in determining, for the purposes of identification procedures, the time span in which satisfactory evidence of a person's identity has to be obtained, in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular:

- The nature of the business relationship or one-off transaction concerned;
- The geographical location of the parties;
- Whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
- In relation to where in respect of one-off transaction, payment is to be made by or to the applicant for business of the amount of US$15,000 or more; or where two or more one-off transactions appear to be linked and the total amount in respect of all the transactions, which is payable by or to the applicant for business is US$15,000 or more, the earlier stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is US$15,000 or more.

522. There is the need for Liberia to amend the PMLL and the KYC-CDD Regulations to expressly provide for timing for verification of identity of customers and beneficial owners before, during and in the course of establishing a business relationship or conducting transactions for occasional customers.

Failure to Satisfactorily Complete CDD (E.C. 5.15 – 5.16):

523. Section 15.110.1(b) of the PMLL provides that identification procedures maintained by a person are in accordance with the PMLL if they require the taking of such measures specified in the procedures that where evidence of an identity is not obtained from an applicant for business relationship or one-off transaction, the relevant business should not proceed any further with that business relationship or one-off transaction. The KYC/CDD Regulations do not cover steps that the BFIs should take when an applicant for business fails to complete CDD. However the Assessors' interaction with managements of BFIs revealed that where an applicant for business fails to complete CDD, the banks will not continue with the business relationship. Some banks cited instances where they have done so but Assessors were not able to confirm their assertions.

CDD Requirements for Existing Customers (E.C. 5.17 -5.18):

524. There are no special rules regarding CDD for existing customers. Neither the PMLL nor the KYC/CDD Regulations has specific provision or requirement on how to deal with existing customers regarding the prevention of money laundering. The Assessors' interaction with the banks revealed that banks were updating records of existing customers to comply with the requirements on identification and verification of customers but that they are not yet able to achieve full compliance. The Assessors were not able to access their records to confirm the information.

525. During the on-site visit, Assessors observed that relevant businesses listed in or envisaged by the PMLL were not aware of the existence of the PMLL. Also, the CBL Regulations cover only bank financial institutions. However, the CBL Regulations was widely circulated to bank financial institutions but did not contain all the necessary requirements of the FATF Recommendations that may be complimentary to the provisions in the PMLL. Apart from banks, all the other financial institutions were not applying CDD measures to their customers.

Recommendation 6

Identification, Risk Management and Enhanced Ongoing Monitoring of Politically Exposed Persons (E.C. 6.1, 6.2, 6.2.1, 6.3, &6.4)

526. There is no provision in the PMLL requiring FIs to, in addition to performing the CDD measures, put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person (PEP). Paragraph 4.2 (iii) of the KYC-CDD Regulations requires each BFI to have and implement customer acceptance policies or procedures that include specific indication of information on any person holding important public positions and persons or companies clearly related to them. The persons include heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations, religious leaders and other businessmen. In addition, paragraph 4.5 requires Boards of BFIs to adopt KYC policies for implementation by senior management consistent with general risk management practices, but does not explain what general risk management practices entail. The KYC Policies are to ensure board and management oversight, systems and controls, training and other related policies. Paragraph 3.2 of the CGR also requires boards of banks to adopt policies and procedures that guide management in its assessment of risks.

527. There is no requirement in law, regulation or other enforceable means for FIs to obtain senior management approval before establishing a business relationship with a PEP or continuing a business relationship with a customer or beneficial owner who has been accepted and is subsequently found to be or subsequently becomes a PEP, except that the KYC-CDD requires implementation of KYC policies by senior management.

528. There is no specific requirement for FIs to take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs.

529. There is no requirement for FIs that are in business relationship with PEPs to conduct enhanced ongoing monitoring on that relationship.

530. Officials of four BFIs met informed Assessors that they had developed internal KYC/CDD policies in furtherance of the CBL Regulations. The Assessors were able to access the internal KYC/CDD policies of three of the institutions and one of these institutions had actually defined PEPs and provided for the need to scrutinise banking relationship with PEPs. The policy also

provides that authorization of the management board should be obtained before an account is opened for a PEP while noting the difficulty in identifying a PEP.

531. All the BFIs that the Assessors met stated that they do not maintain accounts for PEPs but they reported having salary accounts for public officials. This is a clear indication of the lack of understanding on the part of the financial operators on how to determine if a potential customer, a customer or the beneficial owner is a PEP in their system.

Additional elements

Domestic PEPs (A.C. 6.5):

532. There are no requirements in the PMLL relating to PEPs who hold prominent functions domestically. The KYC-CDD Regulations does not distinguish between a foreign PEP and a domestic PEP. The requirement in paragraph 4.2(iii) on customer acceptance procedures relating to persons holding important public positions and persons and companies clearly related to them applies to domestic PEPs.

Ratification of UN Convention against Corruption (A.C. 6.6)

533. Liberia acceded to the UNCAC on 16 Sep 2005[10]. Illicit enrichment and other acts of corruption are yet to be criminalised in Liberia.[11] Section 12.51 of the Penal Law criminalises the solicitation, acceptance or agreement to accept a thing of pecuniary value by a public servant for having engaged in official action as a public servant or having violated a legal duty as a public servant.

534. Liberia has enacted of the Liberia Anti-Corruption Commission Act (2008) and established an Anti-Corruption Commission The Commission has a legal personality with powers to investigate all acts of corruption discovered or reported to have occurred in the public, private, and civil society sectors of Liberia subsequent to the passage of the Act, cause arrest and detention of persons in pursuance of its functions; cause the freezing of assets of persons being investigated or prosecuted for alleged acts of corruption; cause the confiscation of assets of convicted persons and establish counterpart and technical partnership with similar and other agencies, institutions and organisations in Liberia and abroad.

Recommendation 7

Respondent Institution (E.C. 7.1 – 7.5)

535. The PMLL does not address requirements relating to correspondent banking. The KYC/CDD Regulations which deals with customer identification and verification rules does not

[10] UNODC- UNCAC Ratification Status as of 23 September, 2010
[11] Republic of Liberia, National Anti-Corruption Strategy, December 2006.

prescribe specific requirements for correspondent banking. The CBL also issued the following regulations relating to the management of foreign exchange which do not address correspondent banking: Prudential Regulation for the management of foreign exchange risk exposure; Regulation concerning transfer of foreign currency; and Regulations for the licensing and supervision of money remittance entities. Correspondent banking relationship is only referred to in the Guidelines for the Management of Foreign Exchange Risk Exposure and Placement Abroad by commercial banks issued by CBL on August 26, 2009. Part Two, paragraph 2.0 (a) of the Guidelines permits banks to place funds with a first-rated bank having a minimum rating of A, certified by an internationally recognised rating agency". This guidance is grossly inadequate to meet the requirement of Recommendation 7 on correspondent banking relationship regarding information gathering (E.C.7.1); assessment of the adequacy and effectiveness of respondent institutions' AML/CFT control (E.C.7.2); obtaining approval from senior management before establishing new correspondent banking relationship (E.C.7.3); documenting each party's responsibilities (E.C.7.4); and the obligation by respondent to perform normal CDD obligations where payable-through-accounts are maintained by respondent FI and to provide relevant customer identification data when requested by the BFI (E.C.7.5).

536. The BFIs that the Assessors interacted with informed Assessors that their correspondent banks are all A rating and they comply with CDD requirements being implemented both locally and by their correspondent banks. The Assessors were not able to access any agreement with correspondent banks or any correspondence to confirm what the operators said.

Recommendation 8

537. Section 15.111.1 of the PMLL requires the use of identification data for payment by post or by any electronic means which is effective to transfer funds. This applies whether the payment is debited from an account held in the applicant's name at a deposit taking institution, in Liberia or elsewhere. This does not apply in cases where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering or the payment is made by any person for the purpose of opening a relevant account. Under section 15.111.3, it is immaterial, in respect of payment by post or electronic means, whether the payment or its details are sent or given to a person who is bound by section 15.108.1 or to some other person acting on his behalf.

538. The objective of the KYC-CBL Regulations are intended to (I) protect bank's reputation and the integrity of the banking system; (2) promote high ethical and professional standards in the financial sector and (3) combat the misuse of the bank-financial system by criminals. Similarly, paragraph 4.1 of the KYC-CDD Regulations require all licensed banks to have in place adequate policies, practices and procedures that promote high ethical standards and prevent the bank or the entire system from being used, intentionally or unintentionally, by criminal elements. BFIs are required to have in place appropriate risk management system. Paragraph 3(g) of the KYC-CDD defines transaction to include transactions conducted through electronic, internet or offshore banking.

539. The provisions in section 15.111 of the PMLL and the KYC-CDD Regulations cover some of the requirements in Recommendation 8. For instance, identification procedures apply when establishing business relationships and require that the first payment be carried out through an account in the customer's name with another bank subject to similar CDD standards. Thus, applicants for business involving payment of money by post or other electronic means are to be subjected to full CDD measures. It may be gleaned from the PMLL and the KYC-CDD Regulations that FIs in Liberia are required to take measures to prevent the misuse of technological developments in money laundering. However, the PMLL does not specify the type of details that should accompany payment by post or other electronic means. Furthermore, there is no specific mandatory requirement for FIs and NBFIs to have in place mandatory internal procedures that:

(a) require that an AML/CFT risk assessment is conducted on all new products and services before making them operational or offering them to clients;
(b) identify all new ML/TF risks the new product or service, including new technologies, creates, and set for appropriate risk mitigation procedures to adequately reduce those risks; and
(c) set forth a plan for implementation of the new procedures to ensure effective implementation of the risk mitigation measures.

540. Even though some of the BFIs are providing ATM services and internet banking in a limited way, there are no provisions in the internal money laundering policies that Assessors accessed from BFIs that relate to preventive measures against the misuse of technological developments in money laundering and terrorist financing schemes.

3.2.2 Recommendations and Comments

General Comments

541. There is little awareness of the existence of the PMLL and how financial operators can detect and prevent money laundering. Only banks have been issued with KYC/CDD Regulations while insurance companies, MFIs, forex bureaux and stand-alone money remittance service providers have not been issued with regulations relating to AML/CFT measures. Therefore implementation of the FATF Requirements within the financial sector is very low.

Recommendation 5:

542. The PMLL and the KYC/CDD Regulations do not expressly prohibit financial institutions from keeping anonymous accounts or accounts fictitious names. Further, the KYC/CDD Regulations did not address for instance, when CDD is required; the requirement to perform enhanced due diligence for higher risk customers, business relationship or transaction; what happens when there is a failure to satisfactorily complete CDD; and CDD in relation to existing customers. Furthermore, the required measures for CDD are not comprehensive. For instance, for customers that are legal persons there are no requirements to verify the authority and identity of any person purporting to act on behalf of the customer; and there are also no requirements to take

reasonable measures to understand the ownership and control structure of the customer. The definition of beneficiary transaction is limited to transactions conducted by professional intermediaries on behalf of entities. The KYC/CDD Regulation does not appear to cover a natural person acting on behalf of another natural person. Thus, the definition of beneficiary transaction does not conform to the FATF definition of beneficiary. There is no specific requirement in the law or KYC/CDD Regulations for covered persons to conduct ongoing due diligence or enhanced due diligence for higher risk customers. Besides the Regulations do not include the requirement for BFIs to scrutinise transactions undertaken throughout the relationship and to review record kept on the relationship to ensure they are up-to-date and relevant. There is no effective implementation of CDD measures in banks and there is no implementation of the CDD measures in other financial institutions.

Recommendation 6:

543. There is no definition of PEPs or requirements or procedures to be adopted in relation to PEPs. Furthermore, the CBL has not provided comprehensive guidance to financial institutions regarding PEPs. The KYC/CDD Regulations only defines PEPs and require BFIs to have and implement customer acceptance policies and procedures that include specific indication of and information on PEPs. The Regulations do not require BFIs to take reasonable measures to establish source of wealth and source of funds of PEPs and to conduct enhanced ongoing monitoring on the relationship with PEPs. Liberia does not have a comprehensive anti-corruption legislation domesticating the requirements in the UNCAC.

Recommendation 7

544. The PMLL does not have any provision on corresponding banking or payable through accounts. Furthermore, requirement relating to correspondent banks in the Guidelines for the management of foreign exchange risk exposure and placement abroad by commercial banks issued by CBL on August 26, 2009, is also scanty. Thus the regulations and guidance are grossly inadequate as they do not cover the requirements of Recommendation 7 on correspondent banking relationship.

Recommendation 8:

545. The requirements in the PMLL and the KYC-CDD Regulations are not comprehensive and are not being applied across the entire financial sector.

546. Based on the conclusions drawn with respect to R. 5 – 8, the Assessors recommend that:

- Liberia should review the PMLL to comply with the 40+9 Recommendations of the FATF;
- The supervisors should develop comprehensive KYC/CDD Regulations that will cover all the preventive measures including those for higher risk categories such as non-resident customers, private banking, PEPs, correspondent banking, non-face-to-face customers etc.;

- The supervisors should intensify awareness raising regarding money laundering prevention among financial operators ;
- Supervisors should issue KYC/CDD regulations to MFIs, money remittance service providers, foreign exchange bureaux and insurance companies; and
- Supervisors should monitor compliance of the FATF requirements by persons being regulated by them.

3.2.3 Compliance with Recommendation 5 to 8

Rec.	Rating	Summary of Factors Underlying Rating
R.5	**NC**	• There is no requirement in law or regulation prohibiting FIs from opening anonymous accounts or maintaining accounts in fictitious names. • Apart from banks, KYC/CDD Regulations have not been issued to other sectors of the financial system. • KYC/CDD Regulations do not address when CDD is required; enhanced due diligence for higher risk customer, business relationship or transaction; existing customers; and failure to satisfactorily complete CDD. • KYC/CDD requirement for ongoing monitoring of business transactions is limited to transactions in excess of US$25,000 or equivalent in other currencies. • No requirement for verification of authority of person acting on behalf of customers that are legal persons; and to understand structure and control of customer. • No requirement for FIs to scrutinise transactions undertaken throughout the relationship. • No requirement to review records maintained on the relationship to ensure its relevance. • There is little implementation of CDD measures.
R.6	**NC**	• PEPs not addressed in the law. • No requirement to establish source of wealth and source of funds of customers and beneficial owners identified as PEPS. • No requirement to conduct enhanced ongoing monitoring of the relationship with PEPs. • No requirement to get senior management's approval before establishing or continuing a business relationship with a PEP.
R.7	**NC**	• Correspondent banking not addressed in the law. • No requirement to get information about respondent's business. • No requirement to assess respondent's AML/CFT controls

		and their adequacy and effectiveness. • No requirement to obtain approval from senior management before establishing new correspondent relationship. • No requirement for FI to document respective AML/CFT responsibilities of each party in a correspondent banking relationship. • No requirement for FI to satisfy itself that normal CDD obligations are conducted by respondent where payable-through-accounts are maintained and to provide relevant customer identification data upon request. • Scanty prescription in KYC/CDD Regulations regarding correspondent banking relationship • There is no effective monitoring of compliance
R.8	**NC**	• The PMLL does not specify the type of details that are to accompany a payment by post or other electronic means • There are no policies or procedures in place to address any specific risk associated with non-face-to-face business relationships or transactions • Requirements in PMLL not being implemented across the entire financial sector.

3.3 Third Parties and Introduced Business (R. 9)

3.3.1 Description and Analysis

Legal Framework:

547. The PMLL does not prohibit covered persons from using third parties or intermediaries in conducting CDD on their behalf.

Reliance on Third Party for CDD Purposes (E.C. 9.1)

548. There is no specific requirement for FIs and NBFIs to rely on CDD/KYC done by third parties. However, section 15.112(4) & (5) of the PMLL permits covered persons to accept a written assurance from the applicant for business who is, or appears to be, acting as an agent for a principal to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business. This provision applies where the applicant for business (a) acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions; and (b) is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those required by either: (i) any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of

the proceeds of crime to which the government of the Republic of Liberia is a party; or (ii) Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

Availability of Identification Data to Third Parties (E.C. 9.2)

549. Neither the PMLL nor the KYC/CDD regulations require FIs to take adequate steps to ensure that third party will make available copies of identification data and other relevant documentation relating to CDD requirements upon request without delay.

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

550. Section 15.112.5 of the PMLL permits reliance on due diligence assurance only from circumstances where there are reasonable grounds for believing that the applicant for business (a) acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions; and (b) is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those required by either: (i) any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the government of the Republic of Liberia is a party; or (ii) Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

Adequacy of Application of FATF Recommendation (E.C. 9.4)

551. Section 15.112.5 of the PMLL provides guidance on determining where the third party that meets the conditions can be based. Covered persons may rely on due diligence assurance only under circumstances where there are reasonable grounds for believing that an applicant for business (a) acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions; and (b) is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those required by either: (i) any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the government of the Republic of Liberia is a party; or (ii) Council Directive 91/308/EEC of the European Community, as amended and replaced from 3time to time. However, the PMLL does not require competent authorities to take into account information available on whether the countries adequately comply with CDD requirements set out in Recommendations 5 and 10. Liberia should require FIs to refer to reports, assessments or other reviews concerning AML/CFT that are published by the FATF, FATF Style Regional Bodies (FSRBs), the IMF or the World Bank.[12]

Ultimate Responsibility for CDD (E.C. 9.5)

552. There is no provision in law, regulation or other enforceable means placing ultimate responsibility on FIs relying on a third party for identification and verification of identity of

[12] See footnote 19 of FATF Methodology

customers. However all BFIs that the Assessors interacted with stated that they do not use third parties or intermediaries to carry out customer identification and verification on their behalf. The BFIs did not provide the Assessors with records to enable them to confirm the statement of the BFIs.

3.3.2 Recommendations and Comments

553. The PMLL permits the use of third parties or intermediaries but the KYC/CDD Regulations do not address the reliance on third party for carrying out CDD. The banks interviewed informed Assessors that they do not use third parties to conduct CDD on their behalf but the Assessors could not verify their statement. Since the PMLL permits reliance on due diligence assurance by third party, the Assessors recommend that the supervisor develops regulations on reliance on third party to cover the requirements of R.9 and issue them to financial institutions. Supervisors should also monitor compliance with the regulations. Liberia should require FIs to refer to reports, assessments or other reviews concerning AML/CFT that are published by the FATF, FATF Style Regional Bodies (FSRBs), the IMF or the World Bank.[13]

3.3.3 Compliance with Recommendation 9

Rec.	Rating	Summary of Factors Underlying Rating
R.9	**PC**	• There is no provision in law, regulation or other enforceable means placing ultimate responsibility on FIs relying on a third party for identification and verification of identity of customers. • There is no requirement for FIs to take adequate steps to ensure that third party will make available copies of identification data and other relevant documentation relating to CDD requirements on request without delay • The FIs are not monitored to ensure compliance with the requirements of R.9 where FIs rely on third party for CDD, or to confirm that FIs do not rely on third party for CDD.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Legal Framework:

[13] See footnote 19 of FATF Methodology

554. The CBLA 1999, the NFIA 1999, and the PMLL 2002 constitute the legal framework for accessing and sharing of information.

Inhibition of Implementation of FATF Recommendations (E.C. 4.1):

555. Sections 15.101 (3) and 15.102(5) of the PMLL permit a person to disclose a suspicion of any funds or investments derived from criminal activities or used for criminal activities, or any matter on which a suspicion is based, to a Law Enforcement Officer or Customs Officer . Furthermore sections 15.101.5 and 15.102.8, require that if a person who was in employment at a relevant time discloses information "to the appropriate person in accordance with procedure established by his employer for making those disclosures as they have effect in relation to disclosures, and intended disclosures, to a Law Enforcement Officer or Customs Officer".The disclosures are not to be treated as breach of any restriction upon the disclosure of information imposed by statute or otherwise.

556. Section 36 of the CBLA 1999 provides that the CBL may furnish information to the public through publication in the Gazette. However, Section 37 (2) precludes the CBL from providing information which will disclose the affairs of any person who is a customer of a financial institution, unless the consent of that customer has been obtained in writing. The Governor, officers and employees and other persons connected to the operations of the CBL are required to take an oath of fidelity and secrecy under section 18 of CBL Act and are precluded from having access to, disclosing or publicizing non-public material information which they have obtained in the performance of their duties at the Central Bank unless otherwise permitted by law or regulation.

557. The NFIA 1999 Section 35 (1) prohibits an inquiry to be made into the affairs of any individual customer of a financial institution. Section 35 (2) also precludes the CBL from revealing to any person any information as to the affairs of any individual customer of a FI obtained in the exercise of its regulatory functions, unless lawfully required to do so by a court of law. However, with the enactment of the PMLL 2002, the CBL and FIs can provide information relating to suspicion of any funds or investments derived from criminal activities or used for criminal activities, or any matter on which a suspicion is based, to a Law Enforcement Officer or Customs Officer and such act will not be considered as breach of restriction imposed by the CBLA or NFIA.

558. Paragraph 3 of the Liberian Anti-Corruption Measures issued pursuant to Part V of the A-CCA states that officials of Government who become subjects to financial crimes investigation will be deemed to have automatically waived their right under bank secrecy laws, so that relevant institutions of integrity charged with the responsibility of investigating acts of financial improprieties can check on their financial transactions in Liberia and abroad should the need arise. This provision presupposes that the LACC can compel financial records for purposes of investigation and prosecution of corruption cases.

Ability of Competent Authorities to Access Information

559. The Assessors are of the opinion that competent authorities may have difficulty in accessing information they require to properly perform their functions. The PMLL removes the restrictions imposed by the CBLA and the NFIA if disclosure is made to law enforcement officer or customs officer but has not provided how law enforcement officer or customs officer should obtain information from covered persons. The law enforcement officers interviewed said they have to obtain court order to access information from FIs.

Sharing of information with other competent authorities internationally and domestically

560. The law is not clear about providing information outside the jurisdiction of Liberia. Regarding sharing of information with other competent authorities domestically, the law does not provide for disclosure to other competent authorities domestically. The competent authorities, that is, the law enforcement officers and the customs officer, disclosed that they have to go through the judiciary to access information to properly perform their function in combating ML.

Data protection/Privacy rights:

561. The law does not provide for data protection and measures against possible misuse of the information by the law enforcement officers or the customs officers.

3.4.2 Recommendations and Comments

562. The PMLL removes the restrictions on disclosure of individual customer's financial information imposed by the CBLA and NFIA if the disclosure is to law enforcement officer or to customs officer, but does not provide for how the officers will obtain information. The officers can only obtain information by going through the courts and this may hinder timely access to information and slow down money laundering investigations. The law does not provide for data protection and measures against possible misuse of the information by the law enforcement officers or the customs officers.

563. In view of the above, the Assessors recommend that Liberia should Review and modify existing secrecy laws to ensure that they do not impede implementation of AML/CFT standards.;

3.4.3 Compliance with Recommendation 4

Rec.	Rating	Summary of Factors Underlying Rating
R.4	**PC**	• The PMLL does not provide for data protection. • The PMLL does not provide for measures against possible misuse of information by law enforcement officers and customs officers. • Law enforcement officers do not have direct access to financial records • There is no express provision for sharing information internationally.

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

3.5.1 Description and Analysis

Recommendation 10

564. The PMLL and the KYC-CDD Regulations provide for the legal framework for record keeping requirements in Liberia.

Record keeping and Reconstruction of Transaction Records (E.C. 10.1 & 10.1.1)

565. Section 15.115 of the PMLL 2002 requires covered persons to keep the following records:

- *In any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity obtained in accordance with identification procedures relating to business relationships and or transactions on behalf of another, a record that indicates the nature of the evidence and comprise a copy of the evidence; or provide such information as would enable a copy of it to be obtained; or where not reasonably practicable to provide a copy of the evidence, sufficient information should be provided to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and*
- *A record containing details relating to all transactions carried out by the person in the course of relevant financial business.*

566. Paragraph 15.115 (2) of the PMLL and paragraph 5.0 of the KYC/CDD Regulations require that identification and transaction records be kept for at least a period of five years. The requirements in the PMLL and the KYC-CDD apply regardless of whether the account or business relationship is ongoing or has been terminated. In respect of identification records, section 15.115.2(a) requires that the records be kept from the date on which the relevant business was completed. Transaction records are to be kept from the date on which all activities taking place in the course of the transaction in question were completed. The transaction records required would be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity and meet the requirement in R10.1.

567. Paragraph 5.0 of the KYC/CDD Regulations requires BFIs to maintain "for at least five years, all necessary information received and records made pursuant to due diligence conducted in respect of its customer acceptance procedures and customer identification rules". However the CBL manual of on-site examination policies and procedures does not include examining compliance with the record-keeping requirement.

Record Keeping for Identification data (E.C. 10.2):

568. Paragraph 15.115 (2) of the PMLL and paragraph 5.0 of the KYC/CDD Regulations require that identification and transaction records be kept for at least a period of five years. The five year period commences, in relation to identification records, the date which the relevant business was completed, and in relation to transaction records, the date on which all activities taking place in the course of the transaction in question were completed. Section 15.115.4 interprets date on which relevant business is completed to mean:

a) In circumstances falling within Case I, the dates of the ending of the business relationship in respect of which formation of the record under sub-section 1(a) was compiled;

b) In circumstances falling within Case 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under subsection 1(a) was compiled;

c) *In circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under sub-section 1(a) was compiled, and where the formalities necessary to end a business relationship have not been observed, but a period of five (5) years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.*

Availability of Records to Competent Authorities (E.C. 10.3):

569. There is no requirement in the PMLL for FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. Section 23 of the NFIA empowers the Supervisory Authority, to inspect the books and records of financial institutions. Refusal to give the CBL access to the books and records of the institution attracts a penalty. NFIA Section 35 (1) provides that nothing in the NFIA "shall permit or allow any financial institution or any person acting for or on behalf of the financial institution in his position therewith to neglect or refuse to provide to the CBL any document or information it may request, require or order in respect of any customer or the activities of the financial system.

570. Paragraph 5.0 of the KYC/CDD Regulations extends the five years period for which all necessary information received and records made pursuant to due diligence conducted in respect of its Customer Acceptance Procedures and Customer Identification Rules to records on transactions, both domestic and international to enable the BFIs to comply with information requests from the CBL and other competent authorities. The Regulations does not define competent authorities. Apart from the CBL, access to records of FIs is obtained through court orders.

Special Recommendation VII

571. In Liberia, Banking institutions and money remittance service providers provide wire transfer services. Assessors were informed that there are three licensed money remittance entities, of which only two are active. Measures relating to cross-border money transfers in Liberia are described as in the ensuing paragraphs.

Originator Information for Wire Transfer and Threshold

572. Both the PMLL and the KYC/CDD Regulations require FIs to obtain and maintain information relating to the identity of customers. However, the PMLL and the KYC/CDD Regulations do not make specific provision for cross-border and domestic transfers between financial institutions. Section 15.110 of the PMLL requires relevant businesses to maintain identification procedures for applicants of business concerning any particular business relationship or one-off transaction by requiring the production by the applicant for business of satisfactory evidence of his identity or taking measures specified in the procedure as will produce satisfactory evidence of his identity and the procedures require that where that evidence is not obtained the business relationship or one-off transaction in question should not proceed further.

573. Section 15.111.1 of the PMLL provides that where satisfactory evidence of the identity of an applicant for business would, apart from, payment of account in the name of applicant for business, be required under the identification procedures in accordance with section 15.110 (requirement for systems to combat money laundering) but the circumstances are such that a payment is to be made by the applicant for business and it is reasonable in all circumstances for the payment to be sent by post or by any electronic means which is effective to transfer funds; or for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means; then, the fact that the payment is debited from an account held in the applicant's name at a deposit taking institution, in Liberia or elsewhere, subject to like requirements to those placed on such institutions by this part (whether the account is held by the applicant alone or jointly with one or more persons) shall be capable of constituting the required evidence of identity.

574. According to section 15.111.2 of the PMLL, the requirement in 15.111.1 should not have effect in cases where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering or the payment is made by any person for the purpose of opening a relevant account. Under section 15.111.3, it is immaterial, in respect of payment by post or electronic means, whether the payment or its details are sent or given to a person who is bound by section 15.108.1 (relevant financial business) or to some other person acting on his behalf. Although section 15.111.1(b)(ii) indicates that the details of the payment are to be sent by post, to be given on telephone or to be given by any other electronic means, it does not specify the details that may be sent.

Maintaining Originator Information

575. In accordance with FATF Recommendations, the originator information which accompanies the wire transfer must be kept for five years. Although the laws do not specify originator information relating to wire transfer, PMLL Section 15.115 (2) and paragraph 5.0 of the KYC/CDD Regulation require that records and information received by covered persons should be maintained for at least five years.

Verification of identity of originator

576. The PMLL does not expressly require FIs to verify the identity of the originator in accordance with Recommendation 5 for all wire transfers of EUR/USD1,000 or more. The verification requirements apply irrespective of the amount involved.

577. Identification and verification rules under the KYC/CDD Regulations relating to cross-border and domestic transfers between financial institutions are the same as those for other transactions. The KYC/CDD Regulations defines transactions to include transfer (inward or outward) and transactions conducted through electronic, internet or offshore banking.

Full originator information in the message or payment form accompanying cross-border wire transfer

578. The FATF Recommendation SR VII requires that for cross-border wire transfers of EUR/USD 1,000 or more the ordering financial institution should be required to include full originator information in the message or payment form accompanying the wire transfer. It remains with each country to decide whether cross-border or domestic transfers of less than EUR/USD 1,000 are required to contain full originator information. There is no express provision in law, regulation or other enforceable means requiring ordering FIs to include full originator information in the message or payment form accompanying a wire transfer of EUR/USD 1,000 or more. Section 15.111, on payment by post, refers to *details of the payment to be sent by post, to be given on telephone or to be given by any other electronic means*, but does not specify the details that may be sent. The banks, however, disclosed that they are complying fully with this requirement but the Assessors were not able to confirm this.

579. The Authorities in Liberia have not issued guidelines to financial institutions with respect to the implementation of originator information relating to wire transfers. The banks that Assessors visited informed the Assessors that the transfers are accompanied by full originator information. They explained that their correspondent banks will not allow any transfers that are not accompanied by full originator information. The Assessors did not examine records to confirm this.

Domestic wire transfers

580. There is no requirement in the PMLL ordering financial institutions to include full originator information in the message or payment accompanying wire transfers of EUR/USD1,000 or more. The information on cross-border wire transfer above applies to domestic transfers irrespective of the amount involved.

Transmission of originator information by intermediaries and beneficiary institutions

581. There is no requirement for intermediary or beneficiary FI in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

Adoption of effective risk-based procedures

582. SR VII also requires beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The lack of complete originator information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious and should be reported to competent authorities. The banks stated that payment is not effected in respect of any wire transfer that is not accompanied by complete originator information until the full information is received otherwise the amount of money transferred is returned to the originator. Assessors were not able to sight evidence to support this statement.

Monitoring of information and sanctions

583. The Authorities have not issued any guidelines, or regulations, regarding the implementation of FATF Recommendation SR. VII. There is no evidence that the supervisors are monitoring compliance and sanctions are not applied for non-compliance.

3.5.2 Recommendations and Comments

584. Record-keeping requirements are covered in both the PMLL and in the KYC/CDD Regulations issued to banks. However, the CBL manual of on-site examination policies and procedures do not cover examination of compliance with record-keeping requirements. Even though the banks disclosed that they are complying with the record-keeping requirements, there is nothing in the CBL's examination report to confirm banks' compliance. There are also no regulations relating to record-keeping issued to insurance companies, MFIs, forex bureaux, and money remittance providers.

585. The Assessors recommend that the Supervisory Authorities develop regulations that will cover record-keeping requirements as specified in FATF Recommendation 10 for the various sectors, such as, insurance companies, MFIs, forex bureaux, and money remittance providers and issue these regulations to them. The Supervisory Authorities should also monitor compliance.

586. Regarding FATF Recommendation SR VII, the implied provisions in the PMLL are not being implemented. The CBL issued regulation concerning transfer of foreign currency and regulations for the licensing and supervision of money remittance entities, as well as KYC/CDD regulations but none of these fully cover the requirements of SR VII. The Assessors therefore recommend the following that:

- Supervisory Authorities should develop and issue regulations pertaining to SR VII to all financial service providers who are involved in wire transfers, both domestic and international.
- Supervisory Authorities should also monitor compliance of the regulations.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

Rec.	Rating	Summary of Factors Underlying Rating
R.10	**PC**	• Most financial institutions are not implementing record-keeping requirements • There is no requirement in the PMLL for FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority • There is no evidence that FIs are being supervised for compliance with record-keeping requirements
SR VII	**PC**	• No express provision in law, regulations or guidelines regarding the requirements of SR VII and their compliance. • Supervisory Authorities have not put in place procedures to monitor compliance with SR VII.

Unusual, suspicious and other transactions

3.6 Monitoring of transaction and relationships (R11 and 21)

3.6.1 Description and Analysis

Recommendation 11

587. There is no requirement in the PMLL for financial institutions to pay attention to all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. The CBL KYC/CDD Regulations issued to banks provides little guidance in relation to the requirements in Recommendation 11.

Complex, Unusual Large Transactions (E.C. 11.1)

588. Paragraph 4.4 of the KYC/CDD Regulations requires BFIs to establish, either separately or within its KYC policies, an effective system to monitor and detect unusual or suspicious activities. Paragraph 3 (f) of the Regulations define suspicious activities as any higher risk transaction, or complex, unusual large transactions or unusual patterns of transactions, which have no apparent economic base or visibly lawful purpose. Section 3 (e) defines higher risk/suspicious transaction as any account, transfer, transaction or lodgement in excess of US$25,000 or its equivalence in Liberian Dollars in the case of an individual and US$40,000 or its equivalence, in the case of a body corporate. KYC/CDD regulations 4-4 (ii) also require banks to put in place adequate management information systems to provide senior management and compliance officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts. However, the KYC/CDD Regulations do not apply to other financial service providers other than banks.

Examination of complex and unusual transactions (E.C. 11.2)

589. Paragraph 4.3 (i) of the CBL KYC/CDD Regulations require BFIs to, among others, obtain all information necessary to establish to their full satisfaction the purpose and intended nature of the business relationship. The KYC/CDD Regulations also require banks to put in place effective system to monitor and detect unusual or suspicious activities, and adequate management information systems to provide senior management and compliance officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts. However, there is no evidence that the CBL monitors compliance with this requirement. A review of the CBL's Examination Manual and Reports, did not confirm that this area is examined.

590. The banks that Assessors visited and interacted with said they monitor complex and unusual transactions but this was not proved to the Assessors. The AML Policies and Procedures of one of the banks visited requires that large currency transactions in the form of cash withdrawals and cash deposits of more than US$10,000.00 or its Liberian Dollar equivalent should be reviewed daily by the Internal Audit Manager or and one member of Senior Management. It further provides that

unusual activity which results in suspicion of money laundering should be reported to the CBL and the affected correspondent bank. While commending the bank for its effort to pay attention to unusual large transactions, Assessors wish to say that the requirement is not comprehensive because it only requires for review where there are cash deposits or withdrawals of more than US$10,000.00. This requirement appears to have been confused with the requirement in Recommendation 19.

Record keeping of findings (E.C. 11.3):

591. Paragraph 5.0 of the KYC/CDD Regulations requires BFIs to keep records for at least five years. This requirement applies to records on transactions, both domestic and international, to enable the BFIs to comply with information requests from the CBL and other competent authorities. Even though the banks said they were complying with this requirement, there was no evidence, either from their examination manual or from their examination reports, that the CBL was monitoring compliance by BFIs.

Recommendation 21

Special attention to business relationships and transactions

592. There is no express requirement in law, regulation or other enforceable means for FIs to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from countries which do not or insufficiently apply the FATF Recommendations. However, the requirement in section 15.112.4 and 5 provide for circumstances in which FIs can rely on due diligence assurance of evidence of the identity of a person on whose behalf the applicant for business may act in relation to that person will have obtained and recorded under procedures maintained by the applicant for business. The PMLL provides that it will be reasonable for FIs to accept the due diligence assurance if there are reasonable grounds for believing that the applicant for business acts in the course of business in relation to which an overseas regulatory authority exercises regulatory functions and is based or incorporated in, or formed under the law of a country in which there are in force provisions at least equivalent to those required by any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the Government of Liberia is a party or Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

593. The provisions in section 15.112.4 and 5 of the PMLL envisages that persons to whom they apply have in place or are subjected to sufficient anti-money laundering measures and therefore do not pose risk to the financial system of Liberia. Thus the PMLL impliedly require FIs to give special attention to business relationships and transactions with persons who fall within the purview of section 15.112.4 and 5. However, the application of section 15.112.4 is based on reasonableness and not an express requirement to apply countermeasures to persons, business relationships and transactions. The implied requirement is not clear enough for relevant businesses to ascertain whether they are meeting the requirement. In this regard, compliance is not ascertainable by supervisory authorities. The supervisors cannot monitor institutions under their authority for

compliance nor sanction them for non-compliance. Furthermore, the provisions in sections 15.112.4 and 5 are limited in scope as they only apply to legal persons that are acting on behalf of principals. Furthermore, a country may be a party to the relevant UN conventions in respect of the prevention of the laundering of proceeds of crime or the Council Directive 91/308/EEC of the European Community but may not be in compliance with and has not effectively implemented the FATF Recommendations.

594. There are no effective measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries, although one of the banks visited informed Assessors that by its affiliation with international banks that are located in countries that apply stringent AML/CFT measures in their businesses, it is obliged to apply similar measures to business relationships and transactions. In fact, the bank's AML Policies and Procedures specify that it only deals with eight other registered banks in Liberia and its correspondent banks that are obviously sufficiently applying the FATF Recommendations.

3.6.2 Recommendations and comments

595. The requirements relating to complex and unusual large transactions are only provided for in the KYC/CDD Regulations issued to banks. Although the banks informed Assessors that they were complying with the requirements, the Assessors were not able to confirm as there was no evidence of compliance monitoring by the CBL. The Regulations regarding complex and unusual transactions have not been developed and issued to other financial service providers other than banks.

596. The Assessors recommend that the Supervisory Authorities should

(a) issue regulations to all financial service providers requiring them;
   - (i) to pay special attention to all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose,
   - (ii) examine as far as possible the background and purpose of such transactions and set forth their findings in writing, and
   - (iii) keep such findings available for competent authorities and auditors for at least five years;
   - (iv) effectively monitor FIs and NBFIs for compliance with the requirements of Recommendation 11.

597. Regarding FATF Recommendation 21, the PMLL does not expressly require FIs to give special attention to business relationships and transactions with persons from countries that do not apply or insufficiently apply the FATF Recommendations. The guidance provided only cover legal person who are acting as principals to agents. There is no evidence of compliance with these requirements. The Liberian Authorities have no measures in place either in the law or in regulations to ensure compliance with the requirements of this FATF Recommendation.

598. The Assessors therefore recommend that Liberia should amend the PMLL, issue Regulations or other enforceable means to incorporate provisions relating to FATF Recommendations 11 and 21. In accordance with Recommendations 11 and 21, the PMLL or Regulations should require FIs to:

- Pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
- Examine as far as possible the background and purpose of such transactions and to set forth their findings in writing.
- Keep their findings available for competent authorities and auditors for at least five years.
- Give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; and
- Examine the background and purpose of transaction with no apparent economic or visible lawful purpose, and maintain written findings which should be made available to competent authorities.

599. Further, Liberia should put effective measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries; and where a country continues not to apply or insufficiently applies the FATF Recommendations, appropriate counter-measures should be applied to that country.

3.5.3 Compliance with Recommendations 11 and 21

Rec.	Rating	Summary of Factors Underlying Rating
R.11	**PC**	• Regulations on complex and unusual large transactions not issued to other financial service providers other than banks. • The requirement to keep findings available for competent authorities is limited to BFIs by virtue of the KYC-CDD Regulations. • There is no effective monitoring of implementation.
R.21	**PC**	• There is no express requirement in law, regulation or other enforceable means for FIs to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from countries which do not or insufficiently apply the FATF Recommendations • There is no monitoring for compliance with the requirements in Recommendation 21

3.7 Suspicious Transaction reports and other reporting (R13-14, 19, 25 and SR IV)

3.7.1 Description and analysis

Recommendation 13 & Special Recommendation IV

Recommendation 13

600. In Liberia, the PMLL and the KYC/CDD Regulations provide for submission of STRs to Law Enforcement Officers, Customs Officer, employers and the CBL. Liberia has not established an FIU with the function to receive, analyse and disseminate STR and other information relating to money laundering.

Reporting obligations

Under the PMLL

601. There is no direct mandatory obligation in the PMLL requiring an FI to report the FIU when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. The provisions in sections 15.101.3,15.101.5, 15.102.5, 15.102.8 and 15.117(d) of the PMLL envisages the fact that persons are expected to render STRs, in the case of the PMLL, to Law Enforcement Officers, Customs officers or employers.

602. Section 15.101.3 provides that *where a person discloses to a Law Enforcement Officer or Customs Officer a suspicion or belief that any funds or investment are derived from or used in connection with criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which a suspicion or belief is based……*, while 15.102.5 *provides that where a person discloses to a Law Enforcement Officer or a Customs Officer a suspicion or belief that any property is, in whole or in part directly or indirectly represents another person's proceeds of criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which such a suspicion or belief is based*…… Furthermore, sections 15.101.5 and 15.102.8 provide that *in the case of a person who was in employment at the relevant time, subsections 3 and 4/5 and 7 shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures, and intended disclosures, to a Law Enforcement Officer or Customs officer.*

603. Section 15.117(d) also provides that internal reporting procedures maintained by a person are in accordance with that section if they include provision for securing that the information or other matter contained in a report is disclosed to a Law Enforcement Officer or Customs Officer where the person who has considered the report under the internal reporting procedures maintained in accordance sub-sections (a) to (c) knows or suspects that another person is engaged in money laundering.

604. Recommendation 13.1 requires that the requirement to report suspicious transactions to the FIU should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason for possible prosecution for a money laundering offence or otherwise (so called "indirect reporting") is not acceptable. The provisions discussed do not constitute direct mandatory requirements and appear to be intended for prosecution for a money laundering offence. In this regard, they cannot conveniently be applied to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. Liberia has not established an FIU to whom STRs are submitted. Therefore, the requirements in the PMLL do not comply with Recommendation 13.1.

Under the KYC/CDD Regulations

605. Paragraph 4.1 of the KYC/CDD Regulations requires BFIs to have in place KYC Policies that include suspicious activity reporting (SAR). Paragraph 6.0(i) provides that each licensed bank shall be required to submit to the CBL promptly, a Suspicious Activity Return, where applicable. Paragraph 3(f) of the Regulations define "suspicious activities" as (1) any higher risk transaction, or (2) complex, unusual large transactions or unusual patterns of transactions, which have no apparent economic base or visibly lawful purpose.

606. Officials of the Banking Supervision Department of the CBL informed the Assessors that in the absence of the FIU, the CBL receives STRs. The CBL does not analyse the information and disseminate to the relevant institutions but does so for its internal purposes. Some banks visited informed the Assessors that they submit SARs to the CBL. Both the CBL and banks did not provide the Assessors with statistics of STRs submitted or received.

607. The provisions in the KYC/CDD do not comply with the requirements in R. 13.1. Paragraph 6.0(i) is not a direct mandatory obligation to BFIs to submit STRs. The use of the phrase shall be instead of the words are to, should or must, is an indication of a future intention to require BFIs to submit SARs to the CBL. Also, the definition of suspicious activities appears to have been confused with unusual transactions and does not indicate that the funds are suspected to be the proceeds of crime. A transaction is suspicious where the reporting party has reasonable ground to suspect or suspects that funds are the proceeds of a criminal activity. Therefore, the requirement in the KYC/CDD Regulations do not comply with the requirements of FATF Recommendation 13.1

STR related to terrorist financing SR. IV

608. There is no obligation in law or regulation to make STRs where there are reasonable grounds to suspect or there is suspicion that funds are linked or related to, to be used for terrorism, terrorist acts or by terrorist organisations or those who finance them. Liberia has not criminalised terrorist financing and as such there is no requirement to submit STRs related to terrorism financing.

Reporting Threshold

609. In the absence of a direct mandatory obligation to make STRs in accordance with R 13, there is no requirement that all suspicious transactions, including attempted transactions should be reported regardless of the amount of the transaction.

Reporting of Tax Matters

610. There is no provision in law, regulation or other enforceable means to prevent relevant institutions from reporting suspicious transactions on the ground that it involves tax matters. However, tax crimes are bailable offences and do not fall within the purview of criminal conduct in the PMLL.

Additional Element

611. In the absence of a direct mandatory obligation to make STR and criminalisation of all predicate offences, designation to fall within the threshold of non-bailable offences and existence of an FIU with the power to receive, analyse and disseminate STRs, FIs are not required to report to the FIU when they suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering.

Effectiveness of the STR regime

612. The STR regime in Liberia is not effective. The Assessors have a number of concerns about the lack of effectiveness of the STR regime of Liberia. Since the enactment of the PMLL in 2002, the authorities have not taken any action to make reporting entities aware of their obligation to submit STRs, even to Law Enforcement Officers and Customs Officers. In fact, a greater number of stakeholders, both reporting entities and receiving entities were not aware of their obligations under the PMLL relating to suspicious transaction reporting. There appears to be a disconnection between the CDD/KYC obligations which is the foundational basis of the reporting obligation. While the PMLL impliedly requires reporting entities to report suspicions to Law Enforcement Officers, the KYC/CDD Regulations require BFIs to submit STRs to the CBL. Both documents do not provide details regarding what reporting entities should look for and when to report. The main purpose of the CDD/KYC requirement is to enable institutions to identify what transactions should be considered "usual" for each customer. In the absence of any understanding regarding what transactions should be expected or "usual" for each customer, it is not possible for reporting entities to identify "unusual" or suspicious transactions to enable them to effectively fulfil their reporting obligations. The Assessors observed that the KYC/CDD Regulations were issued in accordance with section 45 of the CBL Act and section 39 of the New Financial Institutions Act of 1999 without reference to the PMLL. Perhaps it is due to the fact that the PMLL did not specifically require supervisory authorities to issue regulations in furtherance of the PMLL. It is important to state that the KYC/CDD Regulations has been in existence since 2005 and the absence of relevant statistics on STRs submitted is also of much concern. This situation may have been precipitated by the threshold set for the reporting obligation given the nature of customers maintained by FIs in Liberia.

Recommendation 14

613. Section 15.101.3 of the PMLL provides that "where a person discloses to a Law Enforcement Officer or Customs Officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which a suspicion or belief is based: the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and if he does any act in contravention of assisting another to retain tainted benefit and the disclosure relates to the arrangement concerned, he does not commit an offence under section 15.101 if the disclosure is made before he does the act concerned and the act is done with the consent of the Law Enforcement Officer or Customs Office; or the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

614. A similar provision is made in section 15.102.5 relating to disclosure of suspicion or belief that property is, or in whole or in part directly represents another person's proceeds of criminal conduct. In the case of disclosure to an employer, sections 15.101.5 and 15.1028 provide that in the case of a person who was in employment at the relevant time, the protection for disclosure will have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for making such disclosures as they have in relation to disclosures, and intended disclosure, to a Law Enforcement Officer or Customs Officer. This provision appears to apply to employees whose employers are expected to have in place procedures for disclosures. However, Assessors observed that apart from BFIs, designated institutions had not complied with this provision and are therefore likely to rely on standard non-disclosure procedures established by them.

615. Although the provisions produced above seek to provide protection for persons who disclose suspicions or beliefs for money laundering from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, they do not specify whether the disclosure should be in good faith. However, good faith may be inferred in situations where a person makes a disclosure before the person takes a step in the money laundering scheme with the consent of a Law Enforcement Officer or Customs Officer. Good faith cannot be guaranteed in cases where makes a disclosure after the act, but on his own initiative as soon as it is reasonable for him to make it. The PMLL does not explain what constitutes reasonableness or the timeframe within which it will be reasonable for a person to make a disclosure. A person who was otherwise involved in arrangement with the intention to launder the proceeds of crime may make a disclosure out of fear of arrest or as a result of dissatisfaction with an accomplice. This provision may be counterproductive as the essence of disclosures is to ensure that criminal proceeds are not dissipated or the ability of national authorities to freeze, seize and confiscate proceeds of crime is not prejudiced. In absence of a judicial decision on these provisions, the Assessors could not determine their effectiveness.

616. Furthermore, the provisions do not specify whether they are intended to protect financial institutions and their directors and officers (employees are provided for). The provisions do not also specify whether the protection would be available even if they did not know precisely what the underlying criminal activity was and regardless of whether illegal activity actually occurred. There

is no penalty for failure to report a suspicion or belief that a money laundering offence has been or is about to be committed. There is the need for Liberia to amend the PMLL to comply with the FATF Recommendations.

Prohibition against tipping off

617. In Liberia, tipping off is prohibited during enquiry or when a disclosure is made to a Law Enforcement Officer, Customs Officer or an employer. Under section 15.104.1 of the PMLL, a person is considered to be guilty of an offence if the person knows or suspects that a Law Enforcement Officer or Customs Officer is acting or is proposing to act, in connection with an investigation which is being, or is about to be conducted into money laundering and the person discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation. Both sections 15.104.2 and 15.104.3 provide that a person is guilty of an offence if the person knows or suspects that a disclosure has been made to a Law Enforcement Officer, Customs Officer or an employer and the person discloses any information or any other matter which is likely to prejudice any other investigation which might be conducted following the disclosure.

618. A person guilty of a tipping off is liable to a penalty a non-bailable first degree felony; seizure of goods; and imprisonment for a period of not less than five years and not more than ten years.

Additional Elements

619. There is no law, regulation or other measures that ensure that the names and personal details of staff of financial institutions that make STRs are kept confidential by the FIU.

Recommendation 25 (guidance and feedback to financial institutions)

620. The PMLL does not expressly require competent authorities to establish guidelines that will assist FIs and DNFBPs to implement and comply with their respective AML requirements. However, section 15.108.3 of the PMLL empowers the court to take into account any relevant supervisory or regulatory guidance which applies to a person, in determining whether that person has complied with the requirements to have in place identification, record-keeping and other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering. In the absence of any relevant supervisory or regulatory guidance, the court is to take into account any other relevant guidance issued by a body that regulates, or is the representative of, any trade, profession, business or employment carried on by that person. At the time of the on-site, no competent authority or self-regulatory organisation (SRO) had established guidelines for FIs and DNFBPs in furtherance of the PMLL.

621. On 14 October, 2005, the CBL, in accordance with section 4(5) of the CBL Act and section 39 of the NFIA issued Regulation CBL/SD/05/2005 to BFIs. The Regulations prescribe and set forth minimum KYC and CDD requirements to be observed by all licensed BFIs with the objectives to protect the reputation of banks and the integrity of the banking system; promote high ethical and

professional standards in the financial sector and combat the misuse of the bank system by criminal elements. It requires BFIs to have in place adequate policies, practices and procedures on customer acceptance, customer identification and verification rules, on-going monitoring and scrutiny of transactions of high risk accounts; appropriate risk management system and suspicious activity reporting. Under paragraph 8.0 of the Regulations, a licensed BFI that violates the Regulations is liable to pay a fine, for each instance of violation, of not less than two hundred thousand Liberian Dollars (L$200,000) and/or be subjected any other applicable laws. However, the Regulation is limited in scope as it is tailored to suit general prudential requirements. It does not cover terrorist financing. There is the need for additional guidance that would meet the FATF standards.

622. The other financial sector regulators have not taken any action in providing guidance for the institutions under their purview on AML/CFT related issues. DNFBPs have not been informed about their obligation under the PMLL and no guidelines have been established for them despite the enactment of the PMLL since January, 2002.

Feedback mechanism

623. There is no adequate and appropriate feedback mechanism in place having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and other Person. Liberia has not established an FIU and the feedback mechanism being applied by the Supervision Division of the CBL and the MOJ are very weak. It is envisaged that on the establishment of the FIU, appropriate feedback mechanisms will be put in place for FIs and other person.

Recommendation 19 (large currency transaction reporting)

624. Liberia has not considered the feasibility and utility of implementing a system where FIs report all transactions in currency above a fix threshold to a national central agency with a computerised data base.

Recommendation 32 (maintaining comprehensive statistics)

625. There is no requirement for FIs to maintain comprehensive statistics on STRs. Assessors were not provided with statistics on STRs (SARs) received from BFIs.

3.7.2 Recommendations and Comments

626. **Recommendation 13**: The suspicious activity reporting regime in Liberia is very weak and limited in scope. This raises much concern regarding Liberia's AML/CFT system. Liberia has not established a FIU to receive, analyse and disseminate STRs and other information relating to money laundering. Persons obligated under the PMLL to make STRs are not aware of their obligations. Competent authorities have not issued guidelines to persons and entities under their supervision to enable them to undertake their duties under the PMLL. There is the need for the country to take steps to enhance the reporting regime. Liberia should:

- Establish the FIU and provide it with powers to receive, analyse and disseminate STRs and other information;
- Amend the PMLL and provide for a direct mandatory obligation for FIs to report to the FIU when they suspect or have reasonable ground to suspect that funds are the proceeds of criminal activity. The amendment should be reflected in the KYC/CDD Regulations;
- Require FIs to submit STRs on all suspicious transactions and attempted transactions regardless of the amount of the transaction;
- Require FIs to submit STRs regardless of whether they involve tax matter; and
- Criminalise all predicate offences and require FIs to report to the FIU when they suspect that funds are the proceeds of criminal acts that would constitute predicate offence for money laundering.

627. **Special Recommendation IV**: Liberia should criminalise terrorist financing and require in law or regulation that reporting entities should report to the FIU all transactions suspected to be linked or related to, or to be used for terrorism, terrorists act or by terrorist organisation or those who finance terrorism.

628. **Recommendation 14**: Liberia should consider requiring providing for the following in law or regulation:

- Specify who can benefit from protection for disclosure;
- Specify whether the protection will be available even if the person who reported did not know what the underlying criminal conduct was, regardless of whether illegal activity actually occurred;
- Ensure that the names and personal details of staff of FIs who make STRs are kept confidential by the FIU.

629. **Recommendation 19:** The authorities should consider the feasibility and utility of implementing a system where FIs report all transactions in currency above a fixed threshold to a national central agency with a computerised data base. The authorities should take into account the peculiarities of the Liberian economy and the nature of customers maintained by FIs in Liberia, and taking into account the country's Strategy on Financial Inclusion. Reports maintained in the database should be available to competent authorities for AML/CFT purposes. Additionally, the systems for reporting large currency transactions should be subject to strict safeguards to ensure proper use of the information or data that is reported or recorded. For a start, the authorities may designate the CBL to perform the functions required under Recommendation 19.

630. **Recommendation 25**: Liberia should consider requiring competent authorities and SROs to issue guidelines for reporting entities to enable them to undertake their AML/CFT obligations. It should also consider producing or resorting to typologies cases to assist reporting entities to detect suspicious transactions. Adequate and appropriate feedback mechanism should also be put in place.

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

Rec.	Rating	Summary of Factors Underlying Rating
R.13	**NC**	• The FIU is not established • There is no direct mandatory obligation for FIs to report to the FIU when they suspect or have reasonable ground to suspect that funds are the proceeds of criminal activity. • There is no requirement for FIs to submit STRs on all suspicious transactions and attempted transactions regardless of the amount of the transaction; • There is no requirement for FIs to submit STRs regardless of whether they involve tax matter • Not all predicate offences of money laundering have been criminalised
R.14	**PC**	• Persons benefitting from protection against criminal, civil or administrative liability are not clearly defined • There is no provision on whether the protection will be available even if the person who reported did not know what the underlying criminal conduct was, regardless of whether illegal activity actually occurred; • There is no provision to ensure that the names and personal details of staff of FIs who make STRs are kept confidential by the FIU.
R.19	**NC**	• Liberia has not considered the feasibility and utility of implementing a system where FIs report all transactions in currency above a fix threshold to a national central agency with a computerised data base
R.25	**NC**	• There is no direct requirement for regulators and SROs to issue guidelines for relevant entities • Apart from BFIs, no guidelines have been issued for other financial institutions and DNFBPs • KYC/CDD Regulations is not comprehensive
IV	**NC**	• Terrorist financing is not criminalised • There is no obligation to report suspicious transaction related to terrorist financing

Internal controls and other measures

3.8 Internal Controls, Compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and Analysis

Recommendation 15

631. The legal framework is found in section 15.108 to 15.117 of the PMLL 2002, NFIA 1999 section 21 (1) (b), Corporate Governance Regulation 2008 sections 3.2 (s), and 4.1, Regulation on audit of banks and publication of financial statements (RABPFS), 2005 section 3.2 (b), Guidelines on due diligence concerning prospective and existing employee (s) of financial institution (GDDCPEEFI), and the KYC/CDD.

Internal AML/CFT controls (E.C. 15.1)

Policies, procedures and controls

632. Section 15.108 of the PMLL provides that '*No person shall, in the course of relevant business carried on by him in Liberia, for a business relationship, or carry out a one-off transaction, with or for another unless that person (a) Maintains the following procedures established in relation to that business: (i) identification procedures in accordance with sections 15.110 and 15.112;(ii) record-keeping procedures in accordance with section 15.115; (iii) except where the person concerned is an individual who in the course of relevant business does not employ or act in association with any other person, reporting procedures in accordance with section 15.117 Section 15.117; (iv) such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering; and (b)takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of (i) the procedures maintained under paragraph (a) which are maintained by him and which relate to the relevant financial business in question; and (ii) the enactments relating to money laundering; and (iii) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be engaged in money laundering.*

633. A person who contravenes the provision in section 15.108 is liable on conviction to a non-bailable first degree felony; seizure of the proceeds (good); and imprisonment for a period of not less than five years and not more than ten years.

634. The provision in section 15.108 complies with some aspects of the requirements in Recommendation 15.1 but does not cover measures to be taken to detect and prevent terrorist financing.

Designation of an AML/CFT compliance officer

635. Section 15.117 provides that the "internal reporting procedures maintained by a person are in accordance with this section if they include provision 'Identifying a person ("the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering'. Section 15.117 (b) provides that the procedures should require that the appropriate person or another designated person should consider reports made under paragraph (a) in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion. The provision does not specify that the appropriate person should be designated at the management level.

636. The banks have audit units that are responsible for compliance with CBL's directives and regulations, and the policies and procedures of the institution including money laundering issues. These general compliance officers meet quarterly with the CBL to discuss supervisory issues that confront the regulatory agent and senior management of commercial banks. The Assessors sighted minutes of meeting held on June 4, 2010. The minutes did not reflect any issues relating to anti-money laundering. The banks have not appointed anti-money laundering compliance officers.

Timely access to customer identification data and other CDD information

637. Section 15.117 of the PMLL provides that the internal procedures should provide for any person charged with considering a report, in this case the appropriate person or other designated person, in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned. The provision in section 15.117 is ambiguous as it does not specify the type of information that is to be made available to the appropriate person. Recommendation 15.1.2 requires that the appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

Audit function (E.C. 15.2):

638. There is no requirement in the PMLL for FIs to maintain adequately resourced and independent audit function to test compliance, including sample testing, with these procedures, policies and controls. Section 21 of the NFIA 1999 on audit of banks and publication of financial statements, requires every financial institution to appoint an external auditor annually, who is a professionally qualified person satisfactory to the Central Bank. The external auditor, among other functions is to review the adequacy of internal audit, control, practices and procedures and to inform the CBL about any fraudulent act by any employee, director or subsidiary of the FI, or any irregularity, or deficiency in its administration or operations, or any breach of any provision of the NFIA.

639. Paragraphs 4.1 and 4.4 of the CGR issued to banks, also include the requirement for the establishment of an audit committee whose responsibility includes the review of the integrity of the bank's financial reporting and overseeing the independence and objectivity of the external auditor, and the performance of the head of internal audit and the overall internal audit function. Paragraph 6.2 requires the internal auditor to be largely independent, highly competent, very objective, consistent, have good integrity, and to report directly to the board audit committee on approved audit program.

640. Each bank has appointed an external auditor and has an internal audit unit. The Assessors sighted the organizational structure of one of the bank and this structure showed that the head internal audit and control reports directly to the board. The provision in the NFIA is limited to financial institutions. However, only BFIs have been issued with guidelines on internal procedures to detect and prevent money laundering. The Assessors were not able to access the organisational structures of other banks to ascertain whether the banks have applied the provisions in the NFIA and CGR in testing the effectiveness of the AML procedures, policies and controls within the BFIs.

Ongoing Employee training AML/CFT (E.C. 15.3)

641. Section 15.108 of the PMLL requires relevant businesses to maintain procedures that provide employees from time to time with training in the recognition and handling of transactions carried out by, on behalf of, any person who is, or appears to be engaged in money laundering. The corporate governance for FIs regulations 3.2 require the board of directors of a bank to ensure that the bank has adequate training programs to support needed skill levels and to keep personnel abreast of current developments in the financial services industry.

642. Officials of some the banks informed the Assessors that they had training programmes which were ongoing and these programmes included anti-money laundering issues. The Assessors reviewed their training programmes which included anti-money laundering issues but could not confirm the effectiveness of the training.

Screening procedures (E.C. 15.4)

643. Paragraph 6 of CBL/SD/002/2010, the Guidelines on Due Diligence Concerning Prospective and Existing Employees of Financial Institutions issued by the CBL requires each licensed financial institution to obtain, and/or maintain on their personnel files the following information on persons seeking employment with them and/or existing employees:

- A character reference from each licensed BFI, NBFI, and CBL (the FI should seek this information directly);
- A character reference from the most recent former employer, a religious institution, a recognized educational institution, a recognized community-based organization or a recognized social organization;
- A clearance from the Liberia National Police; and
- A full bio-data of the applicant (including former places of work).

644. For a non-resident applicant or a foreign national seeking employment, and foreign nationals residing in Liberia, the FIs are to obtain the above information from the applicant's country of residence, where applicable, a letter of resignation from the applicant's former place of work notarized in the applicant's country of residence; a notarized statement giving the reason(s) of the applicant's departure from the former place of work, and a character clearance from the relevant security agencies of the applicant's country of residence.

645. In the case of staff seconded from an affiliate, subsidiary, or parent company to work at a licensed financial institution in Liberia, the FIs are to inform and submit to the CBL for review and approval before placement of the staff: approval letter from the board of the parent company nominating the staff; terms of reference of the staff and position to be occupied; a letter of clearance from the home country banking or relevant supervisory authorities; and full bio-data of the staff.

646. Paragraph 6 of the guidelines also require the banks to provide a list of dismissed, terminated and/or former staff of commercial banks on a monthly basis, upon request and immediately a bank dismisses, terminates the appointment or retires a staff.

647. The banks interacted with informed Assessors that they comply with the guidelines. The information they request include character enquiry, police clearance references from former employer and guarantors. The Assessors were not able to confirm this from employees' personal files and there were no evidence in examination reports relating to compliance with the guidelines.

Additional Elements

Independence of AML/CFT Compliance Officer (A. C. 15.5)

648. The banks do not have AML/CFT compliance officers but have compliance officers for the operations of the bank in general. One organizational structure of one of the banks sighted by the Assessors indicated that the head internal audit and control reports directly to the Board.

Recommendation 22

649. Section 3 of the NFIA prohibits a local financial institution from doing banking business or providing non-bank financial services as a business in Liberia or abroad without a license granted by the Central Bank authorising the licensee to do such business. Therefore, a licensed FI can establish a branch or subsidiary in a foreign country. However, there is no provision in the PMLL or in the KYC/CDD for FIs to:

- ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with Liberia's requirements and the FATF Recommendations to the extent that local (host country) laws and regulations permit;
- pay particular attention that this principle is observed in branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations;

- Ensure that branches and subsidiaries in host countries apply the higher standard to the extent that local laws and regulations of the host country permit where the minimum AML/CFT requirements of Liberia and host countries differ; and
- Inform supervisors in Liberia when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures of the host country.

650. FIs in Liberia have not established foreign branches or subsidiaries although the NFIA does not prohibit the establishment of foreign branches and subsidiaries.

Additional Elements

651. Licensed FIs in Liberia do not have foreign branches or subsidiaries.

3.8.2 Recommendations and Comments

652. **Recommendation 15**: The PMLL does not provide for an audit function and the screening of employees as well as the appointment of AML/CFT compliance officer at the management level. However the NFIA and the CGR require each licensed bank to have an audit function whose head should report directly to the Board and to have ongoing employee training programme. The guidelines on due diligence concerning prospective and existing employees of FIs require each FI to screen personnel before employing them. The banks screen applicants before employing them. While the CBL conducts a fit and proper test on board and senior managements of BFIs, there is no evidence that the CBL is monitoring compliance with the requirement for the internal auditor to report directly to the Board. There is no AML/CFT compliance officer although the banks have audit unit whose functions include testing compliance with the general operations. Furthermore, the regulations issued by CBL regarding meeting the requirements of FATF Recommendation 15 are only limited to banks and there is no requirement for banks to appoint AML/CFT compliance officers.

653. Liberia should consider providing the following in law, regulation or other enforceable means requiring that:

- FIs should designate AML/CFT compliance officers at the management level;
- The compliance officer should have timely access to customer identification data and other CDD information, transaction records, and other relevant information;
- FIs should maintain adequately resourced and independent audit function to test compliance, including sample testing, with compliance of the procedures, policies and controls;
- The other FIs should put in place screening procedures to ensure high standards when hiring employees; and
- Supervisory authorities should develop regulations covering the requirements of FATF Recommendation 15 and issue them to insurance companies, forex bureaux, MFIs and money remittance service providers and monitor compliance with the regulations.

654. **Recommendation 22**: FIs in Liberia have not established foreign branches or subsidiaries although the NFIA does not prohibit the establishment of foreign branches and subsidiaries. Liberia should therefore provide in law, regulation or other enforceable means, adequate measures to ensure that Liberian FIs that establish foreign branches and subsidiaries require their foreign branches and subsidiaries to observe AML/CFT measures consistent with the Liberian FIs' requirements and the FATF Recommendations. Where a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local rules, those FIs should be required to inform Liberian authorities. Such FIs should also be required to pay particular attention that the principle is also observed when branches and subsidiaries are located in countries which do not or insufficiently apply the FATF Recommendations.

3.8.3 Compliance with Recommendations 15 & 22

Rec.	Rating	Summary of Factors Underlying Rating
R.15	**PC**	• There is no requirement to appoint a compliance officer at management level • The PMLL does not specify the type of information to be provided to the appropriate person (compliance officer) • There is no requirement for FIs to ensure that the compliance officer as timely access to customer identification data and other CDD information, transaction records, and other relevant information • There is no requirement in the PMLL for FIs to maintain adequately resourced independent audit function • Most FIs are not providing their staff with on-going training in AML/CFT • There is no requirement in the PMLL to screen employees before appointing them. • There is no monitoring or compliance with Recommendation 15
R.22	**NC**	• The PMLL does not cover requirements of R. 22 • The supervisory authorities have not developed regulations to ensure compliance with this FATF Recommendation.

3.9 Shell Banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

655. There is no provision in law or regulation prohibiting the establishment of or acceptance of continued operation of shell banks in Liberia. This notwithstanding the CBL explained that it does not license shell banks and that any person who wishes to operate a FI is required to have a physical presence in Liberia and meet all the licensing requirements in sections 4 and 8 of the NFIA. The requirements include "a statement of the address of the head office of the entity to operate the business, the name and address of every member of its board and the name and address of its principal officers. The Regulation Concerning Banking License also require the applicant to, among others, provide the name and description of the location of the principal and other places of business in Liberia where it proposes to do business, and in case of a mobile agency, the area to be served, ownership structure and business plan.

656. There is no law, regulation or other enforceable means prohibiting FIs from entering into, or continuing correspondent banking relationships with shell banks.

657. There is no law, regulation or other enforceable means requiring FIs to satisfy themselves that their correspondent banks do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

658. The money laundering law and the NFIA should be reviewed to include provisions consistent with FATF Recommendation 18. The CBL's manual of examination should include testing of compliance with E.C.18.3, that is, whether FIs satisfy themselves that respondent financial FIs in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

Rec.	Rating	Summary of Factors Underlying Rating
R.18	**NC**	• There is no express prohibition of the establishment or acceptance of continued operation of shell banks in Liberia. • FIs are not prohibited from entering into or continuing correspondent banking relationships with shell banks. • FIs are not required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.

3.10 The supervisory and oversight system – Competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Recommendation 23 (including Recommendation 30–structure and resources of the supervisory authorities[14])

659. **Legal Framework**: The legal framework for the supervisory and oversight system including sanctions is found in the Central Bank of Liberia Act (CBLA) 1999, Sections 4 (5) and (6), 5 (1), 26 (3) and (5), 34, 37 and 38; the New Financial Institutions Act (NFIA) 1999; the Insurance Act 1978, Sections 2.1, 2.3, 2.4, 4.1, 4.5,4.8, 4.10.2, 6.3; and the Prevention of Money Laundering Law (PMLL) 2002.

Overall supervision

Banks:

660. The CBLA and the NFIA constitute the regulatory framework for institutions which are licensed by the CBL to carry on banking business. Section 2(1)(i) of the NFIA defines banking business as the business of receiving funds from the general public through the acceptance of voluntary money deposits payable upon demand and subject to transfer by check, or after a fixed period or after notice or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, or from the Government of Liberia or from any foreign or international financial institutions, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business. Paragraph 4 .5 of the CBLA empowers the CBL to administer the NFIA and regulate banking activities. Section 5(1) of the CBLA provides the CBL with the power to supervise bank financial institutions.

661. The CBLA and the NFIA provide the CBL with adequate authority to regulate and supervise financial institutions in Liberia. Sections 4 and 5 of the CBLA empower the CBL to regulate and supervise bank and non-bank financial institutions, as well as non-bank financial services institutions. The NFIA empowers and authorises the CBL to regulate and supervise the BFIs and NBFIs including insurance companies. However, the Insurance Act 1978 also authorises the Bureau of Insurance headed by the commissioner of Insurance to regulate and supervise insurance companies.

662. The CBL has timely access to some, but not all the information that an FIU would require to conduct financial analysis. The CBL has access to information from bank-financial institutions by virtue of its supervisory function over those institutions. Section 37 of the CBL Act requires every financial institution to furnish to the CBL, at such time and in a manner that the CBL may prescribe,

[14] As related to Recommendation 30; see section 7.1 for the compliance rating for this Recommendation.

any information and data as the CBL may require for the proper discharge of its functions and responsibilities. The CBL is however precluded from publishing information which would disclose the affairs of any person who is a customer of financial institution, unless the CBL has obtained the consent of the interested party in writing. The Governor, officers and employees and other persons connected to the operations of the CBL are required to take an oath of fidelity and secrecy under section 18 of CBL Act and are precluded from having access to, disclosing or publicizing non-public material information which they have obtained in the performance of their duties at the Central Bank unless otherwise permitted by law or regulation.

663. Section 35 (1) of the NFIA restricts the CBL from making enquiries into the affairs of any individual customer of a financial institution. It equally precludes financial institutions or persons acting for or on behalf of the financial institutions in their positions in the financial institutions to neglect or refuse to provide to the CBL any document or information it may request, require or order in respect of any customer or the activities of the financial institutions. However, section 35 (2) of the NFIA permits the CBL to, on the authority of law or court of law, reveal to any person any information as to the affairs of any individual customer of a financial institution obtained in the exercise of its regulatory jurisdiction so long as the provision does not operate as a bar to communication by the Central Bank in accordance with its right to request for information under section 26.

664. With regards to administrative and law enforcement information, the CBL is operationally required to work closely with the Ministry of Justice, which oversees the Police, DEA, among other LEAs, and other government agencies. Since the CBL does not operate as an FIU its access to information is not guaranteed as would have been the case with regards to FIU.

665. The CBL has a mandate under sections 22 and 23 of the New Financial Institutions Act 1999 to conduct examination and inspection on financial institutions. However the mandate is for basic prudential examination and not for AML/CFT purpose. Access to information directly or indirectly on a timely basis from reporting entities is not guaranteed.

666. The CBL supervises the banks through the Banking Supervision Department (BSD), headed by a director (assisted by two assistant directors), who reports directly to the Executive Governor. The main function of BSD is to maintain the stability and robustness of the banking system and the system's ability to adhere to its liabilities to depositors in a changing economic environment. The BSD is divided into two sections (policy/regulation, and supervision/surveillance). Each of the sections is divided into units as follows: policy/regulation section (compliance/enforcement unit, and policy unit); and supervision/surveillance section (examination unit one, examination unit two and credit reference unit).

667. The supervision of banks is conducted through on-site examination which was done twice a year but now once a year, and off-site monitoring through the analysis of returns submitted by the banks to CBL. The supervisors have been using the compliance based approach but are now migrating to the risk-based approach, and have developed a risk-based supervision framework. To guide their supervisory process, the supervisors developed a manual of on-site examination, policies and procedure; guidelines for off-site surveillance of banks; and a work programme for the year

2010. The Assessors consider the prudential supervision of banks as effective. However there is no evidence in the manual of on-site examination, the guidelines for off-site surveillance of banks, the work programme for the year 2010, and the examination reports that compliance with the provisions of PMLL 2002 and the KYC/CDD Regulations is monitored effectively.

Non-Bank Financial Institutions:

668. The New Financial Institutions Act, 1999 provides the legal framework for the supervision of non-bank financial institutions (NBFIs). Section 2(1) of the NFIA defines "non-bank financial institution" to mean any person or institution whose activities and transactions are in the form of non-bank financial services rendered without accepting from the general public deposits payable upon demand or after a fixed period. Section 2(16) defines "Non-bank financial services" to mean: the business of thrift operation and loan association; Broker and dealer operations in securities and commodities; Currency exchanging and encashment of checks; Redeeming, encashing, or otherwise dealing in money orders or other similar financial instruments; Issuance of credit cards; Underwriting of insurance; Loan or financing agency business; Operation of building societies; Remittance of money but not accepting from the general public money payable on demand or after a fixed period.

669. With regards to supervision of financial institutions, section of the NFIA empowers the CBL to carry out a comprehensive on-site inspection/examination of each financial institution at least once every year. The CBL is required to, from time to time, cause an examination or special inspection or other inspection to be made of each financial institution whenever in its judgment such examination is necessary or expedient in order to determine whether the institution is in a sound financial condition and whether the requirements of law have been complied with in the conduct of its business. For the purpose of determining the condition of a FI and its compliance with the NFIA, the CBL may at any time cause an examination to be made of any of the affiliates of the FI in Liberia to the same extent that an examination may be made of the institution by appointing one or more qualified persons other than officers of the CBL to conduct special inspections or other inspections.

Insurance Sector

670. The power and authority of the CBL to regulate and supervise the insurance sector is derived from the CBLA 1999 Sections 4, 5 and 2(m), and NFIA Sections 8 and 2(16)(vi). The CBLA 1999 Sections 4 and 5 empower the CBL to regulate and supervise non-bank financial institutions as well as non-bank financial services institutions and to administer the NFIA 1999 while Section 2 (m) defines non-bank financial service to include insurance underwriting business. NFIA Section 8 requires that to operate an insurance business, a person must apply in writing to the CBL, and comply with the requirements in NFIA Section 4 (1) and all of the requirements for license under Chapters (3) and (4) of the Insurance Law of Liberia (ILL) 1978.

Capital Markets Sector

671. The CBLA Section 3 empowers the CBL to facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy. Among the powers granted to the CBL in Section 5 of CBLA is the power to purchase and sell securities. While there is yet no functional capital market, arrangements are far gone for the Treasury Operations Unit to commence Treasury Bills auction on behalf of Government. The Treasury Operations Unit was established in February 2010 with the functions of managing the country's reserves, carrying out investment and spearheading the development of a capital market. The rules and regulations governing the auction of Treasury Bills have already been drafted.

Market Entry and Licensing

672. Section 3 of NFIA prohibits any person from carrying out banking business or providing non-bank financial services as a business without a license from the CBL of Liberia. A local financial institution is prohibited from doing banking business or providing non-bank financial services as a business in Liberia or abroad, a foreign financial institution from doing banking business or providing non-bank financial services as a business in Liberia without a license granted by the CBL authorising a licensee to do such business. The licenses are to indicate the class of financial institution and the operations the licensee is authorized to do."

673. In order to obtain a license to operate as a financial institution in Liberia or to do offshore banking, a person is required to apply in writing and submit to the CBL the following:

a) Authenticated copies of the instrument under which the entity to operate such a business is duly organised;

b) Pay to the CBL a non-refundable application fee as shall be determined by the board of governors of the CBL;

c) A statement of the address of the head office of the entity to operate such a business, the name and address of every member of its board and the name and address of its principal officers;

d) Such financial data as the CBL may require, including, but not limited to financial statements and projections for five years;

e) Full particulars of the business that the entity proposes to do together with detailed and clear definition of activities to be performed by the proposed financial institution;

f) Evaluation of the adequacy of the entity's financial and managerial resources;

g) Name and description of the location of the principal and other places of business in Liberia where it proposes to do business, and in case of a mobile agency, the area to be served;

h) Such other documents or information as the CBL may require;

i) Such other requirements and information which include, but not limited to, sufficient and detailed information on the backgrounds, qualifications, experience and financial

means of each shareholder holding at least five (5%) percent of the capital stock of the proposed financial established.

674. The application and every document submitted in accordance with Section 4 (1) are to be signed by the members of the board of the applicant, or by any principal legally authorized to do so. In considering an applicant for license, the CBL is required to, without limiting the generality of the requirements, conduct such investigations as may be considered necessary to ascertain the validity of the documents submitted under Section 4 (1), the financial status and history of the applicant, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to undertake, and the earning prospects afforded by the area primarily to be served. The CBL may, within ninety days after the receipt of an application, or, where further information has been required, after the receipt of such information, grant a license or inform the applicant that it has refused to grant a license and may state the grounds upon which such refusal is based. In granting a license, the CBL is empowered to impose additional conditions to be satisfied by the license.

675. In the case of a foreign financial institution, the CBL is required as a condition precedent for the commencement of operations that the foreign FI provide the CBL with a:

a) duly executed instrument in writing appointing the CBL its true and lawful agent upon whom all process, in any action or proceeding against it in a cause of action arising out of a transaction with its places of business in a cause of action arising out of a transaction with its places of business in Liberia may be served with the same force and effect as if it were organized in Liberia and has been lawfully served with process therein;

b) written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Liberia to whom all process shall be forwarded by the CBL, or upon whom any process not served upon the CBL under Section 4 (5) (a) may be served; and

c) statement satisfactory to the CBL to the effect of the adequacy of the consolidated supervision of the institution's home country, including the full extent and status respecting the currencies of denomination, the solvency and the liquidity of the institution and its branches and subsidiaries.

676. A foreign financial institution is required, prior to issuance of the license and its commencement of operation, pay a license fee to be determined by the CBL.

677. The CBL may issue a provisional approval for a specified license to an applicant on the terms and conditions that it considers appropriate, if the CBL is satisfied that the applicant will carry on banking business with integrity, prudence and the required professional competence; the applicant has and will maintain the required paid up capital and hold a license of the specified type as required.

678. An external bank is required to have and maintain in Liberia the required capital in the form of funds transferred from abroad together with other funds that may be determined by the CBL. The CBL issues to the applicant a final approval and a license of a specified type to carry on banking business, after the CBL is satisfied with the organisational and infrastructural arrangements made by the applicant, and that the applicant has complied with the terms and conditions stipulated in the provisional approval.

Powers to Revoke a License

679. Under section 11 (1) of the NFIA, the CBL may revoke the license of a licensee if the licensee:

- Fails to commence operations within a period of 6 months following the granting of the license unless such period has been extended by written advice of the CBL; or
- Fails to comply with the conditions of its license or the measures relating to the inspection of books and records of financial institutions required by the CBL;
- Is in breach of the provisions of this Act which are applicable thereto;
- In the case of a bank financial institution, ceases to do banking business in Liberia; or
- Employs or otherwise engages the services of a person who is dismissed or advised to retire on grounds of fraud or financial malpractice, or fails to comply with a directive of the CBL to remove or dismiss such person.

680. Before revoking any license, the CBL is required to give the concerned financial institution, within the context of NFIA and the CBLA, notice of its intention to do so, and is to afford the licensee a reasonable opportunity to show cause, if any, why the license should not be revoked. If, in its opinion, the cause is valid, the CBL may not revoke the license. When a license has been revoked, the CBL is required to, as soon as possible, publish notice of the revocation in the Gazette and in a newspaper of general circulation in the area in which is located the main office of the licensee in Liberia and take any other steps necessary to inform the public of such revocation. Except for breach of other provisions of laws or orders, a license revoked may be restored by the CBL if the institution proves its capacity to commence operation, comply with condition of its license, or recommence banking operations, whichever is the reason for the revocation. The revocation of a license may be a ground for liquidation. A Court may order compulsory liquidation upon determination and express submission of a statement by the CBL to all depositors, other creditors, safe deposit box lessees, and the bailors of property held by the financial institution of the nature and amount for which their claim is shown on the books of the financial institution within sixty (60) days following the date of revocation of the license.

Significant Shareholdings

681. Section 9 of the NFIA requires that all voting stock issued by local financial institution should be in registered form, and prohibits a local financial institution from entering into a merger or consolidation, or joint venture, or establish a subsidiary; sell, dispose or transfer the whole or any

substantial part of its assets or liabilities in Liberia other than revolving funds in the ordinary course of its business without the consent of the CBL. Transfer of revolving funds which may reduce the capital of a financial institution is also prohibited. Also, a financial institution is not permitted to: Effect a change of its authorized capital; Alter its name a set out in its license or amend the instrument under which it is organized; Undertake banking operations other than the operations it is authorized to do in its license; have an investment in fixed assets that exceeds 50% of its issued and outstanding capital stock or its unimpaired capital, surplus or reserves; have an investment of 10% in equity shares of the unimpaired capital, surplus and reserves of any company, in the case of an institution permitted by the CBL to so do.

682. In the case of foreign FIs, Section 10 of the NFIA provides that without the approval of the CBL, no foreign institution which is licensed under this Act shall:

a) Transfer the whole or any substantial part of its assets or liabilities in Liberia;

b) Effect a reduction of its assigned capital in Liberia;

c) Alter its name as set out in its license;

d) Undertake banking operations other than the operations it is authorized to do in its license;

e) Undertake banking operations other than the operations it is authorized to do in its license.

683. In considering any proposed action under Sections 10 (1), the CBL is to be guided by investigations as may be considered necessary to ascertain the validity of the documents submitted by the FI in applying for its licence, the financial status and history of the FI, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to undertake, and the earning prospects afforded by the area primarily to be served.

684. The CBL may disapprove a proposed transfer of shares in the interest of sound and prudent management of a bank by preventing the acquisition by a person who in the opinion of CBL may exercise influence to the detriment of the bank, the sale or disposal of shares by a promoter or a director, or a person who has a controlling interest which could be detrimental to that bank, or a transaction in any other situation in which the CBL has reason to believe that the transaction will be detrimental to that bank.

Appointments of Directors and Employees

685. Section 4 (1)(i) of the NFIA 1999 requires that before granting a license to operate a financial institution, the CBL should have sufficient and detailed information on the backgrounds, qualifications, experience and financial means of each shareholder holding at least 5% of the capital stock of the proposed financial institution. Furthermore section 4 (3) requires that before granting a license, the CBL should conduct an investigation to ascertain the character and experience of its management. Section 71 (1)(b) requires any member of the board, manager, or other officer

concerned with the management of a financial institution to cease to hold office if he is convicted in a court of law of a felony or any offense involving fraud or dishonesty.

686. Additionally, section 74 requires every financial institution to obtain the approval of CBL before appointing any director or chief executive officer to manage the financial institution. The regulation concerning banking license section 1.4 issued by the CBL requires that shareholders, directors and senior management must be fit and proper persons before a license is granted. The CBL carries out the "fit and proper test" on board of directors, and senior management before approving their appointment in the bank financial institution. Shareholders are also investigated before granting a license.

Power to Request for Information and Examination

687. Section 23 of the NFIA requires every financial institution to produce for the inspection of any examiner appointed by the CBL at such time as the examiner specifies, all books, minutes, accounts, cash, securities, documents, and vouchers relating to its business in Liberia and to supply all information concerning the institution's business in Liberia as may reasonably be required by the examiner within such time as the examiner specifies. Banks are also required to submit to the CBL, not later than five (5) banking days after the last day of each reporting period, a schedule or regular reports in a form and at intervals as may be prescribed by the CBL. Section 24 (1) also requires every bank to submit to the CBL periodic reports.

688. The CBL is empowered under section 28 of the NFIA to, from time to time, call for any information which it may require, for the purposes of this Act, from any financial institution about the operations of the financial institution and those of its affiliates in Liberia, or from a local financial institution about its operations and those of its affiliates abroad; provided, that the information furnished may, in the discretion of the CBL. The CBL may require financial institutions to furnish it periodically with statements of all credits granted to customers in excess of sums prescribed by regulation, and the extent of their utilization during the month and communicate to the financial institution, which has notified a credit or an application for credit in the name of a customer the overall amounts of credits opened and utilized by him during the period. At the request of a financial institution, the CBL may, in its discretion, extend from time to time any period within which such financial institution is, in accordance with the provisions of this Act, obliged to furnish any document or information. The power to compel production of records for supervisory purposes is not predicated on a court order. Failure to produce the records and books attracts sanctions ranging from fines to revocation of the license.

Intervention Powers and Remedial Actions

689. Section 25 of the NFIA provides that, if in the opinion of the CBL examination authorised reveals that a financial institution concerned is conducting its business in an unlawful or unsound manner or that its capital is impaired or that it is otherwise in an unsound condition, the CBL may:

a) Require the external auditor appointed by the financial institution to undertake a special audit covering the unlawful act or irregularity and/or the impairment of

capital and to make a written report within thirty (30) days of such request to the CBL and to the financial institution stating the result or conclusions of its audit.

b) Appoint a person who in the opinion of the CBL, has had proper training and experience to advise the financial institution on the steps to be taken to rectify the matter, and shall fix his remuneration which shall be paid by the institution.

c) Without prejudice to the authority of the CBL, require that such institution signs, obligates and commits itself to a written agreement entered by and between it and the CBL to forthwith take such measures as the CBL may consider necessary to rectify the matter, including but not limited to remedial measures of suspension and dismissal of the institution's officers and directors, limitation of its operations and the appointment of provisional administration to manage the institution to compliance with regulations.

690. A financial institution that is an object of an intervention, is required to submit a semi-annual report in writing to the CBL on the following:-

i. the increase or decrease or otherwise of its registered capital;

ii. any loss on and of its adjusted capital or cessation of its payments:

iii. any change in ownership and structure.

Insurance Commission

691. Section 8 (1) of the NFIA 1999 requires a person who intends to operate an insurance company in Liberia to apply for a license from the CBL and comply with licensing requirements and all of the requirements for licenses specified under Chapters 3 and 4 of the Insurance Law of Liberia (ILL) 1978. The ILL 1978 also empowers the Bureau of Insurance to authorise and license insurance companies. According to the Acting Commissioner of Insurance, who heads the Bureau of Insurance, which is in the Ministry of Transport, the Commission still has as its responsibility, the licensing and supervision of the insurance companies.

692. In Section 4.4 of the insurance law 1978, requirements for the issuance of license include the submission of the person's name, location of home office and if an alien insurer, its principal office in Liberia, the kind of insurance to be transacted, date of organization or incorporation, country or state or other political subdivision therein in which it was formed or organized, such additional information as the Commissioner may reasonably require. There is no mention of the need to disclose the sources of funds or to carry out a fit and proper test on the applicant, shareholders or directors and senior management.

Power to revoke licence

693. Section 11 of the NFIA empowers the CBL to revoke the license of an insurance company (financial institution) if the company:

(a) fails to commence operations within a period of 6 months following the granting of the license unless such period has been extended by written advice of the Central Bank;
(b) fails to comply with the conditions of its license or make books and records available to the CBL ;
(c) is in breach of the provisions of the NFIA which are applicable to the company;
(d) employs or otherwise engages the services of a person dismissed, terminated or advised to retire on grounds of fraud and financial malpractice or fails to comply with a directive of the Central Bank to remove or dismiss such person.

694. There was no evidence that such power has been exercised.

Appointment of directors and employees

695. Section 2.3 of the Insurance Law, 1978 empowers the Commissioner of Insurance to approve incorporation of insurance companies and authorise their operations. Employment of directors of insurance companies is subject to the approval of the Commissioner. However, there is no evidence that the 'fit and proper test' is carried out before approval is given for the appointment of directors.

Powers of supervision and control

696. Section 2.3 of the Insurance Act empowers the Commissioner of Insurance to examine, inspect, audit or investigate insurance institutions to ensure compliance with the Insurance Act. However, supervision is not effective.

Power to gather information

697. Section 2.3 (d) of the Insurance Act, 1978 empowers the Commissioner of Insurance to acquire and maintain all records, reports, audits and other information filed in accordance with the operating requirements for insurers.

Intervention powers

698. The Insurance Act empowers the Commissioner to cancel the registration of an insurer where a registered insurer is not conducting its business in accordance with sound insurance principles. The Commissioner is also empowered to suspend an insurer who is found to be deficient in expertise to carry on the registered class of insurance business from continuing with the business until the deficiency is corrected, or cancel that class of insurance business from the number of insurance businesses the insurer is authorised to undertake.

Remedial Actions

699. The Insurance Commissioner may direct an insurance company whose activities are found to be deficient to remedy the deficiency within a time specified by the Commissioner. Failure to remedy the deficiency may result in revocation of license.

Licensing/registration of Micro Finance Institutions (MFIs)

700. The licensing/registration of MFIs falls under the authority of the CBL as provided in the New FIA 1999, and no person, group or entity is to carry on microfinance business without authorization from the CBL. The microfinance regulatory framework requires institutions/commercial banks engaged in microfinance operations as a line of business to operate in accordance with the NFIA and its applicable regulations. This means that their shareholders, directors and management should be fit and proper persons. The regulations also requires non-bank MFIs whose primary line of business is microfinance including NGO MFIs that engage in microfinance as part of their relief and rehabilitation programmes to be registered. The requirements for registration include, detailed statement indicating precise nature of the business, description of activities, name, address and contact information of principal actors and ownership structure.

701. The CBL issued regulations for the license and supervision of money remittance entities on July 2004. Section 2.00 of the regulations requires an applicant who wants to license a money remittance entity to submit, among others, statement of the names and addresses of the shareholders and officers of the proposed money remittance entity, along with their curriculum vitae and statement of financial conditions. Section 4.00 (vii) of the regulations states that officers and directors of the entity shall only be appointed after approval from CBL. Section 4.00 (v) limits the amount to be received or transferred by a money remittance entity for each transaction to US$5,000. Section 5-0 requires a money remittance entity to issue receipts for all financial transactions and maintain a register showing the names of beneficiary and sender, remittance amount, date of remittance and date of payment. The Assessors were not provided with any evidence that compliance of these Regulations is being monitored. Also, there is no evidence that the fit and proper test is carried out on management of the 6 registered credit-only MFIs.

702. The PMLL 2002 does not provide for the evaluation of shareholders, directors and senior management of financial institutions on the basis of “fit and proper” criteria.

Application of Prudential Regulation to AML/CFT (E.C.23.4)

703. The regulatory and supervisory measures that apply for prudential purposes which are relevant to AML/CFT such as licensing, risk management processes and ongoing supervision are effectively applied to banks through monitoring and examination system. There is a comprehensive licensing process which includes the “fit and proper test” procedure. The CBL monitors banks on a continuous basis through the submission of various returns – weekly (1), bi-monthly (1), monthly (16), quarterly (10), semi-annual returns on dormant accounts and abandoned properties, and annual returns (4). These returns are analyzed and feedback communicated to the banks with

recommendations for implementation. There are also other specific reports such as inter-bank trade report, force report, monthly financial soundness indicators (FSIs), and analysis on audited and un-audited accounts. There are quarterly meetings with banks chaired by the governor. The CBL is migrating from a compliance based approach to supervision to a risk based approach and has developed a risk based supervision framework and detailed procedures. However, there is no evidence that these measures are effectively applied to other financial institutions.

Licensing or registration and supervision of money or value transfer service or money or currency exchange service (E.C.23.5 and 23.6):

704. The NFIA 1999 requires licensing and supervision of money transfer service and currency exchange service. The CBL Regulation for the Licensing and Supervision of Money Remittance Entities requires, among others, that any business seeking to render money remittance services or operate money remittance entity in Liberia shall be licensed and the applicants, promoters, directors and/or officers of the proposed money remittance entity should be fit and proper persons. Paragraph 2.00 of the Regulations requires an applicant who wants to license a money remittance entity to submit, among others, statement of the names and addresses of the shareholders and officers of the proposed money remittance entity, along with their curriculum vitae and statement of financial conditions. Section 4.00 (vii) of the Regulations states that officers and directors of the entity shall only be appointed after approval from CBL. Section 4.00 (v) limits the amount to be received or transferred by a money remittance entity for each transaction to US$5,000. Section 5-0 requires a money remittance entity to issue receipts for all financial transactions and maintain a register showing the names of beneficiary and sender, remittance amount, date of remittance and date of payment.

705. The CBL Regulations for the Licensing, Supervision of Foreign Exchange Bureaux, require among others that a person who wants to operate a foreign exchange bureau should be licensed and each licensed operator must have a picture identity card that also carries the license number of the bureau. The applicant, its promoters, directors and management are required to undergo a fit and proper test. However, the requirements for licensing of forex bureaux do not include information on sources of funds and the need for the proprietors and bureaux management to go through the fit and proper test. There are a host of foreign exchange dealers that are not licensed. The Assessors did not sight any evidence of effective supervision of the money remittance and currency changing service providers.

Licensing and Regulation of Financial Institutions (E.C.23.7)

706. The CBLA 1999 and the NFIA 1999 require that all financial institutions must be licensed or registered, regulated and supervised. However not all financial institutions are licensed or registered, or subjected to regulation or supervision. The Assessors were informed that there are hosts of MFIs and forex bureaux that are neither licensed nor supervised.

Structure, funding, staffing and resources of supervisory authorities

Central Bank of Liberia

707. The Central Bank of Liberia was established by Part II, section 3 of the CBL Act of 1999 as the successor in business and interest to the National Bank of Liberia, to do business in accordance with the provisions of the Act. The principal objective of the CBL is to achieve and maintain price stability in the Liberian economy. To this end, the CBL seeks to preserve the purchasing power of the national currency; promote internal and external equilibrium in the national economy; encourage the mobilization of domestic and foreign savings and their efficient allocation for productive economic activities; facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy, and foster monetary, credit and financial conditions conducive to orderly, balance and sustain economic growth and development.

708. The Mission and Objectives of the CBL is to maintain price stability and to ensure a sound banking and financial system, thereby contributing to sustainable economic development of the nation. The Management of the CBL seeks to achieve the objectives of the Bank's mission through:

a) Maintaining the value of the domestic currency and external reserves;

b) Pursuing appropriate interest and exchange rate policies;

c) Safeguarding the integrity of the financial sector;

d) Issuing notes and coins to meet the demand of the general public;

e) Conducting economic analysis and publishing economic and financial statistics;

f) Promoting and supporting the development of financial markets and efficient payment and settlement systems; and

g) Advising the Government on economic and financial matters.

709. In achieving the stated objectives, the Bank commits itself to providing effective support functions through a sound banking and financial control system, appropriate information system and the development of competent and qualified staff.

710. **Structure**: The powers of the Bank are vested in a Board of Governors, responsible for the formulation and implementation of policy. The Board has the power to make, alter or repeal by-laws, regulations and orders for the purpose of giving effect to the provisions of the Central Bank of Liberia Act. The Board consists of five Governors who are appointed by the President of Liberia subject to confirmation by the Liberian Senate.

711. The management of the Bank is conducted by an Executive Governor who is also Chairman of the Board of Governors and a Deputy Governor who serves as principal assistant to the Executive Governor. They are both appointed by the President of Liberia subject to confirmation by the Liberian Senate. The Executive Governor and Deputy Governor are appointed for a term of 5 years each, and are both eligible for reappointment once. The 4 Non-Executive Governors are appointed on a staggered-term basis from 4 years to 1 year. They are also eligible for reappointment for a fixed period of 5 years.

712. The Board is responsible for formulating policies necessary for the achievement of the Bank's principal objective which is to achieve and maintain price stability in the Liberian economy. In so doing, the Board devises and pursues policies designed to:

a) Preserve the purchasing power of the national currency;

b) Promote internal and external equilibrium in the national economy;

c) Encourage the mobilization of domestic and foreign savings and their efficient allocation for productive economic activities;

d) Facilitate the emergence of financial and capital markets that are capable of responding to the needs of the national economy; and

e) Foster monetary, credit and financial conditions conducive to orderly, balanced and sustained economic growth and development.

713. In addition, the Board is responsible to ensure effective and efficient operation of the banking system in accordance with the New Financial Institutions Act of 1999.

714. The Board has an Audit Committee which assists it in ensuring that appropriate and adequate accounting procedures and internal controls are established, as well as ensuring compliance with such standards and statutory requirements. Part of the Committee's mandate is to engage with the Bank's external auditor to discuss the Bank's financial reporting and other relevant issues as they relate to prudent management of the Bank's resources.

715. As part of its mandate to ensure financial sector stability, the Board, in 2009, approved the adoption of the Risk-Based Supervision (RBS) approach to replace the Compliance-Based Supervision Approach. The RBS approach is premised on the identification of the primary risks affecting a financial institution and the evaluation of the significance of those risks for the financial institution in question. The RBS is expected to go a long way in promoting sound management of risks in individual financial institutions in Liberia, which will ultimately contribute to healthy competition and greater stability of the financial system – a key precondition to sustained economic growth in the country – and allows the CBL to more efficiently employ scarce resource.

716. The department of the CBL are as follows:

a) Research, Monitoring and Planning Department;

b) Regulation and Supervision Department;

c) Internal Audit Section;

d) Legal Department;

e) Administration Department;

f) ;

g) Banking Department;

h) Finance Department; and

i) Treasury Operations Department.

717. For purposes of this report, the Regulatory Supervision Department is extensively discussed.

718. **Regulatory Supervision Department of the CBL**: The Supervision Department is responsible for the implementation and oversight compliance with the NFIA and applicable regulations issued by the Central Bank of Liberia (CBL). Currently, the Banking Supervision Department of the CBL has powers to carry out inspection exercises to enforce the provisions of the Financial Institutions Act 1999 and other gazetted Guidance circulars on know your customer and customer due diligence (KYC/CDD). Against this background, it regulates, and supervises bank and non-bank financial institutions in Liberia with the aim of ensuring the safety and soundness of the financial system as a whole. The Department has two sections, (a) Regulation and Policy Section and (b) Supervision and Surveillance Section. The Regulatory and Policy Section has two units, namely Compliance/Enforcement Unit and Policy Unit; while the Supervision and Surveillance Section has three units: Examination Unit One; Examination Unit Two and Credit Reference Unit.

719. The objectives of the Department are primarily to:

a) Ensure the safety and soundness of the financial system;

b) Ensure compliance with the NFIA and applicable regulations as well as international standards and best practices;

c) Adopt and implement strategies for distressed banks resolution, including receivership and liquidation; and

d) Facilitate the development of an enabling environment that should give rise to a robust financial system.

720. The Department utilizes On-Site Examination; Off-Site Surveillance; Promulgation and enforcement of regulations/directives; Reorganization and/or liquidation of troubled institutions; and Licensing and training in pursuing its objectives.

721. In pursuance of its goals, the Department’s Examination Section conducts examinations, monitors, and reports on, the overall condition of financial institutions. The Section has two Units: Off-Site Surveillance and On-Site Examinations.

722. The Off-Site Surveillance: The Off-Site Surveillance Unit monitors, reviews, and analyzes financial institutions' returns and prepares reports based on said returns and serve as an early warning device to detect emerging problems before they lead to an opened crisis. The returns are used by the supervisors/examiners for the purpose of determining banks' exposures to risk, the effect on banks' profits, etc. Some basic ratios (the financial soundness indicators) are computed from these returns and are used to analyze such important areas as Capital Adequacy, Assets Quality, Earnings Sufficiency, and Liquidity Adequacy.

723. The On-Site Examination: The On-Site Examination Unit conducts periodic examination and special visits in supervised institutions. This Unit also complements the Off-Site in the verification of information provided on the returns submitted to the CBL.

724. Based on a Risk-Based Supervision Framework, the CBL has now merged on-site and off-site functions to be performed by a team of examiners called desk officers or relationship managers assigned to each bank.

725. Policy and Regulation Function: The Policy and Regulation Section of Supervision is responsible for monitoring and enforcing banks' compliance with the NFIA, Regulations, guidelines, directives, MOUs, as well as other recommendations emanating from examination reports. The Section also has discussions with banks' external Auditors and Management and/or Banking Operation Department on issues affecting the individual banks and the banking review performance and risks management practices. The Department is also responsible for licensing and training. The Operations Section receives and analyzes the applications for operations by banks and non-banks, and, based on the attainment of certain minimum requirements, grants license for operation. It also provides training for staffs of the Department, banks, and non-banking institutions with the view of creating an informed environment to serve as the basis of attaining and maintaining safety and soundness in the financial system.

726. The Receivership and Liquidation Function: This Section is responsible for the management of the assets of problem banks and the settlement of claims in the event the bank is liquidated. This includes a comprehensive and up-to-date database of the financial and other records of the problem institutions.

727. **The BSD has a standard operating pro**cedure, which requires officials of the BSD to carry out supervision inspection once a year. Assessors were told that the CBL had directed each bank to include forensic audits of its branch expansion costs, management expenses and information technology infrastructure in the 2010 audit program.

728. Assessors were informed that though the BSD has more resources and personnel than other departments of the CBL, the magnitude of the responsibilities is beyond the capacity of the personnel. Currently, the BSD has 31 officers who have been trained both internally and externally through foreign collaboration with friendly countries. Memoranda of Understanding (MOUs) have been concluded with Central Bank of Nigeria. Liberia equally has access to training under the West African Monetary Zone and agreement with the establishment of College of Bank Supervisors in Abuja in August 2010.

729. **Funding**: The CBL has an autonomous budget which is being funded by its own investment and other sources of income.

730. **Professional standards, confidentiality, integrity, and skills**: In accordance with section 16 of the CBL Act, all appointments of officers of the CBL are only to positions created by decisions of the Board of Governors and on such terms and conditions as are prescribed by the Board of Governors.

731. Section 17 of the CBL Act provides that the Governors are not to be regarded or act as delegates on the board of any commercial, financial, agricultural, industrial, or other business interest, or receive or accept directions from them in respect of duties to be performed under the Act. They are required to fully disclose to the Board of Governors any commercial, financial, agricultural, industrial, or other business interest with which they or members of their families may at any time directly or indirectly be interested and are to refrain from voting on any matter related to the interest which becomes the subject of action by the Board of Governors, unless the disclosure of that interest will not disqualify the interested party for the purpose of constituting a quorum.

732. The Governors, officers or employees of the CBL are not to receive any gift for themselves or person with whom they have family, business, or financial connections if the acceptance of the gifts would result, or give the appearance of resulting in, the diminishment of their impartial devotion to their duties under the Act. Section 17 of the Act does not provide any sanctions for non-disclosure of interest.

733. The disclosure is to be made at the commencement of discussions of the Board of Governors of matters in which Governors may have interests. Furthermore, neither the Governors nor any officers or employees of the Central Bank are to receive any gift for themselves or person with whom they have family, business, or financial connections if the acceptance of the gift would result, or give the appearance of resulting in, the diminishment of their impartial devotion to their duties under the Act.

734. Section 18 of the CBL Act requires every Governor, officer, employee or agent of the Central Bank to take an oath of fidelity and secrecy in the form prescribed by the by-laws. A person who serves or has served as a member of the Board of Governors or staff of the Central Bank, or as an auditor, or agent of the Central Bank in a manner unauthorised by law, is precluded from permitting access to, disclosing or publicising non-public material information which the person has obtained in the performance of his duties at the Central Bank or use the information, or allow the information to be used, for personal gain.

735. Officials of the CBL may disclose non-public material information outside the CBL, in accordance with procedures established by the CBL:

a) In accordance with the expressed consent of the person to whom the information relates;

b) In performance of a duty to the public to make disclosure, including to aid law enforcement and on the order of a court of competent jurisdiction or other person of competent authority;

c) To the external auditors of the Central Bank;

d) To foreign financial institutions supervisory authorities; or

e) The interest of the central bank itself in legal proceedings requiring disclosure.

736. A person who contravenes the provisions in section 18 of the CBLA is liable to a fine of not less than Two Hundred Thousand Liberian Dollars (L$200,000) and not more than Two Hundred

Fifty Thousand Liberian dollars (L$250,000) or imprisonment imposed for a term not exceeding twelve months or to both fine and imprisonment.

737. **AML/CFT Training**: According to the management of BSD, the Department is one of the priority departments and is receiving the highest support in terms of staffing and training. The department recruited the highest number of staff in recent years. At the moment there are 31 staff compared to 15 staff three/four years ago. Training of staff of BSD is ongoing. There is an in-house training programme for staff which includes training workshop on AML, Credit and Credit Risk Management, and Leadership. A certification process is also part of the training programme. This process involves a satisfactory completion of a set of core courses by staff during their first three years in the department and a passing score on an objective certification test that the BSD will administer from time to time.

738. The staff are also exposed to external training. Out of thirty professional staff, twenty-five have attended various training in supervision abroad. Six of the staff have attended AML training. These courses include, Central Bank of Nigeria Examination Training Course levels 2 and 3, Federal Reserve of New York Bank Supervision Course, Banking Regulation and Supervision in Switzerland, Risk Management and Financial Crisis in the Gambia, Conference on Risk Management in Emerging Markets in Basel, Risk-based Supervision- Market and Operational Risk in Tunisia, Regional Course on Advance Banking Supervision in Lagos, Seminar on Policy Challenges for the Financial Sector in Washington and Selected Insurance Core Principles in Accra.

739. The MFI Unit which has eight staff are not trained on AML/CFT measures. The Assessors did not sight any training programme for staff.

The Bureau of Insurance

740. The ILL 1978 Section 2.1 created the Bureau of Insurance headed by the Commissioner of Insurance. The functions of the Commissioner of Insurance are specified in Section 2.3 of the ILL 1978 to include approval of incorporation of insurance companies and authorised their operations; registration and licensing of agents and brokers; and examination, inspection, auditing or investigations as are necessary for insurance companies to ensure compliance with the requirements of the law.

741. The Bureau of Insurance under the Ministry of Transport is responsible for regulating and supervising the insurance sector, notwithstanding the provisions of the CBLA 1999 and the NFIA 1999 which mandates the CBL to supervise insurance business in Liberia. There is a draft law (Liberia National Insurance Commission Act 2010) which if enacted will repeal the ILL 1973 and 1978 and establish the Liberia National Insurance Commission, an autonomous body, whose principal object will be to ensure the effective administration, supervision, regulation and control of insurance business in Liberia.

Funding

742. The Bureau does not have a separate budget. It is funded by the Government of Liberia through budgetary allocation to the Ministry of Transport but funds are not always available to the Bureau to enable it to effectively perform its functions. The Bureau is in dire need of funds.

AML/CFT Supervision Skills

743. There is no supervision carried on in the insurance industry. The activities carried on by the Bureau are mainly printing of insurance stickers and carrying out vigorous enforcement of third party motor insurance law. Staff of the Bureau lack AML/CFT supervisory skills. There is no supervision of compliance with the provisions of the PMLL 2002. In fact, officials of the Bureau are not aware of their obligations under the PMLL or any AML/CFT policy being implemented in Liberia.

Professional standards, confidentiality, integrity, and skills

744. Staff of the Bureau are subject to the same professional standards and requirements on confidentiality, integrity and skills that are applicable to staff of other financial institutions, including the CBL and bank financial institutions.

AML/CFT Training

745. The Bureau of Insurance has seven staff including the acting Commissioner. Apart from the acting Commissioner who has qualification in Insurance, none of these staff has qualification in insurance. The Assessors did not sight any in-house training programme. The Office lacks basic tools to carry out its supervisory functions. There are no computers, printers or vehicle. The Assessors were informed by the Commissioner that the insurance industry is undergoing reform and a draft bill has been prepared which will soon be enacted.

Others FIs

746. Supervision of MFIs, foreign exchange bureaux and money remittance service providers, is not effective and there is no evidence that compliance with the provisions of the PMLL 2002 is monitored. There is no evidence that the MFIs that are registered are subjected to effective supervision. According to the MFI Unit, there are a host of un-registered MFIs which are not subject to any form of monitoring. There was no evidence of monitoring compliance with the provisions of the PMLL 2002. The MFI Unit did not have a copy of the PMLL 2002 nor were the staff familiar with the law.

747. Generally, FIs in Liberia are subject to little or no AML/CFT regulation and are not effectively implementing the FATF Recommendations.

Authorities, Powers and Sanctions: Recommendation 29 & 17

Adequacy of powers, including on-site inspection and access to information

Recommendation 29

Monitoring and Ensuring Compliance of AML/CFT by Supervisors (E.C.29.1)

748. The CBL has adequate powers, derived from the CBLA 1999 and NFIA 1999, to regulate and supervise BFIs and BNFIs. Section 5 (1) of the CBLA 1999 and the section 22 of the NFIA 1999 empower the CBL to supervise bank-financial institutions, non-bank financial institutions and authorized non-bank financial services, dealers and brokers. Monitoring of banks for compliance with prudential measures is carried out through examinations and on a continuous basis through the submission of various returns at specified periods. These returns are analyzed and feedback communicated to the banks with recommendations for implementation. There are quarterly meetings with banks chaired by the governor.

749. The Insurance Commissioner is also empowered by section 2.3 of the Insurance Act 1978 to examine, inspect, audit or investigate insurance institutions to ensure compliance with the requirements of the Insurance Act, but monitoring is not effective.

750. Apart from the commercial banks where there was a low level of supervision for AML purpose, the supervisors were not monitoring the other FIs to ensure compliance with FATF Recommendations.

Authority by Supervisors to Conduct Inspection of Financial Institutions (E.C.29.2)

751. The CBL and the Insurance Commissioner have adequate authority to conduct inspection of institutions under their supervision. Section 22 (1) of the NFIA 1999 empowers the CBL to carry out a comprehensive on-site inspection/examination of FIs at least once a year. Section 22 (2) provides for CBL to cause an examination or special inspection of any financial institution when it considers it necessary to determine the financial soundness of the institution. Furthermore, the CBL is empowered under section 22 (3) to cause an examination of a financial institution's affiliates in Liberia at any time for the purpose of determining the condition of the financial institution. In this regard, section 22 (4) empowers the CBL to appoint one or more qualified persons, other than officers of the Central Bank to carry out the inspection. Section 2.3 (e) of the Insurance Act 1978 empowers the Insurance Commissioner to conduct inspection of insurance entities to ensure compliance with the requirements of the Insurance Act.

Power of supervisors to Compel Production of Records (E.C.29.3)

752. Section 23 of the NFIA 1999 empowers the CBL to inspect the books and records of financial institutions. Subsection (1) requires each financial institution to produce all books, minutes, accounts, cash, securities, documents and vouchers relating to its business in Liberia to the examiner and supply all information concerning its business in Liberia as may reasonably be required by the examiner within the time specified by the examiner. Section 24 (1) also requires

every bank to submit periodic reports to the CBL. The power to compel production of records for supervisory purposes is not predicated on a court order. Failure to produce the records and books attracts sanctions ranging from fines to revocation of the license. Section 2.3 (d) of the Insurance Act 1978 empowers the Commissioner of Insurance to acquire and maintain all records, reports, audits and other information filed in accordance with the operating requirements for insurers.

Adequate Powers of Enforcement and Sanction by Supervisor (E.C.29.4)

753. The NFIA 1999 provides the supervisors with adequate powers to enforce the provisions of the NFIA and to apply appropriate sanctions when the need arise. The PMLL also provides powers of enforcement and sanctions for non-compliance but these sanctions can only be applied through the courts.

Recommendation 17

Sanctions

Effective, Proportionate and Dissuasive Sanctions (E.C. 17.1 and 17.4):

754. In Liberia, criminal, civil and administrative sanctions available to deal with natural or legal person covered by the FATF Recommendations (excluding requirements relating to terrorist financing) that fail to comply with national AML requirements are provided for in the PMLL and the KYC/CDD Regulations. The sanctions are in relation to tipping off when disclosure to employer is made and failure to comply with requirements for systems and training as may be appropriate for the purposes of forestalling and preventing money laundering. Under sections 15.103.4.8 and 15.108.2 of the PMLL, a person who contravenes a provision against tipping off or carries on relevant financial business without maintaining procedures on identification, record-keeping, training and other procedures of internal control and communication is liable to: a non-bailable first degree felony; seizure of the proceeds; and imprisonment for a period of not less than five years and not more than ten years.

755. Sanctions may be applied to a body corporate where an offence relating to the requirement to systems and training to prevent money laundering under section 15.108 of the PMLL committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any officer of the body corporate or any other person who was purporting to act in any such capacity as the person, as well as the body corporate. In the case of a partnership, or an unincorporated association other than a partnership, the sanctions will apply where the offence is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or a person concerned in the management or control of the association.

756. The NFIA empowers the CBL to sanction FIs for non-compliance with the provisions of the act. The sanctions ranged from fines to revocation of license. Section 11 (1) provides that the CBL may revoke the license of a licensee if the licensee:

- Fails to commence operations within a period of 6 months following the granting of the license unless such period has been extended by written advice of the CBL; or
- Fails to comply with the conditions of its license or the measures relating to the inspection of books and records of financial institutions required by the CBL;
- Is in breach of the provisions of this Act which are applicable thereto;
- In the case of a bank financial institution, ceases to do banking business in Liberia; or
- Employs or otherwise engages the services of a person who is dismissed or advised to retire on grounds of fraud of financial malpractice, or fails to comply with a directive of the CBL to remove or dismiss such person.

757. Section 40 (1) of the NFIA 1999 empowers the CBL to appoint a provisional administrator for a financial institution in the event the institution is grossly mismanaged, such as keeping false accounts, eroding asset base, engaging in money laundering, violating the provisions of the NFIA or other relevant laws and regulations.

758. Under section 13 a person who carries on a banking or foreign exchange business without a license or refuses to make available for examination the books, accounts and records to the examiners is liable to pay a fine of not less than five hundred thousand Liberian dollars. The CBL may also close down the business or ask the board to dismiss and remove the offending officers of the business who have refused to produce the documents. A person who holds funds obtained by doing banking business without license is required to repay the funds as directed by the CBL and is liable to a fine of not less than five hundred thousand Liberian dollars or ten times the gain obtained in the illegal activity, whichever is greater.

759. The following violations attract monetary penalties:

- Liquidity requirements violation – Sanction in NFIA Section 17 (5) is payment to the CBL of a charge at an annual rate not exceeding ten percentage points above the highest rate fixed at the time by the CBL, for any of its operations on the amount of the deficiency for so long as the failure continues;

- Violation of restrictions on dividend and other payments from profits – Sanction in NFIA Section 19 (2) is payment of a fine of not less than two hundred thousand Liberian dollars or be closed by the CBL. If the closure continues for three days or more because the financial institution fails or refuses to pay the fine, the CBL may revoke its license;

- Refusal of financial institutions to produce books and records to the examiners or to forward returns to the CBL within the specified time; refusal to notify the CBL of persons dismissed, terminated or advised to retire on grounds of fraud and financial malpractice – Sanctions are provided in NFIA Sections 23 (2); 24 (2); and 73 (2).

760. Under sections 24 (4); 32 (3); 37 (3); and 70 of the NFIA, failure to keep proper books and records in accordance with internationally accepted accounting principles and practices as well as the requirements of the legal provisions on accounting in Liberia; receipt of deposit by an insolvent

financial institution; acquisition of more than ten percent of the equity in another financial institution in Liberia without securing the prior written approval of the CBL; and wilful failure by financial institution to file report of an abandoned FI, attract monetary sanctions and/or imprisonment of not less than two years.

761. Other sanctions include intervention by the CBL in financial institutions (NFIA Section 25), *cease and desist orders* (NFIA Section 39 (1)); seizure of financial institutions by CBL (NFIA Section 47); and determination of compulsory reorganization of a financial institution (NFIA Section 50).

762. Paragraph 8.0 of the KYC/CDD Regulations provides that a licensed bank-financial institution found in violation of the Regulations will be liable to pay a fine, for each instance of violation, of not less than Two Hundred Thousand Liberian Dollars (L$200,000) and/or be subjected to any other applicable laws.

763. Sanctions available under the Insurance Act 1978 range from fines to cancellation of authority to carry on insurance business. The Assessors did not sight any document indicating that insurance companies were sanctioned at one time or the other for failure to comply with insurance or AML requirements.

764. The sanctions available to the CBL under the NFIA are proportionate and dissuasive and are being applied by the Supervisor. On a number of occasions the CBL issued written warnings and directives to financial institutions. The Assessors sighted copies of letters to some banks directing them to take specific measures to correct deficiencies and report back to the CBL within a specified period of time. In 2005, the CBL placed a provisional administrator to manage a bank effective 23 August 2005. The reasons for their action include:

- Non-adherence to established policies and procedures, and considerable disregard of law and CBL regulations and directive;
- Precipitously low vault cash holdings and maintenance of inadequate liquidity characterized by inability to cover persistent clearing shortfall;
- Imprudent and risky lending practices, including high level of connected and insider lending, lending against explicit and formal undertaking made as a condition of its license; and
- Incorrect and/or late submission of returns to the CBL.

765. Furthermore, because of unsatisfactory performance of another bank, CBL had to send a resident supervisor to the bank until its performance improved. In another bank, the CBL placed a moratorium on its branch expansion activities until its performance improved. On 30th June, 2010, the CBL fined a bank L$1.5 million for violation of CBL Regulation No CBL/SD/004/2009 Concerning the Placement of Funds Abroad and CBL directives of October5, 2009 and February 1, 2010. In two instances, the CBL caused the removal of two managing directors for the precarious conditions of the banks they managed.

766. There is no evidence of sanctions been applied to other financial institutions including the insurance industry. The PMLL provides the same sanctions for all the offences giving the impression that there is no proportionality in application of the sanctions.

Designation of Authority to Apply Sanctions (E.C.17.2)

767. Sanctions provided in the PMLL 2002 are criminal in nature and may only be imposed upon conviction by the court. Sections 17, 19, 23, 24, 25, 39, 40, and 47 of the NFIA designate the CBL as the authority for imposing administrative sanctions for violation of the provisions of the NFIA. Understandably, the CBL applies sanctions in cases of violations of the KYC/CDD Regulations.

Sanctions Available in Relation to Directors and Senior Management (E.C.17.3)

768. Section 15.109 of the PMLL provides that when an offense under Section 15.108 (systems and training to prevent money laundering) is committed by a body corporate and is proved to have been committed with the consent or connivance of , or to be attributable to any neglect on the part of , any officer of the body corporate or any other person who was purporting to act in any such capacity the officer or other person, is guilty of that offense and is liable to a penalty as provided under section 15.108.2. The NFIA Sections 20 (6), 24 (4), 30-32, 39, and 70 gave the power to the CBL to sanction directors, officers and employees of financial institutions. Section 39 (1) of the NFIA states that the CBL may, in line with and pursuant to the Act, by its orders, dismiss or cause to be dismissed, directors, officers and employees of financial institutions.

Recommendation 25 – (guidelines for financial institutions other than on STRs)

Guidelines to Assist FIs and DNFBP to Comply with AML/CFT Requirement (E.C.25.1):

769. The CBL has issued a number of regulations and guidelines to help financial operators to comply with the AML requirements and these include the following: Regulations on Know-Your Customer (KYC) and Customer Due Diligence (CDD) issued in 2005. Assessors examined all the Regulations and guidelines but did not find them comprehensive for the purposes of requiring the FIs to comply with AML requirements. (See shortcomings highlighted in General Comments on Recommendation 5).

770. Regulations concerning corporate governance for financial institutions issued in 2008 do not provide for specific measures relating to prevention of money laundering.

771. The guidelines on due diligence concerning prospective and existing employees of financial institutions were issued in 2010 to assist in screening persons hired and in assessing existing employees. The records sighted in banks visited by the Assessors confirmed that applicants for employment in these banks are screened before they are employed. The Assessors cannot affirm that the same measures are taken before employing staff in other financial institutions.

772. Guidelines for the management of foreign exchange risk exposure and placements abroad by commercial banks were issued in 2009. Section 4.4 requires banks to put in place adequate risk management systems and other appropriate internal control mechanisms and procedures to identify, measure, monitor and control foreign exposure both on and off balance sheet. The guidelines did not cover measures relating to the prevention of money laundering in foreign exchange management.

773. Regulations concerning transfer of foreign currency were issued in 2001. Section 2.03 allows an individual who does not have a bank account to transfer over-the-counter up to US$5,000 at a time, provided that such transfers shall not be more than two times within a thirty day period at a given bank. The regulation does not include the need to carry out due diligence where appropriate.

Feedback (E.C.25.2)

774. There is no feedback mechanism in place to acknowledge receipt of reports or provide update on status of investigations or case.

3.10.2 Recommendations and Comments 17, 29, 23, and 25

775. **R.17** – There are various sanctions provided in the NFIA for the supervisory authority to apply, ranging from administrative to civil and criminal. These sanctions are proportionate and dissuasive and the CBL is designated to apply the administrative sanctions. There is evidence of application of sanctions to banks by CBL whereas application is not evident to other financial institutions including insurance companies. The sanctions provided in the PMLL for various offenses are not proportionate as all the offenses carry the same sanctions which are criminal in nature and may only be imposed upon conviction by the courts.

776. The Assessors recommend that the sanctions provided in the laws should be broadly applied to all financial institutions. Furthermore, the sanctions provided in the PMLL for various offenses should be reviewed so as to vary them and make them proportionate to the offenses.

777. **R.29** – The CBL and the Insurance Commissioner have adequate powers of supervision and monitoring and ensuring compliance by FIs. The CBL supervises and monitors banks effectively for compliance with prudential measures. However there is little or no monitoring of banks for compliance with AML/CFT measures. There is also no monitoring of other FIs including insurance companies for compliance with AML/CFT measures. The NFIA and the Insurance Law empower supervisors to compel production of records and there are adequate powers of enforcement and application of sanctions. The sanctions provided in the PMLL can only be applied through the courts while the NFIA empowers the CBL to apply administrative sanctions. Examination of reports provided by the CBL did not provide the Assessors with evidence of effective monitoring of BFIs for compliance of their AML/CFT obligations. There was no record on STRs received, analysed and disseminated. There was no record of sanctions applied to any BFI for failure to comply with AML/CFT obligations. Assessors therefore concluded that the CBL's supervision/monitoring of BFIs for compliance with AML/CFT obligations was not effective.

778. The Assessors recommend that all FIs should be effectively monitored for compliance requirements to combat money laundering and terrorist financing consistent with FATF Recommendations.

779. **R.23** – The CBL and the Insurance Commissioner have adequate powers to regulate and supervise financial institutions. While there is effective prudential supervision of banks, there seems to be no effective prudential supervision of the other FIs. All the FIs, including banks are not subject to adequate AML/CFT regulation and supervision. There is no evidence that compliance with FATF Recommendations is monitored. There is no designated competent authority in the PMLL to ensure adequate compliance with AML/CFT measures. Although CBL takes adequate measures to ensure that criminals or their associates including directors and senior management do not own or participate in the management of banks, there is no evidence that the same measures are taken for other financial institutions. Prudential regulations related to AML/CFT are effectively applied to banks but not to the other FIs. There is little or no monitoring of both money remittance and currency changing service providers to ensure compliance with AML/CFT measures. Not all FIs are licensed or registered or subjected to regulation or supervision. There are a host of MFIs and foreign exchange dealers that are not regulated and supervised.

780. The Assessors recommend that:

- The PMLL should be reviewed to cover comprehensively FATF Recommendations with respect to FIs;
- The CBL and the Commissioner of Insurance should cover all AML/CFT measures in their surveillance and on-site examination of FIs and monitor the FIs for compliance with these measures.
- Supervisors should ensure the licensing/registration of all FIs and subject them to AML/CFT regulation and supervision.
- The PMLL be reviewed to include a designated competent authority to be responsible for ensuring that FIs adequately comply with the requirements to combat money laundering and terrorist financing

781. **R.25** – The Regulations and guidelines issued by CBL to banks do not provide for a description of money laundering and terrorist financing techniques and methods and additional methods that BFIs could take to ensure that their AML/CFT measures are effective. There are no regulations or guidelines to other financial institutions and DNFBPs on the prevention of money laundering and terrorist financing. There is no feedback mechanism in place to acknowledge receipts of reports or update on status of investigations or cases. As a result, the Assessors recommend that:

- Guidelines/regulations be developed to comprehensively cover the preventive measures in FATF Recommendations to assist FIs and DNFBPs to comply with these measures.

- FIs and DNFBPs that are required to report suspicious transactions should be provided with appropriate feedback in line with FATF Best practice Guideline on Providing Feedback to Reporting FIs and Other Persons.

3.10.3 Compliance with Recommendations 17, 23, 25 and 29

Rec.	Rating	Summary of Factors Underlying Rating
R.17	**PC**	• With the exception of banks, sanctions are not applied to other FIs including insurance companies. • Sanctions provided in the PMLL are not proportionate. • There are no statistics available to show that the sanctions provided in the PMLL have been applied.
R.23	**NC**	• All FIs, including banks are not subject to adequate AML/CFT regulation and supervision. • The supervisors do not monitor compliance with FATF Recommendations. • There is no designated competent authority in the PMLL to ensure adequate compliance with FATF Requirements by FIs • With the exception of banks, measures to ensure that criminals do not own or control FIs are not implemented to other FIs. • There are a host of unlicensed or unregistered MFIs and dealers in foreign exchange. • Money transfer service or currency changing service providers are not monitored for compliance with AML/CFT measures. • The CBL is not effectively enforcing compliance with the Regulation of reporting of SARs
R.25	NC	• The regulations/guidelines issued to banks to assist them to comply with AML/CFT measures are inadequate. • There are no regulations/guidelines issued to other FIs including insurance companies, and DNFBPs to assist them comply with AML/CFT measures. • There is no feedback mechanism in place to reporting institutions.
R. 29	PC	• There is little or no monitoring of banks for compliance with FATF Recommendations • There is no monitoring of NBFIs, including insurance companies for compliance with AML/CFT measures

3.11 Money or value transfer services (SR VI)

3.11.1 Description and Analysis

Legal Framework:

782. The legal framework is found in the PMLL 2002 and the NFIA 1999. The MVT is a financial service covered under PMLL section 15.107. Therefore the provisions of the prevention of money laundering law apply to this service also. The NFIA section 3 empowers the CBL to give authorization for any one who wants to operate a money transfer services.

Special Recommendation VI

Designation of Registration/Licensing Authority (E.C. VI.1):

783. The NFIA designated CBL as the licensing authority for all financial institutions, including natural and legal persons that perform money or value transfer services. The CBL issued regulations for the licensing and supervision of money remittance entities in July 2004. Paragraph 1.0 of the Regulations defines "money remittance service" to mean "the acceptance of cash and/or other financial instruments in one location under agreement to pay a corresponding sum in cash or other acceptable forms to a named beneficiary in another location". Paragraph 3.1 empowers the CBL to, as part of the requirements for acquiring a license, to require that the applicants, promoters, directors and/ or officers of the proposed Money Remittance entity are 'fit and proper'. Paragraph 1.0(v) of the regulations defines "fit and proper" to mean "an undisputable honesty in handling, and capacity to honour the financial obligations arising out of the engagement in the operations of a money remittance service". The CBL has licensed three stand-alone money remittance entities besides the ones managed by banks.

784. Paragraph 7 of the Regulations empowers the CBL to carry out on-site examination of Money Remittance entities at least once a year. The CBL has the right to order an investigation into the affairs of any entity whose conduct justifies an investigation. A person duly authorised by the CBL to conduct an investigation or examination may enter the premises where a licensee is carrying on business to inspect the premises and any book or document on the premises which the authorised person reasonably requires to inspect for the purpose of ascertaining whether a contravention of the regulations or any other regulation issued is being committed or has been committed.

785. The CBL is mandated to impose penalty on a Money Remittance entity that fails to permit an authorised person from the CBL to inspect or perform the functions assigned, or refuses to produce any book under the control of the entity which the authorized person requires for the performance of the assignment specified. The penalty for contravention of the Regulation is a fine of not less than One Hundred Thousand (ES 100,000) Liberian Dollars in respect of every day during which the default is not remedied or cured. If any information supplied or item produced is found to be false in any material in particular, the entity will be liable to pay a fine of a minimum of Two Hundred Thousand (L$200,000) Liberian Dollars in respect of every day the violation

continues. The Central Bank may close down and revoke license of the entity. In addition, the entity is to be subjected to prosecution in the courts for the offence committed.

Application of FATF Recommendations (in particular R.4-11, 13-15 and 21-23, and SR.I-IX, E.C.VI.2):

786. The MVT is a financial service covered under PMLL section 15.107. Therefore the provisions of the PMLL apply to this service also. In this regard, the deficiencies identified in relation to other FIs under Recommendations 4-11, 13-15 and 21-23 also and SR VII also apply to MVTs.

Monitoring of Money Value Transfer Service Operators (E.C.VI.3):

787. The money transfer services that operate through banks are monitored through bank examinations. However, the CBL licenses stand-alone money value transfer service providers but there is no evidence that these providers are subject to effective monitoring by the CBL to ensure that they comply with FATF Recommendations. The operators are not aware of AML measures and have not been issued with any regulations or guidelines to that effect.

List of Agents of Value Transfer Service Operators (E.C.VI.4):

788. There is no requirement in the Regulations for the Licensing and Supervision of Money Remittance Entities issued by the CBL in 2004 or other document for money value transfer service operator to maintain a current list of its agents which must be accessible to the CBL.

Sanctions (applying E.C.17.1-17.4 in R.17, E.C.VI.5):

789. MVT is a financial service covered under PMLL and NFIA. Therefore all sanctions for non-compliance with PMLL and NFIA that apply to financial institutions apply to them. The deficiencies in the sanctions regime discussed under Recommendation 17 also apply to MVTS providers.

Additional Elements – Applying Best Practices Paper for SR VII (VI.6)

790. The CBL licenses MVT service providers and as such all supervisory measures to which FIs are subject apply to them also.

Effectiveness

3.11.2 Recommendations and Comments

791. The CBL is the licensing authority for MVT service providers. However, apart from MVT service providers that operate through banks where CBL conducts effective prudential supervision,

there is no evidence, either in examination manual or examination reports, that the stand-alone MVT service providers are subject to effective prudential supervision.

792. There is no effective implementation of the FATF requirements by MVT service providers. However on discussions with banks that provide MVT service such as Western Union and Money Gram, they stated that they implement the groups' policies and standards on AML/CFT but the Assessors did not access records from the banks to confirm the statement. Besides, the Assessors did not sight any guidelines issued to MVT service providers to assist them in implementing AML/CFT measures or requesting them to maintain a current list of their agents. Furthermore, sanctions for non-compliance with AML/CFT measures have not been applied.

793. Based on the above comments, the Assessors recommend the following:

- That guidelines be developed to assist MVT service providers to implement the FATF requirements on the fight against money laundering and terrorist financing.
- That CBL immediately begins monitoring of MVT for compliance with the AML/CFT measures and should apply sanction for non-compliance.
- That MVT service providers should be requested to maintain current list of their agents and make this list available to the CBL.

3.11.3 Compliance with Special Recommendation VI

Rec.	Rating	Summary of Factors Underlying Rating
SR.VI	**NC**	• No guidelines are issued to MVT to assist them in implementing AML/CFT measures. • No effective supervision of MVT service providers • No monitoring of MVT service providers to ensure implementation and compliance with AML/CFT measures • No sanctions have been applied. • No effective implementation of the requirements of SR.VI by the CBL.

4. Preventive Measures – Designated No-Financial Businesses and Professions (DNFPBs)

Basic legal obligations

794. The PMLL does not expressly provide for regulation and supervision of the Designated Non-Financial Businesses and Professions (DNBFPs). There is no evidence of practical implementation of preventive measures on CDD, record keeping and report of suspicious transactions applicable to DNFPBs, including casinos, notaries, lawyers, non-governmental organisations, accountants, trust and company service providers.

795. Dealers in precious metals and stones are to a certain limited extent subject to licensing, but a large section of alluvial miners are operating without licenses. Similarly, the real estate sector is not regulated due to lack of policy on housing and land tenure system except that only persons of Negro origin can own land in Liberia. The Bureau of Internal Revenue under the Ministry of Finance has a section that deals with collection of taxes on real estate. However, the section's activities are not guided by any specific regulations order than the Revenue Code which needs urgent revision to bring it up to standard.

796. There are two functional Casinos in Monrovia operating under the management of hotels. Assessors confirmed that the Casinos were registered under the Ministry of Commerce and Industry but there are no guidance issued on how the Casinos should operate against being used to launder proceeds of crimes. The Liberian Government appears to be unaware of the vulnerability of casinos to ML and TF and has not established a supervisory regime to monitor casinos for AML/CFT purposes.

797. Assessors were informed that the legal profession in Liberia is narrow in operation to litigation and defence activities on behalf of clients. Lawyers are not involved in incorporation of companies because the Association Law does not require an attestation from a lawyer before incorporation of a legal person. There is an apprenticeship system whereby an apprentice to a lawyer could do legal work without having passed through a law school. These gaps leave room for integrity problem in the profession since many unqualified persons are free to operate as legal practitioners. Other professionals like Accountants and Estate Practitioners do not appear to be well-regulated by their self regulatory bodies (SROs). Such bodies include the Association of Certified Public Accountants, Association of Bankers. Assessors noted that either there were no visible or well-organized SROs or the government does not recognize other SROs for estate practitioners like Surveyors, Architects, Engineers and Builders.

798. In general terms, businesses engaged in providing financial services that involve remittance or exchange of funds, dealers in precious minerals and stones are not regulated against money laundering. There is no clear designation of authorities that are mandated to supervise and monitor the activities of DNFBPs' or receive suspicious transaction reports from such entities.

4.1 Customer due diligence and record keeping (R.12)

Recommendation 12, applying R. 5, 6, 8 - 11,

799. There is no requirement in law, regulation or other enforceable means for DNFBPs to undertake CDD measures. DNFBPs are not monitored for compliance with preventive measures as required under the FATF recommendations.

4.1.1 Description and Analysis

800. A number of government MDAs are responsible for the regulation/supervision of DNFBPs in Liberia. AML/CFT obligations are not extended to casinos; real estate agents; dealers in precious metals and dealers in precious stones; lawyers, notaries and other independent legal professionals and accountants; and Trust and Company Service Providers. The Liberian authorities should extend AML/CFT obligations to the identified DNFBPs. The designate supervisory bodies of the DNFBPs should ensure compliance of their respective DNFBPs or designate self-regulatory organisations to fulfil this function.

4.1.2 Recommendations and comments

801. . AML/CFT obligations have not been extended to DNFBPs. The Assessors recommend that the Liberian authorities should extend AML/CFT obligations to DNFBPs, where appropriate, in law, regulation or other enforceable means and make them aware of their obligations. The authorities should also conduct an assessment of the ML/FT risks in the DNFBP sectors.

802. Regulators, the SROs and the Ministries responsible for the implementation of the enabling Act when it is eventually passed should develop KYC/CDD guidance for the DNFBP sectors and effectively monitor them for compliance. The CBL should also monitor the activities of Casinos when they act as currency changers.

4.1.3 Compliance with Recommendations 12

Rec.	Rating	Summary of Factors Underlying Rating
R.12	**NC**	• There is no AML/CFT obligation applicable to DNFBPs. • There is no supervisory authority with mandate to regulate, supervise and monitor DNFBPs against money laundering and terrorist financing.

4.2 Monitoring suspicious transaction reporting, R. 16 (Applying R13 – 15 & 21)

4.2.1 Description and Analysis

803. There is no provision in law, regulation or other enforceable means which requires DNFBPs to report suspicious transactions under any circumstances. There is equally no guidance on implementation of AML/CFT preventive measures among DNFBPs.

Recommendation 16

Reporting to FIU (C.13.1 – 4)

804. DNFBPs are not required to comply with suspicious transaction reporting obligations whether by law, regulation or other enforceable means. However, section 15.108.4 of the PMLL appears to contemplate reporting obligation of a professional legal adviser to disclose information or other matter as an exception to the offence of tipping off. Section 15.108.4 of the PMLL provides that nothing in sub-sections 1 to 3 (offences of tipping-off during enquiry, when disclosure to Law Enforcement Officer is made and when disclosure to employer is made) makes it an offence for a professional legal adviser to disclose any information on a matter to, or to a representative of a client of his connection with the giving of the legal adviser of legal advice to the client or to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings. The Assessors inferred from this section that the legal adviser referred to is an independent legal adviser as it referred to a client of his. However, in the absence of a direct mandatory obligation for legal professional to make an STR, Assessors are of the opinion that the PMLL does not apply to legal professionals.

Protection for reporting suspicious transaction and protection of tipping off (C.14.1 – 2)

805. In the absence of extension of AML/CFT obligations to DNFBPs, this requirement has not been implemented. **Internal controls, compliance and audit (C.15.1 – 4)**

806. There is no law, regulation or other enforceable means requiring DNFBPs to put in place internal control measures, including appointment of a Compliance Officers whose job is to ensure that the reporting entities complies.

Special attention to relationship involving countries that inadequately applying AML/CFT measures and counter- measures (C.21.1-3)

807. There is no requirement in law, regulation or other enforceable means for DNFBPs to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

808. There are no measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries.

809. There is no requirement for DNFBPs to, as far as possible, examine the backgrounds and purposes of transactions that have no apparent economic or visible lawful purpose and make written findings available to assist competent authorities and auditors.

810. There is no evidence of application of or intention to apply appropriate countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.

4.2.2 Recommendations and Comments

811. Without an FIU in place it is superfluous to monitor reporting of suspicious transaction as required under recommendation 16. Thus, no action has been taken to provide guidance to DNFBPs on their obligation to report STRs. There is need to expedite action on passage of an amended PML law with due cognizance given to DNFBPs as reporting entities. A regulatory guidance and awareness creation would go a long way in sensitizing the stakeholders on the need for DNFBPs to fulfil their obligation to file STRs or to maintain internal controls and policies to prevent money laundering and financing of terrorism.

4.2.3 Compliance with Recommendation 16

Rec.	Rating	Summary of Factors Underlying Rating
R16	**NC**	• There is no requirement for DNFBPs to file suspicious transaction reports • Liberia has not established an FIU • DNFBPs are not regulated or supervised as such there is no awareness of the obligation to maintain internal controls and policy to prevent money laundering and financing of terrorism through their sector. • There is no implementation of Recommendation 16.

4.3 Regulation and Supervision

4.3.1 Description and Analysis

812. The Ministry of Lands, Mines and Energy is engaged in some form of regulation and supervision of the dealers in precious stones and metals even though it has no basis in anti-money laundering and countering the financing of terrorism preventive requirements. The Ministry's focus is mainly on generating revenue for the government and abiding by the Kimberly process to which Liberia subscribes. This process has greatly helped to sustain some measure of orderliness in the sector even though there are quite a lot of illegal miners operating in the sector with impunity.

Recommendation 24

Overview of DNFBP supervisors

813. Casinos, including internet casinos, are not subject to regulatory and supervisory regime that ensures that they implement the AML/CFT requirements under the FATF Recommendations. There are two casinos in Liberia, both are located in Monrovia. Casinos are licensed and supervised by the Ministry of Commerce.

Recommendation 25 – (Guidance for DNFBP other than guidance on STRs)

814. There is total absence of any regulatory guidance on AML/CFT compliance enforcement for the DNFBP sectors.

4.3.2 Recommendations and Comments R.24 & R.25:

815. The authorities charged with the responsibility of preparing the required legislation and guidance for regulation, supervision and monitoring of the AML/CFT reporting entities in Liberia should expedite action on the process. In this regard the Ministry of Justice and the Law Reform Commission should consider addressing all the gaps and deficiencies identified in the PMLL.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

Rec.	Rating	Summary of Factors Underlying Rating
R.24	**NC**	• There are no designated supervisors, SROs and national authorities specifically charged with the responsibility to oversee the supervision of DNFPBs for AML/CFT purposes. • There is lack of awareness of the existing risk factors in the DNFBP sector therefore the authority has not made resources available to develop AML/CFT supervision.
R. 25	**NC**	• There are no supervisors designated to develop guidance for DNFBP sectors.

		• No budgetary allocation was made towards providing resources for the development of awareness program for reporting entities. • No guidance has been issued across all the DNFBPs.

4.4 Other non- financial businesses and professions (R.20)

816. Liberia has not considered applying Recommendations 5, 6, 8-11, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

817. The Liberian economy is largely cash-based with evident lack of confidence in the use of financial instruments like cheques and other electronic means of carrying out financial transactions. However, the banking institutions are making gradual progress in introducing Automated Teller Machines (ATM), SMS banking and other means of exchange. This process would require putting in place adequate safeguards to ensure the integrity of the financial system.

4.4.3 Compliance with Recommendation 20

Rec.	Rating	Summary of Factors Underlying Rating
R.20	**NC**	• Liberia has not considered applying Recommendations 5, 6, 8-11, 17and 21 to financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering and terrorist financing. Secured payment system is currently at the experimental stage as such its effectiveness cannot be guaranteed.

5. Legal Persons and Arrangements & Non-Profit Organizations

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

818. The formation and regulation of legal persons and legal arrangements in Liberia are governed by the Associations Law of 3 January, 1977. The Law comprises the Business Corporation Act (BCA), the Not-for-Profit Corporation Act (NCA) and the Partnership Act. The Law also regulates unincorporated associations and corporative societies. The BCA applies to domestic and foreign corporations authorised to do business or doing business in Liberia. Such corporations are to be organised for any lawful business purpose or purposes. Corporations to which the Banking Law or Insurance Law apply are also subject to the BCA, but the Banking Law and Insurance Law prevail where there are conflicting provisions in the Banking Law and the BCA. A person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organise a corporation under the Business Corporations Law.

819. Liberia has not adopted any measures to prevent the unlawful use of legal persons and legal arrangements for ML and TF. However, there are some measures to ensure that there is sufficient, accurate and timely information held on the control of legal persons that can be obtained or accessed by competent authorities. Information on the companies register pertains only to legal ownership/control, as opposed to beneficial ownership, is not verified and is not necessarily reliable. There is no system for verification of other information submitted to the Foreign Affairs or Ministry of Commerce, in particular the details of persons named as directors or shareholders of the company.

820. The laws of Liberia permit the appointment of corporate and nominee directors, which further obscures beneficial ownership and control information. Bearer shares can also be issued in Liberia and some additional specific measures are required to ensure that they are not misused for money laundering.

821. Trusts are a not popular part of the legal and economic fabric of Liberia. Request for trusts normally come into play on the death of a testator who requires in his will that money should be held in trust. Thus request for a trust is based on a testator's will, and trust services are rarely requested for. Section 3.1 of the Associations Law requires each domestic and foreign corporation authorised to do business in Liberia to designate a registered agent in Liberia on whom process against the corporation or any notice or demand required or permitted by law to be served may be served. A domestic or foreign corporation not having a place of business in Liberia is to designate a domestic bank or trust company with a paid up capital of not less than US$50,000, which is authorised by the Legislature of the Republic to act as registered agents for such corporations and trusts. Providers of trust services are not subject to or monitored for AML/CFT obligations. Liberia does not have a registry of trusts and it is not known how many trusts have been created in Liberia or how many trustees are in Liberia. There

are no requirements that will ensure trust beneficial ownership information would be available to competent authorities on a timely basis.

Recommendation 33

Types of companies that can be registered

822. The Ministry of Commerce is the central authority for the registration of businesses in Liberia, but needs to obtain specific certification for registration of diamond businesses from the Ministry of Mines and Energy before registration. All commercial entities that operate in or from Liberia are required to be registered. In this regard, the Ministry of Commerce is making efforts to educate and register petty businesses to enable them to obtain access to loans and other benefits.

823. The Associations Law is the legal framework for the registration of legal persons including trust companies, foundations, charities and companies limited by guarantee including NGOs. The Ministry of Foreign Affairs incorporates companies before registration. Documents relating to registration of proprietorship are to be notarised and probated before registration.

824. There is a requirement for full disclosure during registration. There is no requirement for company service providers to obtain, verify and retain records of the beneficial ownership and control of legal persons. The Ministry does not verify information provided for registration unless there is an objection to the registration of the company. Each company is required to register each year in order to have legitimate status to do business in Liberia. This process allows the Ministry of Commerce to ascertain the consistency of information provided by a company. Registration of companies can be done on-line at the website of the Ministry of Commerce, from which basic information on registration can be obtained.

825. The different types of legal persons in Liberia, most of which are regulated under the Associations Law, are as follows:

826. ***Corporation*****:** This means a corporation for profit formed under the Business Corporation Act, or existing on its effective date and also formed under any other general statute or by any special Act of the Republic of Liberia. Shareholders and directors are not personally liable to debts and obligations of a corporation, which is usually incorporated with the purpose of conducting a business in Liberia, and which has perpetual duration.

827. ***Foreign Corporation***: A corporation for profit registered under the laws of a foreign jurisdiction, which obtains permit to conduct business in Liberia, by submitting all the requested documents to the local authorities.

828. ***Hybrid Corporation***: It is a corporation that conducts a for-profit business, issues shares, and along with shareholders, has non-shareholding members.

829. ***Non-Resident Corporation***: This type of company is incorporated for purposes of international trade and investment, and is generally not liable to pay taxes in Liberia if it is not beneficially owned by a person who is liable to pay tax in Liberia. Moreover, this company cannot conduct business in Liberia and cannot own a property in Liberia. This structure is not appropriate for conducting banking, insurance or mutual fund business. This entity can be managed from any country of the world, its directors and shareholders need not be residents or citizens of Liberia. A company must have its registered office within the jurisdiction. Beneficial ownership need not be disclosed to the authorities.

830. ***Registered Business Company***: This type of company may be incorporated by at least one person, whose liability is limited by shares or by guarantee. Each shareholder is required to specify the number of shares he holds. The company name must end with the word "Limited" or "Ltd". It is restricted to transfer its shares and the number of shareholders must not exceed 50 at any time.

831. ***Limited Liability Company (LLC)***: A limited liability company may conduct any lawful business activity, for and not for profit, excluding banking, insurance and several other types of financial activities. Its name must end with "Limited Liability Company" or "LLC". Such a company can re-domicile to and from Liberia, following a precisely outlined procedure.

832. ***General Partnership***: In Liberia, a partnership is a structure, within which two or more persons cooperate under a single name. Rights of each partner must be precisely specified. In order to be formed, a partnership agreement must be created and signed by all the partners. A partnership usually conducts a for-profit business. All the partners are fully liable for all the debts and obligation of a partnership.

833. ***Limited Partnership***: At least one general partner with unlimited liability and at least one limited partner with liability limited up to the capital invested can form a limited partnership. This partnership may conduct the same types of activities as a general partnership.

834. ***Private Foundation***: Private foundation is a registered legal entity, which may not conduct any trading activities, may not become a general partner of a partnership and director of a company. Charitable purpose need not, but may be the main existence and operations objective of a foundation. The assets of a foundation must be irrevocably transferred by one or more donors. Its name should end with the words: "Private Foundation". At least three officers must be assigned to administer a private foundation. Beneficiaries and persons directly related to them may not become officers.

835. ***Non-for-profit corporation***: A not-for-profit company may be formed by grant of a charter by special act of the Legislature or by filing articles of incorporation as provided by the provisions of Chapter 21 of the Associations Law. A not-for-profit company may make contracts, receive properties and other assets, and professionally act as a trustee to the principal object of the corporation. Its administrators should execute all the necessary activities in order to preserve and enlarge the capital of the corporation. An administrator of a not-for-profit corporation, whether a corporate entity or a private person, is required to be resident in Liberia. If at any time a non-for-profit corporation fails to have a registered agent in Liberia, it may no longer conduct any kind of activities in Liberia and/or must be dissolved.

836. Corporations in Liberia are required to file articles of incorporation and other documents with the Ministry of Foreign Affairs before they are registered by the Ministry of Commerce. The information required may depend on the nature of the corporation being incorporated. The articles of incorporation of profit making organisations are to contain:

a) The name of the corporation;
b) The duration of the corporation;
c) The purpose for which the corporation is organised. It is sufficient to state that, either alone or with other business purposes, that the purpose of the corporation is to engage in any legal act or activity for which the corporations may be organised under the BCA, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for the express limitation of any;
d) The registered address of the corporation in Liberia and the name and address of its registered agent;
e) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par values, or if such shares are to be divided into classes, the number of share of each class, and the statement of the par value of the shares of each class or that such shares are to be without par value;
f) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
g) The number of shares to be issued as registered shares and as bearer shares and whether registered shares may be exchanged for bearer shares and bearer shares for registered shares;
h) If the bearer shares are authorised to be issued, the manner in which required notice shall be given to shareholders of bearer shares;
i) If the corporation is to issue the share of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
j) The number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors shall be elected and qualify;
k) The name and address of each incorporator; and
l) Any provision not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including the designation of initial directors, subscription of stock by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors than are otherwise prescribed in the BCA, and any provision which under the BCA is required or permitted to be set forth in the by-laws.

837. The original copy of the articles of incorporation, signed and acknowledged, together with a duplicate signed copy of the articles of incorporation, as well as other relevant documents are to be delivered to the office of the Minister of Foreign Affairs accompanied by a receipt showing payment to the minister of Finance of all fees required to be paid in connection with the filing of articles of incorporation and relevant documents.

838. A not-for-profit corporation is required to file articles of incorporation providing information to the effect that:

a) The name of the corporation;
b) The duration of the corporation if other than perpetual;
c) That the corporation is organised pursuant to the provisions of the Not-for-Profit-Corporation Act;
d) The purpose or purposes for which the corporation is organised;
e) The registered address of the corporation in Liberia and the name and address of its registered agent;
f) The number of directors constituting the initial board of directors and if the initial board of directors and if the initial board of directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors shall be elected and qualify;
g) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association; and
h) A designation of the Minister of Foreign Affairs as agent of the corporation upon who process against it will be served in accordance with section 3.2 of the Associations Law.

839. Each domestic and foreign corporation authorised to do business in Liberia is required to designate a registered agent, on whom process against the corporation or any notice or demand required or permitted by law to be served may be served on. In the case of a corporation having a place of business in Liberia, the agent is to be a resident domestic corporation having a business in Liberia or a natural person, while the registered agent for a domestic or foreign corporation not having a place of business in Liberia is required to be a domestic bank or trust company with a paid up capital of not less than fifty thousand United States dollars ($50,000).

840. Information on legal persons registered in Liberia is available to competent authorities and the public on request, unless the information is considered to be confidential.

Registration of business names

841. Articles of incorporation is to, among others, indicate the name of the corporation. Thus, the name of a corporation is registered at the very outset at the time of filing of the articles of incorporation with the Ministry of Foreign Affairs. Section 4.2 of the Associations Law provides that, the name of a domestic or authorised foreign corporation is to contain the word “corporation”, “incorporated”, company” or limited or an abbreviation of one of these words. However, a non-

resident domestic corporation or a foreign corporation is permitted to, in the place of the words or abbreviations, include as part of its name words, abbreviations, suffix, prefix and indicate that will clearly indicate that it is a corporation as distinguished from a natural person or partnership. In order to avoid confusion or deceit, the name should not appear like or conflict with that of an existing corporation registered with the Ministry of Foreign Affairs.

Incorporation of Financial Institutions

842. In Liberia incorporation of financial institutions are incorporated under the Business Association Act.

Transparency mechanism

843. The system of registration of legal entities in Liberia is open. Non-resident entities formed or registered under the Liberian Associations Law are statutorily required to retain banks or trust companies as registered agents in Liberia on whom processes or documents or notices required to be served may be served. Where a legal entity fails to designate a registered agent, the Ministry of Foreign Affairs is designated as the registered agent of the entity on whom processes and documents required by law to be served may be served.

844. Liberia maintains an annual registration process which mandates companies to be registered annually. Any information presented to the Ministry of Commerce is validated yearly. The information available however is not on the beneficial owners or the control details of the company. Lawyers and trust service companies registering companies are not required to obtain, verify or retain records of the beneficial ownership and control of legal persons.

Access to Information

845. According to officials of the Ministry of Commerce information will be given out to competent authorities so long as this does not infringe confidentiality rules. They defined confidentiality as information on the finances of a company. They added that information on public companies could be disclosed on demand but not that of private companies. The process of obtaining information varies and would depend on the type of information required. Law Enforcement Authorities will be provided with information when due process is followed. From discussions with officials both from the Ministry of Justice and the Ministry of Commerce and Industry, it was clear that due process will mean a court order compelling the Ministry to release the required information.

Bearer Shares

846. Companies incorporated in Liberia (public and private) are permitted to issue bearer shares, under section 5.8.2 of the Associations Law provided that they are authorised by the company‘s articles of incorporation. The issuance of bearer shares is required to be reflected in a company‘s register of members, which is available for public inspection. Section 5.8.2 of the Associations Law provides that the articles of incorporation may provide that on request of a shareholder, his bearer

shares shall be exchanged for registered shares. Registered shares may also be exchanged for bearer shares. Liberian laws restrict the transfer of shares, including obligating the holder of the shares to offer to the corporation or to any other holders of securities of the corporation or any other person(s) a prior opportunity to be exercised within a reasonable time to acquire the restricted shares or obligating the corporation or any holder or any other person or combination of these to purchase at a specified price the shares which are subject to an agreement on the purchase and sale of the restricted securities. Subscription for shares is to be in writing and irrevocable for six months, unless otherwise stated in the subscription agreement or by consent of all the subscribers. Subscriptions for shares or stocks are transferable unless provided in the subscription agreement. The transfer of bearer shares is by delivery of certificates. As required under section 5.8.4 of the Associations Law. Each certificate representing shares when issued is to indicate, among others, the name of the person or person to whom the shares are issued if a registered share. This means a certificate for bearer shares need not indicate the name of the owner.

847. Liberia has not taken appropriate measures to ensure that bearer shares are not misused for money laundering and terrorist financing. Apart from BFIs, financial institutions are not implementing the requirement in the PMLL to take reasonable measures for the purpose of establishing the identity of any person on whose behalf an applicant for business is acting. Financial institutions are not required to exercise special care in dealing with companies which have a significant proportion of capital in bearer shares. Financial institutions should have procedures in place to monitor the identity of principal shareholders. This may require the financial institutions to consider whether to immobilise the shares. Where it is not practical to immobilise bearer share, financial institutions should obtain a declaration from each beneficial owner who holds 5% or more of the total shares of the corporate customer on the percentage of shareholding. Such owners should also provide a further declaration on an annual basis and notify the Ministry of Commerce immediately if the shares are sold, assigned or transferred. In addition, the authorities should issue guidelines to require FIs to exercise care in initiating business transactions with companies with nominee shareholders and companies which have a significant proportion of capital in bearer shares, to obtain satisfactory evidence of beneficial owners of such companies or to have procedures to monitor the identity of principal shareholders.

Reliance on investigative powers

848. The Division of inspectorate serves as the policing arm of the Ministry of Commerce and has the mandate of the enforcement of all regulations and policies regarding the conduct of trade within Liberia. The Division collaborates with other divisions to ensure that businesses operate within the confines of the General Business Laws of Liberia and ensures the payment of revenue obligations, i.e. business registration fees to government. The Division is headed by an Inspector-General and assisted by two deputies (Urban and Rural) along with one Assistant Inspector-General. Additionally, the Division is represented in all political sub-divisions of the Country by four Regional Coordinators and fifteen (15) Senior County Inspectors. With the exception of the Freeport of Monrovia where the activities of the Inspectorate are supervised by the Coordinator, the Division assigned inspectors to very port of entry. In spite of this provision the Division lacks the qualified personnel and the logistics to carry out any meaningful inspections of companies. Assessors also observed that the focus of inspectors was on the collection of revenue. Inspections were not being conducted for purposes of ensuring that legal persons and legal arrangements are not being misused for purposes of money

laundering and terrorist financing. In general, officials who are in charge of registration and inspection of legal persons and legal arrangement are not aware of the importance of preventing legal persons and legal arrangements from being used for money laundering and terrorist financing.

Additional Elements

849. It seems that given the legal framework and the supervisory mandate of the Ministry of Commerce, financial institutions may have limited access to information for the purpose of verification of beneficial owners except through court processes. Assessors were however unable to obtain any statistics of records of information verified or obtained by financial institutions or any court processes compelling the release of information.

5.1.2 Recommendations and comments

850. There is no mechanism in place in Liberian legislation on commercial and corporate laws to ensure that proceeds from predicate offences to money laundering are not utilized either through natural or legal persons. The Inspector-General has broad inspection and investigation powers, which unfortunately is underutilized because of lack of personnel and resources. The Ministers for Commerce and Justice can rely on the powers under the Money Laundering Law or Association of Business Act or on the law enforcement authorities and the judiciary to access information and enforce compliance with disclosure requirements.

851. The process for the identification of beneficial ownership can only be obtained based on a court order. Therefore, information on beneficial owners is not always available in a timely manner. Due to lack of qualified personnel to conduct inspection on registered companies, information on directors and shareholders is not verified and may not necessarily be reliable.

852. It is recommended that the Liberian authorities review the current corporate registration system to determine ways in which adequate and accurate information on beneficial ownership may be available in a timely manner for investigation by law enforcement authorities.

853. Adequate resources should be made available to the Inspectorate Division of the Ministry of Commerce and Industry to boost the capability of the office to conduct onsite investigations on information provided by corporate bodies. In addition the Money Laundering Law should be amended to specifically include inspectors in the law enforcement officers mentioned in the law.

854. The country should expedite action to synchronize all the laws that deal with registration and supervision of the conduct of businesses for the purpose of money laundering and terrorist financing as well as seek to provide comprehensive measures for the identification of beneficial owners.

5.1.3 Compliance with Recommendation 33

Rec.	Rating	Summary of Factors Underlying Rating
R.33	**NC**	• Adequate measures are not in place to ensure that there is adequate, accurate and timely information on beneficial ownership. • There is no national registry that records the required ownership and control details for all companies and other legal persons registered in Liberia. • There is no mechanism in place to verify the identity of owners for AML and CFT purposes. • There are no appropriate measures to ensure that bearer shares are not misused for money laundering

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

855. The Ministry of Commerce and Industry is the Ministry that deals with the registration of Trusts in Liberia. Assessors were informed by a private legal practitioner that registration of trusts in Liberia was not a common occurrence. Trusts are registered under the Associations Law. Section 20.4 of the Business Corporation Act empowers a not-for-profit corporation organised under Chapter 20 of the Act and subject to any limitations provided in the Act or other statute of Liberia or its articles of incorporation to act as trustee under any trust incidental to the principal object of the corporation, receive, hold, administer, and expend funds and property subject to such trust.

856. Private practitioners and other service providers are not obliged to keep records of beneficiaries, trustees and settlors. Lawyers have little or no knowledge of the PMLL and the need to regulate beneficial ownership to prevent legal arrangements from being used for the purposes of laundering money or financing of terrorists.

Process for registration and identification of owners of LTD / GTE Company or organization

857. Section 21.1 of the Associations Law provides that a not-for-profit corporation may be formed by three or more persons for any lawful purpose which do not contemplate the distribution of gains, profits, or dividends to its members and for which individuals may lawfully associate themselves, including religious, patriotic, professional, scientific, charitable, social, educational, athletic or cultural purposes, or for rendering services, subject to laws applicable to particular classes of not-for-profit-corporations or lines of activity. Not-for-profit-corporations are precluded from conducting their activities for pecuniary benefit or financial gain, whether or not in furtherance of their corporate purposes, except to the extent that the activities support other lawful activities which they conduct. Not-for-profit-corporations can only distribute gains, profits, or dividends to their members on their dissolution.

858. Section 24.4 of the Associations Law exempts the members of a not-for-profit corporation from being personally liable for the debts, liabilities or obligation of the corporation. A member of a not-for-profit corporation is liable to the corporation only to the extent of any unpaid portion of the initiation fees, membership dues or assessments which the corporation may have lawfully imposed on the member, or for any other indebtedness owed by the member to the corporation.

859. A not-for-profit-corporation may be formed by grant of a charter by a special act of the Legislature by filing articles of incorporation with the Minister of Foreign Affairs. The Articles of Incorporation is to contain, among others, the name of the corporation; and the number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors are elected and qualify.

860. By virtue of section 24.1 of the Associations Law, corporations, unincorporated associations and partnerships and natural persons may be members of not-for-profit-corporations. A not-for-profit-corporation may also be incorporated and exist without members or have one or more classes of members. Section 24.1 provides that any provision for classes of members should be provided in the charter, articles of incorporation, bylaws. Where the corporation has two or more classes of members, the designation and characteristics of each class and the qualifications and rights, and limitations on, the members of each class may be provided in the articles of incorporation, bylaws, or if the bylaws provide, a resolution of the board. Membership may be effected and evidenced by signature of the articles of incorporation, designation in the articles of incorporation or the bylaws, membership certificate or card, or any method prescribed by the charter, articles of incorporation or the bylaws.

Process for registration of Incorporated Trustees and identification of beneficial owners

861. In Liberia, trust services are rarely required. Normally, the creation of trusts in Liberia comes into play on the death of a testator who has requested in his will that money put into a trust. There is no register of trusts in Liberia, though section 20.4 of the Associations Law empowers each not-for-profit-corporation organised under Chapter 20 of the Associations Law and subject to any limitations provided in the Act or any other statute in of Liberia or its articles of incorporation to act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to the trust. Trusteeship under the Associations Law may also occur under section 11.4.2 which empowers directors of a corporation to become trustees on the dissolution of the corporation or on expiration of the period of the corporate existence of the corporation. The directors/trustees are provided with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the country wherever situated, prosecute and defend all suits as may be necessary or proper for the purposes mentioned. They are also empowered to distribute the money and other property among shareholders after paying or adequately providing for payment of the liabilities of the corporation and undertake other actions which ought to have been taken by the corporation before the dissolution.

862. By implication, the process for registration of not-for-profit-corporations specified in the Associations Law applies to incorporated trustees. There is no requirement for trust service providers to obtain, verify and retain records of the details of trust or other similar legal arrangements. Trust service providers are not subject to or monitored for any AML/CFT obligations. The deficiencies regarding identification of beneficial owners discussed under Recommendation 33 apply to trusts.

Transparency Mechanism

863. Generally the commercial laws in Liberia provide for transparency in dealing with control of corporations. The absence of a requirement to obtain, verify and retain records on details of beneficial ownership needs to be addressed.

Access to Information on Beneficial Owners of Legal Arrangements

864. Liberia does not have a Central Registration Authority for the registration of Trusts. They are not regulated by any supervisor to ensure compliance with AML/CFT obligations. Some of the lawyers informed the Assessors that they are guided in their relationship with the clients by the common law of trusts, ethical rules of practice, and confidentiality obligations.

Reliance on investigative powers

865. As with legal persons, in addition to the information kept by the Ministry of Foreign Affairs and Ministry of Commerce, reliance may be placed on the investigative powers of law enforcement agencies or financial regulators through court orders.

Information retained by AML/CFT regulated businesses as part of their compliance obligations

866. Companies engaged in activities relating to legal arrangements are not subject to AML/CFT obligations.

Information held by tax authorities and other agencies

867. The Revenue Code requires every taxpayer to file tax returns based on the value of property, turnover and other basis for tax assessment. Taxpayers are also required to submit financial statements. The Bureau of Revenue shares information with the CBL, the LACC and other competent authorities on a regular basis. In this regard, information held by tax authorities and other agencies on trustees may be accessible on collaborative basis. Information considered to be confidential may however be obtained through court orders.

Information held by private companies or individuals

868. Information held my private companies and individuals may be obtained through court orders.

Additional Element:

Statistics and Effectiveness

869. Although the creation of trusts is rarely requested for in Liberia, the absence of record keeping or reporting requirements on trusts identifying the trusts or the existence of the trust difficult. Assessors were not provided with information on how many trusts have been created in Liberia or how many trustees there are. Most importantly, there are no requirements that will ensure trust beneficial ownership information would be available to competent authorities on a timely basis. These factors limit the extent of information which might be found when investigative powers are used.

5.2.2 Recommendations and Comments

870. Liberia does not have a registry of trusts. Some information on trusts is held by the Ministry of Commerce, other government agencies and financial institutions. Reliance may have to be placed on the investigative powers to access information pertaining to beneficial ownership and control of trusts. It is recommended that Liberia introduce measures to enhance the transparency of trusts. In particular, measures which would enable enforcement agencies to identify the existence of a trust and require a party to hold information on the beneficial ownership and control of trusts and other legal arrangements. It is also recommended that providers of trust services be made subject to the relevant AML/CFT obligations.

5.2.3 Compliance with Recommendation 34

Rec.	Rating	Summary of Factors Underlying Rating
R.34	**NC**	• There is no requirement for trust service providers to obtain, verify and retain records of the details of the trust or other similar legal arrangements. • No effective mechanism in place to assist competent authorities to have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts.

5.3 Non Profit Organisations (SR VIII)

5.3.1 Description and Analysis

Overview of the sector15

871. The Ministry of Planning and Economic Affairs (MPEA) is the sector Ministry responsible for non-profit organisations in Liberia. (NPO's). NPO's are formed under the Associations law and the Business Corporations Act. The Ministry registers and accredits these organizations. As a post-war country, Liberia is interested in encouraging both macro and micro economic policies that will foster investment t to boost the economy and promote growth.

872. Historically, the traditional societies, social clubs, economic clubs (susu), community service and work groups have operated throughout Liberia. Later, faith-based organizations emerged and facilitated the transformation and socio-economic development of the country, especially in the areas of education, health and spiritual development. The 70's and 80's saw the emergence of modern day CSOs with a focus on capacity building, human right, advocacy and development issues. Thus, Non Governmental Organizations (NGOs) functioning within the territory of Liberia are expected to be independent, non-profit making, non-partisan and charitable organizations, established in accordance with the Associations Law of Liberia, having the primary goal of enhancing the social, educational, professional, scientific, athletic, cultural and economic well-being of communities and may operate nationally or locally on a non discriminatory basis.

873. The number of NGOs and the magnitude and level of their influence may have warranted the development or formulation of guidelines or policy to guide their operations after the civil war. The operations of NGOs in general buttressed government efforts in ensuring peaceful coexistence, stability and national development. The war years (1989-2003), shattered the governance structure and systems, the rule of law disappeared and a humanitarian crisis arose that needed immediate attention which no national authority could address. The international community had to take the lead in ensuring not only the provision of humanitarian assistance, but also the protection of life and property and eventual return to peace. Thus, NGOs became the main instruments through which such support could be provided. The international NGOs, which had the resource -base provided the lead. The arrival of international NGOs during this period gave an impulse to the establishment and growth of additional local NGOs. In some cases, they formed partnerships for the delivery of needed humanitarian services to the affected population. The contribution of these organizations to the survival of the affected population and return to peace has been considered to be commendable.

874. Since 1990, there has been a proliferation of NGOs in Liberia. This was due primarily to the Liberian civil war, coupled with the influx of Sierra Leonean refugees and the need to render both

[15] Some of the information in the overview were adapted from the NGO Policy Guidelines due to their relevance to the discussion of NGOs within the AML/CFT context.

humanitarian and development assistance. During the peak of the Liberian civil war, these efforts were strictly relief oriented. The proliferation of NGOs in Liberia however brought to light a number of concerns regarding their activities. These concerns were not only been expressed by NGOs themselves but also by governmental authorities and the general public. These concerns are reflected below:

875. The NGOs expressed the following key concerns:

a) The absence of clear guidelines for NGO operations culminates in complexities in obtaining incorporation and accreditation
b) The lack of decentralized accreditation procedures
c) The propagation of demands from different government institutions for the submission of various reports, instead of a centralized reporting mechanism
d) The absence of published and transparent fee structures
e) The incidence of corruption on the part of certain public officials
f) The harassment of field workers by local officials
g) The new international aid modalities operates to marginalize national NGOs
h) The existence of competition between national and international NGOs
i) The inadequacy of capacity building and partnership mechanisms to support national NGO programs
j) The inadequacy of government efforts to inform and involve civil society in its development agenda

876. The Government raised the following key concerns:

a) There is little or no reference and engagement by NGOs with line ministries and local authorities
b) Abused of duty free privileges
c) Evasion of tax by some NGOs
d) Some portions of the laws of Liberia are compromised or disregarded
e) There is little or no level of sustainability of NGO projects
f) Some NGO projects and programs are not in line with the Government's development agenda

877. While acknowledging the contributions NGOs have made to the country, the public expressed the following key concerns including:

a) Very little impact on beneficiaries
b) Little or no input from target beneficiaries during the project cycle
c) Proliferation of NGOs

d) Skewing of NGOs' activities

e) Underutilization of local NGOs

f) Prioritizing relief activities over development, despite the transition to development

g) Disrespect towards local authorities

h) Inadequate accountability

i) Inadequate transparency

878. According the Liberian authorities, a review of the NGO registry in the MPEA revealed omissions and deficiencies. Besides, comparing the lists of NGOs registry at the MPEA with records from the Ministry of Finance and other line ministries showed extensive and vital discrepancies in reports to line ministries, particularly on project focus areas and project locations.

879. In 2006 MPEA carried out a series of consultations, facilitated by United Nations Development Program, to produce the first draft of NGO Policy and Guidelines, which were further reviewed in another series of consultations with all stakeholders (Line Ministries, NGO, Donors and UN). A working committee chaired by MPEA and consisting of representatives of line ministries, local and international NGOs and UN developed a revised NGO Policy and Guidelines for Operations. The revised draft was discussed in a series of regional consultative meetings and validated in a one day workshop by all concerned stakeholders in January 2008. The policy and guidelines for operations are therefore formulated, based on the existing law of Republic of Liberia, to explain the procedures which NGOs should follow in order to be accredited by the MPEA and to encourage the effective coordination of NGO activities by enhancing the mechanism for cooperation and the government, to clearly define the roles and responsibilities of stakeholders, to ensure community-driven intervention, transparency, accountability, respect for the rule of law and to ensure that the people of Liberia reap the full benefits of their activities. It was observed that the authorities have not for purpose of implementation of SR VIII reviewed the adequacy of laws and regulations of NPOs.

880. Currently, there are over four hundred (400) national NGOs in Liberia. Most NGO works are related to the provision of education, healthcare, water and sanitation. The MPEA does not have the requisite resources to collate information on beneficial ownership. There is lack of knowledge within the Ministry of the existence of the PMLL and the need to regulate non-profit organisations to prevent them from being used to launder funds or for purposes of financing terrorism.

Adequacy of laws and regulations on NPOs

881. An NPO may be formed by grant of a Charter by special act of the legislature or by filing Articles of Incorporation. The process of registration begins with the incorporation of the entity at the Ministry of Foreign Affairs. When the Articles of Incorporation is secured, the concerned person then moves to the sector ministry concerned with his area of interest for letters of acknowledgement and relevant by-laws and presents these at the Ministry of Planning and Economic Affairs. The applicant fills a form at the Ministry which points to the thematic area within which the NPO would be operating. When the Ministry is satisfied with this information it arranges an on-site visit to validate

the information given by the applicant. The Ministry satisfies itself through onsite visit to the proposed office location of a prospective NPO to ensure that the prospective NPO has the requisite office infrastructure and logistics that lends credence to its ability to undertake development work before the Ministry approves the application of the NPO.

882. A NPO may be formed under section 21.1 of the Associations Law by three or more persons for any lawful purpose which is not for the distribution of gains, profits or dividends to members. Purposes for which they could be formed include religious, patriotic, professional, scientific, charitable, social, educational, athletic and cultural or for rendering services subject to laws applicable to particular classes of NPO's or lines of activity. No NPO is permitted to distribute gains, profits or dividends to any of its members except on dissolution.

883. The Articles of Incorporation of an NPO are to contain:

a) The name of the corporation;

b) The duration of the corporation if other than perpetual;

c) The purpose or purposes for which the corporation is organized;

d) That the corporation is organised pursuant to the provisions of the Not-For Profit Corporation Act;

e) The registered address of the corporation in Liberia and the name and address of its registered agent;

f) The number of directors constituting the initial board of directors are to be named in the Articles of Incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors shall be elected and qualify;

g) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association;

h) A designation of The Minister for Foreign Affairs as agent of the corporation on who process against it may be served.

884. In Liberia, a non-profit organisation may be formed for the purpose of incorporating any existing unincorporated association or organisation. Liberian NPO's have powers to:

- sue and be sued,
- enter into contracts,
- receive property by devise or bequest, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations;
- Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to such trust;
- Convey, exchange, lease, mortgage, encumber, transfer on trust, or otherwise dispose of all property, real or personal;

- Borrow money, contract debts, and issue bonds, notes and debentures, and secure the payment or performance of its obligations;
- Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

Outreach to the sector

885. Liberian NPO's have extensive rights but are to a large extent not supervised. The Associations Law does not have any provisions on reaching out to the sector for the purpose of monitoring their activities or conducting periodic reviews. NPO's remain largely unaware of their vulnerability to TF as no programmes have been developed or designed to create this awareness. Assessors observed that even officials at the MPEA were not aware of trends, issues of FT and the fact that NPO's could be targeted as conduits for TF and ML. The Ministry needs to organise some awareness creating programmes and put in place a structure to achieve this.

886. The MPEA is however making efforts to promote transparency, accountability, integrity and public confidence in the administration and management of all NGOs in Liberia through the application of the NGO Policy Guidelines. The policy prescribes a reasonable set of guidelines aimed at delivering four results to ensure better coordination among various ministries/agencies involved with the operations of NGOs; ensure a coherent process for the accreditation of NGOs and the distribution of their programs and activities; provide a conducive environment for the smooth operations of NGOs and for ensuring stronger accountability and transparency with the NGOs sector; and put in place a systematic approach to the building of requisite capacities and a stronger framework within which both local and international NGOs can work. Liberia should incorporate AML/CFT issues into the Policy Guidelines to ensure that NGOs are aware of their vulnerability to TF and also live up to their AML/CFT obligations.

Supervision of NGOs

887. Monitoring and evaluation of all accredited NGO programs and projects in Liberia is carried out under the Ministry's Poverty Reduction Strategy in collaboration with the line Ministries and other relevant institutions. Assessing the situation and the effectiveness of project implementation; identifying possible constraints with a view to finding solutions, and sharing lessons and experiences.

888. The Monitoring and Evaluation exercise entails documentation review, field visits and dialogue with NGO officials and other actors, analysis of information and making informed decisions, and producing evaluation reports and sharing with the NGOs concerned. The methodology for field visits of program activities include spot checks undertaken without the NGO's prior knowledge. However, information gathered during these spot checks are verified with the NGO(s) concerned. There is also Participatory Monitoring and Evaluation which involves formal communication to the NGO(s) concerned, informing them of the planned visit. The MPEA gathers information from the NGO(s) concerned, other NGOs at the location and/or sector of activity, line Ministries, target beneficiaries and local communities, but verifies information obtained from third parties with the

NGO(s) concerned. NGOs are given a reasonable opportunity to respond to any information gathered by the MPEA prior to the release of any evaluation report. On satisfaction of the inspection, the MPEA issues an eligibility report to the NGOs found to be performing to expectation.

889. Assessors were informed that the Ministry had about two hundred and twenty- five (255)field staff working in the fifteen counties responsible for monitoring all developmental work going on in the various towns, districts and counties. They are supervised at the county level by fifteen supervisors through the County Development Steering Meetings. Since these supervisors report on all development work they report on any work being done by any non-profit organisation at that level. This means that the supervision is not structured for the non-profit organisations specifically and it would be impossible to detect irregularities.

890. The Ministry did not appear to have any mechanism to do quality control on the work of these organisations and does not have timely information on the size, features or activities of these organisations.

891. There is no anti-money laundering or counter terrorist financing of terrorism structure in place and most organisations remain vulnerable to be used as sources through which funds could be channelled to finance terrorism.

892. While supervision of non-profit organisations was considered to be the responsibility of the Ministry of Planning, this Ministry does not have structures in place to monitor or effectively oversee the activities of these organisations. The organisations submit annual reports made up of their development programmes and financial reports for the year to the Ministry of Planning. There is however no follow-up structure in place to ensure that non-profit organisations keep within their mandates of incorporation. Once these organisations are formed they are more or less left on their own. The Ministry's interest remains in the development work they are supposed to carry out.

Information on objectives ownership, and control and administration

893. According to section 21.1 of the Associations Law, NGOs may be incorporated for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to members of the NGOs and for which individuals may lawfully associate themselves such as religious, patriotic, professional, scientific, charitable, social educational, athletic, or cultural purposes, or for rendering services, subject to laws applicable to particular classes of not-for-profit corporations or lines of activity. A corporation to which section 21.1 applies is prohibited from conducting activities for pecuniary profit or gain, whether or not in furtherance of its corporate purposes except to the extent that such activity supports other lawful activities which it conducts. In furtherance to this, NGOs, during incorporation, are required to file Articles of Incorporation setting out, among others, the purpose or purposes for which the corporation is organized; the registered address of the corporation in Liberia and the name and address of its registered agent; the number of directors constituting the initial board of directors; the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors are elected and qualify; and a designation of The Minister for Foreign Affairs as agent of the corporation on who process against it may be served .

894. Section 24.1 of the Associations Law provide that corporations, unincorporated and partnerships, as well as natural persons, may be members of a not-for-profit corporation or it may have no members. A not-for-profit corporation may also one or more classes of members. Section 24.1 requires that any provision for classes of members should be set out in a charter, articles of incorporation or by-laws. Where a corporation has two or more classes of members, the designation and characteristics of each class and qualifications are to be set out in the charter, articles of incorporation, by laws, or if the by-laws requires, a resolution of the board. Evidence of membership of a not-for-profit corporation is by signature on the articles of incorporation, designation in the articles of incorporation, membership certificate or card, or other methods. Transfer of membership or any rights arising from the membership is prohibited, unless otherwise permitted by the articles of incorporation or by-laws. An NGO is required to have bank accounts in its name in Liberia that concurs with the rules and regulations of the CBLA and NFIA.

895. Despite the above, there was no express requirement for NGOs to maintain information on the purpose and objectives of their activities and identity of persons who own, control or direct their activities, including senior officers, board members and trustees. Due to the proliferation of NGOs in Liberia, some of whom are not registered with the appropriate authorities, information is not readily available either from the NGOs or appropriate authorities.

Transaction and accounting records

896. Apart from the annual reports to be filed, NGOs are not obliged to keep any other records of accounts. The PMLL does not place an obligation on NGOs such as is required of relevant Financial businesses to keep records. There is no procedure in place for law enforcement agencies to obtain information on detailed accounts, control of funds by the organisation or information on domestic and international transactions.

Powers to investigate and sanction

897. Activities of most non-profit organisations in Liberia are not regulated. Assessors were informed that the Ministry of Planning does not have staff trained to carry out investigations for money laundering and financing of terrorism purposes. Presently terrorism and its associated offences are not criminalised in Liberia and so there is no legal regime to deal with it.

898. Assessors were informed that no sanctions had been applied against any non-profit organisations. There are no set down procedures to follow to freeze accounts of trustees, remove trustees or remove their accreditation for operating.

899. NPO’s can act as trustees, convey, exchange, dispose or mortgage all property real or personal. This increases the risk of such organisations being used to finance terrorism or launder funds. Since they are incorporated under the Associations Law, this places their trusteeship activities under the Ministry of Commerce which however does not have the power to monitor their activities.

Domestic and International cooperation

900. There is no central authority in the Ministry who provides information to international requests regarding non-profit organisations that are under investigations. International requests coming to Liberia are channelled through the Ministry of Foreign Affairs and then to the Ministry of Justice before being sent to the relevant Ministry. Assessors found that international organisations applying to work in Liberia have to submit to the Ministry of Planning evidence of three other countries where they had worked previously in the field in which they are seeking to do developmental work. The Ministry however does not verify this information submitted to it because it lacks the capacity to do so.

Recommendations and comments

901. The proliferation of NGOs in Liberia and the evident lack of resources and capacity of appropriate authorities to monitor their activities make the NGO sector very vulnerable to terrorist financing. The current registration and monitoring framework for the NPO sector although underpinned by law has not established an effective regime in which the activities of NGOs are be tracked and the way in which the funds received by NPOs are used. The MPEA could not demonstrate that the measures introduced by the authorities have been able to rationalize the operations of NPOs and enhanced the cooperation between the MPEA and the NPO sector. Moreover the measures applied have not enhanced the transparency and accountability in the NPO sector. This may be attributed to the lack of capacity of the MPEA to effectively supervise the NGOs and the fact that most NGOs are international NGOs who sometimes sub-contract their work to national NGOs, thus making it difficult for the MPEA to apply any enforcement powers. The lack of an adequate enforcement mechanism to give effect to the NGO Policy Guidelines issued by the MPEA is a major gap in the framework Liberia is building.

902. There are no appropriate, dissuasive and proportionate sanctions for NPOs that do not comply with the Policy Regulation. The only remedy currently available to the MPEA is the refusal to issue certification which is a remedy that should be used as a last resort. There are no fines, warnings, censures or other less extreme sanctions that can be imposed on NPOs that fail to comply with relevant obligations. In view of the above, Assessors concluded that:

- Liberia does not have an effective system to prevent the misuse of the non-profit sector by people who finance terrorism;
- Liberia has also not reviewed the adequacy of its laws and regulations that relate to non-profit organizations;
- There has been no outreach to the non-for profit sector with a view to protecting the sector from terrorist financing abuse;
- Supervisors do not have the capacity to monitor the activities of non-for profit organizations; and
- The laws on NPO’s are in dire need of amendment to ensure that their activities are monitored and that sanctions are provided for and violations punished.

903. Assessors recommend as follows:

- A risk assessment of the sector for the purpose of identifying the relevant features, size, and volume of funds which could be used for the purpose of terrorist financing should be conducted and the results disseminated among NGOs, competent authorities and persons and entities who may be subject to AML/CFT obligations;
- The legal regime in place for the supervision of the activities of NPO's is limited in scope and should therefore be enhanced through the adoption of a more comprehensive legislation. This will also ensure that information will be available for law enforcement and international cooperation.
- The Ministry of Planning should maintain a point of contact that will respond promptly to requests on NPO's.

5.3.3 Compliance with Special Recommendation VIII

Rec.	Rating	Summary of Factors Underlying Rating
SR.VIII	**NC**	• The domestic laws relating to non-profit organisations have not been reviewed to assess their effectiveness for purposes of terrorist financing • There is no process in place to ensure timely information on the features or activities of NPO's • No mechanism exists to prevent NPO's from being used as conduits for FT • Provisions on contents of Articles of Incorporation of NPOs do not expressly require details of identity of persons who own or control activities such as board members or trustees • No requirement in place for NPO's to maintain appropriate records of domestic and international transactions • No sanctions in place for violations by NPO's • Lack of awareness of vulnerability of NPO's to TF and ML by oversight Ministry. • Awareness has not been created among NPO's through outreach programmes of their vulnerability to TF and ML. • LEA's cannot effectively investigate and gather information on NPO's • Mechanism does not exist at responsible ministry to facilitate response to international requests

6. National and International Cooperation

6.1 National co-operation and co-ordination (R31 & 32)

6.1.1 Description and Analysis

Policy development fora

904. There is no specific agency or institution that has been mandated to coordinate the Government's AML/CFT policies. The PMLL does not specifically provide for cooperation among agencies for the purposes of combating the laundering of proceeds derived from criminalised predicate offences. The Anti-Corruption Act however provides for inter-agency collaboration. Part IV of the Act which deals with the powers of the commission provides under section 4.1.g. empowers the Commission to establish counterpart and technical relationships with similar and other agencies, institutions and organisations in Liberia and abroad, as may be necessary for the effective discharge of its functions.

905. One of the functions of the Commission is to serve as the agency of the government of Liberia with primary responsibility for the investigation of all acts of corruption and in its role of investigations to promote and coordinate the collaboration of all law enforcement agencies of government in the discharge of their activities as they relate to combating corruption. It does this through inter alia tracing and monitoring the movement and whereabouts of persons accused of being involved in acts of corruption and building data-banks, maintaining data bases, and sharing the contents of the data on persons or organisations convicted of acts of corruption.

906. The Commission has a good working relationship with the Ministry of Justice and the Liberian National Police and assessors were informed that some joint investigations in a corruption case involving a Minister of State was been carried out by the Commission and the Ministry of Justice.

907. The Ministry of Justice is able to coordinate and work well with the National Police, National Security and The Drug Law Enforcement Unit. Since the Ministry of Justice is the principal agency for investigations and prosecutions of offences it relies on the law enforcement agencies for investigations and intelligence gathering.

908. In spite of this collaboration, convictions for serious offences remain on the low side. There has not been any conviction for money laundering and since 2009 there has been only one conviction for a drug offence despite the prevalence of drugs trafficking in Liberia.

909. Since there is no FIU in place, financial institutions are not able to report suspicious financial transactions. The coordination among agencies at the national level is weak because financial institutions and DNFBP's are left out of the cooperation.

Co-operative groups/Specialized AML subject matter groups

910. Although the MOJ appears to coordinate well with the other law enforcement authorities, there is no coordination among the law enforcement agencies especially in relation to money laundering. Assessors found out that plans are far advanced to set up a Transnational Crime Unit made up of the Commissioners of the Police, Customs, Immigration, Drugs Unit and National Security. The unit will then coordinate the affairs of all the agencies to erase duplication of activities and sharpen skills of the work force of the agencies. An MOU to this effect had been prepared but not signed at the time of the on-site visit.

FIU & law enforcement agencies and other national institutions

911. The FIU is not established. It is expected that once the FIU is in operation, it will coordinate law enforcement activities with other security agencies, including the National Security Bureau that is responsible, alongside the LNP, for the investigation of money laundering cases.

912. In 2010, Liberia established a Transnational Crime Unit (TCU) comprising 60 security and law enforcement experts. Membership of the TCU is drawn from the NSA, BIN, LNP and other law enforcement agencies. The TCU is structured to train and equip the members to provide robust response to threats posed to Liberia by transnational organised crime, including drug trafficking. Thus, the TCU is a as a unit include multi-integrated investigation teams, multi-disciplined strategic and operational criminal intelligence cells, tactical and technical surveillance teams as well as police cooperation experts. According to the Liberian authorities, the use of the components of the TCU will allow Liberian authorities to cover all aspects of what is required to tackle transnational organised crime, bring perpetrators to justice, stop money laundering, tax evasion, and seize illegal drugs and assets. The authorities informed Assessors that the TCU would be built up in phases over a period of three and half years. This initiative is very laudable and Assessors are very desirous of knowing how Liberia progresses with the TCU and combating of transnational organised crime, particularly, money laundering and terrorist financing.

913. There is no statistics on the policies developed through the coordination framework in Liberia. However, Assessors note that the draft AML/CFT Bill and draft National AML/CFT Strategy were prepared through the coordination framework in Liberia with the support of GIABA.

Additional Elements

914. The system for consultation with the financial sector and DNFBPs on AML/CFT issues is at its nascent stage and Liberia needs to be encouraged to intensify efforts on this.

Analysis of Effectiveness

915. There is no effective mechanism for domestic cooperation concerning issues pertaining to AML/CFT.

6.1.2 Recommendations and comments

916. In general, the framework coordinating AML/CFT efforts in Liberia is weak. However, the authorities appear to understand the requirement for cooperation. An initial effort in this regard was led by the CBL in the review of the PMLL and playing a leading role in assisting with the organisation of AML/CFT related programmes by GIABA and other development partners. The establishment of the TCU is highly commendable. The Ministry of Finance is currently playing a pivotal role in the coordination of AML/CFT activities, particularly in relation to GIABA programmes. It is expected that the FIU will become a central AML/CFT coordinating unit for all the supervisors, law enforcement agencies and the private sector to ensure the effectiveness of national coordination mechanisms.

917. The Assessors noted that as at the time of the on-site visit, Liberia had developed a draft national strategy on AML/CFT but the regulators or the law enforcement agencies had not conducted any ML/FT risk assessment to ascertain the vulnerability of Liberia ML/FT.

918. Discussions with several relevant institutions revealed that there was no consultation between competent authorities, the financial sector, and DNFBPs in the drafting of the PMLL although there was a level of consultation for the draft PML/TF Bill. This explains some of the challenges Liberia is facing in attempting to implement some of the provisions of the PMLL such as the internal rules, and also the exclusion of key institutions from the PMLL. Currently, Liberia does not have an Inter-Ministerial Committee on AML/CFT matters. The authorities should designate an agency with responsibility to coordinate the implementation of the Government's AML/CFT policies.

919. There is the need for the relevant institutions to intensify efforts to pass the AML/CFT Bill into law and adopt the national AML/CFT strategy to assist the country in implementing AML/CFT measures. The AML/CFT national strategy should be used as a framework for strengthening institutional, legal and enforcement mechanisms for the prevention of financial crime and combat of money laundering and financing of terrorism.

6.1.3 Compliance with Recommendation 31

Rec.	Rating	Summary of Factors Underlying Rating
R.31	**NC**	• There is no FIU in place to coordinate the activities of the LEA's and act as the central point of operational cooperation. • Mechanisms for consultation among competent authorities are very weak • There has not been any coordinated policy development or joint activities among the LEA's and policy makers to combat ML and FT.

6.2 The Convention and the UN Special Resolutions (R.35 and SR.1)

6.2.1 Description and Analysis

920. Liberia has acceded to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances and the United Nations Convention against Transnational Crime. Liberia's PMLL domesticates some of the provisions of these Conventions.

Recommendation 35 and Special Recommendation 1

921. The PMLL domesticates some of the provisions in the Vienna and Palermo Conventions. The PMLL criminalises the laundering of the proceeds of crime and provides for the prevention and punishment for laundering and related offences. It also provides for concealment removal or transfer of the proceeds of crime.

922. The PMLL is not being implemented. Most stakeholders, including law enforcement institutions, are not aware of the provisions of the PMLL and their responsibilities in relation to the law.

923. Liberia is a member of the United Nations. Some of the relevant UN Conventions to which Liberia is a party are:

SN	Name of International Convention/Instrument	Date of Signature/Accession/Ratification	Implementing Legislation
1	International Convention for the Suppression of the Financing of Terrorism	5 March 2003a	NA
2	International Convention for the Suppression of Terrorist Bombing	5 March 2003 a	
3	United Nations Convention against Transnational Organized Crime	22 Sep 2004 a	PMLL
4	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	16 Sep 2005 a	PMLL
5	United Nations Convention against Corruption	16 Sep 2005 a	Aspects in LA-CC Act

Special Recommendation 1

CFT Convention

924. Liberia has not ratified the United Nations Convention on the Suppression of Terrorist Financing and has no legislation in place to deal with issues of financing terrorism and its related offences. Liberia should enact legislation to criminalise the financing of terrorism, terrorist acts and proscribe terrorist organisations and designate terrorist financing as a predicate offence of money laundering.

S/RES/1267(1999) and successor resolutions and S/RES/1373 (2001)

925. Liberia has not implemented the UNSCRs 1267 and 1373. The Bureau of National Security oversees matters that deal with the security of the country and will be best suited to assume responsibility and steer affairs between themselves and the police.

926. The Financial Intelligence Unit should also be set up as a matter of urgency to issue relevant guidance and regulations to reporting entities on their obligations under the PMLL and regulate intelligence details under UNSCR 1267 AND 1373.

Additional elements

927. Liberia subscribes to the following international arrangements:

- ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- OAU Convention on the Prevention and Combating of Terrorism, 1999;
- the Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers; and
- United Nations Convention against Corruption (UNCAC).

6.2.2 Recommendations and comments

928. Liberia needs to ratify the Conventions, domesticate and effectively implement them. There is the urgent need to enact the AML/CFT Bill and put in place mechanisms for the implementation of UN/SC/Resolutions. Specifically, the authorities should

- Establish the FIU with full powers in accordance with acceptable international standards

- Ensure the timely distribution of the lists of designated persons;
- Ensure the analysis of information received from the FIs by the FIU in a prompt manner;
- Implement an effective procedure for the freezing and unfreezing the assets of listed persons.
- On establishment, the FIU should develop guidance notes for FIs on their obligations regarding the UNSCRs; and
- Develop mechanisms for the coordination of national and international cooperation between relevant agencies.

6.2.3 Compliance with Recommendation 35 and Special Recommendation 1

Rec.	Rating	Summary of Factors Underlying Rating
R.35	**PC**	• There has been no implementation of the PMLL which was passed in 2002.
SR. 1	**NC**	• There is no legislation criminalizing FT. • There is no legal framework or guidelines for the implementation of the UNSCR 1267 and 1373.

6.3 Mutual Legal Assistance (R.36-38, SR V, R. 32)

6.3.1 Description and Analysis

929. Liberia does not have comprehensive framework on mutual legal assistance but there exist mechanisms to provide mutual legal assistance in relation to all criminal matters, including those considered to involve fiscal matters. Provisions on mutual legal assistance may be found in the Liberian Constitution, the PMLL,the Anti-Corruption Commission Act and the Executive Act establishing the Ministry of Foreign Affairs.

Recommendation 36 and SR V

Legislation

930. Article 9 of the Liberian Constitution provides that 'The Republic shall encourage the promotion of bilateral and regional cooperation between and among Liberia and other nations and the formation and maintenance of regional organisations aimed at the cultural, social, political and economic development of the peoples of Africa and other nations of the world. Section 15.136 of the PMLL provides for limited mutual legal assistance for purposes of enforcement of external confiscation orders in relation to money laundering. While the Anti-Corruption Commission Act is the legal framework on mutual legal assistance in corruption matters. Article 9 of the Constitution will apply to matters relating to terrorist financing.

Provision of widest range of mutual legal assistance

931. Various agencies including the Police, Customs, Drugs Law Unit, Anti-Corruption Commission and the Bureau of National Security provide mutual legal assistance to other countries. The range of assistance that can be offered include:

a) Obtaining sworn evidence or other authenticated or certified evidence including banking documentation for use in investigations or criminal proceedings;

b) Interviewing witnesses and suspects in criminal investigations where the person is willing;

c) Serving of summons or other judicial document requiring a person to appear before a judicial authority in the requesting country as a witness or defendant in criminal proceedings;

d) Cooperating without appearing before a judicial authority in Liberia where any statement made would be on oath;

e) Authenticating or certifying evidence for use in the requesting country especially where that evidence that evidence has already been obtained by Liberian Police for their own purpose;

f) Surrender of fugitive criminals;

g) Providing details of previous convictions;

h) Sharing information concerning investigations into offences which have been committed in Liberia;

i) Exercise of search and seizure powers where evidence is required for use in criminal trials or investigations; and

j) Restraint and confiscation of proceeds of crime on conviction.

932. Section 15.137 of the PMLL empowers the Minister of Justice to direct, in relation to a country or territory outside Liberia designated by order, that subject to any modifications as may be specified, to apply to proceedings which have been or are to be instituted in a designated country and may result in an external confiscation order being made in the designated country. The Minister may also make provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; provision as to evidence or proof of any matter for the purpose of enforcing or registering an external confiscation order; and other incidental, consequential and transitional provision as it appears to the Minister to be expedient. The Minister may also direct that proceeds which arise out of an action taken in a designated country with a view to satisfying a confiscation order should be treated as reducing the amount payable under the order to the extent as may be specified.

933. Section 15.137.2 defines external confiscation order to mean an order made by a court in a designated country for the purpose of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which the PMLL applies or the value of property so obtained or depriving a person of a pecuniary advantage so obtained. The authorities have not utilized this provision since the enactment of the PMLL in 2002.

934. The Anti-Corruption Commission Act mandates the Commission to serve as the agency of government authorised to make and receive requests for the purpose of international mutual legal assistance in the fight against corruption. The Commission, in the exercise of its powers, can identify trace and freeze assets of persons being investigated or prosecuted for allegations of corruption on the authority of a prior warrant issued by a court of competent jurisdiction. The Commission at the time of the on-site visit had not received any MLA requests or made any requests to other countries.

Entry, Search and Seizure

935. Section 11.2 of the Criminal Procedure Law of Liberia empowers a magistrate or justice of the peace to issue a warrant to a law enforcement officer only on an affidavit or written complaint made on oath establishing the grounds for the issuance of the warrant for entry, search and seizure of property where the property is stolen or embezzled property; illicit, forfeited, or prohibited property; contraband; instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offence.

936. Section 15.126.10 of the PMLL empowers a Law Enforcement Officer or Customs Officer to seize property for the purpose of preventing any realizable property from being removed from Liberia. The exercise of the power to seize will include the power to enter and search. Such powers

may be exercised in relation to mutual legal assistance by virtue of the power conferred on the Minister of Justice by section 15.137 of the PMLL.

Conditions and Restrictions on MLAs

937. No laws specifically impose any restrictions on MLA requests. In practice however, mutual legal assistance is not prohibited or generally made subject to unreasonable, disproportionate, or unduly restrictive conditions. A request will not be declined without stating the reason or reasons why the request cannot be executed; or without consulting the requesting authority and, where appropriate, inviting it to modify the request so that assistance may be provided.

938. Officials of the Ministry of Foreign Affairs informed Assessors that MLA's are normally treaty based and are considered on a case by case basis. However requests for assistance are not refused solely on the basis that they may involve fiscal matters. Request for assistance relating to tax offences are referred to the Internal Revenue Agency for action.

Processes for execution of MLA requests

939. Request for mutual legal assistance is made to the Ministry of Foreign Affairs and is then referred to the Ministry of Justice. The Minister for Justice then relays the request to the relevant authority depending on the content of the request. The country has not published any MLA guidelines for the execution of MLA requests

Timeliness of responses to MLA requests

940. Provision of assistance in a timely manner in Liberia is often affected by logistical constraints, including lack of proper database on individuals, lack of proper records in the Ministry of Foreign Affairs on MLA's and bureaucracy of the public service. The time for response to mutual legal assistance requests depends on the circumstances, and the subject matter of the request. The Assessors noted that because there was no formal mechanism for the timely response to MLA requests, obtaining an order from the court for the conduct of searches or for production of documents may take longer than in most jurisdictions.

Fiscal Matters and Mutual Assistance

941. There is no provision in any law that would create an impediment to MLA involving fiscal matters. In discussions with the authorities, they advised that this would not be an impediment to providing MLA.

Secrecy and Confidentiality

942. There is no impediment to providing MLA due to secrecy or confidentiality matters (See Section 2.4 – Financial Institution Secrecy or Confidentiality)

Mutual Legal Assistance Treaties

943. Assessors were informed that agencies in Liberia had entered into a number of treaties with agencies in other countries ,. Customs for instance is a member of the World Customs Organisation (WTO) and the Regional affiliate organisation which has a Regional Liaison Office, Training Centre, and Capacity Building Centre which shares information and intelligence and responds to MLA requests. Customs has signed two treaties with Sierra-Leone and Guinea to foster MLA and is about to sign one with Ghana in the near future.

Avoiding conflict of jurisdiction

944. There is no clear guidance on how to approach a MLA request when there is conflict of jurisdiction. However, the authorities stated that if the crime is committed in Liberia and the accused person is resident in Liberia or a citizen of Liberia, the country will have the first option to prosecute unless the person is not a Liberian citizen. However, Liberia does not have any arrangement that deals with the issue of avoiding conflicts of jurisdiction.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1)

945. The provision in Article 9 of the Constitution will apply to MLA for matters relating to terrorist financing.

Additional elements

946. Powers of competent authorities required under R.28 are available for use when there is a direct request from foreign judicial or law enforcement counterparts since organisations have their own contacts. However, these powers have not been applied in cases relating to money laundering and terrorist financing.

Recommendation 37 (dual criminality relating to mutual legal assistance) and SR V

947. Liberia does not provide MLA on the basis of dual criminality. The practice has been that various agencies have responded to requests on a case by case basis. It must be mentioned however that the PMLL in section 15.101.7 defines criminal conduct to mean conduct which if it occurs in Liberia will constitute a non-bailable first degree felony and if it occurs outside Liberia would constitute such an offence if it had occurred in Liberia. It is not certain how the country will handle predicate offences which occur in other countries but are not first degree non-bailable offences in those countries. Since Liberia has not handled any MLA requests in respect of ML and TF offences, this area remains unclear.

Recommendation 38 and SR V

Consideration of asset forfeiture fund and asset sharing

948. There is no provision in the PMLL on assets forfeiture fund and sharing of confiscated assets with other countries. The Criminal Procedure Law and the Penal Law do not provide for it. Liberia has not considered establishing an asset forfeiture fund and asset sharing regime.

Dual Criminality and Mutual Assistance

949. Dual criminality is not a pre-condition for rendering MLA by Liberia. The authorities informed by Assessors that Liberia is party to a number of international conventions, and for that matter, undertakes its obligations under those conventions, including the provision of MLA, without any hindrance.

Property of Corresponding Value

950. By virtue of the PMLL, Liberia can seize property of corresponding value.

Coordination of Seizure and Confiscation Actions

951. There has been no coordination between the authorities for seizure and confiscation actions with other countries.

Asset Forfeiture Fund

952. The Liberian authorities have not considered establishing an asset forfeiture fund.

Sharing of Confiscated Assets

953. This requirement has not been considered.

Additional Elements (applying c. 3.7 in R.3, c. 38.6)

954. Under section 15.136 of the PMLL, Liberian courts can give effect to any judgment that has been obtained in a foreign jurisdiction under Order. This provision has not been implemented in relation to money laundering.

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3)

955. Apart from Article 9 of the Constitution, which does not provide specific guidance on MLA, there is no other legislative or regulatory framework for providing international cooperation in relation to FT matters. The authorities did not provide any guidance as to what action would be taken by Liberia upon receipt of a request for cooperation in relation to FT.

Statistics (applying R.32)

956. There is no statistical data available with respect to the number of MLA requests sent or received regarding ML or FT.

Effectiveness

957. The decision to grant MLA depends on the requested State's legal framework as well as its willingness to cooperate. In principle, international standards require countries to afford mutual legal assistance to the fullest extent possible under relevant laws, treaties, agreements and arrangements with respect to investigations, prosecutions and judicial proceedings in relation to the offences covered by those standards. The relevant laws, treaties, agreements and arrangements must establish the grounds and conditions upon which a request may be made or denied, matters for which MLA will be provided, the procedures and powers of competent authorities in relation to MLA. The absence of uniform procedures in Liberia for granting MLA means that Liberia only grants MLA on discretionary basis and not on systematic basis, when necessary. This system may result in lengthy and cumbersome procedures with no guarantee of timely and successful provision of the requested assistance. Furthermore, the non-designation of the full spectrum of designated ML offences will impede the effectiveness of MLA provided by Liberia. In this regard, Liberia cannot be depended on by other countries to be a reliable partner when MLA is needed. Similarly, it will be difficult for Liberia to request for MLA.

Additional elements

Recommendation 32 (statistics)

958. Liberia did not provide Assessors with statistics on MLA requests received, made or executed.

MLA statistics: total requests that have passed through the Ministry of Justice and other agencies

959. The Ministry of Justice, Foreign Affairs, Bureau of National Investigations, the Liberian National Police and Customs informed assessors that they have received MLA requests which they have responded to and also made a few requests. There was however no statistics from any Ministry or Agency to verify responses or requests made in respect of MLA's with other countries.

6.3.2 Recommendations and comments

960. From discussion with the authorities, it became evident that Liberia does not prohibit or place unreasonable or undue restrictive conditions on the provision of mutual legal assistance, especially on requests from the United States of America. However, there is no comprehensive and efficient process for the execution of mutual legal assistance requests. MLA provisions have been

provided in the draft AML/CFT Bill. Additionally, the responses to MLA requests are not timely and not effective. Given the absence of an effective system, which is reflected in the lack of statistics on MLA provided or received, it appears that the MOJ lacks the capacity to treat MLA requests effectively. It is envisaged that the provisions on MLA in the AML/CFT Bill will help streamline the MLA process in Liberia in relation to ML and TF when the Bill is passed into law and effectively implemented.

961. The Assessors note that Liberia is committed to international cooperation but its ability to provide the widest range of cooperation is hampered by absence of clear procedures and powers to provide assistance. The Assessors recommend that Liberia should consider taking the following steps to improve its MLA regime:

- Expedite action to pass the AML/CFT Bill;
- Provide for comprehensive and efficient process for the execution of mutual legal assistance requests;
- Develop procedures for the management of MLA requests in a timely and efficient manner;
- Develop a data base for information on MLA; and
- Train the staff of the MOJ and other competent authorities on how to manage MLA requests effectively.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.36	**PC**	• There is no evidence that MLA requests are dealt with in a timely manner. • LEAs do not have clear and efficient processes in place for the execution of MLA requests. • Most Ministries and Agencies do not maintain proper records of MLA requests dealt with. • There is no regime in place to respond to MLA request relating to FT offences. • The absence of criminalisation of money laundering offences limits the effectiveness of MLA provided by Liberia
R.37	**PC**	• No records of MLA requests made or dealt with exist to determine how impediments will be handled.
R.38	**NC**	• There are no clear cut appropriate laws that deal with provisional measures that can be applied in respect of MLA • Procedures are not in place to ensure uniformity, clarity and expediency in responding to MLA

Rec.	Rating	Summary of Factors Underlying Rating
		requests. • There is no record of MLA responded to by Liberia for identification, freezing, seizure or confiscation of laundered property, proceeds from, or instrumentalities used or intended to be used. • No arrangements are in place to coordinate seizure and confiscation actions with other countries. • No regime in place to deal with sharing of confiscated assets arising through cooperation between Liberia and other countries. • No provision for an asset forfeiture fund is in place.
SR. V	**NC**	• Absence of criminalisation of terrorist financing limits the extent and effectiveness of MLA provided by Liberia • No regime in place to deal with international cooperation in respect of FT. • There is no mechanism in place to deal with sharing of assets confiscated as a result of international cooperation.

6.4 Extradition (R.39, 37 & SR.V)

6.4.1 Description and Analysis

Recommendation 39 and Special Recommendation V

Legislation

962. Section 1.1 of the CPL provides that 'the provisions of this title govern the procedure in criminal proceedings in all courts of the Republic of Liberia except where a different procedure is expressly provided by statute or rule of court.' In this regard, Chapter 8 is to be so construed as not to contravene the spirit of the extradition arrangement as contemplated by the parties at the time of its negotiation. Therefore, in the absence of any provision in the PMLL to the contrary, the provisions on extradition specified in Chapter 8 of the CPL apply to money laundering.

963. Section 8.1 of the CPL defines 'extradition arrangement' as any treaty, convention, or executive agreement providing for reciprocal rights to the surrender of fugitives apprehended in the territory of the parties thereto. A 'fugitive' is defined as 'any person within the Republic of Liberia who is accused or has been convicted of an extraditable offence within the jurisdiction of a foreign state'. Extradition under the CPL applies to requisitions of foreign States that have an extradition arrangement in force with Liberia, provided that there is at the time of the receipt of the requisition or of the proceedings, an extradition arrangement in force with the requesting foreign state. Section 8.2 provides that 'if any provision of this chapter is inconsistent with the terms of the applicable extradition arrangements, the latter shall prevail. This chapter shall be so construed as not to contravene the spirit of the extradition arrangement as contemplated by the parties at the time of its negotiation.'

964. Section 8.3 provides that 'A requisition for the surrender of a fugitive shall only be recognised if the offence charged is one which is included in the provisions of the applicable extradition agreement, and is not a political offence.

965. For the purposes of the Money Laundering and other Offences Law the criminal conduct required for the offence of money laundering is defined in section 15.101.7 as conduct which

a) If it occurs in Liberia constitutes a non-bailable first-degree felony;

b) If it does not occur in Liberia would constitute such an offence if it had occurred in Liberia.

966. This means that the principle of dual criminality applies to the extradition process for the offence of money laundering.

Extradition of nationals

967. Liberia will extradite its nationals so long as the purpose of the extradition is not contrary to the requirement of the extradition process and Liberia international obligations.

The process for granting extradition requests

968. Section 8.5 of the Criminal Procedure Law provides that the request for extradition should be made to the Secretary of State. Presently however extradition requests are first made to the Minister of Foreign Affairs. The request which is to be in writing be accompanied by documents authenticated by the proper authority in the requesting State showing that the fugitive is substantially charged with having committed an extraditable offence. The Minister for Foreign Affairs will then request the Attorney-General to secure the arrest of the fugitive. The Attorney-General will do so where satisfied that the requesting State has charged the fugitive with an offence which is extraditable within the meaning of s.8.3 of the Criminal Procedure Law.

Dual criminality and extradition

969. The Criminal Procedure Law does not specifically provide for the principle of dual criminality. Section 8.3 provides that a requisition for the surrender of a fugitive will only be recognised if the offense charged is one which is included in the provisions of the applicable extradition agreement, and is not a political offense. However, the PMLL in defining 'criminal conduct' introduces the element of dual criminality by providing that it is conduct which if it occurs in Liberia would constitute a non-bailable first degree felony and if it does not occur in Liberia would constitute such an offence if it had occurred in Liberia. The practice would be that Liberia would extradite fugitives on offences that constitute predicate offences for the offence of money laundering which are provided for by the Penal Law.

970. Assessors were informed by officials of the Ministry of Foreign Affairs that extradition in Liberia is mostly done on a case by case basis and for most instances the circumstances surrounding the case and the provisions of the Criminal Procedure Law will determine the action to be taken.

971. The Ministries of Justice Ministry and Foreign Affairs did not provide the assessment team with statistics of extradition requests granted and those made by the Minister for Foreign Affairs. It was difficult therefore for assessors to ascertain in what instances the case by case discretion had been exercised by the two ministries.

Restrictions on Extradition

972. Liberia does not place undue restrictions on the extradition process. Section 8.3 of the Criminal Procedure Law provides that a requisition for the surrender of a fugitive shall only be recognised if the offence charged is one which is included in the provisions of the applicable extradition agreement and is not a political offence. The guilt or innocence of the fugitives as to the extraditable offence with which he is charged may not be inquired into in any extradition

proceeding except as it may be involved in identifying the person held as the person charged with the extraditable offence, or in connection with establishing a defence of political offence.

Efficiency of Extradition Process

973. Assessors were informed that the Ministry of Foreign Affairs had responded to a number of requests from various African countries, Europe and The United States of America. Assessors were also informed that two weeks prior to the on-site visit an American citizen was extradited to America to face trial. However, Assessors could not verify the most recent process as officials of the Ministry of Foreign Affairs failed to produce documents to support this. In addition assessors were told that because of the good international relationship between Liberia and America, the process of extraditing fugitives to America to face trial was higher than that with other countries.

974. A fugitive arrested for the purpose of extradition would have to be brought before a magistrate or justice of peace for a preliminary extradition hearing as soon as practicable and be supplied with counsel where he does not have one. Where his counsel raises reasonable objections as to the fugitive being the right person charged or raises a defence as to the charge being of a political nature a date would have to be set for this to be done and in practice would slow down the process. Attorneys of the Justice Ministry verified that Liberia was a rights-based country and objections from defence counsel were given serious consideration by magistrates.

Recommendation 37 and SR. V

975. Liberia does not have in place the legislative framework that deals with the financing of terrorism. The country has however made far reaching attempts to amend its penal law to provide for the financing of terrorism in line with international standards and the FATF standards.

Statistics

976. The Ministries responsible for mutual legal assistance and extradition in Liberia did not provide the Assessors with statistics on mutual legal assistance and extradition requests granted.

6.4.2 Recommendations and comments

977. There are no simplified procedures for expedited action on extradition matters. In Liberia, extradition remains treaty based. There is the need to review the Criminal Procedure Law to take into account the fact that offences that are not within a treaty today may evolve tomorrow. It is therefore important to extradite based on offences than to draft a bilateral treaty on a case by case basis. This has led to delays in responding to requests and in some cases, has rendered the entire extradition regime ineffective. The country should consider maintaining a comprehensive data on extradition requests. There should be a mechanism in place to ensure timely response to extradition requests.

978. The law enforcement authorities charged with security issues in Liberia include the Liberian National Police, The National Bureau of Investigations, and the Ministry of National Security. There is general lack of coordination among these institutions as well as lack of skill and capacity to deal with terrorist financing issues. There is a need to coordinate and beef up skill in these sectors to enable them effectively implement the law on terrorist financing when it is passed.

979. Liberia should take immediate steps to fully implement the 1999 United Nations Convention for the Suppression of the Financing of Terrorism and put in place effective measures to ensure the exchange of information and provision of assistance with other jurisdictions in matters of terrorism and its financing.

980. There is no statistics to enable the Assessors to verify the effectiveness of the process.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

FATF Rec.	Rating	Summary of Factors Underlying Rating
R.37	**PC**	• The bureaucracy involved in dealing with requests causes delays. • No regime exists to allow extradition and MLA for FT.
R.39	**PC**	• There has been no extradition in furtherance of the PMLL
SR. V	**NC**	• Terrorist financing is not criminalised

6.5 Other Forms of International Cooperation (R.40, SR.V & R. 32)

6.5.1 Description and Analysis

Recommendation 40 and SR V

981. Legal Framework: Article 9 of the Constitution of the Republic of Liberia provides that 'The Republic shall encourage the promotion of bilateral and regional cooperation between and among Liberia and other nations and the formation and maintenance of regional organisations aimed at the cultural, social, political and economic development of the peoples of Africa and other nations of the world. Section 15.136 of the PMLL provides for limited mutual legal assistance for purposes of enforcement of external confiscation orders. There is no legislative or regulatory framework for FT.

Widest Range of International Cooperation and Exchange of Information (c. 40.1, 40.1.1, 40.2 & 40.3):

982. Competent authorities in Liberia engage in cooperation and exchange of information outside of normal MLA channels as follows:

Cooperation by Supervisory Authorities

983. CBL - The CBL has entered into a MOU with the Central Bank of Nigeria on information sharing regarding applications for the establishment of cross-border branches, subsidiaries and representative offices of Nigerian banking institutions. Under this MOU, the CBN provides the CBL with information findings on financial, managerial and other standings of any Nigerian bank applying to open a branch, subsidiary or a representative office in Liberia.

Cooperation by Law Enforcement Agencies

984. TCU – The TCU was established as a result of Liberia's membership of the West Africa Coast Initiative (WACI) which is supported by international agencies and organisations comprising the UNODC, the International Criminal Police Organisation (INTERPOL), the United Nations Office in West Africa (UNOWA) and the United Nations Department of Peace-Keeping Operations (DPKO) and its field missions in Liberia, and aimed at supporting the ECOWAS Regional Action Plan to address the growing problem of illicit drug trafficking and transnational organised crime and drug abuse in West Africa. Other signatories to the WACI are Cote D'Ivoire, Senegal and Guinea Bissau due to their peculiar circumstances as post conflict countries that are also under serious threats from drug trafficking and related criminal activities. By its membership of the WACI, the TCU shares information with the partner countries as well as the international agencies and organisations and places Liberia in a stronger position to fight crimes and enhance national coordination and international cooperation, including access to Interpol's I 24/7 the National Central Bureau, Interpol's database. Specifically, the TCU will partner with ECOWAS and other international institutions to fight drug trafficking and organised crime in a coordinated manner. In

view of this, the Liberia's communication structure in the worldwide INTERPOL system is to be significantly improved to reach international policing standards.

985. LNP- LNP has an Interpol Unit and work through them to cooperate with counterpart police forces. In addition, the LNP works closely with other counterparts within the West African Chiefs of Police and ECOWAS frameworks.

986. Ministry of National Security- The Ministry is a member of the Interpol system and part of the global fight against transnational crime. The Ministry did not provide any particular instances of international cooperation.

987. LACC- The LACC has established a counterpart relationship with the Economic and Organised Crime Commission (EFCC) of Nigeria.

Cooperation by Other Competent Authorities

988. Department of Revenue – The Department has entered into tax information treaties with the United Kingdom and the Netherlands. Treaty discussions are ongoing with Ghana, Nigeria, India, France and seven Nordic countries.

Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts (c. 40.4, 40.4.1, & 4.5)

989. The authorities can conduct inquiries or investigations on behalf of their foreign counterparts through the appropriate formal channels such as the Ministry of Foreign Affairs or MOJ or within the context of ECOWAS or Interpol. There is no operational FIU through which foreign counterparts can make inquiries.

No Undue Restrictions on Exchange of Information

990. There are no disproportionate or undue restrictions on the exchange of information. Furthermore, there are no restrictions concerning the exchange of information on fiscal related matters.

Secrecy or Confidentiality and Cooperation

991. Secrecy issues are not an obstacle to complying with requests for cooperation. (See Section 2.4 - Financial Institution Secrecy or Confidentiality)

Safeguards in Use of Exchanged Information

992. The authorities did not indicate mechanisms in place whereby information exchanged is safeguarded.

SR V (applying c. 40.1-40.9 in R. 40, c. V.5)

993. The authorities have not been involved in any FT matter to provide assistance to other countries.

Additional Elements (SR V applying c. 40.10-40.11 in R. 40, c. V.9)

994. See the preceding paragraph.

Statistics (applying R.32):

995. There is no statistical data available with respect to the number of requests sent or received regarding ML or FT.

Analysis of Effectiveness:

996. The authorities have not done much in enhancing other forms of international cooperation outside the formal mechanisms established by treaty or in a multi-lateral body. There has been minimal agency to agency cooperation between Liberian competent authorities and their counterparts in the region.

6.5.2 Recommendations and comments

997. There is need for Liberia to take the following steps to remedy the deficiencies in this Recommendation:

- Streamline procedures to ensure timely response to requests;
- Put in place mechanisms to ensure cooperation with supervisory authorities and law enforcement agencies in foreign countries. ;
- Simplify the process of sharing of information on informal basis ; and
- Effectively implement the PMLL.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

FATF Rec.	Rating	Summary of Factors Underlying Rating
R. 32	**NC**	• There is no statistics on cooperation issues
R.40	**PC**	• Inter-agency cooperation is very minimal
SR. V	**NC**	• There is no inter-agency cooperation on FT matters

7. Other Issues

7.1 Resources and Statistics/

Recommendation 30

998. Liberia has not established a FIU and this is a major deficiency in the AML/CFT regime of Liberia. Assessors noted that competent staff, supervisory and investigation authorities, who will be involved in the implementation of AML/CFT measures need to be provided with guidance pending the establishment of FIU.

999. There is need for additional human resources and funding to be devoted to the adoption and implementation of the draft AML/CFT Bill and strategy. There is need to train more staff of the different agencies to enable them commence proactive implementation of the PMLL and subsequent adoption of the draft Bill.

1000. The coordination framework for LEAs should be strengthened to enhance exchange of information and intelligence. Once the FIC is established, it should take up the challenge of coordinating AML/CFT efforts related to the development of guidance, training programs and policy for the relevant agencies.

1001. There is a level of independence in the prudential supervisory process but additional resources including personnel, and more specialized training on the implementation of AML/CFT measures would be required to bring them up to speed and in line with international best practices.

1002. There is the need to reassess and review the mandates and capacity of LEAs to address the threats of money laundering, terrorism, and terrorist financing.

7.1.2. Compliance with Recommendation 30

Rec.	Rating	Summary of Factors Underlying Rating
R.30	**NC**	• The FIU has not been established. • There is no funding committed to the development and implementation of AML/CFT Bill and strategy in the country. • Little training has been provided to staff of the different supervisory, law enforcement agencies and other competent authorities to enable them to commence proactive implementation of the PMLL.

Recommendation 32

1003. There is general lack of statistics on issues related to AML/CFT. This may be attributed to the fact that not much work has been done by almost all the competent authorities towards enforcing

their mandates under the PMLL. It is therefore difficult to assess the effectiveness and efficiency of the AML/CFT regime in the country.

1004. Assessors were unable to obtain Statistics on cases prosecuted or investigated on money laundering, terrorist financing and assets confiscated and forfeited. Therefore, Liberia needs to maintain statistics on the following:

- Investigation, criminal procedures and sentences in cases of ML/CFT;
- Cases of freezing, seizing of property, and reports of confiscated property, in relation to money laundering and terrorist financing, as well as the respective amounts;
- Request for mutual judicial assistance received, issued, provided and refused, as well as average response time;
- Suspicious transaction reports submitted to the FIU and distribution of reporting institutions;
- Amount of cash money or bearer negotiable instruments seized, confiscated at borders or reported as lost;
- Supervisions carried out in the financial sector and sanctions applied;
- Inspection or monitoring actions carried out with DNFBPs and sanctions applied;
- Number of various financial institutions and DNFBPs authorised to operate in Liberia; and
- Number of monitoring or inspection actions carried out and the sanctions applied.

Additional elements

1005. An insignificant number of Judges in Liberia have been provided with training concerning money laundering and financing of terrorism offences including seizure, freezing and confiscation of property.

7.1.3. Compliance with Recommendation 32

Rec.	Rating	Summary of Factors Underlying Rating
R. 32	**NC**	• There is general lack of statistics on issues related to AML/CFT. • Not much work has been done by almost all the competent authorities on the implementation of the AML/FT Act. • It is difficult to assess the effectiveness and efficiency of the AML/CFT regime in the country given the lack of statistics across all the sectors. • Assessors were unable to obtain Statistics on cases prosecuted or investigated on money laundering, terrorist financing and assets confiscated and forfeited.

Table 1: Ratings of Compliance with FATF Recommendations

The ratings of compliance are made in accordance with FATF Recommendations based on the four levels mentioned in the 2004 Methodology namely, (Compliant-(C), Largely Compliant (LC), Partially Compliant (PC), Non- Compliant (NC), or could in exceptional cases be marked as not applicable (N/A)

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country

Forty Recommendations	Rating	Summary of factors underlying rating
Legal Systems		
1. ML offence	**NC**	• Designated predicated offences are not first degree non-bailable offences and therefore do not fall within the bracket of 'criminal conduct' required for the money laundering offence. • The PMLL has not been implemented since its enactment in 2002.
2. ML offence – mental element and corporate liability	**PC**	• There is no system of administrative liability of legal persons. • The sanctions provided have not been tested. While the sanctions provided are proportionate and dissuasive none has been applied. • No criminal, civil or administrative sanctions have been applied.
3. Confiscation and provisional measures	**PC**	• Liberia has not designated all the predicate offences of money laundering. This will impede the effective implementation of freezing, seizure and confiscation measures. • LEA's do not have adequate power to identify and trace property that is subject to confiscation or suspected to be

		the proceeds of crime. • There is no express provision in the PMLL to void actions taken by persons to prevent LEA's from recovering property subject to confiscation. • Confiscation applies only after conviction. • There is no effective implementation of the provisions on freezing, seizure and confiscation of proceeds and instrumentalities of crime.
Preventive measures		
4.Secrecy laws consistent with the Recommendations	**PC**	• The PMLL does not provide for data protection. • The PMLL does not provide for measures against possible misuse of information by law enforcement officers and customs officers. • Law enforcement officers do not have direct access to financial records • There is no express provision for sharing information internationally.
5. Customer due diligence	**NC**	• There is no requirement in law, regulation or other enforceable means prohibiting FIs from opening anonymous accounts or maintaining accounts in fictitious names. • Apart from banks, KYC/CDD Regulations have not been issued to other sectors of the financial system. • KYC/CDD Regulations do not address when CDD is required; enhanced due diligence for higher risk customer, business relationship or transaction; existing customers; and failure to satisfactorily complete CDD. • KYC/CDD requirement for ongoing monitoring of business transactions is limited to transactions in excess of US$25,000 or equivalent in other currencies. • No requirement for verification of authority of person acting on behalf of customers that are legal persons; and to understand structure and control of customer. • No requirement for FIs to scrutinise transactions undertaken throughout the relationship. • No requirement to review records maintained on the relationship to ensure its relevance. • There is little implementation of CDD measures.
6. Politically exposed persons	**NC**	• PEPs not addressed in the law. • No requirement to establish source of wealth and source of funds of customers and beneficial owners identified as

		PEPS. • No requirement to conduct enhanced ongoing monitoring of the relationship with PEPs. • No requirement to get senior management's approval before establishing or continuing a business relationship with a PEP.
7. Correspondent banking	**NC**	• Correspondent banking not addressed in the law. • No requirement to get information about respondent's business. • No requirement to assess respondent's AML/CFT controls and their adequacy and effectiveness. • No requirement to obtain approval from senior management before establishing new correspondent relationship. • No requirement for FI to document respective AML/CFT responsibilities of each party in a correspondent banking relationship. • No requirement for FI to satisfy itself that normal CDD obligations are conducted by respondent where payable-through-accounts are maintained and to provide relevant customer identification data upon request. • Scanty prescription in KYC/CDD Regulations regarding correspondent banking relationship • There is no effective monitoring of compliance
8. New technologies & non face to- face business	**NC**	• The PMLL does not specify the type of details that are to accompany a payment by post or other electronic means • There are no policies or procedures in place to address any specific risk associated with non-face-to-face business relationships or transactions • Requirements in PMLL not being implemented across the entire financial sector.
9. Third parties and introducers	**PC**	• There is no provision in law, regulation or other enforceable means placing ultimate responsibility on FIs relying on a third party for identification and verification of identity of customers. • There is no requirement for FIs to take adequate steps to ensure that third party will make available copies of identification data and other relevant documentation relating to CDD requirements on request without delay • The FIs are not monitored to ensure compliance with the requirements of R.9 where FIs rely on third party for CDD, or to confirm that FIs do not rely on third party for CDD.

10. Record keeping	**PC**	• Most financial institutions are not implementing record-keeping requirements • There is no requirement in the PMLL for FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority • There is no evidence that FIs are being supervised for compliance with record-keeping requirements
11.Unusual transactions	**PC**	• Regulations on complex and unusual large transactions not issued to other financial service providers other than banks. • The requirement to keep findings available for competent authorities is limited to BFIs by virtue of the KYC-CDD Regulations. • There is no effective monitoring of implementation.
12. DNFBP – R.5, 6, 8-11	**NC**	• There is no AML/CFT obligation applicable to DNFBPs. • There is no supervisory authority with mandate to regulate, supervise and monitor DNFBPs against money laundering and terrorist financing.
13. Suspicious transaction reporting	**NC**	• The FIU is not established • There is no direct mandatory obligation for FIs to report to the FIU when they suspect or have reasonable ground to suspect that funds are the proceeds of criminal activity. • There is no requirement for FIs to submit STRs on all suspicious transactions and attempted transactions regardless of the amount of the transaction; • There is no requirement for FIs to submit STRs regardless of whether they involve tax matter • Not all predicate offences of money laundering have been criminalised
14. Protection & no tipping-off	**PC**	• Persons benefitting from protection against criminal, civil or administrative liability are not clearly defined • There is no provision on whether the protection will be available even if the person who reported did not know what the underlying criminal conduct was, regardless of whether illegal activity actually occurred; • There is no provision to ensure that the names and personal details of staff of FIs who make STRs are kept confidential by the FIU.
	PC	• There is no requirement to appoint a compliance officer

15. Internal controls, compliance & audit		at management level • The PMLL does not specify the type of information to be provided to the appropriate person (compliance officer) • There is no requirement for FIs to ensure that the compliance officer as timely access to customer identification data and other CDD information, transaction records, and other relevant information • There is no requirement in the PMLL for FIs to maintain adequately resourced independent audit function • Most FIs are not providing their staff with on-going training in AML/CFT • There is no requirement in the PMLL to screen employees before appointing them. • There is no monitoring or compliance with Recommendation 15
16. DNFBP – R.13-15 & 21	**NC**	• There is no requirement for DNFBPs to file suspicious transaction reports • Liberia has not established an FIU • DNFBPs are not regulated or supervised as such there is no awareness of the obligation to maintain internal controls and policy to prevent money laundering and financing of terrorism through their sector. • There is no implementation of Recommendation 16.
17. Sanctions	**PC**	• With the exception of banks, sanctions are not applied to other FIs including insurance companies. • Sanctions provided in the PMLL are not proportionate. • There are no statistics available to show that the sanctions provided in the PMLL have been applied.
18. Shell banks	**NC**	• There is no express prohibition of the establishment or acceptance of continued operation of shell banks in Liberia. • FIs are not prohibited from entering into or continuing correspondent banking relationships with shell banks. • FIs are not required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**NC**	• There is no direct requirement for regulators and SROs to issue guidelines for relevant entities • Apart from BFIs, no guidelines have been issued for other financial institutions and DNFBPs • KYC/CDD Regulations is not comprehensive

20. Other DNFBP& secure transaction techniques	**NC**	• Liberia has not considered applying Recommendations 5, 6, 8-11, 17and 21 to financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering and terrorist financing. • Secured payment system is currently at the experimental stage as such its effectiveness cannot be guaranteed.
21. Special attention for higher risk countries	**PC**	• There is no express requirement in law, regulation or other enforceable means for FIs to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from countries which do not or insufficiently apply the FATF Recommendations • There is no monitoring for compliance with the requirements in Recommendation 21
22. Foreign branches & subsidiaries	**NC**	• The PMLL does not cover the requirements of Recommendation 22. • The supervisory authorities have not developed regulations for compliance with this FATF Recommendation.
23. Regulation, supervision and monitoring	**NC**	• All FIs including banks are not subject to adequate AML/CFT regulation and supervision. • The supervisors do not monitor compliance with FATF Recommendations. • There is no designated competent authority in the PMLL to ensure adequate compliance with FATF Requirements by FIs • With the exception of banks, measures to ensure that criminals do not own or control FIs are not implemented to other FIs. • There are a host of unlicensed or unregistered MFIs and dealers in foreign exchange. • Money transfer service or currency changing service providers are not monitored for compliance with AML/CFT measures. • The CBL is not effectively enforcing compliance with Regulation of reporting SARs
24. DNFBP - regulation, Supervision and monitoring	**NC**	• There are no designated supervisors, SROs and national authorities specifically charged with the responsibility to oversee the supervision of DNFPBs for AML/CFT purposes. • There is lack of awareness of the existing risk factors in the DNFBP sector therefore the authority has not made resources available to develop AML/CFT supervision.

25.Guidelines & Feedback	**NC**	• The regulations/guidelines issued to banks to assist them to comply with AML/CFT measures are inadequate. • There are no regulations/guidelines issued to other FIs including insurance companies, and DNFBPs to assist them comply with AML/CFT measures. • There is no feedback mechanism in place to reporting institutions.
Institutional and other measures		
26. The FIU	**NC**	• No law, including the Prevention of Money Laundering Law of January 2002, provides for the establishment of a Financial Intelligence Unit in Liberia. • There is no guidance to the reporting entities on how to submit AML/CFT related STRs. • There are no mechanisms in place to ensure that Financial and Non-Financial Institutions generate and forward suspicious transaction reports for further analysis. • There is general lack of awareness of the obligation to render AML/CFT STRs across all reporting entities and no efforts to enforce compliance by the authority. • There is no guidance issued on how an FIU will operate in terms of funding, independence etc. • No guidance issued to ensure confidentiality and protection of information reported to FIU. • There are no publications on the activities of the FIU, including statistics, typologies and trends of ML/FT as required.
27. Law enforcement authorities.	**PC**	• No specific Law Enforcement Agencies are designated to investigate ML and FT rather there are overlapping mandates for LEAs involved in investigation of crimes. • There is no written provision that allows LEAs to postpone or waive the arrest of suspect and/or the seizure of money for purpose of identifying persons involved in ML offence or for gathering evidence. • LEAs mandated to investigate ML predicate offences do not have clear cut standard operating procedures setting out uniform techniques of carrying out tasks. • Special departments are created to investigate predicate offences of ML but not provided with adequate resources to perform. •

28. Powers of competent authorities	**PC**	• The PMLL empowers LEAs and Customs to receive STRs voluntarily submitted but cannot be compelled to produce except by court order. • Police Act provides for power of search by warrant and arrest of persons and instrumentalities of crimes while committing the crime, but requires court order if crime is reported. • Officers of LEAs lack adequate logistics, including funding for training and operational requirements of the agencies. • LEAs have the power to take witness statements for use in investigation and prosecutions of predicate offences, but has not been applied specifically to ML and FT • There are no defined techniques in place for maintaining integrity amongst personnel of LEAs who are not subject to proper vetting and signing of oath of secrecy and allegiance. • There is little or no exposure of LEA officers to technical knowledge on economic and financial crimes.
29. Supervisors	**PC**	• There is little or no monitoring of banks for compliance with FATF Recommendations • There is no monitoring of NBFIs, including insurance companies for compliance with AML/CFT measures
30.Resources, integrity and training	**PC**	• The FIU has not been established. • There is no funding committed to the development and implementation of AML/CFT Bill and strategy in the country. • Little training has been provided to staff of the different supervisory, law enforcement agencies and other competent authorities to enable them to commence proactive implementation of the PMLL.
31. National co-operation	**NC**	• There is no FIU in place to coordinate the activities of the LEA's and act as the central point of operational cooperation. • Mechanisms for consultation among competent authorities are very weak • There has not been any coordinated policy development or joint activities among the LEA's and policy makers to combat ML and FT.
32. Statistics	**NC**	• There is general lack of statistics on issues related to AML/CFT.

		• Not much work has been done by almost all the competent authorities on the implementation of the AML/FT Act. • It is difficult to assess the effectiveness and efficiency of the AML/CFT regime in the country given the lack of statistics across all the sectors. • Assessors were unable to obtain Statistics on cases prosecuted or investigated on money laundering, terrorist financing and assets confiscated and forfeited.
33. Legal persons - beneficial owners	**NC**	• Adequate measures are not in place to ensure that there is adequate, accurate and timely information on beneficial ownership. • There is no national registry that records the required ownership and control details for all companies and other legal persons registered in Liberia. • There is no mechanism in place to verify the identity of owners for AML and CFT purposes. • There are no appropriate measures to ensure that bearer shares are not misused for money laundering •
34. Legal arrangements beneficial owners –	**NC**	• There is no requirement for trust service providers to obtain, verify and retain records of the details of the trust or other similar legal arrangements. • No effective mechanism in place to assist competent authorities to have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts.
International Co-operation		
35. Conventions	**PC**	• There has been no implementation of the PMLL which was passed in 2002.
36. Mutual Legal Assistance (MLA)	**PC**	• There is no evidence that MLA requests are dealt with in a timely manner. • LEAs do not have clear and efficient processes in place for the execution of MLA requests. • Most Ministries and Agencies do not maintain proper records of MLA requests dealt with. • There is no regime in place to respond to MLA request

		relating to FT offences. • The absence of designation of ML offences limits the effectiveness of MLA provided by Liberia
37. Dual criminality	**PC**	• The bureaucracy involved in dealing with requests causes delays • No regime exists to allow extradition and MLA for FT
38. MLA on confiscation and freezing	**NC**	• There are no clear cut appropriate laws that deal with provisional measures that can be applied in respect of MLA • Procedures are not in place to ensure uniformity, clarity and expediency in responding to MLA requests. • There is no record of MLA responded to by Liberia for identification, freezing, seizure or confiscation of laundered property, proceeds from, or instrumentalities used or intended to be used. • No arrangements are in place to coordinate seizure and confiscation actions with other countries. • No regime in place to deal with sharing of confiscated assets arising through cooperation between Liberia and other countries. • No provision for an asset forfeiture fund is in place.
39. Extradition	**PC**	• There has been no extradition in furtherance of the PMLL
40. Other forms of co-operation	**PC**	• Inter-agency cooperation is very minimal
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
I. Implement UN instruments	**NC**	• There is no legislation criminalizing FT. • There is no legal framework or guidelines for the implementation of the UNSCR 1267 and 1373.
II. Criminalise terrorist financing	**NC**	• There is no legal and regulatory framework to deal with FT. • Most agencies that are likely to be involved in the implementation of the CFT Bill, when passed into law, are not aware of the threats of terrorist financing and their role under the Bill
III. Freeze and confiscate terrorist assets	**NC**	• There is no legal or regulatory framework on confiscation of terrorist assets •
IV. Suspicious transaction	**NC**	• Terrorist financing is not criminalised • There is no obligation to report suspicious transaction

reporting		related to terrorist financing
V. International co-operation	**PC**	• The absence of criminalisation of TF limits the effectiveness of MLA provided by Liberia • No regime in place to deal with international cooperation in respect of FT. • There is no mechanism in place to deal with sharing of assets confiscated as a result of international cooperation.
VI. AML requirements for money/value transfer services	**NC**	• No guidelines are issued to MVT to assist them in implementing AML/CFT measures. • No effective supervision of MVT service providers • No monitoring of MVT service providers to ensure implementation and compliance with AML/CFT measures • No sanctions have been applied. • No effective implementation of the requirements of SR.VI by the CBL.
VII. Wire transfer rules	**PC**	• No express provision in law, regulations or guidelines regarding the requirements of SR VII and their compliance. • Supervisory Authorities have not put in place procedures to monitor compliance with SR VII.
VIII. Non-profit organisations	**NC**	• The domestic laws relating to NPOs have not been reviewed to assess their effectiveness for purposes of terrorist financing • There is no process in place to ensure timely information on the features or activities of NPOs • No mechanism exists to prevent NPOs from being used as conduits for FT • Provisions on contents of Articles of Incorporation of NPOs do not expressly require details of identity of persons who own or control activities such as board members or trustees • No requirement in place for NPOs to maintain appropriate records of domestic and international transactions • No sanctions in place for violations by NPOs • Lack of awareness of vulnerability of NPOs to TF and ML by oversight Ministry. • Awareness has not been created among NPOs through outreach programmes of their vulnerability to TF and ML. • LEA's cannot effectively investigate and gather

		information on NPOs • Mechanism does not exist at responsible ministry to facilitate response to international requests
IX. Cross Border Declaration & Disclosure	**NC**	• No enforcement of the regulations on cross border declaration and disclosure • No provision of facilities, including supervision guidelines to capture relevant data • The regulatory framework allowing inflow of currency without limit is defective. • Application of the regulation is not supported by reference to the issue in the substantive law

TABLE 2: RECOMMENDEDACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional measures	
Criminalization of ML (R.1 & 2)	Liberia should: • Amend the Penal Law to designate predicate offences as first degree non-bailable offences and criminalise those not yet criminalised.
2.2 Criminalization of Terrorist Financing (SR.I)	Liberia should: • Enact legislation to criminalise FT. • Provide a legal framework and mechanisms for the implementation of the UNSCR 1267 and 1373.
2.3 Confiscation, freezing and seizing the proceeds of crime (R.3)	The country should • Provide a legal framework to apply confiscation and other provisional measures to FT as a predicate offence for ML. • Provide LEA's with adequate power to identify and trace property that is subject to confiscation or suspected to be the proceeds of crime. • Make express provision in the PMLL to void actions taken by persons to prevent LEA's from recovering property subject to confiscation. • Amend the necessary legislation to facilitate confiscation without conviction.
2.4 freezing of funds used for terrorist financing (SR.III)	The authorities should consider taking the following actions – • Pass the AML/CFT Bill into law; • As a matter of urgency, establish the regulatory and institutional framework for implementing the requirements in the 1267 and 1373 Resolutions. The authorities may consider establishing a Counter Terrorism Committee as a mechanism by which this can be done; • Establish regulatory and institutional mechanism

	to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions; • Set up appropriate and effective systems for purposes of communicating actions taken under freezing mechanisms to the financial sector including the distribution of lists of designated persons; • Provide appropriate guidance to the commercial banks and other financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. The authorities should, in setting up the regulatory and institutional framework for implementing 1267 and 1373 resolutions, include processes by which e) listed persons can be de-listed; f) access to funds or other assets that were frozen and have been determined to be necessary for basic expenses, the payment of certain fees, expenses and service charges or extraordinary expenses can be authorised; g) the unfreezing of funds of de-listed persons and innocent third parties; and h) reviewing of freezing decisions, • Put in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a Court ; • Provide protection for the rights of bona fide third parties. Such protection should be consistent with the standards provided in Article 8 of the Terrorist Financing Convention, where applicable; and • Establish appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations governing the obligations under SR III and to impose civil, administrative or criminal sanctions for failure to

	comply with such legislation, rules or regulations.
2.5 The financial intelligence units and its functions	The country should: • Establish a Financial Intelligence Unit to receive, analyse and disseminate STRs and other information on money laundering and terrorist financing, and provide it with budget and operational independence • Provide guidance to ensure confidentiality and protection of information reported to FIU. • Require the FIU to publish its activities, including statistics, typologies and trends of ML/FT as required • Provide reporting entities with guidance on how to submit AML/CFT related STRs. • Put in place mechanisms to ensure that Financial and Non-Financial Institutions generate and forward suspicious transaction reports for further analysis. • Empower relevant authorities to sensitise all reporting entities on their obligation to render AML/CFT STRs and enforce compliance
2.6 Law enforcement, prosecution authorities and other competent authorities (R. 27 & 28)	Liberia should: • Provide officers of LEAs with adequate logistics, including funding for training and operational requirements of the agencies. • Empower LEAs to apply their power to take witness statements in investigation and prosecutions of predicate offences, to ML and FT • Define techniques for maintaining integrity amongst personnel of LEAs who are not subject to proper vetting and signing of oath of secrecy and allegiance. • Provide LEA officers with more technical knowledge on economic and financial crimes.
2.7 Cross Border Declaration and Disclosure (SR IX)	The Liberian authorities should: • Enforce the Regulations on Physical Movement of Currency and Foreign Bank Notes • Provide facilities, including supervision guidelines to capture relevant data • Provide a threshold for incoming cash and BNI • Provide sanctions for non-compliance of incoming

	requirement
Preventive measures – Financial Institutions	
3.1 Risk of money laundering and terrorist financing (R. 5)	• Amend the PMLL to cover all requirements including prohibition of the opening of anonymous accounts or accounts in fictitious names. • Issue KYC/CDD Regulations to other sectors of the financial system. • Review the KYC/CDD Regulations to provide for the following: o CDD is required; o enhanced due diligence for higher risk customer, o business relationship or transaction; existing customers; o and failure to satisfactorily complete CDD. • Provide for verification of authority of person acting on behalf of customers that are legal persons; and to understand structure and control of customer. • Require for FIs to scrutinise transactions undertaken throughout the relationship. • Require FIs to review records maintained on the relationship to ensure its relevance. • Effectively implement CDD measures and monitor compliance.
3.2 Customer due diligence including enhanced or reduced measures (R.6-8)	**Recommendation 6** • The Liberian authorities should provide for requirements on PEPs in law, regulation or other enforceable means. • It is recommended that the CBL and SROs should develop comprehensive guideline on PEPs taking into consideration the risks that they pose to the financial system. Efforts should be made to provide a list of PEPs to financial institutions. This list should be updated from time to time; • The guidelines should require FIs and DNFBPs to: - establish source of wealth and source of funds of customers and beneficial owners identified as PEPS

	- conduct enhanced ongoing monitoring of the relationship with PEPs -obtain senior management's approval before establishing or continuing a business relationship with a PEP. **Recommendation 7** • The Liberian authorities should amend the PMLL to provide for correspondent banking and require FIs to - gather information about respondent's business. - assess correspondent bank's AML/CFT controls and their adequacy and effectiveness - obtain approval from senior management before establishing new correspondent relationship -document respective AML/CFT responsibilities of each party in a correspondent banking relationship -satisfy themselves that normal CDD obligations are conducted by respondent bank where payable-through-accounts are maintained and to provide relevant customer identification data upon request. • CBL should effectively monitor compliance of FIs in relation to requirements on correspondent banking relationships **Recommendation 8** • Liberian authorities should put in place comprehensive risk measures to ensure that technology is not abused for purposes of money laundering • Liberia should ensure that the requirements in PMLL are implemented across the entire financial sector.
3.3 Third parties and introduced business (R.9)	• The authorities should amend the PMLL and the KYC/CDD Regulations to place ultimate responsibility on FIs when they use third parties or intermediaries to conduct CDD on their behalf

3.4 financial institution secrecy or confidentiality (R.4)	• The Liberian authorities should amend the PMLL to: -expand the protection on disclosure to cover persons who may disclose information for purposes of detecting and preventing money laundering -provide for data protection -provide for measures against possible misuse of information by law enforcement officers and customs officers -expressly permit relevant businesses to share information
3.5 Record keeping and wire transfer rules (R 10 &SR VII)	**Recommendation 10** • Record-keeping requirements should be across all sectors • The authorities should require FIs in law, regulation or other enforceable means to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority • There should be effective implementation of the requirements of the PMLL **Special Recommendation VII** • The authorities should issue regulations or guidelines for implementation of the requirements of SR VII • Supervisory Authorities should put in place procedures to monitor compliance with SR VII.
3.6 Monitoring of transactions and relationships (R. 11& 21)	**Recommendation 11** • The CBL should work with the Insurance Commissioner should develop and issue Regulations on complex and unusual large transactions for the financial service providers in accordance with FATF Recommendations and effectively monitor compliance **Recommendation 21** • There should be express requirement in law, regulations or other enforceable for FIs to give

	special attention to businesses relationship with persons from or in countries that do not or insufficiently apply the FATF Recommendations and provide countermeasures for such matters incidental to such relationships and transactions • There should be effective monitoring for compliance with this FATF Recommendation
3.7 Suspicious transactions reports and other reporting (R. 13,14,19, 25, & SR IV)	**Recommendation 13** • The Liberian authorities should intensify efforts to establish the FIU • There should be a direct mandatory obligation for FIs to report to the FIU when they suspect or have reasonable ground to suspect that funds are the proceeds of criminal activity. • Terrorist financing should be criminalized • There should be requirement for FIs to submit STRs on all suspicious transactions and attempted transactions regardless of the amount of the transaction; • FIs should be required to submit STRs regardless of whether they involve tax matter • Criminalise remaining predicate offences of money laundering and extend reporting obligations to them **Recommendation 14** Liberia should amend the PMLL to -Clearly define the persons benefitting from protection against criminal, civil or administrative liability as a result of disclosure of suspicion or belief of commission of a ML offence -Make express provision on whether the protection will be available even if the person who reported did not know what the underlying criminal conduct was, regardless of whether illegal activity actually occurred; Require that the names and personal details of staff of FIs who make STRs are kept confidential by the FIU. **Recommendation 25** • The CBL, Insurance Commissioner and SRO should issue comprehensive regulations/guidelines to assist reporting entities to comply with

	AML/CFT measures • There should be a feedback mechanism in place to reporting institutions. **Recommendation 19** • The authorities should require regulators and SROs to issue comprehensive guidelines to FIs and DNFBPs under their supervision to comply with FATF Recommendations
3.8 Internal controls, compliance, audit and foreign branches (R.15 &22)	**Recommendation 15** Amend the PMLL to require reporting entities to : • Appoint AML/CFT compliance officers at senior management level • Establish audit function to test compliance with internal procedures • Screen employees before appointment to ensure high integrity and professionalism **Recommendation 22:** • There should be a requirement for FIs to apply AML/CFT measures in foreign branches and subsidiaries when they are established. • Supervisory authorities should develop regulations for compliance with this FATF Recommendation.
3.9 Shell banks (R.18)	• Liberia should expressly prohibit the establishment or acceptance of continued operation of shell banks in Liberia. • FIs should be prohibited from entering into or continuing correspondent banking relationships with shell banks • FIs should be required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks. The requirement should be in law, regulation or other enforceable means
3.10 The supervisory and oversight system- competent authorities and SROs, Role, functions, duties, and powers, (including sanctions) (R. 23, 29, 17 & 25)	**Recommendation 23** • All FIs, including banks should be subject to adequate AML/CFT regulation and supervision. • The supervisors should monitor compliance with FATF Recommendations. • Liberia should amend the PMLL to designate a competent authority to ensure adequate compliance with FATF Requirements by FIs

	• Liberia should ensure that all FIs implement measures to prohibit criminals from controlling FIs • CBL should take immediate steps to subject unlicensed or unregistered MFIs and dealers in foreign exchange to licensing requirements and adequate supervision. • Money transfer service or currency changing service providers should be monitored for compliance with AML/CFT measures. **Recommendation 25** • CBL should issue comprehensive regulations/guidelines to banks to assist them to comply with AML/CFT measures • The relevant authorities should issue regulations/guidelines to other FIs including insurance companies, and DNFBPs to assist them comply with AML/CFT measures. • There should be a feedback mechanism in place between reporting institutions, competent authorities and the FIU. **Recommendation 29** • All FIs should be monitored for compliance with FATF Recommendations **Recommendation 17** • The authorities should ensure that sanctions are applied to other FIs including insurance companies for non-compliance with national AML/CFT obligations. • The PMLL should be amended to provide proportionate and dissuasive sanctions. • Supervisors/regulators should maintain comprehensive statistics on sanctions applied in furtherance of the PMLL
3.11 Money value transfer services (SR. VI)	• The CBL should issue guidelines to MVTs to assist them in implementing AML/CFT measures. • There should be effective supervision of MVT service providers • MVT service providers should be monitored to ensure implementation and compliance with

	AML/CFT measures • Sanctions should be applied to MVTs who violate AML/CFT obligations relating to them. • CBL should ensure effective implementation of the requirements of SR.VI
4. Preventive Measures – Non-Financial Businesses and Professions (DNFBPs)	
4.1 Customer due diligence and record keeping (R. 12)	• There should be requirement in law, regulation or other enforceable means for DNFBPs to undertake CDD measures. • Liberia should designate a supervisory authority with mandate to regulate, supervise and monitor DNFBPs for implementation of AML/CFT requirements
4.2 Suspicious transaction reporting (R.16)	**Applying Recommendations 13, 14, and 15 to DNFBPs** **Recommendation 13** • There is no requirement for DNFBPs to file suspicious transaction reports • Liberia has not established an FIU • DNFBPs are not regulated or supervised as such there is no awareness of the obligation to maintain internal controls and policy to prevent money laundering and financing of terrorism through their sector. • There is no implementation of Recommendation 16. **Recommendation 15** • Amend the PMLL to require DNFBPs to : • Appoint AML/CFT compliance officers at senior management level and prescribe measures for those who do not work with or in association with others • Require DNFBPs to: • -Establish audit function to test compliance with internal procedures • -Screen employees before appointment to ensure high integrity and professionalism **Recommendation 14** Liberia should amend the PMLL to -Clearly define the persons benefitting from protection against criminal, civil or administrative

	liability as a result of disclosure of suspicion or belief of commission of a ML offence -Make express provision on whether the protection will be available even if the person who reported did not know what the underlying criminal conduct was, regardless of whether illegal activity actually occurred; • Require that the names and personal details of staff of FIs who make STRs are kept confidential by the FIU.
4.3 Regulation, supervision and monitoring (R.24-25)	**Recommendation 24** • The authorities should designate supervisors and SROs and specifically charge with the responsibility to oversee the supervision of DNFPBs for AML/CFT purposes. • The is the need to raise awareness of the existing risk factors in the DNFBP sector and make resources available to develop AML/CFT supervision of DNFBPs. **Recommendation 25** • The CBL should assist SROs to issue comprehensive regulations/guidelines to assist DNFBPs to comply with their AML/CFT obligations • There should be a feedback mechanism in place to DNFBPs
4.4 Other non-financial businesses and professions (R.20)	• The authorities must assess the risks applicable to DNFBPs in order to determine if lesser CDD measures should be applied
5. Legal Persons and Arrangements & Non-Profit Organizations	
5.1 Legal Persons – Access to beneficial ownership and control information	• Liberia should review its current corporate registration system to determine how adequate and accurate information on beneficial ownership may be available in a timely manner for investigation by law enforcement authorities. • There should be a mechanism in place to verify the identity of owners of legal persons for AML and CFT purposes. • The Ministry of Commerce should recruit qualified investigators to undertake investigations and conduct on-site visit to verify information

	provided by corporate bodies.
5.2 Legal Arrangements – Access to beneficial ownership and control information	• Liberia should enact a comprehensive legislation on trusts and implement measures to ensure that adequate, accurate and timely information are available to law enforcement authorities concerning the beneficial ownership and control of trusts. • A supervisor or SRO should be appointed for lawyers and trust service providers to ensure that they are supervised for compliance with AML/CFT obligations.
Non-profit organizations	• Authorities should organise more outreach programs for the NPOs on the vulnerability of the sector to AML/CFT. • Training programs and awareness activities should be organized for the NPOs, supervisors and law enforcement agencies on how to detect the abuse of NPOs by terrorist groups that disguise themselves as charitable organizations. • Authorities should provide a point of contact that could respond promptly to requests for international cooperation. • The authorities should implement the Best Practices Note provided by FATF on SR VIII. (This may be obtained from FATF website- www.fatf-gafi.org or www.giaba.org.)
6. National and International Cooperation	• Liberia should take the following steps to improve its MLA regime: • Provide for comprehensive and efficient process for the execution of mutual legal assistance requests. • Develop procedures for the management of MLA requests in a timely and efficient manner. • Develop a data base for the MLA information • Train the MOJ staff on how to manage MLA requests effectively. • Develop an effective confiscation regime for money laundering offences,
National co-operation (R.31)	• Liberia should establish an Inter-Ministerial Committee comprising relevant stakeholders • The authorities should adopt the national AML/CFT strategy as a framework for strengthening institutional, legal and enforcement

	mechanisms for the prevention of financial crime and combat of money laundering and financing of terrorism. • The FIU should be established to take the lead in the development of a national AML/CFT policy.
6.2 The Conventions and UN Special Resolutions (R. 35 & SR I)	**Recommendation 35** • Liberia is urged to domesticate and implement the Vienna and Palermo Conventions
6.3 Mutual legal assistance (R. 36, 38 & SR V)	**Recommendation 36** • Liberia should put in place mechanisms, including guidelines to provide LEAs with clear and efficient processes for the execution of MLA requests. In this regard, Assessors recommended that an MLA legislation should be enacted in accordance with the UNCAC provisions on MLA which has been described as a good example of a model MLA regime. • Ministries and Agencies should maintain proper records of MLA requests dealt with. **Recommendation 38** • There should be clear cut appropriate laws that deal with provisional measures that can be applied in respect of MLA • Procedures are not in place to ensure uniformity, clarity and expediency in responding to MLA requests. • There is no record of MLA responded to by Liberia for identification, freezing, seizure or confiscation of laundered property, proceeds from, or instrumentalities used or intended to be used. • Liberia should put in place appropriate structures to coordinate seizure and confiscation actions with other countries. • The authorities should consider putting in place a system to deal with sharing of confiscated assets arising from cooperation between Liberia and other countries provide for an asset forfeiture fund. SR V • The law enforcement agencies should put a mechanism in place for coordinating asset seizure

	and confiscation with other countries. • The authorities should consider establishing an asset forfeiture fund for or authorizing the sharing of terrorist assets with other countries.
6.4 Extradition (R.39,37 & SR V)	• The Liberian authorities should criminalise the full range of predicate offences of money laundering and ensure effective implementation of the PMLL in relation to the extradition provisions.
6.5 Other forms of co-operation (R.40 & SR.V)	• Liberia should intensify efforts to establish the FIU, put in place appropriate mechanisms and develop procedures to qualify for membership of the Egmont Group to enable the Liberian FIU to exchange and receive intelligence information on money laundering and terrorist financing from other countries. • Liberia should improve on exchange of information with other counterparts through the signing of MOUs and arrangements with their counterparts. • There should be sufficient security mechanisms in place to protect confidential information
7. Other issues	
Resources and statistics (R. 30 & 32)	**Recommendation 30** Liberia should consider to undertake the following: • Establish the FIU. • Provide funding for the development and implementation of the AML/CFT Bill and strategy in the country. • Provide training to staff of the different supervisory, law enforcement agencies and other competent authorities to enable them to commence proactive implementation of the PMLL. **Recommendation 32** The Liberian authorities should: • As a matter of urgency, establish the FIU • Have in place a data system for recording received data on STRs and CTRs. • Require the FIU to publish annual reports to enable it provide feedback to reporting entities and to the public.

	• Have in place a centralized data system or require relevant agencies to maintain statistics on prosecutions and investigations of money laundering cases under the PMLL and other legislation • Maintain records of assets seized, frozen, confiscated and forfeited should also be • Maintain records on mutual legal assistance and extradition matters initiated and concluded by Foreign Affairs or by the MOJ • Consider setting up a central data system in the FIU. The data system should be available to all the relevant supervisory authorities and LEAs to store information about cases investigated and prosecuted, including recovered assets and other related matters.

ANNEXES

ANNEX 1: DETAILS OF BODIES MET ON THE MUTUAL EVALUATION ON-SITE MISSION: MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

Annex 1:

Ministries:

- Ministry of Justice
- Ministry of Finance
- Ministry of Foreign Affairs[16]
- Ministry of Internal Affairs
- Ministry of Commerce
- Ministry of National Security
- Ministry of Planning and Economic Affairs
- Ministry of Lands, Minerals and Energy

Criminal Justice and Operational Agencies:

- National Security Agency
- Department of Revenue
- Bureau of Customs
- Liberian Anti-Corruption Commission
- Liberian National Police
- National Drug Enforcement Agency
- National Investment Commission

Financial Sector Bodies

- Central Bank of Liberia

[16] Discussion with this Ministry revealed that the Ministry does not have AML/CFT functions but is mentioned here for purposes of recognition.

- Insurance Commission
- First International Bank
- Access Bank
- Liberian Bank for Development
- Association of Forex Bureaux

DNFBP and Other Matters

- National Housing Authority
- Law Reform Commission

ANNEX 2: LIST OF LAWS, REGULATIONS AND OTHER GUIDANCE RECEIVED

1. Anti-Human Trafficking Law, 2005
2. Associations Law - approved: May 19, 1976 - effective: January 3, 1977
3. Central Bank of Liberia Act, 1999
4. Constitution of the Republic of Liberia
5. Criminal Procedure Law
6. Executive Law: Ministry of Justice
7. Executive Law: Ministry of Planning and Economic Affairs
8. Executive Law: Ministry of Finance
9. Executive Law: Ministry of Commerce and Industry
10. Executive Law: National Bureau of Investigation
11. Executive Order N° 22 Protection of Whistleblower
12. Freedom of Information Act, 2008
13. General Guide to Account Opening and Customer Identification
14. Insurance Law, 1978
15. Liberian Anti-Corruption Commission Act
16. National Security Agency Act, 1974
17. New Financial Institutions Act Of 1999
18. Penal Law
19. Prevention of Money Laundering Law
20. Public Health Law
21. Refugee Act, 1993
22. Repealing and Replacing the Investment Incentives Act of 1973
23. Revenue Code of Liberia Act of 2000: Phase one: Reform Tax Code of Liberia

REGULATIONS

1. Financial Rules
2. Prudential Regulations N0. Cbl/Sd/05/2000
3. Prudential Regulations for Related Persons Transactions
4. Regulation N0. CBL/Sd/15/2001- Regulations Dealing With the Physical Movement of Foreign Currency Bank Notes

5. Regulation N0. Cbl/Sd/01/2005-Prudential Regulation for the Management of Foreign Exchange Risk Exposure
6. Regulations for the Licensing and Supervision of Foreign Exchange Bureaux
7. Regulation N0. CbL/Sd/03/2004
8. Regulations for the Licensing and Supervision of Money Remittance Entities
9. Regulation N0. Cbl/Sd/16/2001
10. Regulation Concerning Transfer of Foreign Currency
11. Regulation N0. Cbl/Sd/04/2005
12. Regulations on Audit of Banks and Publication of Financial Statements

INTERNATIONAL CONVENTIONS

1. 1988 United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention),
2. United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000;
3. International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999;
4. ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region, 2006;
5. Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
6. OAU Convention on the Prevention and Combating of Terrorism, 1999;
7. The Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers
8. UN Security Council Resolution 1267 and 1373
9. ECOWAS Protocol on Mutual Legal Assistance
10. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978,
11. Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction
12. Convention of 1993 on the Prohibiting of the Development, Production, Stockpiling and used of Chemical Weapons and on their Destruction
13. International Code for the Security of Ships and Port Facilities
14. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by sea, 1996

15. International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 articles 1-22
16. Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000
17. United Nations Convention of the Law of the Sea, 1982
18. African Union Convention on Preventing and Combating Corruption

OTHER GUIDANCE

1. Guidelines N0. CBL/SD/002/2010- Guidelines on Due Diligence Concerning Prospective and Existing Employee(S) Of Financial Institutions
2. Anti-Corruption Measures
3. National Anti-Corruption Strategy Republic of Liberia December 2006
4. SOP N0.: 1 Opening of new Accounts
5. Policy Memo # 134 Storage and retrieval of branch signature cards
6. SOP # 92 On-Line verification & checking
7. SOP N0.: 37 Western Union Money Transfer Service
8. SOP N0.: 2 Account Deposits and Withdrawals
9. SOP # 87 Drafts issuance accounting treatment
10. Policy Memo N0. 95 Third (3rd) party payment
11. Policy Memo N0. 140 Addendum Tellers' holding limit
12. Anti-Money Laundering policy & know your customer guidelines
13. LB International Bank (Liberia) Limited - Anti-Money Laundering Policies and Procedures
14. Know your customer and Customer Due Diligence (CDD) Policy - International Bank (Lib.) Limited
15. Risk Management Framework – First International Bank (Liberia) Limited
16. Policy Memo # 98 Amendment to SOP# 1 "Opening of new accounts"
17. LB International Bank (Liberia Limited) Corporate Accounts - Policy Memo N° 95 Third (3rd) Party Payments
18. SOP N0.: 49 Savings withdrawal control
19. Policy Memo 126 Signature Verification – Debit Instruction
20. SOP N0: Procedures for opening - New account at Harbel Branch at Head Office
21. LBDI – RAD with Mission BNF
22. SOP # 111 Anti-Money Laundering Policy & Know your Customer Guidelines

23. Declaration of Income, Assets and Liabilities form for Liberian Public Officials
24. Liberia Anti-Corruption Commission (LACC)- Annual Report for the period October 2008 – December 2009
25. Liberia Anti-Corruption Commission (LACC) - First Quarterly Progress Report (For the period January – March 31, 2010)
26. Draft Report of the Reform of the Liberian Insurance Industry by Reform Committee
27. National Energy Policy an Agenda for Action and Economic and Social Development
28. National Investment Commission Monrovia, Liberia, Annual Report 2006
29. National Investment Commission Monrovia, Liberia, Annual Report 2007
30. National Investment Commission Monrovia, Liberia, Annual Report 2008
31. National Investment Commission Monrovia, Liberia, Annual Report 2009
32. Appendix A- Compilation of the Results of Phases 1–3 of self-assessment of the twenty-five
33. Basel core principles by the Bank Supervision Department (BSD) of the Central Bank of Liberia (CBL) as the Supervisory Authority of the Liberian Banking Sector