



Inter-Governmental Action
Group Against Money
Laundering in West Africa

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

12th June 2007

SIERRA LEONE

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The World Bank

**DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

Sierra Leone

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ACRONYMS

ACA	ANTI-CORRUPTION ACT, 2000
ACC	ANTI-CORRUPTION COMMISSION
AML ACT	ANTI-MONEY LAUNDERING ACT, 2005
AMLA	ANTI-MONEY LAUNDERING AUTHORITY
AML/CFT	ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM
AMLD	ANTI-MONEY LAUNDERING DIVISION
BA	BANKING ACT, 2000
BSLA	BANK OF SIERRA LEONE ACT, 2000
BSL	BANK OF SIERRA LEONE
C	COMPLIANT
CDD	CUSTOMER DUE DILIGENCE
CFT	COMBATING THE FINANCING OF TERRORISM
CISU	CENTRAL INTELLIGENCE AND SECURITY UNIT
CPA	CRIMINAL PROCEDURE ACT (1965)
DFID	DEPARTMENT FOR INTERNATIONAL DEVELOPMENT
DNFBPs	DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS
DPP	DIRECTOR OF PUBLIC PROSECUTIONS
ECOWAS	ECONOMIC COMMUNITY OF WEST AFRICAN STATES
FATF	FINANCIAL ACTION TASK FORCE
FI's	FINANCIAL INSTITUTIONS
FIU	FINANCIAL INTELLIGENCE UNIT
FSAP	FINANCIAL SECTOR ASSESSMENT PROGRAM
FT	FINANCING OF TERRORISM
GGDO	GOVERNMENT GOLD AND DIAMOND OFFICE
GoSL	GOVERNMENT OF SIERRA LEONE
ICASL	INSTITUTE OF CHARTERED ACCOUNTANTS OF SIERRA LEONE
IMF	INTERNATIONAL MONETARY FUND
JIC	JOINT INTELLIGENCE COMMITTEE
KYC	KNOW YOUR CUSTOMER
LC	LARGELY COMPLIANT
LPA	LEGAL PRACTITIONERS ACT
MERIDA CONVENTION	UNITED NATIONS CONVENTION AGAINST CORRUPTION (2003)
ML	MONEY LAUNDERING
MLA	MUTUAL LEGAL ASSISTANCE
MLAT	MUTUAL LEGAL ASSISTANCE TREATY
MLR	MONEY LAUNDERING REGULATIONS
MOFA	MINISTRY OF FOREIGN AFFAIRS
MoF	MINISTRY OF FINANCE
MoJ	MINISTRY OF JUSTICE
MOU	MEMORANDUM OF UNDERSTANDING
MVT	MONEY OR VALUE TRANSFER

N/A	NOT APPLICABLE
NBFIS	NON-BANK FINANCIAL INSTITUTIONS
NC	NON-COMPLIANT
NCCT	NATIONAL COMMITTEE ON COUNTER TERRORISM
NDCA	NATIONAL DRUG CONTROL AGENCY
NGO	NON-GOVERNMENTAL ORGANIZATION
NPO	NON-PROFIT ORGANIZATIONS
NRA	NATIONAL REVENUE AUTHORITY
NSC	NATIONAL SECURITY COUNCIL
NSCIA	NATIONAL SECURITY AND CENTRAL INTELLIGENCE ACT, 2002
OARG	OFFICE OF THE ADMINISTRATOR AND REGISTRAR GENERAL
OFSA	OTHER FINANCIAL SERVICES ACT
PALERMO CONVENTION	UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)
PC	PARTIALLY COMPLIANT
PEPs	POLITICALLY EXPOSED PERSONS
PS	PERMANENT SECRETARY
SLAF	SIERRA LEONE ARMED FORCES
SLBA	SIERRA LEONE BAR ASSOCIATION
SLIC	SIERRA LEONE INSURANCE COMMISSION
SLP	SIERRA LEONE POLICE
SRO	SELF-REGULATORY ORGANIZATION
ST	SUSPICIOUS TRANSACTION
STR	SUSPICIOUS TRANSACTION REPORT
TEA	THE EXTRADITION ACT, 1974
UN	UNITED NATIONS
UNSCR	UNITED NATIONS SECURITY COUNCIL RESOLUTION
VIENNA CONVENTION	UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (1988)

A. PREFACE

1. An assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Sierra Leone 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 prepared using the AML/CFT Methodology 2004. The assessment considered the laws, regulations and other materials supplied by the authorities, and information obtained by the assessment team during its mission from May 29-June 13, 2006. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the agencies met is set out in Annex 1 to the detailed assessment report.

2. The assessment was conducted by a team of assessors comprising World Bank staff and a consultant. The assessment team was led by Stuart Yikona, Financial Sector Specialist, with other members being Mark Butler, Financial Sector Specialist, and Richard Gordon, Consultant. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines, practices and other measures and systems in place to deter money laundering (ML) and the financing of terrorism (FT). In terms of institutions, the team covered both the financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs). The team also assessed the capacity, the implementation and the effectiveness of all measures and systems relating to AML and CFT in Sierra Leone.

3. This Report provides a detailed assessment of the AML/CFT measures in place in Sierra Leone as at the date of the mission or immediately thereafter – i.e. before July 21, 2006. It describes, analyses and makes an assessment of the measures and systems in place, and provides recommendations on how certain aspects of the system could be strengthened (see Table 3). It also sets out Sierra Leone's levels of compliance with the FATF 40+9 Recommendations (see Table 2). The Report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of Sierra Leone. It was also presented to the GIABA and endorsed by this organization at its plenary meeting of June 12, 2007.

B. EXECUTIVE SUMMARY

Introduction

4. This Report on the Observance of Standards and Codes for the FATF Forty Recommendations (2003) on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff and consultant of the World Bank, using the 2004 AML/CFT Methodology.

5. This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance with the prevailing context of Sierra Leone. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Sierra Leone or the Boards of the International Monetary Fund (IMF) and the World Bank.

Information and methodology used for the assessment

6. In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the 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 (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Sierra Leone on July 21, 2006.

Main Findings

7. In spite of Sierra Leone having recently emerged from a civil war, the government has taken several important steps in an attempt to address the threat of ML and FT. These efforts included the promulgation in 2002 of regulations pursuant to the Banking Act (BA) and Other Financial Services Act (OFSA) introducing AML/CFT preventive measures for the financial sector and the enactment in July 2005 of the Anti-Money Laundering Act (AML Act). The AML Act extends preventative measures to designated non-financial businesses and professions, and creates the basic framework for Sierra Leone's AML regime. A core feature is the criminalization of ML which is broadly in line with international standards. In respect of the measures to combat FT, Sierra Leone ratified the United Nations International Convention for the Suppression of the Financing of Terrorism (SFT Convention) in September 2003.

8. Despite these efforts, Sierra Leone's AML/CFT regime remains ineffective. The areas of concern include: i) no implementation of the key points of the AML Act, particularly the creation of the FIU; ii) very limited effective supervision by the Bank of Sierra Leone (BSL) of AML/CFT preventive measures for the financial sector; iii) a number of irregularities in the AML Act which have significant consequences for the application of the act; iv) the failure to introduce the provisions of the SFT Convention in domestic law; and v) an absence of a legislative, regulatory or institutional mechanism for the implementation of all the provisions of UNSCR 1267 and 1373. The assessment team believes that addressing these concerns would not require considerable resources, and would significantly advance the country's AML/CFT regime in the short term.

General

General Situation of Money Laundering and Financing of Terrorism

9. Since the end of the civil conflict in 2002, the general crime situation within Sierra Leone has been continuously improving. Whilst there are still some border areas which are a security concern, the rest of the country is benefiting from a more secure environment. The available crime statistics do not indicate the existence of a significant amount of crime which would generate crime proceeds. The predominant use of cash within Sierra Leone means the majority of money laundering and terrorist financing is likely to occur outside of the financial sector.

10. Sierra Leone suffers from petty corruption involving low and middle level public officials though there are some allegations involving larger scale corruption.

11. Diamond smuggling was a problem during the civil conflict from 1991-2002. Whilst the Kimberley certification process has reduced the proportion of the illicit diamonds, sizeable quantities of diamonds are still smuggled out. Though the majority of the smuggling activity is not linked to the laundering of criminal proceeds, the potential for association with money laundering or the funding of terrorism remains.

12. The authorities assess that there is a low risk of terrorist activity occurring within Sierra Leone though there have been claims that terrorist funding activities may occur in Sierra Leone.

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

13. The formal financial sector includes 7 commercial banks, 5 international money transfer agents affiliated with the commercial banks, 13 other small deposit-taking institutions (including a state development bank in the process of being wound-up), 2 discount houses that primarily trade in discounted debt, 52 licensed and a large number of non-licensed exchange bureaus, and a tiny insurance sector.

14. As a small relatively poor developing country with the majority of development occurring along the Atlantic Coast, Sierra Leone has always had a small financial sector, focused primarily on government and those commercial sectors involved in international trade. During the civil conflict, the formal financial sector shrank significantly leading to Sierra Leone effectively becoming a cash economy. Following the end of the conflict, there has been some development in the banking sector though it is still in its infancy and is principally based within Freetown. In spite of this recovery, Sierra Leone remains essentially a cash-based economy. There are only around 160,000 bank accounts in Sierra Leonean banks, of which between 65 and 70 percent are personal accounts, most of which are relatively small savings accounts. The majority of corporate accounts are held by organizations involved in international trade.

15. There is a very small non-bank financial sector. Only 4 insurance companies offer any type of life insurance and none offers policies with an investment dimension. There is as yet no stock market and no licensed broker/dealers, although there are some very limited over the counter transactions.

16. The DNFBP sector includes accountants, lawyers, real estate agents, casinos, and dealers in precious metals and precious stones. There are a limited number of accountants which are mainly occupied in servicing the commercial banks, a small number of large companies, and international aid agencies. With respect to lawyers, these are mainly sole practitioners. Lawyers are sometimes involved in arranging the purchase and sale of real estate. They are also required by law to handle the incorporation of companies and registration of sole proprietorships; and partnerships.

17. Sierra Leone has significant deposits of both precious metals and stones, with the principal ones being gold, bauxite, and diamonds. The introduction of the Kimberly process in 2002, which requires diamond merchants globally to produce a certificate of origin when selling uncut diamonds, has led to a substantial increase in legitimate diamond exports, which have risen from US\$6.5 million in 2000 to US\$142 million in 2005. Sierra Leonean law requires that all exploration, mining, dealing, and exporting of minerals are conducted by licensed persons. There are currently 82 licensed diamond dealers and 7 licensed diamond exporters. However, the number of artisanal mining licenses issued was unavailable but it is estimated that there are many thousands of Sierra Leoneans involved in artisanal mining. It should be noted that transactions are predominately done in cash in US dollars. There is limited retail sale of precious metals and stones which is primarily due to the low income levels of the average citizen.

18. There are only a few real estate dealers in Sierra Leone. Real estate transactions are predominantly conducted in cash directly between the buyer and seller though occasionally, the real estate dealer may be involved in the transaction. Further, it should also be noted that there is currently no legislation concerning the registration of land title.

19. There are four casinos which are situated around Freetown. These are licensed by the National Tourist Board of Sierra Leone though there is no supervision of the gambling activities. There are no known internet casinos operating within Sierra Leone.

Legal System and Related Institutional Measures

20. The criminalization of money laundering is found in the Anti-Money Laundering Act, 2005 (AML Act). The offence of ML is defined in a manner which is generally consistent with the Vienna and Palermo Conventions. Sierra Leone adopts an all crimes approach to define the predicate offences, which includes offences punishable by death or imprisonment of not less than twelve months. However, Sierra Leone has not criminalized some of the designated categories of offences as stipulated in the FATF standards. The authorities advise that the offence of ML as currently provided in the AML Act applies to persons who commit a predicate offence and can be prosecuted for laundering of one's own illicit funds. There are penal and financial sanctions available for the ML offence, which apply to both natural and legal persons; however, these were considered not to be proportionate and dissuasive.

21. Sierra Leone has not criminalized FT and none of the provisions of the AML Act cover FT even though it has ratified the UN International Convention for the Suppression of the Financing of Terrorism.

22. Whilst Sierra Leone has taken some steps in response to relevant UN Security Council Resolutions, which included establishing a high level National Committee on Counter-Terrorism, there is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons.

23. Provisional measures for confiscation, freezing and seizing of proceeds of crime are found in sections of the AML Act, the Anti-Corruption Act (ACA) and the Civil Procedure rules of Sierra Leone. A civil standard of proof is used in determining whether or not to order the confiscation of property. The Bank of Sierra Leone (BSL), the Central Intelligence Service Unit (CISU) and the Attorney-General (AG), who is also the Minister of Justice, are the agencies authorized under the AML Act to make application to the court for confiscation and provisional measures. However, there is no framework for the freezing, seizing or confiscation of the instrumentality used or intended for use in the commission of a predicate offence or those related to FT.

24. The AML Act provides for the creation of the Financial Intelligence Unit (FIU). However, to date, the FIU has not been formally set up. The authorities stated that it is proposed that the Anti-Money Laundering Division (AMLDD) of the Banking Supervision Department, which was set up in 2002, will become the FIU once a decision is made for it to become operational. BSL, which lacks resources in both human and logistical terms, has sought technical assistance from the UNODC in the creation of the FIU.

25. AMLDD has received one STR pursuant to the money laundering regulations issued in September 2002 to financial service providers under the Banking Act (BA) and Other Financial Services Act (OFSA) though subsequent enquiry into the matter revealed that there was no suspicion. The report was therefore not disseminated.

26. The FIU is empowered to analyze and disseminate any report received by it. The report will be disseminated when it is considered that there are “reasonable grounds” to believe the reported transaction involves the proceeds of crime. The reports can be disseminated to either the Director General of CISU or the AG’s office. However, it is unclear why these two agencies have been chosen to receive the report as neither is able to conduct all aspects of an investigation. CISU, which is authorized to conduct operations to protect the State from threats including terrorism, money laundering and other serious crimes, operates covertly and its staff have no power of arrest. The AG’s Office has no mandate to conduct investigations. In disseminating the report to the AG’s Office, the authorities believed the report would be referred to the Sierra Leone Police (SLP) for investigation.

27. Staff of AMLDD have attended some training seminars but there was limited understanding of the role of the FIU and its functions. Furthermore, no detailed thought has been given to designing a formal analysis process and the information which the FIU would need to or was able to access. It should be noted that the AML Act does not provide the FIU with the authority to request any information from any entity other than financial institutions. This may significantly limit the information available to the FIU and restrict its ability to efficiently analyze the reports made to it.

28. Sierra Leone currently has four agencies that could be involved with the investigation and prosecution of ML and TF cases, namely the SLP, the National Revenue Authority (NRA), the Anti-Corruption Commission (ACC) and the Office of the Director of Public Prosecutions (DPP). However, none of the investigation agencies have been designated to conduct such investigations. Whilst the CISU has been mandated with responsibility to tackle the threat of money laundering and terrorism, it is unable to bring a matter to court without assistance from another law enforcement agency. All of the law enforcement agencies suffer both human and logistical constraints and none of them have received any training in conducting financial investigations. The authorities reported that no money laundering and terrorist financing investigations have been conducted to date.

29. Sierra Leone has foreign exchange regulations which do impose some cross border currency transparency reporting requirements. However, the controls are not implemented and enforced. The AML Act does provide for the monitoring of the cross-border transportation of currency or bearer negotiable instruments. Section 20 requires a person who leaves or enters Sierra Leone with more than USD10,000 worth of currency or bearer negotiable instruments, to report the fact to the Authority beforehand, otherwise they commit an offence.

30. Mechanisms for the collection of AML/CFT related statistics have not been developed due to the lack of implementation of the AML Act.

Preventive Measures – Financial Institutions

31. The legal framework for preventive measures for financial institutions can be found in the AML Act and the Money Laundering Regulations (MLR). The AML Act applies to all financial institutions as required by the FATF 40 + 9, whereas the MLR applies only to those financial institutions that are regulated by the BSL under the BA and the OFSA.

32. The MLR, which came into effect in 2002, is relied on as the primary instrument for preventative measures within the financial sector in Sierra Leone and covers nearly all of the mandatory preventative measures set out in the FATF standards. However, the AML Act, which came into effect in 2005 and also introduces preventative measures, is deficient in some key areas such as client profiling and procedures for high risk clients, including PEPs. Compliance with the MLR is enforced through the BSL's program of supervision and examination. Sanctions for non-compliance include revocation of license, removal and replacement of management, officers and staff, mandatory instructions and fines. While the BSL engages in a program of annual on-site and periodic off-site examination of commercial banks and licensed foreign exchange bureaux, it has yet to include more than a few provisions of the MLR in its supervisory examination program. It should be noted that the current capacity of the BSL supervision department is inadequate for existing prudential supervisory tasks, let alone the additional demands that adding AML/CFT issues would create. Gearing up for an effective AML/CFT supervisory program in line with international standards will require the addition of both staff and staff support resources. Notwithstanding these limitations, the BSL has taken several enforcement actions against commercial banks for failure to identify customers properly.

33. Under the AML Act, the Governor of the BSL is the person with primary responsibility for ensuring compliance with preventive measures. The Act further specifies criminal sanctions, including fines and imprisonment, for breaching the obligations. In this regard, it should be recognized that while criminal sanctions mean that law enforcement agencies are involved in sanctioning non-compliance with the AML Act, no law enforcement agency appears to be aware of this responsibility.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

34. The preventive measures for DNFBPs are set out in the AML Act. As mentioned above, the AML Act is deficient in addressing the mandatory preventative measures set out in the FATF standards. Furthermore, it places the same obligations on the DNFBPs as for financial institutions without regard to the appropriate flexibility permitted by the FATF standards.

35. With the exception of lawyers and accountants, who have statutory SROs, there is no framework to ensure compliance by the other DNFBPs other than the BSL pursuant to the AML Act.

Legal Persons and Arrangements and Non-Profit Organizations

36. By virtue of legislation concerning business registration and trusts, the types of legal persons which can be formed within Sierra Leone, are limited liability companies, sole proprietorships, partnerships and trusts. All legal persons except trusts must be registered with the Office of Registrar and Administrator General (ORAG). Any person can inspect the records of ORAG upon paying a search fee. Records are kept manually and include relevant information on companies and undertakings: legal status, date of establishment, company capital, directorships, tax code, corporate bodies and powers of representation. In addition, every company is required to keep a register of its members and include in their books the following particulars: the names and addresses, and the occupations, if any, of the members, a statement of the shares held by each member, the date at which each person was entered in the register as a member, the date at which any person ceased to be a member.

37. This transparency mechanism whereby the public can access the company registry conforms to international standards, although it provides only for the legal title holder of shares and not beneficial owner. Furthermore, as the information on the companies is manually recorded and maintained, there is a possibility that the information stored will not be accurate and reliable. Moreover, the ORAG has no enforcement powers to compel companies to file their annual returns in a timely, consistent and efficient manner.

Non-Profit Organizations

38. There is no legislative or regulatory framework to regulate the operations of Non-Profit Organizations (NPOs). Consequently, the NPO is governed by a document referred to as a 'Policy Regulation', which is not issued under the authority of any law, but was issued by the Government of Sierra Leone (GoSL) for the Operations of Non-Governmental Organizations (March 2004). The various types of NPOs operating in Sierra Leone include national and international, developmental, humanitarian/relief organizations with capacity to undertake active development or humanitarian/relief work in more than three chiefdoms in Sierra Leone. In addition, a Non-Profit Organization (NPO) is required to be a member of the Sierra Leone Association of NGO (SLANGO) and they have to produce annual audited accounts to the NGO Coordinating Unit (NGO Unit) established by the Ministry of Development and Economic Planning, which is responsible to monitor NGO activities.

National and International Cooperation

39. There is no specific agency or institution that has been mandated to coordinate the Government's AML/CFT policies and international relations. An ad hoc committee, composed of some of the relevant AML/CFT stakeholders, was set up in January 2006 for the purpose of trying to resolve an issue that dealt with the policy related to the cross-border physical transportation of currency as well as to ensure the implementation of the AML Act.

40. The mechanisms for domestic cooperation and coordination have not been effective. The level of consultation among the critical AML/CFT relevant bodies has been minimal. The authorities nevertheless have been making efforts to strengthen coordination among national authorities although much remains to be done. On the other hand, consultation with the private sector, remains a major weakness for institutions that are required to comply with the AML Act.

C. GENERAL

General information on Sierra Leone

41. The Republic of Sierra Leone is a small West African nation on the North Atlantic coast with a total land area of about 27,699 square miles (71,740 sq km). It is bordered by Guinea to the northwest and Liberia to the southeast. The total estimated population is currently approximately 5 million. The capital of Freetown, with an estimated population of 550,000 people, and is the main seaport for the country. English is the official language with a literacy rate of 36% (as of 2002).

42. Independence was gained from the United Kingdom on April 27, 1961 and since then, it has experienced five military coups and a civil war which began in March 1991. The conflict caused severe destruction in economic and physical infrastructure leading to the collapse of the public sector, and the displacement of more than 2 million people. With the help of the United Kingdom and a United Nations peacekeeping mission, Sierra Leone emerged from the civil war in 2002. The last UN peacekeepers withdrew in December 2005, leaving full responsibility for security with domestic forces. The UN now maintains a civilian office to support the government.

43. Although there has been progress, Sierra Leone remains an extremely poor African nation, heightened by severe income inequality and hampered by a weak economic and social infrastructure. Sierra Leone is ranked 176th of 177 countries in the UN Human Development Index.¹ Alluvial diamond mining remains the major source of hard currency earnings, accounting for nearly half of Sierra Leone's exports. According to GoSL figures, official diamond exports reached approximately US\$142 million in 2005², but it is estimated that US\$250-300 million worth of diamonds are produced. The economy is entirely cash based and few modern financial instruments such as debit or credit cards, are used.

System of Government

44. Sierra Leone is a constitutional democracy with executive power being vested in the President, who is elected for a 5 year term, with re-election possible but limited to a second 5 year term. The legislative branch is a unicameral Parliament composed of 124 seats; 112 seats are elected by popular vote with the remaining 12 seats filled by paramount chiefs who are elected in separate elections. The next elections are scheduled for 2007.

Legal System

45. The laws of Sierra Leone, as defined in Section 170 of the 1991 Constitution, comprises of the Constitution itself, along with laws made by parliament, statutory instruments, the existing law, and the common law. The common law includes the English common law and customary law. Customary law, which is particular to some communities in Sierra Leone³ and is largely unwritten, is

¹ UNDP, Human Development Report 2005.

² The Gold and Diamond Department

³ Customary Law applies by virtue of Section 170(3) of the 1991 Constitution

the rules and regulations that are applicable by custom. English common law is applied through the Superior Court of Judicature which comprises of the Supreme Court, Appeals Court, and High Court. The Magistrates Courts constitute the inferior courts. All the courts adjudicate criminal and civil matters under statutory and English common law.

Transparency, good governance, ethics and measures against corruption

46. Central to Sierra Leone's strategy to promote transparency, good governance and ethics is the adoption of enhanced measures against corruption. An Anti-Corruption Commission (ACC) was established in August 2000 under the Anti-Corruption Act (ACA). It is charged with investigating cases and educating the public to reduce corruption in its many forms. The ACC has investigated and brought cases against several low- to mid-level public servants. Sierra Leone ratified the United Nations Convention Against Corruption in September 2004. The government has undertaken to improve governance by enhancing transparency and accountability in its operations. It has focused this on public expenditure management, transparency in mining sector operations specifically the diamond industry. To further this, in February 2005, the Government of Sierra Leone (GoSL) launched the National Anti-Corruption Strategy (NACS).

47. Sierra Leone has embarked on reforming a significant number of its laws, many of which were enacted prior to independence. The purpose of this legislative reform is to bring Sierra Leone's legal system into conformity with prevailing international standards and best practices. Part of this work is being conducted under the auspices of the Justice Sector Development Project, a program supported by the donor community.

48. There are many challenges which remain in enhancing good governance and transparency. One area of concern is the judicial sector. The courts are inefficient, congested and characterized by a lack of capacity leading to considerable delays in the disposal of cases brought before the courts. Cases can take up to 10 years and it is alleged that some cases are actually never disposed off.

General Situation of Money Laundering and Financing of Terrorism

49. Since the end of the conflict and the subsequent disarming and demobilization of combatants, the general crime situation within Sierra Leone has been continuously improving. Whilst there are still some border areas which are a security concern, the rest of the country is benefiting from a more secure environment. Crime statistics, which do not necessarily fully reflect the actual situation, show assaults including woundings, theft and fraud are the most reported crimes. The predominate use of cash within Sierra Leone means the majority of money laundering and terrorist financing is likely to occur outside of the financial sector.

50. Several studies have identified corruption as a key problem within Sierra Leone. Most of it is petty corruption involving low and middle level public officials though there are some allegations involving larger scale corruption. The prosecutions initiated by the ACC tend to support this.

51. Sierra Leone's geographical location, and its transportation and trade links may increase its vulnerability to trafficking offences. The porous land borders further enhance the possibility. Two drug cases, involving the smuggling of sizeable quantities of cocaine, originating from Nigeria, with intended destinations in Europe, corroborate the potential risk. The political and security situations in neighboring countries and the post-conflict scenario of Sierra Leone, also raise the likelihood for small arms trafficking to occur.

52. During the conflict, the smuggling of diamonds was a significant problem. The Kimberley certification process, which was introduced in 2002, has progressively reduced the proportion of the illicit diamonds, but a significant amount of diamonds continues to be smuggled out of Sierra Leone. Whilst the majority of the smuggling activity is not linked to the laundering of criminal proceeds, the potential for association with money laundering or the funding of terrorism remains.

53. The authorities assess that there is a low risk of terrorist activity occurring within Sierra Leone. Nevertheless, there have been claims that terrorist funding activities may occur in Sierra Leone.

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

54. **General:** The formal financial sector includes 7 commercial banks, 5 international money transfer agents affiliated with the commercial banks, 13 very small community, cooperative, savings, and building society banks, a small state development bank, 2 discount houses, 51 licensed and a large number of non-licensed exchange bureaus, and a tiny insurance sector.

55. As a small relatively poor developing country with an isolated interior, Sierra Leone has always had a small financial sector, focused primarily on government and those commercial sectors involved in international trade. Even this comparatively undeveloped formal sector shrank significantly during the worsening security situation in the 1990s during which banks began to lose authority to issue letters of credit and started to close their branches outside of Freetown. Soon after the 1997 coup the two largest foreign-owned banks, Barclays and Standard Chartered, which together accounted for more than 80 percent of the domestic market, shut down operations entirely. While the state-owned Sierra Leone Commercial Bank continued to operate in a limited fashion during the civil war, for all intent and purposes the banking sector essentially shut down. Sierra Leone became a nearly completely cash based economy.

56. **Banking:** Since the end of the civil war there has been some recovery in the banking sector. Standard Chartered resumed operations and has recently opened a new headquarters. Barclays was sold to the government and reopened as Rokel Commercial Bank. They, along with the Sierra Leone Commercial Bank, are around the same size and now control around three quarters of the banking market. There are 4 other quite small commercial banks, 4 of which are owned by Nigerian parents (one of which was locally owned until bought out in 2003) and one very small bank opened by a Malaysian parent last year. While the banks have a number of branches in Freetown there are only a total of 15 open in the countryside, although new branches are being planned. A few have ATMs, but due to the poor quality of notes none currently works properly.

57. In addition to the commercial banking sector there is a small number of deposit taking institutions including 4 community banks, a postal savings bank and a savings and loan, and a cooperative bank, none of which is of any appreciable size. There are also 3 non-deposit taking finance companies and a development bank, none of which has significant assets. There are now 5 money transfer agents, including Western Union and Money Gram, all of which are operated through the commercial banks and are not considered separate entities. There are also 52 licensed foreign exchange dealers in addition to the banks (and countless unlicensed ones) as well as 2 discount houses that trade in discounted debt primarily, though not exclusively, for commercial banks.

58. In spite of this recovery, Sierra Leone remains essentially a cash-based economy. Banking assets constitute less than thirty percent of GDP. There are only around 160,000 bank accounts in

Sierra Leonean banks, of which between 65 and 70 percent are personal accounts, most of which are relatively small savings accounts. Corporate accounts are held primarily by the relatively few large businesses in Sierra Leone involved in international trade, including the seven licensed diamond exporters, and those foreign governments, international organizations, and NGOs providing aid. Each of the banks offer private banking services, but the amounts involved are trivial, mostly involving purchase of government securities. The banking business in terms of asset size and accounts is growing only slowly, and in terms of individual accounts may actually be shrinking. The reasons for this are myriad, stemming from the experiences during the civil war when banks could not be relied upon, to the existence of a small commercial sector, high levels of poverty and low levels of literacy, and difficulties in communication between the capital and the hinterland. For the vast majority of Sierra Leoneans, the banking system is simply irrelevant.

59. **Non-Bank Financial Institutions:** There is a very small non-bank financial sector. Only 4 insurance companies offer any type of life insurance and none offers policies with an investment dimension, a situation also unlikely to change in the foreseeable future. There is no stock market and no licensed broker/dealers, although there are some very limited over the counter transactions. Although the government is working to develop a formal equities market, given the state of the private sector in Sierra Leone it is highly unlikely that, at least for the foreseeable future, more than a few companies would list or that float or transaction amounts would be anything more than nominal.

60. **Designated Non-Financial Businesses and Professions:** The DNFBP sector includes accountants, lawyers, real estate agents, casinos, and dealers in precious metals and precious stones.

61. **Accountants:** The Institute of Chartered Accountants has 85 members, of which all but two belong to 9 accountancy firms, the largest of which is KPMG. The commercial banks, the small number of large companies, and international aid agencies consume the majority of financial accountancy services. Accountants do not normally provide consultancy or other non-financial accountancy services or manage individual client accounts.

62. **Lawyers:** There are 120-150 lawyers in practice divided into those that largely practice criminal law; a mix of criminal and civil law; and largely civil law. A significant number of lawyers practice as sole practitioners. Lawyers can purchase and sell, or arrange for the purchase and sell of real estate; organize the incorporation of companies and registration of sole proprietorships; and partnerships.

63. **Dealers in Precious Metals and Precious Stones:** There are currently 82 licensed alluvial diamond dealers and 5 licensed alluvial diamond exporters. Sierra Leone has significant deposits of both precious metals and stones, with the principal ones being gold (alluvial and mined), bauxite (as yet largely untapped), and diamonds (mostly alluvial with a small amount of kimberlitic). The associated mining makes a significant contribution to the country's GDP. Mining and subsequent sale and export of the minerals, is regulated under the Mines and Mineral Decree, 1994, which is administered by the Department for Mines and Minerals (DMM). The law requires that all exploration, mining, dealing, and exporting of minerals are conducted by licensed persons. There are several international companies conducting mining operations to extract the subterranean mineral deposits, which amount to approximately 5% of exports. The alluvial minerals are collected by artisan "miners" (who either pan for gold or search for diamonds along river banks and adjoining areas). The number of artisanal mining licenses issued was unavailable but it is estimated that there are many thousands of Sierra Leoneans involved in artisanal mining. The vast majority of mining operations by both number and value are of diamonds. The miners are required to sell the minerals to dealers, who in turn sell them on to the exporters. Receipts provided to the licensees by the DMM

must be issued for each transaction to prove the origin of the minerals. For the diamond industry, there is no processing done within Sierra Leone. Transactions are predominately done in US dollars with cash.

64. Diamond smuggling has been a considerable problem for Sierra Leone, with the associated loss of revenue. The introduction of the Kimberly process in 2002, which requires diamond merchants to produce a certificate of origin when selling uncut diamonds, has led to a substantial reduction in the smuggling. Diamond exports have risen from USD 6.5 million in 2000 to USD142 million in 2005. The Government Gold and Diamond Department of the National Revenue Authority is responsible for valuing the diamonds to be exported and for issuing a certificate of origin.

65. There is limited retail sale of precious metals and stones which is primarily due to the low income levels of the average citizen. There is no association for precious metal and stone retail dealers.

66. **Real Estate Dealers:** There are only a few real estate dealers in Sierra Leone. Real estate transactions are normally conducted in cash directly between the buyer and seller, although when a dealer is involved, the transactions may be conducted through them. The dealers are not subject to any regulation and there is no association related to the real estate sector. It should also be noted that there is currently no legislation concerning the registration of land title.

67. **Casinos:** Gambling within Sierra Leone is governed by the Summary Conviction Offences Act and the Development of Tourism Act, 1990. Gambling is only permitted in a licensed casino. There are four casinos, all of which are situated around Freetown and are licensed by the National Tourist Board of Sierra Leone. Beyond the requirement to be a licensed casino, there is no supervision of the gambling. There are no known internet casinos operating within Sierra Leone.

68. **Trust and Company Service Providers:** Outside of lawyers and accountants there are no specialist trust and company service providers.

69. There are however no threshold requirements nor is there any guidance as to when CDD measures are to be observed by the DNFBPs.

Overview of commercial laws and mechanisms governing legal persons and arrangements

70. The primary legal instruments creating legal persons and arrangements under Sierra Leonean law are the Companies Ordinance, 1938, the Business Names Registration Ordinance, 1954, the Business Registration Act, 1983, the Wills Act, 1837 and the Conveyancing Act, 1881.

71. In Sierra Leone, a business can operate in the forms of a company, a sole proprietor or a partnership. Sole proprietors and partnerships cannot limit the liability of the business owner(s) vis-à-vis creditors. Therefore, a sole proprietor or a partner of a partnership is liable for all claims against the business with all his personal assets. A company, on the other hand, can limit the shareholders' liability to the value of the subscribed shares (company limited by shares) or to the amount stated in the Memorandum of Articles and Association (company limited by guarantee).⁴ All businesses must be registered with the OARG.

⁴ Section 3(2) of the Companies Ordinance, 1938.

72. Sierra Leonean law permits express, implied or constructive trusts. When an express trust is created it is required to be registered with the OARG. Trusts are not commonly used in Sierra Leone other than for conveyancing and wills.

73. According to the statistics provided by the OARG, there are a total of 9,174 limited liability companies incorporated in Sierra Leone; 25,144 sole proprietorship and partnership businesses registered in Sierra Leone; and 2,142 foreign companies registered with the OARG. However, out of these registered businesses, no information was provided as to how many are actually in operation. No information was provided on the number of trusts registered.

Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

74. Sierra Leone has not developed a national AML/CFT strategy nor has it stipulated what the specific areas of priority are in the development and implementation of its AML/CFT policies.

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

75. **Bank of Sierra Leone:** The Bank of Sierra Leone (BSL), the country's central bank, is the sole supervisor of the financial sector. Supervisory functions are carried out primarily by the Bank Supervision Division. In exercising its supervisory function the BSL licenses financial institutions, examines their compliance with applicable laws and regulations, and imposes sanctions for non-compliance. The BSL has the lead role in ensuring compliance with AML/CFT preventive measures within the financial sector through application of its supervisory responsibilities.

76. **Ministry of Mineral Resources:** The Ministry of Mineral Resources (MMR) is responsible for the regulation and supervision of the mining industry. Amongst other tasks, it issues artisanal miner, dealer and exporter licenses. In respect of applications for exporter licenses, basic background checks are conducted including determining the financial status of the applicant.

77. MMR is also tasked with the prevention of mineral smuggling. One part of this role is conducted by Mines Monitoring Officers who have the authority to search vehicles and persons for illicit minerals. Another component is the reconciliation of the transaction receipts for the minerals, which is used to demonstrate their origin for export purposes.

78. **Gold and Diamond Department:** The Gold and Diamond Department (GDD), which is part of the National Revenue Authority, is responsible to value the minerals which are being exported and for the issuing of the certificate of origin. It also conducts industry checks on the buyers of diamonds from the licensed exporters. The department is headquartered in Freetown which handles the exportation of the minerals though there is another office in the diamond mining area which is involved with the transactions between the artisanal miners and dealers. In addition, there is an independent valuation company Diamond Consular International which does joint valuations with the GDD.

79. **National Revenue Authority:** The National Revenue Authority (NRA) was setup in 2003 as a result of a merger of the Income Tax and the Customs and Excise Departments. It is responsible for the implementation of revenue and customs legislation within Sierra Leone. It is also tasked with the collection of non-tax revenues and operating the GDD. The investigative branch of the NRA is the

Special Investigation and Intelligence Unit which handles all investigations which fall within the NRA's mandate.

80. **Judiciary:** The Sierra Leone Judiciary is comprised of a Supreme Court, Court of Appeal, and a High Court with judges appointed by the President on the advice of the Judicial and Legal Service Commission with the approval of Parliament. The three courts constitute the Superior Court of Judicature. They are established under Chapter VII of the 1991 Constitution pursuant to Sections 120-134. There also are magistrate and local courts and from these, appeals lie to the superior courts of judicature. The Judiciary have jurisdiction in all matters civil and criminal and such other matters in respect of which Parliament may by or under an Act of Parliament confer jurisdiction on the Judiciary. The bench capacity is limited and most of the judges are either on contract or are from other commonwealth countries.

81. **Director of Public Prosecutions:** The office is established under Section 66 of the 1991 Constitution. Pursuant to Section 66(4), the Director of Public Prosecutions (DPP) has the power to institute, take over or discontinue criminal proceedings. The office of the DPP has an establishment of 22 including the DPP but it currently has only 9 staff, one which is donor funded. The staff have received no training relating to the prosecution of financial, ML or TF cases. There is no facility to engage support facilities such as forensic accountants. The unit has significant logistical resource issues such as computers and office accommodation.

82. **Anti-Corruption Commission:** The Anti-Corruption Commission (ACC) was established in 2000, pursuant to the Anti-Corruption Act, and is headed by a Commissioner. It is responsible for investigating allegations of corruption and to take steps to eradicate or suppress corrupt practices including examining of the practices and procedures of Government Ministries and other public bodies to identify vulnerabilities for corruption and to perform public education.

83. **Sierra Leone Police:** The Sierra Leone Police (SLP) is headed by the Inspector-General of Police, whose office is established under Section 155 of the Constitution of Sierra Leone, 1991. Its responsibilities include: the maintenance of public order; the protection of life and property; the prevention of crime, and the detection and prosecution of offenders. It is also currently conducting joint border patrols with the Military.

84. The investigative functions of the SLP are conducted by the Criminal Investigation Department (CID) which is headed by a Chief Superintendent of Police with an Assistant Inspector General Crime Services providing strategic leadership for CID, Interpol and Intelligence Services. The operations of the headquarter sections of the CID are divided into several sections, which includes an Anti-Organized Crime Unit which is responsible for investigating financial crimes.

85. **Central Intelligence and Security Unit:** CISU is established under section 11 of the National Security and Central Intelligence Act (NSCIA). The functions of the CISU include the collection and assessment of any intelligence that may constitute a threat to the security of Sierra Leone and protecting the country from threats including terrorism, money laundering and other serious crimes.

86. The CISU is provided with powers to collect intelligence and assist in their assessment of intelligence. However, its staff have no authority beyond that as a private citizen, to arrest a suspect. The authorities stated CISU primarily has a covert role and any overt action will be performed by another agency, normally the SLP.

87. **Ministry of Justice and Attorney-General:** The Minister of Justice is also the Attorney-General. The office is responsible for giving effect to mutual legal assistance requests that are sent through the Ministry of Foreign Affairs. Other responsibilities include participating in negotiations of international agreements and conventions and ensuring that these are consistent with the legal system of Sierra Leone.

88. **Sierra Leone Bar Association (SLBA):** The Sierra Leone Bar Association (SLBA) is a SRO which is responsible for the admission, enrollment, practice and discipline of legal practitioners in Sierra Leone. The General Legal Council (GLC) established under section 2 of the LPA, is the governing authority with regard to the conduct of the legal profession in Sierra Leone. The GLC is responsible for *inter alia* the issuing of practicing certificates to legal practitioners; the prescription of standards of professional conduct and code of etiquette; and the discipline of legal practitioners. The GLC through its Disciplinary Committee will soon sit to hear 12 complaints that have been brought against some of its members. Furthermore, in seeking to foster a culture of integrity, the SLBA placed an advert in the print media inviting members of the public to lodge any complaints they may have against legal practitioners.

c. Approach concerning risk

89. The authorities have not considered developing or adopting a national risk-based approach to combating ML and FT.

d. Progress since the last WB/IMF assessment or mutual evaluation

90. This is the first time Sierra Leone is being assessed for AML/CFT international standards.

D. DETAILED ASSESSMENT

Table 1: Detailed Assessment

1. Legal System and Related Institutional Measures

1.1 Criminalization of Money Laundering (R.1 & 2)	
Description and analysis	
91.	<p>Legal Framework: The criminalization of money laundering is found in the Anti-Money Laundering Act, 2005 (AML Act) in section 2. The AML Act was passed into law by parliament in November 2004 and came into force on July 21, 2005. There are no regulations that have been issued to implement the provisions of the AML Act.</p>
92.	<p>Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence): Money Laundering is criminalized in section 2 of AML Act. It is an offence for any person to engage directly or indirectly in a transaction that is the proceeds of crime. Furthermore, it is an offence of money laundering for a person to receive, possess, conceal, disguise, transfer, convert, dispose of, remove from or bring into Sierra Leone property that is the proceeds of crime. According to section 2, a person engages in money laundering if he knows or has reasonable grounds to believe that the property is the proceeds of crime. This definition is broad enough to cover the elements referred to in the Vienna and Palermo Conventions.</p>
93.	<p>The Laundered Property (c. 1.2): The offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Under section 1, proceeds of crime cover the proceeds of unlawful activity and include any property that is acquired and traceable to proceeds of unlawful transactions. However, the term unlawful transactions is not defined and consequently a reference to this term makes it unclear as to whether unlawful transactions has a connection to unlawful activity. In order to provide clarity as to what proceeds of crime the ML offence covers, the definition should refer to the ‘proceeds of unlawful activity’ and not ‘unlawful transactions’.</p>
94.	<p>Proving Property is the Proceeds of Crime (c. 1.2.1): The authorities advised that there is no need for a prior conviction for the predicate offence and that a Sierra Leonean court would only need to be satisfied that the proceeds are derived from a predicate offence, based on the evidence brought by the prosecutors.</p>
95.	<p>The Scope of the Predicate Offences (c. 1.3 & c. 1.4): In defining the range of predicate offences, Sierra Leone adopts an all crimes approach with offences punishable by death or imprisonment of not less than twelve months. Section 1 of the AML Act provides for an all crimes definition of offences for money laundering by applying it to all underlying “unlawful activities” committed anywhere. It provides that “unlawful activity means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than twelve months.” From this the scope of predicate offences as defined under section 1 by reference to it being “a crime anywhere” is too broad in that any activity which would constitute a crime in any jurisdiction would be a predicate offence for money laundering in Sierra Leone. Indeed, the authorities acknowledged that the language in the definition of ‘unlawful activity’ was too broad.</p>
96.	<p>Designated Category of Offences (c. 1.3): In discussions with the DPP, the assessors were able to establish that some of the offences provided for in the list of designated offences are not provided for under Sierra Leonean law. Below is a table indicating the relevant law under which a designated offence is covered.</p>
Designated Category of Offences	Relevant Sections

Participation in an organized criminal group	Not provided for under the laws of Sierra Leone.
Terrorism, including terrorism financing	Not provided for under the laws of Sierra Leone.
Trafficking in human beings and migrant trafficking	The Anti-Human Trafficking Act, 2005 criminalizes trafficking in human beings in section 2(1) & (2).
Sexual exploitation (including of children)	The Anti-Human Trafficking Act, 2005 criminalizes sexual exploitation in section 2(3).
Illicit trafficking in narcotic drugs	The Pharmacy and Drug Act, 2001 criminalizes illicit trafficking in narcotic drugs in sections 30, 48 & 64.
Illicit Arms Trafficking	Not provided for under the laws of Sierra Leone.
Corruption and bribery	The Anti-Corruption Act, 2000 under Part IV creates offences related to corrupt practices – s. 7 (corrupt acquisition of wealth); s. 8 (soliciting or accepting advantage); s. 9 (using influence for contracts); s. 10 (corrupting public officer); s. 12 & 13 (misappropriation of public or donor funds or property).
Illicit trafficking in stolen and other goods	Not provided for under the laws of Sierra Leone.
Fraud	Authorities did not provide a copy of the law that criminalizes fraud.
Counterfeiting currency	Authorities did not provide a copy of the law that criminalizes counterfeiting of currency.
Counterfeiting and piracy of products	Not provided for under the laws of Sierra Leone.
Environmental crime	The Environmental Protection Act, 2000 criminalizes environmental crime in section 35.
Murder, grievous bodily injury	Under Common Law.
Kidnapping, illegal restraint and hostage taking	Under Common Law.
Robbery or theft	Larceny Act 1916.
Smuggling	Authorities did not provide a copy of the law that criminalizes smuggling.
Extortion	Under Common Law.
Forgery	Forgery Act 1913.
Piracy	Authorities did not provide a copy of the law that criminalizes piracy.
Insider trading and market manipulation	Not provided for under the laws of Sierra Leone.

97. **Extraterritorially Committed Predicate Offences (c. 1.5):** Notwithstanding the ambiguity

mentioned in paragraph 95, predicate offences for money laundering extend to conduct that occurred outside Sierra Leone. As discussed in paragraph 95, the offence extends to any crime anywhere. Moreover, section 2 of AML Act makes it an offence for any person to remove from or bring into Sierra Leone any property that is the proceeds of crime.

98. **Laundering One's Own Illicit Funds (c. 1.6):** Under section 2(b) of the AML Act the offence of money laundering applies to persons who commit a predicate offence and can be prosecuted for laundering of one's own illicit funds. This position is based on the ordinary criminal prosecutorial experience where an accused person can be charged for receiving proceeds arising from a predicate offence.

99. **Ancillary Offences (c. 1.7):** Conspiracy to commit, attempt, aiding and abetting, facilitating, and counseling the commission of an offence are criminalized under the general common law principles derived from England which punishes those who participated in the commission of the offence with the same penalties as the principal authors. In addition, under the Offences Against Persons Act of 1861 persons who facilitated a commission of a crime are liable to the same punishment as the principal perpetrator. Section 43 of AML Act provides for punishing a person who facilitates the commission of ML as if the offence had been completed.

100. **Additional Element (c. 1.8):** Under Section 1 of the AML Act, it is a money laundering offence where the proceeds of crime are derived from an unlawful activity wherever committed.

101. **Liability of Natural Persons (c. 2.1):** Under section 2 of the AML Act, the offence of ML applies to natural persons that knowingly engage in ML.

102. **The Mental Element of the ML Offence (c. 2.2):** The offence of money laundering under section 2 of AML Act is committed by a person who knows or has reasonable grounds to believe that the property is the proceeds of crime. Further, reasonableness of the grounds of belief is defined under section 8 of the AML Act as being determined objectively having regard to all the facts and surrounding circumstances.

103. **Liability of Legal Persons (c. 2.3 & c. 2.4):** Legal persons are subject to criminal and civil liability under the AML Act and the CPA. Section 44 of AML Act provides for the liability of legal persons that commit the offence of ML. In addition to a corporate body being held liable, every director or officer of that corporate entity is also deemed to have committed the offence of ML unless such director or officer proves that the offence of ML was committed without his knowledge or that he exercise due diligence to prevent the commission of the offence. Furthermore and in addition to the provision under AML Act, the trial of corporations is provided for in section 207 of the Criminal Procedure Act, 1965 (CPA). Under this section, a corporation can be charged either alone or jointly with another person with an offence triable on indictment or summarily before a Magistrate Court. Further, a corporation that is convicted of an offence is liable to a fine in lieu of imprisonment.

104. **Sanctions for ML (c. 2.5):** There is an omnibus provision in section 45 of the AML Act that contravening any of the requirements of the AML Act for which no offence is specifically created is an offence. The penalty is a fine of 30 million leones (US\$10,000), or imprisonment for a term not exceeding five years is imposed or to both. Furthermore, pursuant to section 46 of the AML Act, a court may, in addition to any other penalty, permanently or for a maximum period of five years, ban any person convicted of an offence under section 2 (ML) or 43 (conspiracy) from pursuing the trade or occupation which provided the opportunity for the commission of the offence.

105. However, although sanctions provided for in the AML Act may be consistent with the imprisonment and fines imposed for other offences, the sanctions are not proportionate and dissuasive. This is because the sanctions provided do not compare with the potential gains that money laundering offences can generate. Indeed, discussions with the authorities indicated that because ML relates to activities that involve serious crimes, the sanctions regime may need to be strengthened.

106.	Analysis of Effectiveness: There have been no ML cases prosecuted under the AML Act.	
Recommendations and comments		
107.	<p>The authorities should consider –</p> <ul style="list-style-type: none"> • Amending the definition of the scope of the predicate offences with an eye to narrowing the scope to include only those foreign offences which had they occurred in Sierra Leone would have constituted an offence as discussed in paragraph 124. • Amending the definition of proceeds of crime by replacing ‘unlawful transactions’ with ‘unlawful activity’. • Increasing the severity of the sanctions imposed for ML both in the prison term and the monetary penalty. 	
Compliance with FATF Recommendations 1 & 2		
	Rating	Summary of Factors underlying rating
R.1	PC	<ul style="list-style-type: none"> • Significant flaws in the wording of the offence and its related definitions • The effectiveness of criminalization has not been tested before the court.
R.2	PC	<ul style="list-style-type: none"> • The prescribed sanctions are not proportionate and dissuasive.
1.2 Criminalization of terrorist financing (SR.II)		
Description and analysis		
108.	Legal Framework: There is no legislative or regulatory framework for the financing of terrorism. Sierra Leone has ratified the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (SFT Convention) (see discussion under Section 5.2 ‘Conventions and UN Special Resolutions’) but has not implemented its requirements.	
109.	Criminalization of Financing of Terrorism (c. II.1): Sierra Leone has not criminalized FT.	
110.	Predicate Offence for Money Laundering (c. II.2): Not applicable.	
111.	Jurisdiction for Terrorist Financing Offence (c. II.3): Not applicable.	
112.	The Mental Element of the TF Offence (applying c. 2.2 in R.2): Not applicable.	
113.	Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2) Not applicable.	
114.	Sanctions for FT (applying c. 2.5 in R.2): Not applicable.	
115.	Analysis of Effectiveness: Not applicable.	
Recommendations and comments		
<p>The authorities should –</p> <ul style="list-style-type: none"> • criminalize FT • fully implement all the other provisions of the SFT Convention 		
Compliance with FATF Recommendations II		
	Rating	Summary of Factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> • FT has not been criminalized.
1.3 Confiscation, freezing and seizing of proceeds of crime (R.3)		
Description and analysis		
116.	Legal Framework: Measures for confiscation, freezing and seizing of proceeds of crime are found in section 20(4) of AML Act; Part IV of the AML Act (sections 21-23); sections 22-25 of the Anti-	

Corruption Act, 2000 (ACA); and Orders XXIX, XXX and XXXVII of the Supreme Court Rules, 1960 (the Rules). The framework has not been used in seizing, freezing or confiscation of proceeds of crime.

117. However, there is no framework for the freezing, seizing or confiscation of the instrumentality used or intended for use in the commission of a predicate offence or those related to FT.

118. **Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):** Section 22 of the AML Act provides for the confiscation of property of persons convicted of an offence under the Act. There is a presumption that the property belonging to the convicted person is derived from proceeds of crime unless the contrary is proved. The authorities stated that if the offender cannot establish the legitimacy of the source of his property and they are not commensurate with his income or economic activity they are presumed to be proceeds of crime. Under the AML Act, the order of forfeiture is made by the court upon application by a competent authority (in this case the AG although in practice it will be the DPP). Under section 22(4) of the AML Act, the court can order confiscation of property of corresponding value in lieu of property subject to confiscation. In addition to this, the court under Order XXX(1) of the Rules can make an order for the surrender of any property real or personal belonging to the convicted person. Indeed, the primary framework for confiscation is under the Rules.

119. **Confiscation of proceeds of proceeds of crime (c. 3.1.1 applying c. 3.1):** Section 22 provides for the confiscation of property that is derived from money laundering. And as discussed in section 1.1, Criminalization of ML the offence of ML involves any property that is traceable to proceeds of unlawful activity. Furthermore, property can be confiscated regardless of whether it is held or owned by a third party if it is established that the property is under the control of the convicted person. However, the AML Act does not provide the criteria or guide of determining elements that would constitute control on the part of the convicted person.

120. **Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):** The freezing and seizure of assets prior to confiscation can be ordered at any moment during the investigation process in two cases, according to section 21(1) of the AML Act. The first situation is where a person has been charged with a ML offence. The second scenario is where a person is about to be charged with a ML offence and the assets frozen or seized are those in the possession or under the control of that person. A freezing order made under section 21 is valid for an initial period of 72 hours within which time a suspect is supposed to be charged for a ML offence. If a charge is not laid, then the freezing order will cease to have effect as provided for under section 21(3) of the AML Act. There is no provision for the extension of the 72 hour period and this lacuna creates a loophole in the AML Act for situations where more time is needed for further investigations and therefore an extended time to continue freezing a suspect's property. This would hamper the ability of law enforcement agencies to have time to conduct the necessary inquiries. In addition to these powers under the AML Act, Order XXXVII(3) of the Rules grants authority to the court upon application by a party to a cause or matter to make any order for the detention, preservation or inspection of any property or thing which is the subject of the cause or matter.

121. In addition to the powers under the AML Act, there are provisional measures provided for in the ACA. Sections 22-25 of the ACA provide that the ACC can direct any person not to dispose of any property it specifies in a notice not to deal in such property for a period of six months with a possibility of extending such period. The powers to restrict disposal of property applies to third parties who are holding property on behalf of a person suspected of having committed a corrupt act.

122. **Ex Parte Application for Provisional Measures (c. 3.3):** Applications for freezing and seizure of property subject to confiscation are made *ex parte* before the court.

123. **Identification and Tracing of Property (c. 3.4):** Section 16 of the AML Act enables the Authority and CISU to apply to court for a production order to obtain documents to identify, locate and quantify the property of a person suspected to be engaged in money laundering. The section further provides for a financial institutions to be required to produce transaction records for a period specified in the order.

<p>124. Section 23 provides for a competent authority namely AG, Governor of BSL and CISU, to apply to a court for a production order similar to that obtained under Section 16, except a) that there is no explicit requirement for the application to relate to a person suspected for money laundering or for the tracing of proceeds of crime; and b) that if the person or body required under the order to produce the document is delaying in the production of the document, the competent authority is able to search any premises to retrieve it.</p>		
<p>125. The provisions raise two concerns. Firstly, under section 13(j), the Authority is prohibited from conducting any investigation into money laundering. Because the act of identifying and tracing property is an investigative process and if the Authority were to exercise this power, it would be a violation of section 13(j). The second concern is that the SLP, which is the primary investigative agency within Sierra Leone, has not been given the authority to apply for such orders. The authorities should review these provisions and provide clarification on how identification and tracing of property would have to be conducted.</p>		
<p>126. Protection of Bona Fide Third Parties (c. 3.5): Protection of third party interest is provided for in sections 21(2) and 22(3) of the AML Act. In particular, section 21(2) provides in the case of freezing orders that, a court in making any order freezing the property of a suspect, may give directions as to the determination of any dispute as to the ownership of or other interest in the property. Under section 22(3), when a court is making a forfeiture or confiscation order, the court may give directions for the purpose of determining any dispute as to the ownership of or other interest in the property.</p>		
<p>127. Power to Void Actions (c. 3.6): The power to void actions is covered under the principles of common law dealing with illegal contracts or contracts that are contrary to public policy.</p>		
<p>128. Analysis of Effectiveness: The powers provided under the AML Act, the Civil Procedure Rules and complementary laws such as the ACA are adequate. However, there have not been used in seizing, freezing or confiscation of proceeds of crime.</p>		
<p>Recommendations and comments</p>		
<p>129. The authorities should consider –</p> <ul style="list-style-type: none"> • Providing for legislative and regulatory measures for the freezing, seizing and confiscation of instrumentalities used or intended to be used in the commission of predicate offences or offences related to FT. • Providing a criteria or guide for determining elements that would constitute control on the part of a person suspected of engaging in ML or person convicted of ML. • Extending the time or make provision for extending the period so as to facilitate further investigations in a ML case and thereby to continue freeze a suspect’s property. • Resolving the conflict that exists in the AML Act between section 13(j) on one hand and sections 16 and 23 on the other. • Enabling the SLP as an agency responsible for the investigation of criminal cases to apply for the relevant orders. 		
<p>Compliance with FATF Recommendations 3</p>		
R.3	PC	<ul style="list-style-type: none"> • There is no provision for confiscating instrumentalities used in commission of a predicate offence or offences related to FT. • There have been no ML or FT related cases to determine how effective and efficient the system is.
<p>1.4 Freezing of funds used for terrorist financing (SR.III)</p>		
<p>Description and analysis</p>		
<p>130. Legal Framework: There is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons pursuant to the United Nations Security Council Resolutions. In response to UN Resolution 1373 (2001), Sierra Leone established a high level National Committee on</p>		

Counter-Terrorism (NCCT) comprising the Financial Secretary; the Governor of BSL; the Director-General of the Ministry of Foreign Affairs and International Cooperation; the Inspector-General of Police; the Commissioner, National Revenue Authority; the Chief Immigration Officer; the Coordinator, Office of National Security; the Head of National Drug Control Agency; the Registrar, National Registration Secretariat; the Permanent Secretary, Ministry of Mineral Resources; and the Permanent Secretary, Ministry of Transport and Communications.⁵ In discussions with various security and law enforcement agencies provided no indication as to whether this Committee has taken any action as part of its response to the UN Resolution. Some officials advised the assessors that some action has been taken with the 1267 lists by sharing it directly with immigration and other security personnel at the border posts and airport. On the other hand, it was not clear from discussions with other officials as to what course of action has been taken to implement the UN Security Council Resolutions. Indeed, even the Sierra Leonean UN Report of 2003 does not provide any information with respect to specific implementation measures giving effect to the UN resolutions.

131. **Freezing Assets under S/Res/1267 (c. III.1):** There is no legislative, regulatory or institutional framework for the freezing of terrorist funds or persons designated by the UN Al-Qaeda and Taliban Sanctions Committee in accordance with R1267. The authorities also advised the assessors that they have not frozen any assets belonging to persons on the 1267 list sent to the authorities. Indeed, the authorities advised that the only action taken by the authorities is to provide the Immigration Officers at the border crossing points with the 1267 lists, which they are required to check from if the individuals seeking to enter Sierra Leone have names similar to those on the list.

132. **Freezing Assets under S/Res/1373 (c. III.2):** In the absence of a freezing power, this is not applicable.

133. **Freezing Actions Taken by Other Countries (c. III.3):** In the absence of a freezing power, this is not applicable.

134. **Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):** In the absence of a freezing power, this is not applicable.

135. **Communication to the Financial Sector (c. III.5):** In the absence of a freezing power, this is not applicable.

136. **Guidance to Financial Institutions (c. III.6):** In the absence of a freezing power, this is not applicable.

137. **De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):** In the absence of a freezing power, this is not applicable.

138. **Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):** In the absence of a freezing power, this is not applicable.

139. **Access to frozen funds for expenses and other purposes (c. III.9):** In the absence of a freezing power, this is not applicable.

140. **Review of Freezing Decisions (c. III.10):** In the absence of a freezing power this is not applicable.

141. **Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3,**

⁵ See UN Report to the Security Council by the Government of Sierra Leone (February 2003)

<p>c. III.11): In the absence of a freezing power, this is not applicable.</p> <p><i>General Provisions</i></p> <p>142. Protection of Rights of Third Parties (c. III.12): In the absence of a freezing power, this is not applicable.</p> <p>143. Enforcing the Obligations under SR III (c. III.13): In the absence of a freezing power, this is not applicable.</p>		
<p>Recommendations and comments</p>		
<p>144. The authorities should –</p> <ul style="list-style-type: none"> • As a matter of urgency, establish the regulatory and institutional framework for implementing the requirements in the 1267 and 1373 resolutions. The authorities can consider using the Counter Terrorism Committee as one mechanism by which this can be done. • Establish regulatory and institutional mechanism to give effect to initiatives taken by other jurisdictions pursuant to resolution 1373. • 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. • Through the BSL provide appropriate guidance to the commercial banks and other financial institutions it licenses to advise them of their obligations in taking action under the UN Resolutions. • The authorities should ensure that in setting up the regulatory and institutional framework for implementing 1267 and 1373 resolutions includes processes by which listed persons can be de-listed; the unfreezing of funds of de-listed persons and innocent third parties; and reviewing of freezing decisions. 		
<p>Compliance with FATF Recommendations III</p>		
SR.III	NC	<ul style="list-style-type: none"> • No legislative, regulatory or institutional action has been taken. • There are no processes for dealing with all matters related to 1267 & 1373.
<p>1.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)</p>		
<p>Description and analysis</p>		
<p>145. Legal Framework: The legal provisions relating to the FIU are set out in Part III of the AML Act.</p> <p>146. Establishment of FIU as National Centre (c. 26.1): Section 12 (2) of the AML Act, which was brought into effect in July 2005, states that the FIU shall be established within BSL. At the time of the assessment, the FIU had not formally been set up.</p> <p>147. The authorities stated it is proposed that the Anti-Money Laundering Division of the Banking Supervision Department, which was set up in 2002, will become the FIU once a decision is made for it to become operational. The authorities project the FIU will be operating by the end of 2006. BSL has sought technical assistance from the UNODC in the creation of the FIU.</p> <p>148. Section 13(a) states the Authority shall “receive the reports required” to be made under Sections 6 and 14 of the AML Act. The Authority is defined in Section 12 as the Governor of BSL. Whilst Section 12(2) states the FIU will be set up within BSL, it is not fully clear within the Act, whether it is intended that the term ‘Authority’ is a reference to the FIU. The authorities stated that it was intended for the Authority to be the same as the FIU but legally, it is possible that a unit of BSL, other than the FIU, could act on behalf of the Governor as the Authority.</p> <p>149. Pursuant to Section 12(2), the FIU is responsible for the “expert analysis and processing” of the reports made in accordance with Section 14(a) of the AML Act. Section 14(a) refers to the requirement of a financial institution to maintain records of “new or unrelated” transactions exceeding 25 million Leones for 5</p>		

years after the transaction is completed. There is no requirement to report these transactions to the FIU. However, Section 13(a) sets out that the Authority shall receive the reports required to be issued by financial institutions under sections 6 and 14, namely the requirements to report suspicious transactions. When this issue was identified to the authorities, it was stated that a mistake had been made in the law. The legislation needs to be amended.

150. In discussions with the authorities, it was apparent there was little understanding of what analysis a FIU normally undertakes and no consideration had been given to the analysis process which would be implemented beyond checking the FIU's proposed database for matches and requesting further information from the reporting institution.

151. AMLD has received one STR pursuant to the Money Laundering Regulations (MLR) issued to financial service providers under the BA and OFSA in September 2002 though subsequent enquiry into the matter revealed there was no suspicion. The report was therefore not disseminated.

152. **Guidelines to Financial Institutions on Reporting STR (c. 26.2):** Section 13(g)(iii) states the Authority is required to issue guidelines to the reporting institutions. At the time of assessment, guidelines, which were to be issued in the form of regulations, had not been issued pursuant to this statute. The authorities stated the Legal Advisor for BSL who had been responsible for drafting the regulations which according to the AML Division's work plan had been scheduled to be ready by the end of June 2006, had resigned in May 2006 and no replacement had been found. No draft regulations were provided to the assessors. The suspicious transaction reporting form and a currency transaction report form have been drafted and circulated to members of the Stakeholders Meeting on the Implementation of the AML Act in March 2006 for comment. From meetings with the authorities, it was apparent most of the emphasis on drafting the forms had been aimed at developing the cross border currency reporting form. It should be noted that no consultation had been undertaken with the financial sector concerning the format of the forms which were relevant to them.

153. The draft suspicious transaction form contains the minimum data elements, which once completed, are required to enable basic analysis to be conducted. However, the form appears to be more a crime reporting form than a suspicious transaction reporting form, with categories of suspicious activity including, amongst others, consumer loan fraud, misuse of position, check kiting and check fraud. The form also seems to reflect BSL's experience of previous fraud cases that have involved staff from the financial institutions. The form also does not indicate which data elements are mandatory. It also contains elements which are beyond the reporting institutions' responsibilities such as recommending "any further investigation that might assist law enforcement."

154. The form titled 'Currency Transaction Report' has been drafted for the collection of data for the "Over-the-counter exchange dealings" as defined in Section 10 of the AML Act. Section 10 requires institutions to complete a "standard data form" for any "over the counter exchange transaction" over ten millions leones (USD3,000) or the foreign currency equivalent. "Over the counter exchange transaction" is defined Section 10(3) of the AML Act. The form contains the data elements required for the enforcement agencies to reconstitute transactions including the identity of the person conducting the transaction. The form should be retitled as the 'Over-the-Counter Exchange' Data form for consistency with the term used in the AML Act.

155. The MLR gave guidance on the identification of suspicious transactions and required that suspicious transactions should be reported to BSL or law enforcement agency. The law enforcement agency was not identified. The guidelines, however, did not provide any guidance on the format of a report, the information which should be provided and how a report should be submitted to either BSL or the law enforcement agency.

156. **Access to Information on Timely Basis by FIU (c. 26.3):** At the time of the assessment, no detailed thought had been given to the FIU analysis process and the information which the FIU would need to or was able to access. The authorities stated that they would seek to obtain information from other stakeholders such as SLP, NRA, and NDCA but BSL had not consulted the other agencies on the subject. It should be noted that there is no power provided for the FIU to access any information other than from

financial institutions to assist in its analysis of the reports received pursuant to Section 6 and 14. This may significantly limit the information available to the FIU.

157. **Additional Information (c. 26.4):** Section 13(f) provides the Authority with the power to instruct a reporting institution to “take such steps as may be appropriate to facilitate any investigation anticipated by the authority following a report or investigation made under this section.” The authorities stated this section would be used to obtain further information from the financial institutions to assist their analysis.

158. **Dissemination of Information (c. 26.5):** The FIU is empowered to disseminate any report received by it, in accordance with Section 13(b), if it considers there are “reasonable grounds” to believe the reported transaction involves the proceeds of crime. The reports can be disseminated to either the Director General of CISU or the AG’s office.

159. CISU’s functions are set out in Section 12 of the National Security and Central Intelligence Act 2002 (NSCIA) and include the collection and assessment of any intelligence that may constitute a threat to the security of Sierra Leone and to protect the State from threats including terrorism, money laundering and other serious crimes. CISU is authorized to conduct operations to collect intelligence to aid in their assessment of intelligence. The authorities stated CISU primarily has a covert role and any overt action will be performed by another agency, normally the SLP.

160. The AG’s Office has no mandate to conduct investigations. In disseminating the report to the AG’s Office, the authorities believed the report would be referred to the SLP for investigation. The AG’s Office was not able to advise the assessors why they had been included as an agency to which reports can be disseminated.

161. In restricting the dissemination of the reports to CISU and the AG’s Office, both of which are unable to take immediate overt action based on information in a STR, the effectiveness of the reporting regime is likely to be hampered.

162. One of the routine duties set out in the job description of the Head of the AML Division with BSL states that following the investigation of a suspicious transaction, a report “summarizing the findings of the examinations” will be circulated with the approval of the Director of the Banking Supervision Department, to the Banking Supervision Technical Committee of the BSL, the reporting institution, the Minister for Justice and the Inspector-General of Police. Unless the report is sanitized, the circulation of the findings of the investigation would effectively constitute dissemination to bodies other than those set out in Section 13(b) of the AML Act.

163. It should also be noted that Section 13(g)(ii) enables the FIU to “make to such persons as it may deem appropriate recommendations arising out of any information received.” Whilst this does not make specific reference to reports received by the FIU and it is considered the section is meant to provide the FIU with the authority to make recommendations on measures to prevent money laundering, the wording does leave some possibility for misinterpretation and should be re-worded to remove this.

164. **Operational Independence (c. 26.6):** The AML Act does not provide legal safeguards for the independence and autonomy of the FIU.

165. The authorities have stated the Anti-Money Laundering Division of BSL will become the FIU and the current reporting arrangements will continue. The head of AMLD presently reports directly to the head of the Banking Supervision Department who in turn reports to the Governor of the BSL. It is unclear whether the head of the AMLD or the head of Banking Supervision will be responsible to make the day-to-day operational decisions, including the dissemination of reports.

166. **Protection of Information Held by FIU (c. 26.7):** AMLD’s staff are currently housed within the same office as the Banking Supervision Department with no secure facilities. The authorities stated that office accommodation had been identified within BSL for the FIU. Whilst the proposed accommodation is two individual offices within the Banking Supervision, there are no effective means to secure the rooms or documents within them. In respect of IT facilities, the authorities are waiting for donor assistance in this

area.

167. **Publication of Annual Reports (c. 26.8):** Not Applicable

168. **Membership of Egmont Group (c. 26.9):** Not Applicable

169. **Exchange of Information Among FIUs (c. 26.10):** Not Applicable

170. **Adequacy of Resources for the FIU (c. 30.1):** The Anti-Money Laundering Division was set up in 2002 following the issuing of the regulations pursuant to the Banking Act concerning AML/CFT. The division, according to the 2004 Annual Report of BSL's Banking Supervision Department, was to have a complement of 7 staff and was to be headed by an Assistant / Deputy Director with 2 investigation managers to conduct analysis and 4 monitoring managers to ensure compliance with the regulations. However, due to a recruitment freeze throughout BSL, the current manpower is two; one Assistant Director and one Manager. It also pertinent to note that the Banking Supervision Department, excluding the Anti-Money Laundering Division, is understaffed by over 50%. Furthermore, only 20% of the AMLD's staff time is currently spent handling AML/CFT issues.

171. Beyond the roles of "receiving, analyzing and disseminating" suspicious transaction reports, the AML Act creates the following responsibilities for the FIU/Authority or empowers them to conduct the following actions :

- i. Section 9 (a) - Approval of the programmes introduced by all institutions covered by the AML Act for: 1) centralization of customer and suspicious transaction data; 2) ongoing training for the staff; and 3) internal audit arrangements
- ii. Section 13 (g) - 1) Maintenance of statistics and records on money laundering; 2) making recommendations on measures to prevent money laundering; 3) issue guidelines and to advise the Finance Minister on matters relating to money laundering
- iii. Section 13 (h) – Assess the training requirements of financial institutions concerning their record keeping and reporting obligations, and provide such training
- iv. Section 15 – Power to obtain and execute a search warrant to investigate failure to meet its obligation under the AML Act or where an employee of a financial institution is committing ML
- v. Section 16 – Power to obtain property tracking and monitoring orders

172. Section 17(2) – Apply to a court to obtain an injunction against a financial institution for failure to comply with any obligation under Section 14

173. There are other powers which are also provided to the Governor of the BSL in the AML Act relating to the freezing, seizing and confiscation of property, and assisting with mutual legal assistance requests, and which are anticipated that will be delegated to the staff of the FIU.

174. From the responsibilities and tasks which are likely to be performed by the staff of the FIU, the proposed staffing levels are anticipated to be insufficient.

175. The AMLD use office space and computer equipment assigned to the Banking Supervision Department. The authorities are seeking assistance from donors to secure the necessary IT resources to perform the work of the FIU.

176. **Integrity of FIU Staff (c. 30.2):** AMLD staff, as employees of BSL, are subject to BSL's employment conditions, which include a Code of Conduct. Breaches of the code of conduct can be sanctioned by a variety of measures including dismissal.

177. **Training for FIU Staff (c. 30.3):** Staff from AMLD have attended some training courses from some governmental and private sector organizations which have been hosted in surrounding countries and a

further training course is organized in the near future. However, in meetings with the authorities, it was apparent the level of knowledge of AML/CFT matters was limited. It is considered the staff have currently not received sufficient training on the operations of an FIU or the role of the FIU within an AML regime to permit them to effectively perform the functions of the FIU.

178. **Statistics (applying R.32):** The FIU is authorized to collect statistics and records on money laundering in accordance with Section 13(g)(i) and to disseminate the information within and outside Sierra Leone. However, it is not a mandatory requirement.

179. **Analysis of Effectiveness:** Whilst the AMLD has been set up and has received one STR, in practice, it is not performing the functions of the FIU.

Recommendations and comments

180. The authorities should consider:

- Reviewing the AML Act to provide for the following:
 - a) Empower the FIU as the authority to analyze and disseminate reports received under Section 6 and 14 of the AML Act
 - b) The FIU to receive information from other government departments to assist in its analysis of the reports
- Reviewing whether there is need to disseminate reports to agencies other than the CISU and the AG's Office to enable effective investigation of the matters.
- Organizing training for the staff of the AMLD on the operations of the FIU, the role of the FIU within an AML/CFT regime, and STR analysis.
- Clarifying whether the 'Authority' referred to throughout the AML Act will be the same unit as the FIU
- Reviewing the staffing levels for the FIU to ensure the responsibilities assigned to the FIU by the AML Act and by the Governor of the BSL, can be met.
- Reviewing the job descriptions of the FIU staff to ensure compliance with the AML Act
- Providing accommodation for the FIU with the necessary measures to secure the FIU's records
- Finalizing the draft suspicious transaction report forms after consultation with all appropriate bodies including the reporting institutions.
- Issuing guidelines to the reporting institutions with guidance on the reporting requirements contained within the AML Act and how the reports should be submitted to the FIU. The regulations should include the finalized reporting forms.
- Introducing measures to ensure the operational independence and autonomy of the FIU.
- Developing an operations manual for the FIU.

Compliance with FATF Recommendations 26, 30 & 32

R.26	NC	<ul style="list-style-type: none"> • The FIU has not been set up. • The AMLD which is expected to become the formal FIU, is not currently performing the functions of a FIU.
R.30	NC	<ul style="list-style-type: none"> • Current resources are insufficient. • The rating in this box is an aggregate rating of R.30 across the various parts of the report.
R.32	NC	<ul style="list-style-type: none"> • The single STR means the collection of statistics has not been effectively tested. • The rating in this box is an aggregate rating of R.32 across the various parts of the report

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

Description and analysis

181. **Legal Framework:** Sierra Leone Police - Police Force Act & Section 135 of the Constitution of Sierra Leone 1991; National Revenue Authority - National Revenue Act and Customs Act; Anti-Corruption Commission – Anti-Corruption Act 2000; Central Intelligence and Security Agency – National Security and Central Intelligence Act, 2002; Office of the Director of Public Prosecutions - Section 66 of the Constitution of Sierra Leone 1991

182. **Designation of ML/FT Investigations (c. 27.1):** Sierra Leone currently has four agencies, which can be involved with the investigation and prosecution of ML and TF cases, namely the Sierra Leone Police (SLP), the National Revenue Authority (NRA), the Anti-Corruption Commission (ACC) and the Office of the Director of Public Prosecutions (DPP). The Central Intelligence and Security Unit (CISU) has also a mandate to address, amongst other things, money laundering and as such, conducts financial investigations, but due to the nature of its operations, it does not bring prosecutions, which will be normally done by the SLP. The authorities reported that no money laundering and terrorist financing investigations have been conducted to date.

Office of the Director of Public Prosecutions

183. The position of the Director of Public Prosecutions (DPP) is created by virtue of Section 66 of the Constitution of Sierra Leone 1991. The DPP has the authority to institute criminal proceedings, take over prosecutions instituted by another person or authority, and discontinue any criminal proceedings, prior to any judgment is delivered.

184. Whilst the Office of the DPP does not get involved with the investigation of criminal offences, it may provide advice to the law enforcement agencies during and at the conclusion of an investigation. Cases referred to the office of the DPP are examined to determine the sufficiency of evidence and the appropriate charges, if any, to be brought.

185. The Office of the DPP is able to bring prosecutions in all courts, though the majority of cases heard at the magistrates court are brought by police prosecutors. The staff of the Office of the DPP will represent the State in cases at the High Court and above. To facilitate the hearing of cases outside of Freetown and the Western District, staff from the Office of the DPP are also based within the three other provinces within Sierra Leone.

Police

186. The Sierra Leone Police (SLP) is headed by the Inspector-General of Police, whose office is established under Section 155 of the Constitution of Sierra Leone, 1991. Its responsibilities include: the maintenance of public order; the protection of life and property; the prevention of crime, and the detection and prosecution of offenders. It is also currently conducting joint border patrols with the Sierra Leone Armed Forces (SLAF).

187. The investigative functions of the SLP are conducted by a Chief Superintendent of Police with an Assistant Inspector General Crime Services providing strategic leadership for CID, Interpol and Intelligence Services. The operations of the headquarter sections of the CID are divided into several sections, which includes an Anti-Organized Crime Unit which is responsible to investigate financial crimes.

National Revenue Authority

188. The National Revenue Authority (NRA) was setup in 2003 as a result of a merger of the Income Tax and the Customs and Excise Departments. It is responsible for the implementation of revenue and customs legislation within Sierra Leone. It is also tasked with the collection of non-tax revenues and operating the Government Gold and Diamond Office. The investigative capability of the NRA is the Special

Investigation and Intelligence Unit which handles all investigations which fall within the NRA's mandate

189. *Anti-Corruption Commission*

190. The Anti-Corruption Commission (ACC) was established in 2000 pursuant to the Anti-Corruption Act 2000, and is headed by the Commissioner. It is responsible for investigating allegations of corruption and for taking steps to eradicate or suppress corrupt practices including examining of the practices and procedures of government ministries and other public bodies to identify vulnerabilities for corruption and to perform public education.

Central Intelligence and Security Unit

191. Pursuant to Section 12(1) of the NSCI Act, the functions of the CISU include the collection and assessment of any intelligence that may constitute a threat to the security of Sierra Leone and protecting the country from threats including terrorism, money laundering and other serious crimes.

192. The CISU is provided with powers to collect intelligence to assist in their assessment of a threat. However, its staff have no authority beyond that as a private citizen, to arrest a suspect. The authorities stated that the CISU has primarily a covert role and that any overt action would be performed by another agency, normally the SLP.

National Drug Control Agency

193. Sierra Leone is in the process of setting up of a National Drug Control Agency (NDCA). The agency is expected to be created pursuant to a national drug control agency act, which at the time of the assessment was being considered by Parliament. The NDCA will have a mandate to conduct investigations into drug trafficking and any related money laundering. The assessors were unable to view the draft legislation though were advised that it contained provisions relating to the access to information and documents to support an investigation as well as permitting a variety of special investigation techniques.

194. **Waiver of Arrest of Suspects (c. 27.2):** Law Enforcement authorities have the authority to delay or waive the arrest or seizure of property for the purposes of evidence gathering or identification of other persons. This authority is implicit in the absence of any restriction on the authorities' discretion to time its arrest and seizure measures

Additional Elements

195. **Use of Special Investigative Techniques (c. 27.3 & 27.4):** Provision for the use of technical surveillance is provided to the CISU, pursuant to section 22 under Part VI of the National Security and Central Intelligence Act including interception of communication, records, documents and any other thing to be obtained. As no prosecutions have been conducted which make use of evidence from technical surveillance, it is not clear whether such evidence would be admissible in a trial.

196. The authorities reported that the proposed NDCA Act will provide authority for the use of special investigative techniques such as the interception of telecommunications and controlled deliveries.

197. **Mechanisms for Cooperative / Multi-Agency Investigation Teams (c. 27.5):** The authorities reported that joint operations can be conducted with other law enforcement units including the military. In the case of CISU, SLP and the NRA will assist in conducting any overt action including arrest and prosecution relating to their investigations. Other than the joint border patrols which are conducted by the SLP and the SLAF, arrangements for multi-agency action will be made on a case by case basis. To date, the multi-agency approach has not been adopted for investigations into suspected cases of ML or TF.

198. **Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):** As no money laundering investigations have been conducted to date, there is no mechanism for the review of ML or TF techniques.

199. **Production of Documents and Information (c. 28.1):** The powers to compel production of, search,

seizure and obtain financial records pursuant to the AML Act are covered under Section 1.3 – Power to identify and trace property of this report.

200. Under Section 18 of the Anti-Corruption Act, the Commissioner is able to authorize any investigating officer to “require from any person the production of any accounts, books, documents or other article” which may be required for the investigation. This power, which on the face of it could be utilized to require a financial institution to produce its records, appears to provide an alternative method to getting such records than the use of section 19 of the Anti-Corruption Act, in which the ACC is able to apply to the High Court to obtain copies of bank records of any person under investigation, their immediate family or persons with whom they have had dealings.

201. Section 30 of the Criminal Procedure Act provides a judge, magistrate or a justice of the peace the power to issue search warrants to a police officer or other person named in the warrant to enter any place to retrieve any article which is necessary to conduct an investigation into an offence which is known or is reasonably suspected to have occurred. This section can be used by the police or any other authority to search premises and to obtain any record which would assist in any ML or TF investigation.

202. The Commissioner of the ACC also has power under section 33(1) of the Anti-Corruption Act to authorize an investigating officer search any premises other than residential property to seize any items which are believed to be evidence. If the premises to be searched are residential premises, a Magistrate needs to issue a warrant for a search to be conducted. The Commissioner also has the authority to request any government body or agency for the production of any records.

203. Section 13(f) of the AML Act provides the Authority with the power to instruct “any financial institution to take such steps as may be appropriate to facilitate any investigations anticipated by the Authority” which arose from a report made under the AML Act. Section 14(c) of the AML Act further states that a financial institution must comply with such an instruction. Failure to comply would be an offence arising from the general offense for non-compliance with the AML Act in Section 45; the penalty for which is a fine not exceeding 30 million leones (approximately USD10,000) or imprisonment up to 5 years or both. The authorities stated the power would enable the Authority to instruct a financial institution to provide documents to or perform another action for the Authority or any investigating agency. Given the use of “anticipated” within the section, it is possible to interpret the section to enable an instruction to be made to the financial institution even if an investigation was not going on at the time, but which was believed may be conducted at some point of time in the future. This is a very broad power, which does not have any judicial safeguards. Furthermore, provided that the matter involved is a report made pursuant to Section 6 or 14 of the AML Act, the investigating agency is authorized to, at a minimum, circumvent the need to apply for a search warrant or production order.

204. **Taking Witnesses’ Statement (c. 28.2):** Officers from the SLP and the NRA can obtain witness statements in any matter when a witness is prepared to provide a statement, but do not have power to compel a witness to answer questions or provide a statement. A witness statement is not admissible as evidence in criminal proceedings, unless the defense agrees to the contents of the statement.

205. The ACC is given the “powers, rights and privileges as are vested in the High Court of Justice or judge thereof in a trial” to compel the examination of a witness under oath. The specific authority to summons a witness is set out in Section 18(1). The authorities stated such power is used in the collection of evidence from witnesses and not suspects. There is no power to compel a witness to answer a question put to them.

206. **Adequacy of Resources and Training for Law Enforcement and Prosecution agencies (c. 30.1 & 30.3):** The investigating and prosecuting authorities all cited a significant level of understaffing compared with the duties with which they are currently tasked. As an example, one agency demonstrated a manpower strength of nearly 60% below the established levels. This significantly affects the capability of the agencies to assign staff to specifically address ML and TF issues, especially given the priorities of the other tasks for which they are responsible.

207. Other logistics such as office accommodation, vehicles and computers are also limited and their

specific availability to handle ML/TF issues are in competition with other critical responsibilities of the relevant agencies. The authorities also mentioned the difficulty to attract and retain suitably qualified employees. The reasons for this problem were wide ranging and were not specifically related to AML/CTF work.

Office of the Director of Public Prosecutions

208. The staff of Office of the DPP has an establishment of 22 including the DPP but it currently has only 9 staff, one which is donor funded. The staff have received no training relating to the prosecution of financial, ML or TF cases. There is no facility to engage support facilities such as forensic accountants. The unit has significant logistical resource issues such as computers and office accommodation.

Police

209. The SLP currently has about 9,500 staff which are posted throughout the country. The investigative function of the SLP is conducted by the Criminal Investigation Department. The Anti-Organized Crime Unit which is based in police headquarters and is responsible to investigate financial crimes including money laundering cases, has a staff of 22, and is headed by a Superintendent. Donors have provided financial support to the SLP, which has enabled it to secure some general resources such as vehicles and some computer systems. The unit has not received any training on the investigation of ML and TF cases though it has received training on conducting financial investigations. It does not have any facility to engage support such as forensic accountants and has limited access to basic forensic investigative services.

National Revenue Authority

210. The investigative unit of the NRA, the Special Investigation and Intelligence Unit, is headed by an Assistant Commissioner with two other staff and handles both customs and revenue investigations. It is able to draw upon the expertise such as accountants from within the NRA. It has received no training on conducting financial or ML investigations.

211. *Anti-Corruption Commission*

212. The ACC has a current strength of 108 staff, which includes the Commissioner's Office, the investigative and corruption preventative units, and support staff. The investigative units have received training in relation to financial management and accounting but have not received specific financial investigations.

Central Intelligence and Security Unit

213. The CISU was created in 2002 although it is still in the early stages of being fully developed, and the recruitment and training of staff is still underway. It did not cite any specific resource issues.

214. **Integrity of Competent Authorities (c. 30.2):** Staff of the Office of the DPP are part of the Judicial and Legal Service Commission and the SLP is part of the Public Service Commission and as such, these agencies are subject to the rules and regulations of the respective commissions. These regulations include a provision relating to the expected staff conduct and permit action to be initiated for non-compliance.

Office of the Director of Public Prosecutions

215. The Chief Justice is also currently drawing up a Code of Conduct for the Judicial and Legal Service Commission to specifically address the issues pertaining to the staff within the Judiciary and the Ministry of Justice and its related departments.

Police

216. In addition to being subject to the rules and regulations of the Public Service Commission, SLP is governed by the Police Force Act which has disciplinary regulations attached to it. These regulations were revised in 2001. A Professional Standards Unit, which is headed by an Assistant Inspector General of Police, was established at the same time to conduct the investigation and prosecution of discipline matters. The sanctions for breaches of the discipline regulations range from a caution to dismissal from the Force. The

authorities informed the assessors that the full range of sanctions had been used in the program to improve the professional standards of the SLP.

National Revenue Authority

217. The NRA, which is not part of the Public Service Commission, has developed internal discipline procedures. It is currently drafting its Code of Ethics to support the procedures, compliance with which will form part of employment contract. The results of investigations into disciplinary matters are considered by a sub-committee of the NRA Board, which will make a recommendation to the Board on the sanction, if any, which can include dismissal, to be administered. The mechanism has proved effective, with one case leading to the dismissal of a Deputy Commissioner of Revenue.

218. *Anti-Corruption Commission*

219. Sections 49 and 50 of the Anti-Corruption Act enable the ACC to develop disciplinary procedures and provide for sanctions, including termination of employment. The Commission has a Code of Conduct which staff must comply with and a professional standards unit to investigate complaints against the commission's staff.

Central Intelligence and Security Unit

220. The National Security and Central Intelligence Act enables the National Security Council to issue regulations relating to disciplinary of its employees which includes CISU. Upon joining the unit, all staff are required to take oaths of office and secrecy.

221. **Statistics (applying R.32):** The authorities advised there have been no money laundering or terrorist financing investigations conducted to date. The SLP and ACC both compile cases statistics in relation to their responsibilities. The SLP produces an annual crime report which the authorities advised was being gradually upgraded in line with a project to enhance their statistics in general.

222. **Analysis of Effectiveness:** Whilst the CISU has been mandated with responsibility to tackle the threat of money laundering and terrorism, it is unable to bring a matter to court without assistance from another law enforcement agency. The SLP which has the authority to conduct investigations into all crime and has the powers to take an investigation to the prosecution stage, has not been tasked to handle money laundering. As such, there is currently no investigative agency, which has the capability to handle all aspects of an investigation including bringing the matter to court, has been designated to being responsible to conduct ML or TF investigations.

223. As no ML or TF investigations has been conducted to date, the investigative powers and ability to access the necessary information in pursuit of a ML or TF investigation have not been tested.

Recommendations and comments

224. The various investigative agencies are at different stages of development and each faces a different set of challenges in addressing their responsibilities though this must be considered in light of the overall situation within Sierra Leone.

225. The inconsistency of the legal investigative powers provided to the various agencies, may lead to some difficulty in one agency being able to conduct all aspects of a ML or TF investigation.

226. To investigate more effectively ML and TF cases, the authorities should consider:

- Designating an investigative agency with the capability to perform all aspects of an investigation, to conduct ML or TF investigations.
- Conducting awareness raising on money laundering and terrorist financing within law enforcement agencies, including the powers available under the AML Act.
- Conducting a detailed review of the resources available to investigate and prosecute ML and

<p>TF.</p> <ul style="list-style-type: none"> Organizing training on financial investigations for the relevant investigative agencies. Developing procedures to facilitate the collection of detailed statistics relating to money laundering and terrorist financing investigations conducted by law enforcement agencies and on the use of the powers under the AML Act. 		
<p>Compliance with FATF Recommendations</p>		
R.27	NC	<ul style="list-style-type: none"> There is no law enforcement agency which has full investigative powers and has been assigned responsibility to investigate ML and TF cases. No money laundering investigations have been conducted to date
R.28	NC	<ul style="list-style-type: none"> There is no evidence to demonstrate the effective implementation and use of the investigative powers of the AML Act.
R.30	NC	<ul style="list-style-type: none"> There are significant resources and capacity constraints which limit the relevant agencies' capabilities to effectively conduct investigations into ML and TF The rating in this box is an aggregate rating of R.30 across the various parts of the report
R.32	NC	<ul style="list-style-type: none"> The absence of ML or TF investigation means the collection of statistics has not been conducted There is no system to maintain statistics on investigations and prosecutions of ML and TF, or of the use of powers under AML Act with regard to asset recovery The rating in this box is an aggregate rating of R.32 across the various parts of the report
<p>1.7 Cash couriers (SR.IX)</p>		
<p>Description and analysis</p>		
<p>227. Legal Framework: Section 3 and 20 of the Anti-Money Laundering Act 2005; Sections 23, 24, and Fifth Schedule of the Exchange Control Act 1965; Exchange Control Regulations Governing Current International Transactions, dated December 20, 1995.</p>		
<p>228. Mechanisms to Monitor Cross-border Transportation of Currency (c. IX.1): There are currently two acts of legislation which cover the monitoring of the cross border transportation of currency, the Exchange Control Act 1965 and the Anti-Money Laundering Act 2005.</p>		
<p>229. Section 23 and 24 of the Exchange Control Act prohibit the import or export of foreign currency, unless in accordance with regulations issued by the Finance Minister. The Exchange Control Regulations Governing Current International Transactions, dated December 20, 1995 requires residents of Sierra Leone to declare foreign currency in excess of USD5,000 with supporting documents upon departure. Non-residents are entitled to take foreign exchange out of Sierra Leone up to the amount brought in with them, as such incoming non-residents are advised to disclose any foreign exchange above USD5,000 that is brought into Sierra Leone. Upon arrival in Sierra Leone, there is no notification to travelers of this requirement. The authorities indicated that the regulations were currently not being implemented but they were not able to provide a reason for this.</p>		
<p>230. Section 20(1) of the AML Act provides for the monitoring of the cross-border transportation of currency or bearer negotiable securities. This requires a person who leaves or enters Sierra Leone with more than USD10,000 worth of currency or bearer negotiable securities, to report the fact to the Authority beforehand, otherwise they commit an offence. The penalty for the offence is a fine not exceeding 30 million Leones (approximately USD10,000) or imprisonment up to 5 years or both. This requirement is mandatory as the section states it is required "Notwithstanding anything to the contrary contained in any other law".</p>		
<p>231. At present, discussions are on-going amongst the members of the "Stakeholders Meeting on the</p>		

Implementation of the Anti-Money Laundering Act” concerning the introduction of the reporting requirement under the AML Act and the design of the currency declaration form. This Stakeholders Meeting was first held in January 2006 following several instances where travelers arriving at the main international airport, Lungi airport, with more than USD10,000 in cash, had had the money seized by the SLP in accordance with section 3 of the AML Act. This states “Subject to such exceptions as may be prescribed by the Authority – (b) the transfer to or from any country outside Sierra Leone of any moneys exceeding the equivalent of ten thousand United States dollars otherwise than by or through a financial institution, are hereby prohibited.” To date, no exceptions have been issued by the Authority.

232. In clarifying the intent of section 3, the authorities stated it was to encourage the use of the financial system and to minimize the use of foreign currency within Sierra Leone. It was further stated that a “transfer” as referred to in the section would include the physical transportation of currency.

233. The seizure of the cash at the airport further raised concerns amongst the diamond industry as diamond related transactions are conducted in US denominated cash. Statutory Instrument No 18 of 2000 relating to the Exchange Control Act states that “transactions in diamonds for export shall be carried out and concluded” in US Dollars. Furthermore, Section 3 of the Statutory Instrument states that dollar notes carried by diamond exporters “shall be declared at the point of entry into Sierra Leone.” It would appear there is no direct conflict between Section 3 of the AML Act and Section 3 of the Statutory Instrument . The Section 3 of the AML Act only limits the amount of cash which can be brought in, but this limit could be raised by the granting of an exception by the Authority.

234. It should be noted that the importation of currency by diamond exporters is monitored by the Government Gold and Diamond Office (GGDO) in furtherance of the monitoring of diamond transactions. Licensed diamond exporters are required to declare any amount which is brought into Sierra Leone either by wire transfer or physical transportation, to the GGDO. If the funds are physically imported to Sierra Leone, the funds must taken to a bank to verify the amount imported. Banks will notify the GGDO in writing of the amount of cash or wire transfer brought in to Sierra Leone by the diamond exporter. If the exporter does not use the funds for diamond purchases, which must be documented to gain an export license for the diamonds, the exporter is required to export the funds.

235. Another issue which was raised concerns the timing of the declaration to the authorities. In discussions with the authorities, the assessors were advised that the section was difficult to implement practically as the requirement to declare the currency strictly must be done before entering the country which meant in the case of air travel, before the plane entered Sierra Leonean airspace.

236. The authorities were unable to provide an explanation concerning the differences between the requirements under the Exchange Control Act and the AML Act, and how the draft currency declaration form would address the differing requirements. Furthermore, the authorities had not set any deadline for the clarification of the issues concerning the cross border currency transportation reporting requirements.

237. It is further noted that the draft currency declaration form makes no reference to the Exchange Control Act and will require travelers to provide the total amount of foreign currency being carried regardless of whether the amount exceeds the USD10,000 threshold, which does not appear to be consistent with the Exchange Control Regulations.

238. **Information on Origin and Use of Currency (c. IX.2):** There is no explicit power to request further information on the origin and intended use of the transported funds and negotiable instruments.

239. **Restraint of Currency (c. IX.3):** Part III Para. 4 of the Fifth Schedule to the Exchange Control Act authorizes customs officers to seize anything being exported or imported in contravention of section 23 & 24 of Exchange Control Act.

240. There is no explicit provision for seizing or restraining currency at the border other than, Section 20 (2),(3) and (4) of the AML Act, which empowers an ‘authorized officer’ to search a person who is ‘reasonably believed’ to have failed to declared the currency in accordance with Section 20(1) and to seize any currency or negotiable bearer securities found during such a search which “may afford evidence’ of an offence under Section 20. An authorized officer is: a police officer of the rank of Assistant Superintendent and above, a customs officer, or an employee of BSL who is authorized by the Governor. It is not clear why

provision to empower an employee of BSL has been included in the definition of an 'authorized officer' and whether it would be limited to staff of the FIU.

241. **Retention of Currency and Identification Data by Authorities (c. IX.4):** The draft currency declaration form contains data fields for, amongst other things, information on the identity of the bearer and the amount of currency being carried.

242. **Access of Information to FIU (c. IX.5):** The authorities propose that the currency declaration form would be stored by Customs. They also stated that the currency declaration would be made available to the FIU should it be required.

243. **Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):** Mechanisms for the exact form of the cooperation of the relevant agencies in the administration of the currency declaration system have yet to be established.

244. **International Cooperation Among Customs, Immigration and Related Authorities (c. IX.7):** No specific cooperation arrangements have been made concerning the exchange of information concerning the cross border transportation of currency or negotiable bearer instruments. NRA, the customs authority for Sierra Leone, has not entered into any bi-lateral or regional arrangements for the exchange of customs related information exchange though information exchange does occur on an ad-hoc basis.

245. **Sanctions (c. IX.8):** Part II Section 3 of the Exchange Control Act provides for sanctions of imprisonment for not more than 3 months and a fine upon summary conviction, or upon conviction on indictment, imprisonment for not more than 2 years and a fine, for failing to make a disclosure. The section further provides that the court may order the forfeit of the currency or securities.

246. Under the AML Act, the penalty for failing to provide a declaration pursuant to Section 20(1) of the act is a fine not exceeding 30 million Leones (approximately USD10,000) or imprisonment up to 5 years or both. This provision also covers the making of false declarations.

247. **Sanctions (c. IX.9)** – There is no explicit provision for the sanctioning of persons carrying out cross border transportation of currency for cases in which it is suspected that the funds being carried, relate to money laundering or terrorist financing.

248. **Confiscation of Currency (c. IX.10):** The confiscation of property is provided for under Sections 21-23 of the AML Act which is discussed in Section 1.3 above.

249. **Confiscation of Currency Related to FT (applying c. III.1-III.10 in SR III, c. IX.11):** There is no provision for the seizing, freezing and confiscation of funds which are suspected of being related to terrorist financing

250. **Unusual Movement of Precious Metal and Stones (c. IX.12):** The possession and export of precious metals and stones are covered by the Mines and Minerals Decree 1994. The only licensing requirements are for miners, dealers, and exporters. The provisions are discussed in the Overview of the Financial Sector and Designated Non-Financial Businesses and Professions of this report. Sections 118C of the Mines and Mineral (Amendment) Act make it an offence to smuggle precious minerals from Sierra Leone. As such, there would be no unusual outward movements which would be covered by this criterion and hence, it is not applicable.

251. In respect of the unusual import of precious minerals into Sierra Leone, the lack of mineral processing services within Sierra Leone, the restrictions upon the sale and export of precious minerals, and the related taxes which need to be paid, mean it is highly unlikely that precious minerals would be lawfully imported into Sierra Leone. Furthermore, it is an offence under Section 118B of the Mines and Minerals (Amendment) Act to possess a precious mineral without being able to prove lawful possession. However, there are no formalized information exchange channels for the NRA to exchange information to determine

the source, destination and purpose of the movement.		
252. Systems to Ensure Proper Use of Information (c. IX.13): At present, there are no systems to ensure the proper use of the information reported.		
253. Analysis of Effectiveness: There is no current effective monitoring of cross border transportation of currency, either pursuant to the AML Act or the Exchange Control Act.		
Recommendations and comments		
254. It is clear that inadequate consultation was conducted concerning the introduction of the provisions of the AML Act, in particular Section 3, and the authorities did not anticipate the consequences for Section 20 of the AML Act in introducing Section 3 of the AML Act.		
255. To implement an effective system to monitor the cross border transportation of currency and negotiable bearer instruments, the authorities should consider :		
<ul style="list-style-type: none"> • Determining the full consequences of the introduction of Section 3 of the AML Act • Implementing the requirements of Sections 3 and 20, after consulting with the authorities involved with the effects of the implementation, and issuing exceptions in accordance with Section 3, where required. • Finalizing the cross border reporting form • Introducing systems to ensure the proper collection and storage of the completed forms and which enable access to the appropriate information by the FIU. 		
Compliance with FATF Recommendations		
SR.IX	NC	The requirement to report cross border transportation of currency and bearer negotiable securities, pursuant to Section 20 of the AML Act has not been implemented.

2. Preventive Measures–Financial Institutions

2.1 Risk of money laundering or terrorist financing
Description and analysis
256. The authorities have not conducted any formal risk assessment or developed any policies with respect to the preventative measures for different types of financial institutions, customers, products or transactions, beyond the scope provided in the FATF Recommendations.
2.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)
Description and analysis
257. Legal Framework: The legal framework for preventive measures is found in two places, the AML Act of 2005, Sections 1-14, and the MLR, which was promulgated in 2002. The AML Act applies to all financial institutions performing activities covered by the definitions section of the FATF Recommendations, while the MLR applies only to FIs performing activities that are regulated by the BSL under the BA and the OFSA. The BA and the OFSA regulate all the activities covered in AML Act with certain exceptions. However, as a practical matter these exceptions are of little consequence. They are of two types: activities that are not now undertaken in Sierra Leone (including life insurance services with an investment component, trading in commodity futures, and participation in securities issues); and activities that are undertaken only by FIs that are regulated under the BA or OFSA as a result of their other activities (including safe deposit, custodial services, and private investment services.) This means that, for all intent and purposes, at the present time the AML Act and the MLR cover the same FIs, and these encompass all those activities covered in the FATF standards. However, in order to distinguish

between the FIs that are as a matter of law covered by the Act and those that are regulated under the MLR, those covered by the Act will be referred to in this report as ‘covered persons’, and those regulated by the MLR will be referred to ‘supervised persons’.

258. With four key exceptions noted below, the AML Act provides for statutory obligations regarding preventive measures that are *fewer, less onerous, and less detailed* than found in the MLR. In one sense this is not surprising, in that in common law systems regulations are typically more detailed than laws, and in virtually all such jurisdictions most preventive measures are found not in laws but in regulations. However, the case with Sierra Leone is different in that the MLR actually preceded the AML Act, and often the AML Act seems to add little to the MLR other than confusion. In fact, the assessment team had difficulty determining how and why the preventive measures section of the AML Act came into being (and strongly suggest that it be reviewed). Regardless of these anomalies it is still the case that the MLR is fully in effect, and that with respect to preventive measures it is almost always more comprehensive and more detailed than the AML Act. As a result, the focus of the preventive measures assessment in this report will be on the MLR and not the Act. The assessment will describe in detail the relevant provisions of the MLR for each criterion. However, because the MLR is in general well drafted, the assessment will not discuss the adequacy of the MLR as written *unless there is a deficiency*. Absent such a discussion it can be assumed that the MLR as written is adequate to meet the relevant criterion. However, in order to be comprehensive with respect to description of the legal framework, the assessment will also describe the elements of the Act that relate to the relevant criterion. But because the AML Act adds little to the MLR (other than for the above mentioned four key exceptions) the assessment will not normally comment on the AML Act. However, unlike with the discussion of the MLR, this does not mean that the terms of the AML Act by themselves meet the relevant criterion. Issues with respect to the effectiveness of implementation of the MLR as written are discussed in the sections entitled “Analysis of Effectiveness.”

259. The first of the four key exceptions noted in the previous paragraph relates to sanctions. While the MLR provides the BSL with the usual range of supervisory techniques to enforce compliance, the Act provides for extensive criminal sanction for non-compliance. But while adding criminal sanctions means that law enforcement agencies must be involved in sanctioning non-compliance, no law enforcement agency appears to be aware of this responsibility or to be planning to implement these sanctions. In fact, the assessors question whether including criminal sanctions for breach of preventive measure obligations was intended by the authorities when the Act was drafted.

260. The second exception is found in AML Act Section 6(5), which prohibits tipping off. While tipping off is prohibited by the MLR, the BSL can only punish FIs and their employees and not other’s who might tip off. Also, this is one preventive measure where criminal sanctions are probably appropriate.

261. The third exception is found in AML Act Section 7, which protects those who file certain STRs in good faith from any action, civil or criminal (although this is limited to STRs filed under the terms of Section 4 and not other STRS an issue discussed at greater length below) Again, while the same provision is found in the MLR, the BSL has no legal authority to prohibit the prosecution of all civil and criminal actions.

262. The final exception relates to the legality of two key provisions in the MLR. Prior to the introduction of the AML Act there had been some question as to whether the MLR’s provisions on reporting suspicious transactions and making available reports on large or unusual transactions to the BSL breached the prohibition in the BLSA on the BSL inquiring into any specific account and the prohibition in the BA and OFSA on a financial institution disclosing to the BSL any specific account information. The AML Act, which was enacted after the BSLA, BA, and OFSAs and which therefore overrides any inconsistent provisions in those earlier acts, also has provisions on reporting suspicious transactions and making available reports on large or unusual transactions, although to the Governor of the BSL rather than the BSL itself. While the Governor and the BSL are not one and the same, in the

opinion of the DPP these provisions of the AML Act do in fact override the secrecy provisions of the BSLA, BA, and OFSAs and, therefore, the MLR no longer breaches any secrecy requirements. As a result, the authorities agree that the MLR is now fully in effect.

263. As a practical matter, only commercial banks and foreign exchange bureau carry on other than *de minimis* financial services, and those services are essentially limited to traditional commercial banking, money transfer services, individual savings accounts, and foreign exchange transactions. When considering the coverage and effect of AML/CFT policies in Sierra Leone, it is these institutions (each of which is under the supervision of the BSL) that are relevant.

264. **Anonymous Account (c. 5.1):** AML Act Sections 5 – 8 require that covered persons identify customers. The MLR Section 3.1.2 prohibits supervised persons from maintaining anonymous accounts.

When CDD Measures Required –

265. **Undertake CDD Measures (c. 5.2):** AML Act Section 4(1) requires that covered persons identify customers whenever an account is opened or custodial services are undertaken, safe deposit facilities are granted or any other similar business transaction are undertaken. Section 6(1) requires covered persons to seek the identities of transaction parties when a customer's business transactions exceed a 25 million leones (USD8333) daily aggregate and are unusual or of unjustified complexity or appear to have no lawful purpose. Section 10 (a) requires that bureau de change and casinos undertake CDD measures with respect to any transaction exceeding 10 million leones (US\$3,300), and Section 11 requires that casinos do the same with any transaction over 5 million leones (US\$1,667).

266. The MLR Sections 3.1.1, 3.1.2, 3.3.7, and 4.3 require that supervised persons undertake CDD measures, including customer identification, when a person establishes business relations, enters into fiduciary transactions, undertakes large cash transactions, undertakes a wire transfer, undertakes a FOREX transaction over US 10,000, or undertakes an occasional transaction where the transaction does not involve another supervised person, and that identification be undertaken on an ongoing basis. It does not, however, require CDD measures in the event that there is some suspicion of ML or TF.

Required CDD Measures –

267. **Identification of Customers (c. 5.3):** AML Act Section 4(2) requires that covered persons verify identity and address. Identity verification is to be made by passport, drivers license, national identity card or other official document bearing a photograph; address is to be verified by any document "capable of providing proof." Section 4(4) also requires that covered persons verify identification according to the above requirements of any individual delegated as a director, employee, or agent who may enter into a transaction for third parties, and of any individual who is a beneficiary. Sections 10 (b) and 11 require that persons engaged in over-the-counter FOREX transactions and casino customers verify identity through a passport, drivers license, national identity card or other official document bearing a photograph.

268. MLR Section 3.1.3 requires that supervised persons verify identity and address. Identity verification is to be made by passport, national identity card, security force card, employer identity card with photograph, drivers license, local telephone directory, utility bill, or confirmation letter from employer.

269. **Identification of Legal Persons or Other Arrangements (c. 5.4):** AML Act Section 4(3) requires that covered persons identify customers that are "body corporate" through production of memorandum and articles of association and any document establishing that it is lawfully registered and in existence. Any individual delegated as director, employee, or agent in relation to a business transaction must also be identified. Section 1 defines "identification record" to include "the details of" a certificate of incorporation, any officer of the corporation, and "otherwise" sufficient documentary

evidence to prove that the body corporate is who it claims to be. It also requires the most recent annual return under the Companies Ordinance (CO) which includes a list of current directors and shareholders. For foreign corporations similar documents must be presented, and must be notarized.

270. Under MLR Section 3.1.4, supervised persons that are “corporate customers” (defined as any legal person) must identify directors and account signatures and review the same documents required in the AML Act, and that when there is uncertainty a search should be made in the Office of Administrator and Registrar General (OARG).

271. **Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):** AML Act Section 4(4) requires that when an individual is delegated as a director, employee, or agent in relation to a business transaction, covered persons must also identify “beneficial owners.” Section 5(1) states that whenever it is “uncertain” that a customer is acting on his own behalf, the covered person must seek information as to the true identity of the principal.

272. The MLR Section 3.1.6 requires that supervised persons take reasonable measures to obtain information about the identity of all persons on whose behalf an account is opened or a transaction is undertaken. Section 4.2 requires that when an account is opened on behalf of a third party, including in the form of a trust or as a nominee, enhanced diligence be undertaken with respect to identification of all parties. There is no specific requirement with regard to understanding the ownership and control structure of the customer or understand the natural person who exercises effective control over the legal person. To comply fully with the criterion the MLR must be amended.

273. **Information on Purpose and Nature of Business Relationship (c. 5.6):** The AML Act includes no sections requiring covered persons to gather information on the purpose and nature of the business relationship with a customer.

274. The MLR Section 3.1.7 requires supervised persons to understand enough about a customer and its business so as to be able to identify those changes in customer activity that could be grounds for further inquiry and the possible filing of an STR. Minimum requirements include details on the purpose of the business relationship and purpose of the account, anticipated volume and type of activity, and source of funds.

275. **Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):** The AML Act includes no sections requiring covered persons to engage in ongoing CDD beyond monitoring for transactions that exceed 25 million leones (US\$8333) in daily aggregate that are unusual or of unjustified complexity or appear to have no lawful purpose..

276. The MLR Section 3.1.1 requires that supervised persons conduct CDD as an ongoing process. Section 6.1 requires that this be sufficient to enable supervised persons to recognize when a customer transaction is inconsistent with its legitimate business or personal activities or normal business for type of account.

Risk –

277. **Enhanced Due Diligence for Higher Risk Customers (c. 5.8):** The AML Act includes no sections requiring covered persons to conduct enhanced due diligence for higher risk customers.

278. The MLR Section 4.5 requires that supervised persons apply enhanced CDD for private and offshore banking customers and public officials to establish underlying source of wealth, estimated net worth, source of funds, and any potential reputational risks associated with the customer.

279. **Applying Simplified CDD Measures (c. 5.9 – 5.12):** Neither the AML Act nor the MLR

includes sections on simplified CDD measures.

Timing of Verification –

280. **Timing of Verification of Identity (c. 5.13 -5.14 & 5.14.1):** Both the AML Act and MLR require the verification of the identity of the customer and beneficial owner during the course of establishing business relations as discussed above. Neither the AML Act nor the MLR permit covered or supervised persons to complete verification of identity following the establishment of business relations.

Failure to Complete CDD –

281. **Failure to Complete CDD (c. 5.15 & c. 5.16):** AML Act Section 5(2) states that if covered persons have any doubt as to the identity of a beneficial owner it must terminate the “banking” relationship without prejudice to the requirement to report a suspicious transaction.

282. The MLR 3.1.2 requires that supervised persons establish customer identification in order to begin and maintain a business relationship, which is interpreted by the BSL as forbidding supervised persons from doing so without customer identification.

Existing Customers –

283. **CDD Requirements for Existing Customers (c. 5.17 & 5.18):** Neither the AML Act nor the MLR includes specific provisions on CDD requirements for existing customers, suggesting that all required CDD must be undertaken immediately on all existing customers. Because this is unrealistic, to comply with the standard a regulation would have to be added that would conform to Recommendation 5.

284. **Identification, Risk Management and Ongoing Monitoring of Foreign Politically Exposed Persons (c. 6.1; 6.2; 6.2.1; 6.3 & 6.4):** Neither the AML Act nor the MLR have specific sections beyond what is described in comments on Enhanced Due Diligence for Higher Risk Customers. However, the BSL interprets MLR Section 4.5 as applying to both foreign and domestic public officials.

285. **Domestic Politically Exposed Persons (c. 6.5):** BSL interprets MLR Section 4.5 as applying to both foreign and domestic public officials.

286. **Ratification of the Merida Convention (c. 6.6):** The Merida Convention has been ratified.

287. **Respondent Institutions (c. 7.1 & c. 7.2) :** The AML Act includes no sections concerning correspondent banking or payable through accounts. MLR 3.1.2 requires that supervised persons take steps to ascertain whether a correspondent bank has AML procedures that are adequate, including when needed by requesting the correspondent’s written policies.

288. **Correspondent Relationships (c. 7.3 & c. 7.4):** The MLR 3.1.2 requires that senior management of supervised persons evaluate and approve the adequacy of a correspondent’s CDD process. Neither the AML Act nor the MLR include sections concerning a requirement for the two institutions to document their respective AML/CFT responsibilities in a written understanding. To comply with the standard a regulation would have to be added that would conform to this requirement.

289. **Payable-Through Accounts (c. 7.5):** Neither the AML Act nor the MLR include sections concerning payable through accounts.

290. **Misuse of New Technology for ML/FT (c. 8.1):** Neither the AML Act nor the MLR include sections concerning policies or measures needed to prevent the misuse of new technology for ML/TF. To

comply with the standard a regulation would have to be added that would conform to this requirement.

291. **Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):** Neither the AML Act nor the MLR include sections concerning policies or procedures to address the risks associated with non-face to face business relationships or transactions. While non-face to face business relationships are rare in Sierra Leone, there is some postal banking. To comply with the standard a regulation would have to be added that would conform to Recommendation 8.

292. **Analysis of Effectiveness:** The Methodology requires that “Assessors ... review whether there is adequate capacity and implementation of ... laws [and regulations]. **Laws [and regulations] that impose preventive AML/CFT requirements upon the banking, insurance, and securities sectors should be implemented and enforced through the supervisory process (emphasis added).**”The only statutory mechanism currently in effect in Sierra Leone for ensuring compliance with AML/CFT preventive measures is the BSL’s supervisory process. This process is undertaken pursuant to a supervisory program based on yearly on-site examination of all supervised persons and periodic off-site examinations. The examination program assesses compliance with BSL supervisory regulations and guidelines and, with the exception of FOREX dealers (which are discussed below), is conducted according to the Bank Examination Manual, which includes both procedural rules and all substantive issues to be examined.

293. In 2002, the BSL issued the MLR, which is binding on all supervised persons. However, the BSL has yet to incorporate the MLR Regulation into its examination process. Essentially, only those AML/CFT rules found in the BCPs themselves are included (i.e. fit and proper test, basic customer ID, some recordkeeping, basic suspicious transaction reporting, extensive sanctions for non-compliance). The BSL Examination staff indicated that they were, by and large, unaware of the contents of the MLR and did not include any of its contents in examinations other than what was in the Manual. Finally, a review of every bank examination report completed since 2001 uncovered no reference to the MLR or its contents other than what was in the Manual. This means that the BSL has not enforced compliance of the MLR other than the elements found in the Manual through the imposition of sanctions.

294. It is by reviewing the examination and supervision process that AML/CFT assessors determine if a particular rule has been effectively implemented. If the rule has been left out of the supervisory compliance process, it is exceptionally difficult for an assessor to determine if the rule has been effective. The assessment team did engage in informal discussions with officials from a sample of the relevant parties and reviewed any available written AML/CFT policies and forms. This sample included 5 of the commercial banks, a number of FOREX dealers, and a number of external bank accountants.. While these discussions shed some light on the AML/CFT compliance culture, they were not comparable to a MLR examination. In no instance did the assessment team find clear and convincing evidence that supervised persons were implementing any AML standards other than those found in the Examination Manual. For this reason, the assessment team could not conclude that any provision of the MLR was effectively implemented other than those substantially identical to those found in the Manual.

295. FOREX dealers are supervised according to a separate procedure that does not include any AML/CFT issues. It appears that no FOREX dealer follows any AML/CFT rules on its own.

296. The Examination Manual requires that customers be identified using adequate official documents with photo ID, that records of the ID process are retained, and that customers be prohibited from engaging in transactions if the ID is insufficient. No other aspects of CDD, including such ID measures as identifying beneficial owners or controllers, is included in the Manual. BSL examiners have been diligent in implementing this part of the Manual. Examiners have routinely checked signature and customer ID records and have written up banks for not keeping photo ID records. These elements of CDD standards are adequately assessed and enforced through the supervisory process and they are therefore effective. Other AML/CFT elements found in the Examination Manual will be addressed in

the relevant parts of the assessment.

297. Based on informal discussions with officials from the 5 banks, it would appear that the basics of customer identification, record keeping, and client account monitoring are being followed, although to a relatively greater or lesser extent depending on the bank. The assessment team believes that this conclusion is creditable in part because of the existence of various motivations for compliance. All banks wish to reduce regulatory risk by complying with all regulations, even those that are not yet subject to examination by the BSL, and all wish to protect and extend correspondent banking relationships with banks in jurisdictions where the FATF standards are in effect. Also, in the case of the 4 banks that are branches or subsidiaries of foreign parents, the banks would seek to comply with AML/CFT rules of their parent's jurisdiction.

298. Also based on discussions, it would appear that the 5 money transfer agents follow the strict CDD requirements of their organizations.

Recommendations and comments

299. The MLR should be revised to include provisions consistent with FATF Recommendation 5 regarding application of CDD to existing customers and those with suspicion of ML or TF and with regard to understanding the purpose and nature of the business relationship with a customer and a legal persons ownership and control structure, Recommendation 7 regarding payable through accounts, and Recommendation 8, regarding AML risk from new technologies.

300. Banks have noted that it is sometimes difficult to obtain one of the photo customer IDs required for customer ID. The assessment team was informed by Ministry of Internal Affairs that the government had approved a new national identification card with photo and that it will be available for issuance in the future (see discussion under Section 6 - Other Issues). Until such time, banks should be given some leeway as to which forms of ID are adequate for individual customers based on their profile. A number of banks have noted that current customer ID procedures are particularly cumbersome for poorer and often illiterate clients, which further discourages broader use of the formal financial system. The BSL should consider the appropriateness of allowing supervised persons to apply reduced CDD rules in low risk cases.

301. The BSL should cover all CDD measures in its supervision and examination. It should start developing an ongoing program to analyze AML/CFT CDD risks, create an AML/CFT CDD supervisory methodology for its supervision manual, train supervisors in the use of the methodology and manual, consult with supervised persons (especially the commercial banking sector) on the design of a compliance training program, and begin examinations based on the new methodology and manual.

Compliance with FATF Recommendations 5 to 8

R.5	NC	<ul style="list-style-type: none"> • There are no rules concerning CDD measures for existing customers, those with suspicion of ML or TF and with regard to understanding a legal persons ownership and control structure and the purpose and nature of the business relationship with a customer. • There is ineffective implementation of certain MLR requirements, including those with respect to ID of beneficial owners or controllers. • There is ineffective implementation of MLR requirements by FOREX dealers.
R.6	NC	<ul style="list-style-type: none"> • There are no specific provisions regarding appropriate risk management systems to address PEPs. • There is no effective implementation of MLR requirements, including PEPs.

R.7	NC	<ul style="list-style-type: none"> • There are no rules concerning documenting CDD by correspondent banks. • There are no rules concerning payable through accounts.
R.8	NC	<ul style="list-style-type: none"> • There are no rules regarding policies on the specific risk faced by non-face to face transactions. • There are no rules regarding policies on the misuse of technological developments in ML or TF schemes.
2.3 Third parties and introduced business (R.9)		
Description and analysis		
<p>302. Legal Framework: Under the MLR and the AML Act supervised and covered persons are not permitted to rely on intermediaries or other third parties to perform any of the elements of the CDD process.</p> <p>303. Reliance on Third Party for CDD Purposes (c. 9.1): Not applicable.</p> <p>304. Availability of Identification Data to Third Parties (c. 9.2): Not applicable.</p> <p>305. Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3): Not applicable.</p> <p>306. Adequacy of Application of FATF Recommendations (c. 9.4): Not applicable.</p> <p>307. Ultimate Responsibility for CDD (c. 9.5): Not applicable.</p>		
Recommendations and comments		
Not Applicable		
Compliance with FATF Recommendation 9		
R.9	N/A	
2.4 Financial institution secrecy or confidentiality (R.4)		
Description and analysis		
<p>308. Legal Framework: The legal framework is found in BSLA Section 64, BA section 49, 50 and OFSA section 47, 48, AML Act Sections 4-14, and MLR Section 3.</p> <p>309. Inhibition of Implementation of FATF Recommendations (c. 4.1): The authorities have not conducted a detailed overview of bank secrecy laws to determine if they might inhibit the operation of AML/CFT rules. However, the assessors did undertake such a review and found only one possible problem - there is a prohibition in the BLSA on the BSL inquiring into any specific account and a prohibition in the BA and OFSA on a financial institution disclosing to the BSL any specific account information. However, the passage of the AML Act, which was enacted after the BSLA, BA, and OFSA and therefore whose provisions override any inconsistent provisions in the earlier acts, has provisions on reporting suspicious transactions and making available reports on large or unusual transactions to the Governor of the BSL. While the Governor and the BSL are not one and the same, in the opinion of the DPP these provisions of the AML Act do in fact override prohibition disclosure of specific account information to the BSL. There are no rules in effect that would inhibit implementation of Recommendations 7 and 9 or Special Recommendation VII by financial institutions. Furthermore, there are no provisions that inhibit other supervisory or other competent authorities to implement the AML/CFT rules.</p>		
Recommendations and comments		

Conduct a review of all laws to ensure that none inhibits the operation of AML/CFT rules.		
Compliance with FATF Recommendation 4		
R.4	C	
2.5 Record keeping and wire transfer rules (R.10 & SR.VII)		
Description and analysis		
310.	Legal Framework:	The legal framework is found in AML Act Sections 1, 4, 6, 10, 11, 13, 14 and MLR Sections 3.1.3 through 3.1.5, 3.1.7-3.2.3, 3.3.1, 3.3.7, 3.5.2, 3.5.4.
311.	Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):	The AML Act, Section 14(a) requires covered persons to keep a business transaction record of any new or unrelated business transaction exceeding 25 million Leones (USD8,333) for 5 years following the completion of the transaction. The record must include name and address of all parties to the transaction, description of the transaction sufficient to identify its purpose and method of execution, the details of the account used for the transaction including sort code, and the total value. Section 10 (1) and 11 require bureau de change to keep a record of all FOREX transactions above 10 million Leones (USD3,333) and casinos to keep a record of all transactions over 5 million Leones (USD1,667), including name and address of customer/transactor, for 5 years following completion of the transaction.
312.		MLR Sections 3.3.1 and 3.2.2 require supervised persons to keep records sufficient to permit reconstruction of individual transactions so as to provide evidence for criminal prosecution, including customer/beneficiary name, address, other information normally recorded by the intermediary, nature and date of the transaction, type and amount of currency involved, and type and identifying number of any account involved, for 5 years following completion of the transaction. Section 3.3.6 requires that supervised persons provide the name of beneficiary, purpose of funds, and underlying business activity for FOREX transactions in excess of US \$ 10,000, which Section 3.3.1 requires to be kept for 5 years following the transaction.
313.	Record-Keeping for Identification Data (c. 10.2):	The AML Act, Section 6 (3) requires FIs to keep customer identification information for 5 years. Section 10 (1) and 11 require bureau de change and casinos to keep customer/transactor identification data for 5 years. The AML Act includes no sections concerning record-keeping for other information, such as account files in general or business correspondence.
314.		MLR Sections 3.2.1, 3.2.2, and 3.2.3 require that supervised persons keep customer identification information, account files, and business correspondence for 5 years.
315.	Availability of Records to Competent Authorities (c. 10.3):	The AML Act, Section 13(c) gives the Authority power to inspect a business transaction record held by a covered person (providing, under Section 13 (j) that the AMLA is not conducting “any investigation into ML other than for the purpose of ensuring compliance by a [covered person]”) and Section 14(d) requires that covered persons comply. The AML Act, Sections 15 and 16 give the Authority, the AG, and the CISU authority to inspect customer and transaction records and other information upon court authority.
316.	Originator Information for Wire Transfers (c.VII.1 – VII.7):	See Section 2.2 of this report on CDD. MLR Section 3.1.8 requires that supervised persons include originator information, including name, address, account number, and purpose of payment, and related messages on funds transfers that should remain with the transfer through the payment chain. The same rules apply for cross border wire transfers as for domestic. There are no de minimis rules with respect to wire transfers and no special rules for batch transfers. MLR Section 3.3.3 requires supervised persons to give enhanced scrutiny to transfers that do not include originator information
317.	Monitoring of Implementation of SR VII (c. VII.8):	There is currently no monitoring of

<p>compliance with rules and regulations implementing SR VII. To comply with the standard a regulation would have to be added that would conform to this requirement.</p>		
<p>318. Sanctions (c. VII.9): See comments on 2.10 on Supervisory and Oversight System. Supervisory sanctions apply for failure to comply with rules and regulations implementing SR VII.</p>		
<p>319. Analysis of Effectiveness: The Bank Examination Manual includes examination of whether banks retain customer ID records. This element is adequately assessed and enforced through the supervisory process and is effectively implemented. While anecdotal evidence suggests that other aspects of the CDD process are being at least partially implemented (see discussion in section 2.2) this cannot be confirmed.</p>		
<p>Recommendations and comments</p>		
<p>320. The BSL should cover formally all rules relating to record keeping and wire transfer in its supervision and examination.</p>		
<p>Compliance with FATF Recommendations</p>		
R.10	PC	<ul style="list-style-type: none"> There is no effective implementation of MLR requirements beyond basic customer ID records nor implementation of any requirements by FOREX dealers.
SR.VII	NC	<ul style="list-style-type: none"> There is no effective implementation of wire transfer rules.
<p>2.6 Monitoring of transactions and relationships (R.11 & 21)</p>		
<p>Description and analysis</p>		
<p>321. Legal Framework: The legal framework is found in AML Act Section 6 and MLR Section 3.</p>		
<p>322. Complex, Unusual Large Transactions (c. 11.1): AML Act Section 6(1) requires that covered persons seek information as to the origin and destination of money, the purpose of the transaction, and the identities of transaction parties when a customer’s business transactions that exceed 25 million Leones (in daily aggregate – USD8,333) are conducted in conditions of unusual or unjustified complexity or appear to have no lawful purpose.</p>		
<p>323. MLR 3.3.1 requires that supervised persons scrutinize all complex or unusual transactions and all unusual patterns of transactions, which have no apparent visible economic or lawful purpose.</p>		
<p>324. Examinations of Complex & Unusual Transactions (c. 11.2 & 21.2): AML Act Section 6(2) requires that when covered persons detect a business transaction described in c. 11.1 they draft a report containing all relevant information on the modalities of the transaction and the identity of the principal and of the transacting parties.</p>		
<p>325. MLR 3.3.1 requires that supervised persons examine as far as possible the background and purpose of a business transaction described in c. 11.1 and establish the findings in writing.</p>		
<p>326. Record-Keeping of Findings (c. 11.3): AML Act Section 6(3) requires that covered persons keep a copy of the report described above for 5 years following the “execution” of the transaction. Section 15 gives the Authority or the Director of the CISU the authority to apply to a court for a warrant to search the premises of covered persons and to remove any document.</p>		
<p>327. MLR 3.3.1 requires that supervised persons keep the report described above available to the BSL, auditors, and law enforcement agencies. MLR has no specific time limit for retention of such reports.</p>		
<p>328. Special Attention to Countries Not Applying Recommendations (c. 21.1 & 21.1.1): MLR</p>		

<p>3.3.1 requires that supervised persons scrutinize transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorism finance and to examine the background and purpose of such transactions. However, 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. To comply fully with the criterion the MLR must be amended.</p>		
<p>329. Application of Counter Measures (c. 21.3): Under AML Act Section 14 (3) the Authority and under BA Section 33 and MLR Section 7 the BSL have the authority to order supervised/covered persons to apply counter measures to countries continue not to apply sufficiently the FATF Recommendations.</p>		
<p>330. Analysis of Effectiveness: The Bank Examination Manual includes examination of whether supervised persons report suspicious transactions or monitor transactions for evidence of fraud. In assessing compliance with this provision examiners review all very large transactions. In a number of cases the BSL has written up commercial banks for not adequately monitoring transactions; in one case, supervisory action was taken resulting in the dismissal of a bank official. This means that there has been some effectiveness with respect to transaction monitoring. However, the procedures for examination are largely ad hoc and do not include any of the details required by the Recommendations or the MLR for monitoring for suspicious transaction reporting.</p>		
<p>331. According to reports from both the banking and accounting community, banks are particularly careful about monitoring business accounts largely because of concerns over possible fraud. Due to the small number of business accounts and relatively straightforward client profiles and therefore predictable nature of those accounts, neither monitoring nor suspicious transaction detection is particularly difficult. Accounts of individuals are also limited in number and mostly comprise small savings accounts. Again according to reports, any significant transactions in these accounts would be easily detected. Because this evidence is largely anecdotal, however (see discussion in section 2.2), it cannot be confirmed.</p>		
<p>Recommendations and comments</p>		
<p>332. The BSL should ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. The BSL should cover formally all rules relating to complex and unusual large transactions and their examination, record keeping of those examinations, special attention to countries not applying the Recommendations, and to the application of countermeasures in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.</p>		
<p>Compliance with FATF Recommendations 11 & 21</p>		
R.11	NC	<ul style="list-style-type: none"> • There is no effective implementation of most of the MLR requirements. • Supervision of compliance does not extend to FOREX dealers.
R.21	NC	<ul style="list-style-type: none"> • 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. • There is no effective implementation of MLR requirements.
<p>2.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)</p>		
<p>Description and analysis</p>		
<p>333. Legal Framework: The legal framework is found in the AML Act Sections 6 (4), 14 (b), MLR 3.3.4 and 6.4</p>		
<p>334. Reporting to FIU (c. 13.1 & IV.1): The AML Act Section 6 (4) requires that covered persons report to the Authority any transaction as described in Section 2.6 Monitoring of Transactions and Relationships whenever the covered person has reasonable grounds to believe that a transaction could</p>		

relate to money laundering, which under Section 1 includes the proceeds of crime. Section 14 (d) requires that covered persons report to the Authority any business transaction where the covered person or employee has reasonable grounds to believe that the transaction involves the proceeds of crime. Given that a transaction that should be reported under Section 6(4) requires grounds to believe that a transaction could relate to money laundering which would mean that the transaction would be reasonably believed to involve the proceeds of crime, the reporting requirement under Section 6(4) is redundant with the existence of Section 14(b).

335. MLR 3.3.4 requires that supervised persons report, in the form of an STR, to the BSL and the law enforcement agency (which is not defined) any assets involved in a transaction that they suspect stems either from a criminal activity or that are used to finance terrorism. MLR 6.4 further defines suspicious transaction as one that will often be inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account.

336. **STR Related to Terrorism and its Financing (c. 13.2):** MLR 3.3.4 requires that supervised persons report any assets involved in a transaction that they suspect are used to finance terrorism. There are no provisions within the AML Act with respect to the financing of terrorism.

337. **Reporting Threshold (c. 13.3):** There is no threshold in respect of the requirement to report transactions pursuant to Section 14(b) of the AML Act. Reporting requirements under AML Law Section 6 (4) apply only under the monitoring provisions of Section 6 (1), when a customer's business transactions exceed 25 million leone (USD8333) daily aggregate. Reporting requirements under the MLR have no threshold limits.

338. **Reporting of Tax Matters (c. 13.4):** There are no restrictions on reporting related to fiscal crimes.

339. **Additional Elements - Reporting of All Criminal Acts (c. 13.5):** AML Act Section 1 defines criminal proceeds as the product of any criminal activity anywhere that is a crime punishable by death or imprisonment of not less than 12 months. While Sections 6(4) and 14(b) refer to business transactions, Section 1's definition of transaction includes any activity with a covered person, which would include any funds with which the covered person would come in contact in the course of its business relationships.

340. MLR Section 3.3.4 refers to all crimes involved in a transaction.

341. **Protection for Reporting ST (c. 14.1):** AML Act Section 7 exempts all covered persons and their employees from all criminal and civil liability with respect to secrecy for reporting a suspicious transaction under Section 6(4) in good faith and that otherwise complies with the Act. There is no safe harbor provision regarding reporting under Section 14 (b). This is one of the four key exceptions where the AML Act's provision is more important than that of the MLR, which cannot, as a regulation only, provide a comprehensive safe harbor provision. In order to comply fully with the criterion, the AML Act must be amended to include any reporting of an STR in good faith, including under Section 14 (b).

342. BA Section 49 and OFSA Section 48 provide for supervised persons to maintain secrecy with respect to client account information except as needed to conform to the Acts, and Section 50 and 47 respectively, prohibit the BSL from inquiring into the affairs of any individual customer. MLR 3.3.5 provides limited protection from liability for breach of any restriction with respect to bank secrecy.

343. **Prohibition Against Tipping-Off (c. 14.2):** AML Act Section 6(5) makes it an offense for a covered person or any person required to make a report or having knowledge of such a report under Section 6 (4) to disclose to anyone other than a court, competent authority or other person authorized by law that the information in the report has been furnished under that section. There is no tipping off provision in relation to reports made pursuant to Section 14 (b). This is another of the four key

exceptions where the AML Act's provision is more important than that of the MLR, which cannot, as a regulation only, provide a comprehensive prohibition against tipping off. In order to comply fully with the criterion the AML Act must be amended to include any tipping off, including under Section 14 (b).

344. MLA 3.3.6 prohibits supervised persons, including directors, officers, and employees, from warning or tipping off customers when information relating to them is reported to the BSL or the law enforcement agency.

345. **Additional Elements – Confidentiality of Reporting Staff (c. 14.3):** In the AML Act, there is no provision with respect to confidentiality concerning the identity of the reporting staff. BSLA Section 20 (1) and (3) impose strict confidentiality on any information that arises regarding the affairs of the Bank or any person under its supervision.

346. **Consideration of Reporting All Large Currency Transactions (c. 19.1 - 3):** Officials have not considered the feasibility and utility of implementing a system where covered/supervised persons report all transactions in currency above a fixed threshold to a national central agency with a computerized data base.

347. **Guidelines for Financial Institutions (c. 25.1):** MLR provides general regulatory guidance for supervised persons with respect to their AML but not TF requirements. MLR Appendix A lists guidance for recognition of suspicious transactions for ML but not TF. No other guidance is provided. There is no STR form. However, it should be noted that the authorities are currently drafting a STR form (See Section 1.5 on FIU).

348. **Feedback to Financial Institutions (c. 25.2):** There is no formal system for providing feedback to supervised persons regarding suspicious transaction reporting. There has been informal feedback with respect to the one STR filed.

349. **Threshold Reporting & Tax Matters (applying c. 13.3 & 13.4 in R.13, c. IV.2):** There are no restrictions on reporting related to fiscal crimes.

350. **Analysis of Effectiveness:** The Bank Examination Manual includes examination of whether supervised persons report any suspicious transactions. However, this seems largely confined to whether the examiner believes that, after a quick review of large transactions, any are suspicious, and does not extend to an assessment of the effectiveness of the procedures for transaction reporting. The examination process also seems largely ad hoc. For these reasons it does not appear that examinations are effectively implementing any of the requirements regarding STR reporting. It should also be noted that there is no STR form, although one is currently being designed.

351. There has been one case of a bank reporting a suspicious transaction.

352. While there is some anecdotal evidence suggesting that suspicious transaction reporting and other reporting are being at least partially implemented, (see discussion in section 2.2) this cannot be confirmed.

Recommendations and comments

353. The AML Act should be amended to ensure that all good faith reporting of an STR is protected against liability, and that all tipping off is prohibited. The BSL should provide comprehensive guidance to financial institutions on detection of suspicious transactions, especially FT related transactions, and formal feedback on STR reporting. The BSL should cover formally all rules relating to suspicious transaction reporting in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.

Compliance with FATF Recommendations 13, 14, 19 and 25 (c 25.2) and SR IV

R.13	NC	<ul style="list-style-type: none"> • There is no provision for reporting of suspicious FT transactions in the AML Act. • There is no effective implementation of many key MLR requirements. • There is no effective implementation of MLR requirements by FOREX dealers.
R.14	NC	<ul style="list-style-type: none"> • Only good faith reporting of an STR under AML Act Section 6(4) is protected against criminal and civil liability. • There is no tipping off provision in relation to reports made pursuant to AML Act Section 14 (b).
R.19	NC	<ul style="list-style-type: none"> • Officials have not considered feasibility of reporting all transactions in currency above a fixed threshold.
R.25	PC	<ul style="list-style-type: none"> • There is no STR form. • There is no formal feedback process. • The rating in this box is an aggregate rating of R.25 across the various parts of the report.
SR.IV	NC	<ul style="list-style-type: none"> • There are no guidelines for implementation of TF requirements.
2.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)		
Description and analysis		
<p>354. Legal Framework: The legal framework is found in AML Act Sections 9, 14 and MLR 4.1</p> <p>355. Establishing Internal Controls (c. 15.1, 15.1.1 & 15.1.2): AML Act, Section 9(a) requires that covered persons centralize information on customer ID, principles, beneficiaries etc., and on suspicious transactions. Section 14(f) requires that covered persons develop procedures and controls to combat money laundering.</p> <p>356. MLR Sections 4.1.1 and 4.1.4 requires that supervised persons develop programs on AML and have in place policies and procedures adequate to deter use of their institution for ML, and ensure that they are communicated to staff at induction and at regular future intervals. These should include, at a minimum, policies, procedures, and controls, description of the nature and process of ML, explanation of the underlying legal obligations, an explanation of the vigilance policy and systems including CDD, suspicious activity and reporting requirements, and the designation of compliance officers at management level. While there is no specific provision on compliance officers having timely access to information, BSL policy is that anyone at management level must have timely access to relevant information.</p> <p>357. Audit Function (c. 15.2): AML Act, Section 9 (c), Sections 14 (f) and (g) require that covered persons develop internal audit arrangements, including audit procedures, to ensure compliance with the AML Act. MLR Section 3.1.4 requires that supervised persons instruct internal audit departments to verify on a regular basis compliance with AML policies, procedures, and controls. While there is no specific provision on adequate resources for the audit function, BSL policy is that in order to fulfill a substantive requirement under BSL regulations it is implied that there be adequate resources to ensure compliance.</p> <p>358. Ongoing Employee Training in AML/CFT (c. 15.3): AML Act Section 9(c) requires that covered persons develop ongoing AML training for officials or employees. Furthermore, section 14(e) specifically requires covered persons to comply with training requirements as determined by the AMLA. The reason for the two requirements is not understood.</p> <p>359. MLR Section 3.1.4 requires that supervised persons ensure that staff are trained in AML policies, procedures, and controls at induction and at regular future intervals.</p>		

360.	Screening Procedures (c. 15.4): MLR Section 4.1.4 requires that supervised persons develop policies and adequate screening procedures to ensure high standards when hiring employees.	
361.	Additional Elements – Independence of Compliance Officer (c. 15.5). Under MLR 4.1.4 supervised persons must establish compliance officers at management level.	
362.	Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2): Under the definitions section of the AML Act and the definitions section of the BA and OFSA, both the AML Act and the MLR apply to all overseas operations of persons of covered and supervised persons respectively. However, there are currently no foreign branches or subsidiaries of covered/supervised persons.	
363.	Communication with Home Country Supervisor (c. 22.2): Covered/supervised persons are not required to communicate with their supervisor when a foreign branch or subsidiary is unable to observe AML/CFT measures because this is prohibited by home country rules.	
364.	Additional Elements – CDD Measures at Group Level (c. 22.3): Supervised persons subject to the banking core principles are not required to apply consistent CDD measures at the group level taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.	
365.	Analysis of Effectiveness: The Bank Examination Manual includes no elements regarding internal controls, audit function, employee training, screening procedures, compliance officers, and audit process are being at least partially implemented (there are currently no foreign branches or subsidiaries of covered/supervised persons). While anecdotal evidence suggests that there is implementation (see discussion in Section 2.2) but this cannot be confirmed.	
Recommendations and comments		
366.	The MLR should be updated to include provisions consistent with FATF Recommendation 22.	
367.	The BSL should cover formally all rules relating to internal controls, audit function, employee training, screening procedures, compliance officers, and application of AML/CFT measures to foreign branches or subsidiaries in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.	
Compliance with FATF Recommendations 15 & 22		
R.15	NC	<ul style="list-style-type: none"> There is no effective implementation of the requirements of the AML Act and the MLR.
R.22	NC	<ul style="list-style-type: none"> There are no rules with respect to communication with home country supervisor or compliance with CDD measures at the group level. There is no effective implementation of requirements of the AML Act and the MLR.
2.9 Shell banks (R.18)		
Description and analysis		
368.	Legal Framework: There are no specific rules regarding shell banks.	
369.	Shell Banks (c. 18.1): While there are no specific rules prohibiting shell banks, BA Section 14(1)(e) requires that licensed banks accept deposits in Sierra Leone which is interpreted by the BSL as having at least one physical office. SL has never had a shell bank.	
370.	Correspondent Banking with Shell Banks (c. 18.2): There are no specific rules against	

correspondent banking with shell banks.		
371. Use of Accounts by Shell Banks (c. 18.3): There are no specific rules requiring covered persons to satisfy themselves that respondent institutions in foreign countries do not permit their accounts to be used by shell banks.		
Recommendations and comments		
372. The MLR should be revised to include provisions consistent with FATF Recommendation 18.		
373. The BSL should cover formally all rules relating to correspondent banking with shell banks and use of shell banks in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.		
Compliance with FATF Recommendation 18		
R.18	NC	<ul style="list-style-type: none"> • There are no rules with respect to correspondent banking with shell banks and use of shell banks. • There is no effective implementation of requirements of the AML Act and the MLR..
2.10 The supervisory and oversight system—competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)		
Description and analysis		
374. Legal Framework: The legal framework for the supervisory and oversight system and application of sanctions (with respect to AML/CFT concerns) is found in the AML Act Sections 10(4), 11(2), 43, 45, 46; BA Sections 14(1), 15(1), (4)(a)-(f), (6), 33, 35, 54, 55; MLR Section 7.1; OFSA Sections 7(8), 10 (1), 11, 28 (4), 35, 37, 45(5), 49, 51;.		
375. Effective, Proportionate, & Deterrent Sanctions (c. 17.1 & 17.4): For any violation under the AML Act for which specific sanctions are not provided, section 45 of the Act provides for a fine not exceeding 30 million leones (USD10,000) or imprisonment up to 5 years or both. Sanctions under the AML Act are criminal in nature and may be imposed only upon a finding of guilt by a court.		
376. The BSL has the authority to revoke a supervised person’s license, restrict a person’s license, require the person to adopt or pursue a particular course of action, require the person to follow directions or instructions, require the removal of a director, manager or officer, appoint an individual with temporary authority for such positions, specify other requirements, for failure to comply with orders apply cash penalties of not more than 2 million leones (USD667) per failure for the person or, if there is a failure to follow directions, not more than 5 million leones (USD1,667) plus not more than 3 million leones (USD1,000) for every director, executive, manager or other officer.		
377. MLR Section 7.1 provides that the BSL will penalize supervised persons for failure to comply with the MLR. That Section further lists a number of specific provisions for which breach is to be considered “an offense” liable to a “penalty” under “existing legislation.”		
378. Designation of Authority to Impose Sanctions (c. 17.2): Sanctions under the AML Act are criminal in nature and may be imposed only upon a finding of guilt by a court. BA Sections 4, 14, 15, 33 – 36 designate the BSL as an authority for imposing administrative sanctions for violation of the terms of the BA. OFSA Sections 7, 10, 11, 35 - 37 designate the BSL as an authority for imposing administrative sanctions for violation of the terms of the OFSA Act.		
379. Sanctioning Directors & Senior Management (c. 17.3): AML Act Section 44 states that when an offense under the Act is committed by a body of persons, every director or partner is also deemed to have committed an offense. BA Sections 15, 33, 35 gives the BSL the power to order to act, or require removal of, or replace any chairman, director, manager, or officer of the covered person.		

OFSA Sections 11, 35, 36, 37 gives the BSL the power to order to act, or require removal of, or replace any chairman, director, manager, or officer of the supervised person.

380. **Regulation and Supervision of Financial Institutions (c. 23.1):** The AML Act, BA, OFSA, and MLR provide adequate authority to the BSL to supervise all covered/supervised FIs to ensure compliance with the FATF Recommendations, but supervision is currently inadequate.

381. **Designation of Competent Authority (c. 23.2):** The BSL is the competent authority for ensuring compliance with the MLR.

382. **Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):** The AML Act Section 19 and second schedule exclude persons convicted of a long list of offenses from carrying on the business of a financial institution. BA Section 12 (2) requires the BSL, when considering granting a banking application, to take into account the character and fitness of directors and officers of a bank. Section 44 (1) disqualifies any director, manager, or other officer who “is convicted” of an offense involving dishonesty or fraud. There are no rules with respect to beneficial owners. OFSA Section 6 (a) requires the BSL, when considering granting a banking application, to take into account the character and fitness of directors and officers of an FI. OFSA Section 45 (a) disqualifies any director, manager, or other officer who “is convicted” of an offense involving dishonesty or fraud. There are no rules with respect to beneficial owners, although the Banking Regulation 2003, Section 2 and Seventh Schedule, Part I requires certain information (but not regarding probity) on persons holding 10% or more of the equity of the FI, or those who are otherwise in control.

383. **Application of Prudential Regulations to AML/CFT (c. 23.4):** Prudential regulations related to AML/CFT are effectively applied through the MLR and examination system.

384. **Licensing or Registration & Monitoring of Value Transfer Service (c. 23.5 & 23.6):** The OFSA requires licensing and supervision of value transfer services and FOREX dealers. The AML and MLR apply to both but are ineffectively enforced.

385. **Licensing and Regulation of Financial Institutions (c. 23.7):** All financial institutions must be licensed or registered and regulated and supervised. See discussion under legal framework in Section 2.2 on CDD. However, there are no such institutions engaging in any significant activities.

386. **Monitoring of AML/CFT by Supervisors (c. 29.1):** The AML Act Section 13; BA Section 32; and OFSA Section 34, the BSL has the power to monitor compliance of financial institutions with AML/CFT rules. See also discussion under legal framework in Section 2.2 on CDD.

387. **AML/CFT Inspections by Supervisors (c. 29.2):** Under the AML Act Section 13 c the Authority, and under BA Section 32, and OFSA Section 34, the BSL, has the authority to inspect covered/supervised persons to ensure compliance. See discussion under legal framework in Section 2.2 on CDD.

388. **Power to Compel Record by Supervisors (c. 29.3 & 29.3.1& 29.4):** Under the AML Act Section 13 c the Authority, and under BA Section 32, and OFSA Section 34 the BSL, has the authority to compel production of all documents by covered/supervised persons relevant to monitoring compliance.

389. **Adequacy of Resources for Competent Authorities (c. 30.1):** Resources are inadequate for the BSL to adequately enforce compliance with the MLR. In order for the BSL to cover all CDD measures in its supervision it would have to add those measures to its current program of supervision and examination. This would have to include developing an ongoing program to analyze AML/CFT CDD risks, creating an AML/CFT CDD supervisory methodology for its supervision manual, training supervisors in the methodology and manual, consulting with supervised persons (especially the

<p>commercial banking sector) on the design of a compliance training program, and finally beginning trial examinations. However, the current capacity of the BSL supervision department, which includes 27 supervisory staff of whom four are on study leave, secondments or sabbatical, is inadequate for existing prudential supervisory tasks, let alone the additional demands that adding compliance with AML/CFT regulations would create. Gearing up for an effective AML/CFT supervisory program in line with international standards will require the addition of both staff and staff support resources.</p>		
<p>390. Integrity and Ethical Standards (c.30.2): The BSL has specific employment conditions, including a code of conduct. Breaches of the code can be sanctioned by a variety of measures including dismissal. The BSL has a reputation for maintaining high standards of integrity and ethics.</p>		
<p>391. Training for Competent Authorities (c. 30.3): Training for BSL staff in AML/CFT has been intermittent. Considerable additional training is required.</p>		
<p>392. Additional Elements – Special Training for Judges (c. 30.4): There are no special training programs that have been delivered to the judges and magistrates in ML/FT matters.</p>		
<p>393. Effectiveness of Implementation: Outside of those aspects of the MLR that are not included in the Bank Examination Manual, BSL supervision has been broadly adequate in terms of examination, reporting, and remedial actions, although there was one incident where an order to replace directors to a state-owned bank was not complied with. However, there has been little implementation of the MLR, which has been discussed in depth in each section regarding preventive measures under the heading “Analysis of Effectiveness.” The BSL appears to have done a good job of ensuring that supervised persons are not owned or controlled by criminals, although the rules may not have been adequately enforced with regard to FOREX dealers.</p>		
<p>Recommendations and comments</p>		
<p>394. The BSL should cover formally the entire MLR in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD. It should apply sanctions as appropriate.</p>		
<p>395. The BSL should provide substantial additional AML/CFT training.</p>		
<p>Compliance with FATF Recommendations 17, 23 (c 23.2, 23.4, 23.6-23.7), 29 & 30</p>		
R.17	NC	<ul style="list-style-type: none"> There is no comprehensive system of sanctions application for failure to comply with AML/CFT rules.
R.23	LC	<ul style="list-style-type: none"> Only aspects of AML contained in the Examination Manual are subject to examination and supervision.
R.29	C	
R.30	PC	<ul style="list-style-type: none"> The BSL needs additional AML/CFT training. The rating in this box is an aggregate rating of R.30 across the various parts of the report.
<p>2.11 Money or value transfer services (SR.VI)</p>		
<p>Description and analysis</p>		
<p>396. Legal Framework: Money or value transfer services are covered/supervised persons, and only money transmitters that operate through banks regulated under the BA may conduct money or value transfer services. See discussion above under Section 2.2 legal framework for CDD</p>		
<p>397. Designation of Licensing Authority (c. VI.1): Under the OFSA the BSL licenses money or value transfer services.</p>		

398.	Application of Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX, c. VI.2): Money or value transfer services are covered/supervised persons, and as such all AML/CFT measures that apply to covered/supervised persons apply to them.
399.	Monitoring of Value Transfer Service Operators (c. VI.): Money or value transfer services are covered/supervised persons, and only money transmitters that operate through banks regulated under the BA may conduct money or value transfer services. As such they are monitored through yearly bank examinations.
400.	List of Agents of Value Transfer Service Operators (c. VI.4): Money or value transfer services are covered/supervised persons, and only money transmitters that operate through banks regulated under the BA may conduct money or value transfer services. All agents are thus available.
401.	Sanctions (applying c. 17.1-17.4 in R.17, c. VI.5): Money or value transfer services are covered/supervised persons, and as such all sanctions for non-compliance with the AML Act and MLR that apply to covered/supervised persons apply to them.
402.	Additional Elements – Applying Best Practices Paper for SR VI (c. VI.6): The measures set out in the Best Practices paper have been largely implemented.
403.	Analysis of Effectiveness: The Bank Examination Manual includes no elements specifically relating to money transfer operators. However, as noted in Section 2.2 on CDD, all money transfer operators within Sierra Leone are part of reputable global networks of formal money transfer operators i.e. Western Union, MoneyGram, and strong anecdotal evidence suggests that they comply with a global internal standard for AML/CFT and therefore all elements in this section. However, this cannot be confirmed.
Recommendations and comments	
404.	The BSL should conduct supervision of the money or value transfer service operators with respect to the MLR.
Compliance with FATF Recommendation SR VI	
SR.VI	NC
	<ul style="list-style-type: none"> There is no effective implementation of MLR requirements.

3. Preventive Measures–Designated Non-Financial Businesses and Professions

3.1 Customer due diligence and record-keeping (R.12) (applying R. 5, 6, 8 to 11, 17)
Description and analysis
405. Legal Framework: Under AML Act Section 1 and First Schedule, Part II, casinos, real estate agents, dealers in precious stones and metals, legal practitioners, notaries, independent legal professionals and accountants, are covered persons.
406. CDD Measures for DNFBPs (applying c. 5.1-5.18 in R. 5, c. 12.1):
407. <i>Anonymous Accounts (c. 5.1):</i> There are no specific rules forbidding anonymous accounts. However, AML Act Section 5 – 8 require that all customers be identified, and Sections 1 and 6(3) require that covered persons keep identification records for 5 years.

408. *Undertake CDD Measures (c. 5.2)*: The AML Act Section 4(1) requires that covered persons check customer identification whenever an account is opened or similar “business transactions”.
409. *Identification of Customers (c. 5.3)*: The AML Act Section 4(2) requires that covered persons verify identity and address. Identity verification is to be made by passport, driver’s license, national identity card or other official document bearing a photograph; address by any document “capable of proving proof.” Section 4(4) also requires the identification according to the above requirements of any individual delegated as a director, employee, or agent who may enter into a transaction for third parties, and of any individual who is the beneficiary.
410. *Casinos* – In addition to the general CDD provisions of the AML Act, Section 11 of the Act requires that identification of persons is conducted when exchanging chips or funds worth more than 5 million leones (approx USD1,666). The information is to be recorded on a standard data form. Given that casinos are covered under the general CDD provisions of the Act, Section 11 is redundant.
411. *Identification of Legal Persons or Other Arrangements (c. 5.4)*: AML Act Section 4(3) requires that covered persons identify “body corporate” customers through production of memorandum and articles of association, any document establishing that it is lawfully registered and in existence. Section 1 defines “identification record” to include the details of a certificate of incorporation (notarized if a foreign corporation) and the most recent annual return under the Companies Ordinance (notarized if a foreign corporation), any officer of the corporation, and otherwise sufficient documentary evidence to prove that the body corporate is who it claims to be. This includes any individual delegated as director, employee, or agent in relation to a business transaction.
412. *Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2)*: AML Act Section 4(4) requires that when an individual is delegated as a director, employee, or agent in relation to a business transaction, the covered person also identify beneficial owners. Section 5(1) states that whenever it is uncertain that a customer is acting on his own behalf, the covered person must ask for information as to the true identity of the principal. Section 5(2) states that if any doubt remains, the “banking” relationship must be terminated without prejudice to the requirement to report a suspicious transaction. Section 5(3) states that legal practitioners, public and private accountants, individuals with powers of attorney or authorized agents, acting as financial intermediaries may not invoke professional confidentiality in these cases.
413. *Information on Purpose and Nature of Business Relationship (c. 5.6)*: There are no specific rules requiring covered persons to gather information on the purpose and nature of the business relationship with a customer.
414. *Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2)*: There are no specific rules requiring covered persons to conduct ongoing due diligence.
415. *Enhanced Due Diligence for Higher Risk Customers (c. 5.8)*: There are no rules regarding enhanced due diligence for higher risk customers.
416. *Applying Simplified CDD Measures (c. 5.9 – 5.12)*: There are no rules regarding simplified due diligence measures.
417. *Timing of Verification of Identity (c. 5.13 -5.14 & 5.14.1)*: AML Act Section 4(1) requires that covered persons verify identity of customers before opening and account, taking into safe custody securities, granting safe deposit facilities, or engaging in any other similar business transaction. Section 6(1) requires covered persons to seek the identities of transaction parties when a customer’s business transactions that exceed 25 million Leones (USD8,333) daily aggregate are conducted in conditions of “unusual or unjustified complexity or appear to have no lawful purpose.
418. *Failure to Comply with c. 5.3-5.5 (c. 5.15)*: There are no specific rules with respect to failure to

comply with 5.3-55, except that AML Act Section 5(1) states that if the covered persons has any doubt as to the true identity of the principal the “banking” relationship must be terminated “without prejudice” to the requirement to report a suspicious transaction.

419. *Termination of Business Relationship (c. 5.16)*: AML Act Section 5(1) states that if the FI has any doubt as to the true identity of the principal the “banking” relationship must be terminated “without prejudice” to the requirement to report a suspicious transaction.

420. *CDD Requirements for Existing Customers (c. 5.17 & 5.18)*: There are no rules regarding CDD for existing customers.

421. **CDD Measures for DNFBPs (applying criteria under R. 6 & 8-11)**:

422. *Identification, Risk Management and Ongoing Monitoring of Foreign Politically Exposed Persons (c. 6.1; 6.2; 6.2.1; 6.3 & 6.4)*: There are no rules regarding identification, risk management, and ongoing monitoring for foreign politically exposed persons.

423. *Domestic Politically Exposed Persons (c. 6.5)*: There are no rules regarding domestic politically exposed persons.

424. *Ratification of the Merida Convention (c. 6.6)*: The Merida Convention has been ratified.

425. *Misuse of New Technology for ML/FT (c. 8.1)*: There are no rules regarding the misuse of new technology for ML/FT.

426. *Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1)*: There are no rules regarding non-face to face business relationships.

427. *Reliance on Third Party for CDD Purposes (c. 9.1)*: There are no rules permitting reliance on a third party for CDD purposes.

428. *Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1)*: The AML Act, Section 14(a) requires covered persons to keep a business transaction record of any new or unrelated business transaction exceeding Le 25 million for 5 years following the completion of the transaction. Under Section 1, the record must include identification records of all parties to the transaction, a description of the transaction sufficient to identify its purpose and method of execution, the details of the account used for the transaction including sort code, and the total value. The provision should be extended to cover all transactions regardless of amount.

429. *Record-Keeping for Identification Data (c. 10.2)*: The AML Act, Section 6 3 requires covered persons to keep identification information for 5 years.

430. *Availability of Records to Competent Authorities (c. 10.3)*: The AML Act, Section 13 c and 14 d gives the BSL, in its capacity as the AMLA the power to inspect any business transaction record held by the bank and to make copies.

431. *Complex, Unusual Large Transactions (c. 11.1)*: AML Act Section 6(1) requires that when a customer’s business transactions that exceed 25 million Leones in daily aggregate (USD8,333) daily aggregate are conducted in conditions of “unusual or unjustified complexity or appear to have no lawful purpose,” covered persons seek information as to the origin and destination of money, the purpose of the transaction, and the identities of transaction parties.

432. *Examinations of Complex & Unusual Transactions (c. 11.2)*: AML Act Section 6(2) requires that when covered persons detect a complex or unusual transaction that they draft a report containing all

<p>relevant information on the modalities of the transaction, the identity of the principal and of the transacting parties.</p> <p>433. <i>Record-Keeping of Findings (c. 11.3)</i>: AML Act Section 6(3) requires that covered persons keep a copy of the report for five years following the “execution” of the transaction.”</p> <p>434. Sanctions (applying c. 17.1-17.4 in R. 17, c. 12.3): The AML Act, Section 45 provides a criminal sanction for failure to comply with any of its provisions of a fine not to exceed 30 million Leones (US\$10,000) or by imprisonment for not more than five years or both.</p> <p>435. Effectiveness of Implementation: There has been no implementation of the AML Act.</p>		
Recommendations and comments		
<p>436. The authorities should issue regulations applicable to DNFBPs which address the following issues: gathering information on business relationship; requiring transaction records sufficient to enable the reconstruction of the transactions to be retained for all transactions; requiring ongoing due diligence and enhanced due diligence; identifying occasional customers except when the transaction exceeds a specific amount; requiring CDD for existing customers, foreign and domestic PEPs; and managing the risks of misuse of new technology for ML/FT, and non-face to face relationships. The authorities should consider introducing the thresholds and transaction types relevant to DNFBPs as specified in Recommendations 12 and 16 of the FATF Standards.</p> <p>437. The Authority should develop and implement a plan for ensuring compliance with the regulation. Awareness raising on the impact of the AML Act for DNFBPs should be conducted.</p>		
Compliance with FATF Recommendations		
R.12	NC	<ul style="list-style-type: none"> • There are serious gaps in the rules with respect to CDD. • There has been no implementation of the AML Act.
3.2	Suspicious transaction reporting (R.16) (applying R.13 - 15 & 21)	
Description and analysis		
<p>438. Legal Framework: See above under 3.1.</p> <p>439. Reporting to FIU (c. 13.1-4): Pursuant to Section 1 of the AML Act, DNFBPs are defined as financial institutions. Consequently, they are subject to the same preventative measures in the Act as other financial institutions. The reporting of suspicious transactions in accordance with the AML Act, is covered in Section 2.7 – Suspicious transaction reports and other reporting, of this report</p> <p>440. Protection for Reporting ST and Prohibition of Tipping Off (c. 14.1-2): Pursuant to Section 1 of the AML Act, DNFBPs are defined as financial institutions. Consequently, they are subject to the same preventative measures in the Act as other financial institutions. The provisions for protection when reporting suspicious transactions and prohibition of tipping off is covered in Section 2.7 – Suspicious transaction reports and other reporting, of this report</p> <p>441. Internal Controls, Compliance and Audit (c 15.1-4) - Pursuant to Section 1 of the AML Act, DNFBPs are defined as financial institutions. Consequently, they are subject to the same preventative measures in the Act as other financial institutions. Internal controls, compliance and audit are covered in Section 2.8 – Internal Controls, Compliance, Audit and Foreign Branches, of this report</p> <p>442. Special Attention to Relationships involving countries that inadequately apply AML/CFT measures and Countermeasures (c. 21.1 - 3): Pursuant to Section 1 of the AML Act, DNFBPs are defined as financial institutions. Consequently, they are subject to the same preventative measures in the Act as other financial institutions. The requirement to pay special attentions to relationships involving</p>		

countries that inadequately apply AML/CFT measures and the ability to apply countermeasures are covered in Section 2.6 – Monitoring of transactions and relationships, of this report.		
443. Effectiveness of Implementation: There has been no implementation of the AML Act in relation to DNFBPs.		
Recommendations and comments		
444. The blanket application of preventative measures to DNFBPs without regard to the specific transaction types and the introduction of appropriate thresholds for certain transactions, is over-burdensome and does not reflect the risk associated with the DNFBPs. The authorities should consider introducing the thresholds and transaction types relevant to DNFBPs as specified in Recommendation 12 and 16 of the FATF Standards.		
445. The Authority should develop and implement a plan for ensuring compliance with the regulation. Awareness raising on the impact of the AML Act for DNFBPs should be conducted.		
Compliance with FATF Recommendation 16		
R.16	NC	• There has been no implementation of the AML Act by DNFBPs.
3.3 Regulation, supervision and monitoring (R. 24-25)		
Description and analysis		
446. Legal Framework: Under AML Act Section 1 and First Schedule, Part II, casinos, real estate agents, dealers in precious stones and metals, legal practitioners, notaries, independent legal professionals and accountants, are listed as DNFBPs. The practitioners of the relevant businesses / activities are licensed pursuant to the following legislation: Legal Practitioners Act; Institute of Chartered Accountants of Sierra Leone Act; Mines and Minerals Act; National Tourism Development Act.		
447. Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3): Casinos are licensed to operate by the National Tourist Board of Sierra Leone. However, the licensing requirements do not relate to any gaming or financial transactions performed by the casino. The supervision of the casino concerns the quality of catering and hospitality services. There is no supervision of casinos in relation to AML/CFT.		
448. Section 11 of the AML Act provides that casinos are required to apply to BSL for a license to conduct exchange transactions. In the application for the license, it is necessary to prove the lawful origin of the funds required to set up the business. Whilst beneficial, this requirement does not provide for the identification of the persons involved with ownership, management or operation of the casino which is necessary to prevent criminals or their associates from being associated or involved with the casinos.		
449. Monitoring and Compliance of other DNFBPs (c. 24.2 & 24.2.1): The AML Act subjects all DNFBPs to the same preventative measure. However, there is no monitoring systems with respect to compliance to these AML/CFT measures. With the exception of real estate dealers, the other DNFBPs are subject to regulation of the respective sector's activities. Accountants and lawyers are governed by the Institute of Chartered Accountants of Sierra Leone Act and the LPA respectively. Wholesale dealers in precious stones and metals are governed by the Mines and Mineral Act. There is no regulation of retail precious stone and metal dealers.		
450. Guidelines and Feedback for DNFBPs (c. 25.1 - 2): There are currently no AML/CFT guidelines or feedback mechanisms for DNFBPs.		
Recommendations and comments		

451. The authorities should consider :		
<ul style="list-style-type: none"> • Designating an authority with the necessary expertise and resources, to license and supervise casinos in relation to their gaming operations and any related financial transactions • Introducing measures to enable the identification of persons involved with the operation, management and ownership of the casinos, and the checking of their background • Designating an appropriate authority for each of the DNFBPs sectors for the monitoring and ensuring compliance with AML/CFT measures. 		
Compliance with FATF Recommendations 24 & 25		
R.24	NC	<ul style="list-style-type: none"> • Licensing requirements and supervision of casinos do not relate to any gaming or financial transactions performed by them. • There are no effective measures to prevent ownership, control or operation of the casino by criminals.
R.25	NC	<ul style="list-style-type: none"> • There are currently no AML/CFT guidelines or feedback mechanisms for DNFBPs • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
3.4 Other non-financial businesses and professions—Modern secure transaction techniques (R.20)		
Description and analysis		
452. Legal Framework : Modernization of conduct of financial transactions – Section 3 of the AML Act.		
453. Other Vulnerable DNFBPs (c. 20.1): There is no indication that consideration has been given to introducing AML/CFT requirements to other professions or non-financial businesses, other than DNFBPs, or that assessments have been conducted which would identify that such businesses or professions are at risk of being misused for ML or TF.		
454. Modernization of Conduct of Financial Transactions (c. 20.2): Section 3 of the AML Act requires that “Subject to such exceptions as may be prescribed by the Authority – (a) the use of cash or bearer securities for payments exceeding in the aggregate 25 million leones in business transactions in one day per customer by financial institutions; and (b) the transfer to or from any country outside Sierra Leone of any moneys exceeding the equivalent of ten thousand United States dollars otherwise than by or through a financial institution, are hereby prohibited.” The authorities have stated this section was introduced to encourage the use of the financial system and to minimize the use of cash and foreign currency within Sierra Leone.		
455. Analysis of Effectiveness : Due to the lack of supervision of financial institutions, it is not known how effective the introduction of this section has been at reducing the reliance upon the cash. However, the introduction of Section 3(b) did cause problems for the importation of foreign currency by diamond exporters. Whilst no formal exemption has been issued for licensed diamond exporters, there appears to be agreement by the authorities not to enforce this restriction upon diamond exporters due to the monitoring of transactions by the MMR and the GGDO’s assertion that the US dollar is used to conduct diamond transactions globally.		
Recommendations and comments		

<p>456. The lack of money laundering or terrorist financing investigations restrict the authorities capability to assess the need for extending the AML/CFT requirements to other professions or non-financial businesses, other than DNFBPs, which may be at risk of misuse for ML or TF.</p> <p>457. To further the measures to tackle money laundering and terrorist financing, the authorities should consider :</p> <ul style="list-style-type: none"> • Introducing a mechanism to monitor the types of businesses and professions identified in the course of investigations that are being misused for money laundering and terrorist financing • Conduct an assessment of the businesses and professions within Sierra Leone to determine those which are at risk of being misused for money laundering or terrorist financing, and where appropriate consider introducing preventative measures • Devising a strategy to develop the formal financial sector and to increase access to financial services, with a view to modernizing the conduct of financial transactions. • Conduct awareness raising to the general public on the benefits of use of the formal financial sector. 		
Compliance with FATF Recommendation 20		
R.20	PC	<ul style="list-style-type: none"> • No assessment on the need to extend AML/CFT requirements to non-financial businesses and professions other than those listed in the FATF standards. • Limited efforts have been made to reduce the reliance upon cash for transactions.

4. Legal Persons and Arrangements & Nonprofit Organizations

4.1 Legal Persons–Access to beneficial ownership and control information (R.33)
Description and analysis
<p>458. Legal Framework: The Companies Ordinance, 1938, the Business Names Registration Ordinance, 1954, the Business Registration Act, 1983, the National Revenue Authority Act, 2000, and the Income Tax Act 2000 regulate the incorporation and registration of a business in Sierra Leone.</p> <p>459. In Sierra Leone, a business can operate in the forms of a company, a sole proprietor or a partnership. Sole proprietors and partnerships cannot limit the liability of the business owner(s) vis-à-vis creditors. Therefore, a sole proprietor or a partner of a partnership is liable for all claims against the business with all his personal assets. A company, on the other hand, can limit the shareholders' liability to the value of the subscribed shares (company limited by shares) or to the amount stated in the Memorandum of Articles and Association (company limited by guarantee).⁶ Limited Liability Companies may first register the business name, and then incorporate and register with the Office of the Administrator and Registrar General (OARG) located in Freetown before starting operation. Sole Proprietors and Partnerships must only register the business name, register with the District Tax Office and subsequently register and license the business with the OARG.</p> <p>460. The following describes the registration requirements for incorporating and registering a Limited Liability Company. Sole proprietors and partnerships would have to register the business name</p>

⁶ Section 3(2) of the Companies Ordinance, 1938.

with the OARG only if the business is carried out under a business name which does not consist of his or her ordinary name without any addition⁷. Sole proprietors and partnerships would also have to register with the District Tax Office.

461. Every company as well as sole proprietors and partnerships operating under a name other than the ordinary name of the owner(s), have to register a business name, which fulfills the legal requirements set in the Business Names Registration Ordinance of 1954. This means that the name should not already be taken by another business and should neither be misleading nor offensive. Section 18 of the Companies Ordinance and Section 10 of the Business Names Registration Ordinance describe the restrictions for business names. For example, if the name contains any form of the word “national”, then permission from the Ministry of Trade must be obtained.

462. The applicant must submit a standard Business Name Form, which is available at the OARG. If the name is available, then the OARG issues a Business Name Certificate. This certificate reserves the chosen name for a maximum period of one year. Every company needs to have a Memorandum of Articles and Association containing certain basic information about the entity to be formed. The minimum content of a Memorandum is prescribed in Section 4 of the Companies Ordinance. It is mandatory that the Memorandum is prepared and signed by a Solicitor according to the Legal Practitioners Act of 2000. There is no standard fee for the preparation of the Memorandum for a prospective company. Solicitors in Freetown charge between US\$ 400 to 5,000 for preparing a Memorandum with about US\$ 1,000 for a standard Memorandum.

463. The NRA issues a Provisional Tax Assessment Certificate stating that the applicant has paid the first half yearly rate of the provisional income tax. Companies have to apply with the large taxpayers unit of the Income Tax Department of the NRA in Freetown. Sole proprietors and partnerships must apply with the District Tax Offices. Applicants must submit copies of the: Memorandum and Articles of Association; and Certificate of Incorporation. The NRA opens a taxpayer file, assigns a tax number and gives a questionnaire to the applicant. After the applicant returns the filled in questionnaire, the NRA assesses the provisional tax to be paid in the first year and sets a quarterly schedule for the due dates. The NRA issues after payment of the first installment a Tax Clearance Certificate; and Written Statement.

464. **Transparency Mechanisms (c. 33.1):** The purpose of a company registry is to ensure that all companies fulfill the minimum legal requirements of corporate governance and to provide business information to the public. Therefore, a company registry has to have sufficiently trained employees to assess the Memorandum of Articles and Association of a company and must be organized in such a way that the public can obtain essential information on registered businesses.

465. There is no obligation in the Companies Ordinance or any regulation for that matter that requires the authorities to verify the integrity of the persons forming the company/sole proprietorship/partnership or the accuracy of the information provided by a solicitor.

466. In order to strengthen the storage capability of the OARG, a computerization project has been financed by Department for International Development (DFID) and executed by the British Council as part of a broader Justice Sector development Project (JSDP) legal reform program. At the time of the mission, the first phase of funding was finished leaving the hardware and software locked in a room without being used. With a new round of funding, the installation and training shall be financed. It is not clear however, when the computerization project will be completed.

467. **Access to Information (c. 33.2):** The Register of Companies is maintained by the OARG and any person can inspect the records of a company upon paying a search fee. This register is kept manually

⁷ Section 3 of the Business Names Registration Ordinance, 1954.

<p>and includes relevant information on companies and undertakings: legal status, date of establishment, company capital, tax code, sector of activity, corporate bodies and powers of representation, etc.). It also includes details about changes in the status of the company (changes in board membership, address, etc.). Full details of the company’s managers are mentioned, including name and number of shares held as well as those of other persons holding specific functions in the corporate structure.</p> <p>468. In addition to the public record maintained by the OARG, section 94 of the Companies Ordinance requires every company to keep in one or more books a register of its members and include in their books the following particulars: the names and addresses, and the occupations, if any, of the members, a statement of the shares held by each member, the date at which each person was entered in the register as a member, the date at which any person ceased to be a member. Furthermore, under section 97 of the Companies Ordinance, the register of members is required to be kept at the registered office of the company and be open to inspection during business hours by any member of the public on payment of a fee for each inspection. Any change in shareholders will have to be declared in the shareholders meeting and entered in the register of the company. Pursuant to sections 106-109, every company is obliged to submit annual returns to the OARG. In practice however, this is done by very few companies primarily those that are large companies. The OARG advised the assessors that not much can be done in giving effect to these provisions as the Ordinance lacks the requisite enforcement mechanisms.</p> <p>469. Bearer Shares (c. 33.3): Section 71 of the Companies Ordinance, allows a company limited by shares, if so authorized by its articles, to issue a “bearer share” entitling the bearer of the warrant to the shares specified therein. The shares may be transferred by delivery of the warrant. Pursuant to section 96(1) of the Companies Ordinance, once a share warrant has been issued, the company is required to strike out of its register of members the name of the member holding the shares specified in the warrant as if he had ceased to be a member. Additionally, the company is obliged to register (a) the fact of the issue of the warrant; (b) a statement of the shares included in the warrant; (c) and the date of the issue of the warrant. Beyond the obligations provided for in sections 71 and 96, there is no other mechanism by which one can know or have access to information on the beneficial ownership of the bearer shares.</p> <p>470. Analysis of Effectiveness: The transparency mechanism established in the Companies Ordinance whereby the public can access the company registry is sufficient. However, because the information on the companies is recorded manually, manually maintained; and consequently there is no guarantee that the information stored will be accurate, reliable and that no files would go missing. Furthermore, the information maintained is not current because the OARG has no enforcement powers to compel companies to file their annual returns in a timely, consistent and efficient manner. The lack of submitting annual returns further undermines the reliability and dependability of such information even if there are no impediments to accessing the company records.</p>		
Recommendations and comments		
<p>471. The computerization project being financed by DFID and executed by the British Council as part of a broader Justice Sector development Project (JSDP) legal reform program will enhance the recording capacity and reliability of the information in the registry.</p> <p>472. The authorities should provide the OARG with appropriate enforcement powers to compel companies to submit annual returns in a timely manner.</p>		
Compliance with FATF Recommendation 33		
R.33	PC	<ul style="list-style-type: none"> • There is no enforcement mechanism to compel companies to submit annual returns in a timely manner. • Because the information is recorded manually, the accuracy and reliability is doubtful.

4.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)		
Description and analysis		
473. Legal Framework: The Conveyancing Acts 1881 and 1911 and the 1837 Wills Act governs the creation and administration of trusts in Sierra Leone.		
474. Transparency Mechanism (c. 34.1): Section 46 of the Conveyancing Act 1881 provides that the donee of a power of attorney may execute any instrument in and with his own name and signature and his own seal, or in the name and with the signature and seal of the donor. The instrument that is created is required under section 48 of the 1881 statute to be deposited with the High Court. The 1881 Act does not impose any obligations for the trustee to disclose who the beneficiaries are. Indeed, under the Companies Ordinance there is no requirement for trust to be entered into the register of members (section 100). The OARG indicated to the assessors that the only time a trust is required to be registered with his office is when it is under a Trust Deed. Even then the name or names of beneficiary can remain unknown to the public.		
475. Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2): There is no access of information on the beneficial owner under a trust for as long as it is a private arrangement or it is kept by a legal practitioner.		
476. Analysis of Effectiveness: Discussions with the legal practitioners in Sierra Leone indicated that trusts are not commonly used in Sierra Leone. They are primarily used for purposes of providing instructions for the administration of a person’s estate. The trustee is usually also a beneficiary under the trust.		
Recommendations and comments		
477. The authorities should consider:		
<ul style="list-style-type: none"> • Clarifying the rules on customer due diligence in relation to express trusts. • Adopting rules and practices that enhance the transparency of trusts. 		
Compliance with FATF Recommendations		
R.34	NC	• There are no transparency mechanisms in place.
4.3 Nonprofit organizations (SR.VIII)		
Description and analysis		
478. Legal Framework: There is no legislative or regulatory framework to regulate the operations of NPOs. ⁸ Consequently, the Non-Profit Organization (NPO) is governed by a document referred to as a ‘Policy Regulation’ issued by the GoSL for the Operations of Non-Government Organizations (March 2004). However, the Policy Regulation is not issued under any law.		
479. The Policy Regulation defines an NPO as “any independent, non-profit making, non-political and charitable organization, with the primary objective of enhancing the social, cultural and economic well being of communities.” The various types of NPOs operating in Sierra Leone include national and international, developmental, humanitarian/relief organizations with capacity to undertake active development or humanitarian/relief work in more than three chiefdoms in Sierra Leone		

⁸ See GoSL, Policy Regulation, For Operations of Non-Government Organizations, p.1 stating that “the absence of a legal framework to regulate the operations of NGOs since the restoration of democracy has put pressure on MODEP to develop this new policy.” (March 2004).

480. The Ministry of Development and Economic Planning (MODEP) is the GoSL agency mandated to coordinate and monitor the activities of both national and international NPOs and enhance the cooperation between GoSL and NPOs.⁹ MODEP does this through a UNDP support unit called the NGO Coordinating Unit which is tasked with registering, renewing and monitoring the activities of NPOs. The Policy Regulation is intended to enhance the coordination and monitoring of the activities of NPOs and ensure maximum benefits to the people of Sierra Leone.

481. As at May 3, 2006 there were a total of 254 NPOs registered and operating in Sierra Leone. Of this total, approximately 200 are National NGOs (NNGO) and the rest are International NGO (INGO). All NPOs seeking to operate in Sierra Leone must be registered. The authorities informed the assessors that it is illegal to carry on activities in Sierra Leone or be supported by donors without being recognized and certified by the MODEP. In addition, an NGO is required to be a member of the Sierra Leone Association of NGO (SLANGO).

482. **Adequacy of Laws & Regulations of NPOs (c. VIII.1):** The authorities have not for purpose of implementation of SR VIII reviewed the adequacy of laws and regulations of NPOs. The Policy Regulation as a mechanism by which the NPO sector is governed is adequate except when it relates to having effective and efficient enforcement powers. The GoSL has undertaken a review of the environment in which the NPOs operate. As a result of this review, the GoSL developed the Policy Regulation as discussed above in the paragraph on 'the Legal Framework'. There has never been a legislative framework for regulating the activities of NPOs. Furthermore, the office coordinating and monitoring the activities of NPOs indicated to the assessors that there is currently no plan to promulgate a law governing the NPO sector. Indeed, the Policy Regulation was predicated on the basis of 'mutual trust, confidence and transparency.' Specifically, the Policy Regulation provides as follows: "the increasing demand by NGOs for GoSL counterpart contributions in the form of grants, waivers and other logistics including storage, transportation and personnel gives cause for the rationalization of their activities."

483. Organizations wishing to operate as NPOs in Sierra Leone are required to meet the following criteria –

(a) have a clear mission statement outlining its purpose, objectives, target beneficiaries and constitution, which is in conformity with GoSL development policies and will promote the well being and welfare of Sierra Leone. In this regard, all NPOs operating in Sierra Leone are required to align their objectives with the Poverty Reduction Strategy Paper (PRSP);

(b) have an easily identifiable operating premises, accessible postal address, a bank account in the organizations name with at least two signatories and evidence/commitment to access funds to support its programmes;

(c) have clearly delineated administrative structure and transparent accounting system that is auditable and from which annual accounts can be compiled for audit;

(d) be transparent and accountable to donors, GoSL and beneficiaries in its use of resources, including a summary of overheads/direct support to beneficiaries, local/expatriates staff costs and estimated quantifiable costs of GoSL/community contributions to programmes;

(e) obtain and submit a latest tax clearance certificate;

(f) have and submit a list of membership of the Board of Trustees/Policy Making Body and contact address;

(h) submit last available audit of Sierra Leone operations;

(i) submit a summary of final donor project narrative and financial reports; and

(j) be willing to share relevant activity related reports with GoSL, other NGOs, beneficiaries and other interested parties.

⁹ See GoSL, Policy Regulation, For Operations of Non-Government Organizations, p.1 (March 2004).

484. As mentioned above, MODEP has oversight of the NPO sector through the NGO Coordinating Unit (NGO Unit) established in 2004. Working closely with the NGO Unit is a Supervisory Committee that reviews and approves applications of NPO activities. It consists of –

- i. MODEP as Chair
- ii. Ministry of Health
- iii. Ministry of Education
- iv. Ministry of Agriculture
- v. Ministry of Social Welfare
- vi. Ministry of Labor
- vii. Ministry of Internal Affairs (Immigration)
- viii. Ministry of Finance
- ix. National Revenue Authority
- x. European Union
- xi. DFID
- xii. ADB
- xiii. USAID
- xiv. UNDP
- xv. World Bank

The NGO Unit actively monitors the activities of NPOs both by staff based in Freetown and three monitoring officers based in the Eastern, Northern and Southern Regions. They do so on a regular basis by checking on the operations of the NGO with respect to its objectives as indicated at the time of registration; whether it is carrying out the project it indicated at the time of registration; whether the funds are being applied to the project as indicated to the NGO Unit; and whether the people said to benefit from the project are indeed the beneficiaries.

485. **Preventing Abuse by Terrorist Organizations (c. VIII.2):** The National NGO Coordinator advised the assessors that the authorities have not taken specific measures to prevent the abuse of terrorist organizations posing as legitimate NPOs. However, the assessors were able to verify that the NGO Unit has instituted extensive and appropriate measures to make it difficult if not, prevent NPOs from being abused for terrorist purposes. First the NGO Unit with support from the UNDP has recently launched a project for the creation of a centralized NPO profile database, gathering mandatory information related to all NPOs operating in Sierra Leone. As a result of this process, the NGO Unit has closed down 40 NNGOs and 10 INGOs for varying reasons including questions on the credibility of the NPO operations. The profile includes the activities of the NGO generally for example, health; clear indication of specific project by project being undertaken; a mandatory requirement for the NGO to open specific project account with a financial institutions to which MODEP has access to the account records to monitor the inflow and outflow of funds; information on how much funds are received; the source of such funds; and having audited accounts before a renewal is granted specifying how the money was been spent and the project for which the money was spent. A renewal of registration cannot be granted without producing audited accounts and verification of the fact that monies were spent on projects approved by the Supervisory Committee. Second, the NGO Unit has broken down the operations of the NGO not just by a region but by a district and section within the region. Third, no NGO can be registered without having opened an account with a financial institution and giving MODEP the authority to monitor the receipt and disbursement of the project. The assessors were able to verify this information with the documentation provided by the National NGO Coordinator.

486. **Diversion of Funds for Terrorists Purposes (c. VIII.3):** As discussed in the preceding paragraph, the NGO Unit monitors the inflow and outflow of funds by NPOs. There have been few instances of fraud discovered in the NPO sector in part due to an effective monitoring regime established by the authorities.

<p>487. Additional Elements – Best Practices Paper for SR VIII (c. VIII.4): The assessors were able to verify with the authorities that NPOs in Sierra Leone are required to maintain and do present full program budgets that account for all project expenses including administrative costs. NPOs are required and they do indicate the identity of recipients and how the money is spent. Furthermore, the NGO Unit conducts fact finding visits of project sites for purposes of verifying that the projects are actually being carried out; the beneficiaries are real and genuine; the beneficiaries have received the funds or have had the projects intended for their benefit carried out; and that the funds are accounted for.</p> <p>488. Analysis of Effectiveness: The current registration and monitoring framework for the NPO sector although not underpinned by law or regulation has established an effective regime in which their activities are able to be tracked and the way in which the funds received by NPOs are used. The NGO Unit was able to demonstrate that the measures introduced by the authorities have indeed been able to rationalize the operations of NPOs and enhance the cooperation between the GoSL and the NPO sector. Moreover the measures applied have enhanced the transparency and accountability in the NPO sector. However, the lack of an adequate enforcement mechanism to give effect to the Policy Regulation issued by the GoSL is a major gap in the framework Sierra Leone is building. 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 NGO Coordinator is the cancellation of registration 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.</p>		
Recommendations and comments		
<p>489. In order to further deepen the effectiveness of the authorities should introduce appropriate and adequate enforcement powers and sanctions for the NGO Unit. These sanctions should be underpinned by legislative or regulatory force in order to be effective.</p>		
Compliance with FATF Recommendations		
SR.VIII	NC	<ul style="list-style-type: none"> • There is no legal framework for the supervision of NPOs • The sanctions are not dissuasive and proportionate.

5. National and International Cooperation

5.1 National cooperation and coordination (R.31)	
Description and analysis	
<p>490. Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1): There is no specific agency or institution that has been mandated to coordinate the Government's AML/CFT policies.</p> <p>491. <i>Stakeholders Committee</i> – An ad hoc committee was set up in January 2006 following a Cabinet decision to resolve an issue concerning the cross border transportation of currency. The mandate was however not to domestically coordinate the development and implementation of policies and activities to combat ML and FT. The members of the committee consist of: the BSL (Chair & Secretariat), AG & Minister of Justice, NRA, Ombudsman, NDCA, CISU, SLP, CID, Ministry of Mineral Resources and Office of Vice President.</p> <p>492. <i>National Security Council (NSC)</i> – There is a NSC established under section 2 of the NSCIA whose objective is to consider and determine matters relating to the security of Sierra Leone. It was established in 2002 soon after the end of the civil war. The Council consists of: the President (Chair), Vice President, Minister of Finance, Minister of Foreign Affairs, Minister of Internal Affairs, Minister of Information and Broadcasting, Deputy Minister of Defense, Minister of State for Presidential Affairs, Inspector-General of Police, Chief of Defense Staff, and the National Security Coordinator (Secretariat).</p>	

<p>The NSC also directs the operations of CISU established in section 11 of the NSCIA. The CISU collects and assesses intelligence on threats against the security of Sierra Leone including terrorism, drug trafficking, money laundering and other serious crimes. Its functions do not include coordinating the development and implementation of activities to combat ML and FT.</p>		
<p>493. Analysis of Effectiveness: There is no effective mechanism for domestic cooperation concerning issues pertaining to AML/CFT.</p>		
<p>Recommendations and comments</p>		
<p>494. Discussions with several critical agencies revealed that there was no consultation between competent authorities, the financial sector, and DNFbps in the drafting of the AML Act. Indeed, the only time relevant stakeholders became involved in the process of passing the AML Act was when the Bill was introduced in parliament. This explains some of the challenges Sierra Leone is facing in attempting to implement some of the provisions of the AML Act such as the declaration of currency, and also the exclusion of key agencies from the AML Act.</p>		
<p>495. The authorities should designate an agency with responsibility to coordinate the implementation of the Government's AML/CFT policies.</p>		
<p>Compliance with FATF Recommendation 31</p>		
<p>R.31</p>	<p>NC</p>	<ul style="list-style-type: none"> • No agency has been mandated to coordinate the Government's AML/CFT policies and international relations. • The mechanisms for domestic cooperation and coordination has not been effective. The level of consultation among the critical AML/CFT relevant bodies has been minimal.
<p>5.2 The Conventions and UN Special Resolutions (R.35 & SR.I)</p>		
<p>Description and analysis</p>		
<p>496. Legal Framework: The implementation of some of the provisions of the Vienna and Palermo Conventions are found in the AML Act and the Extradition Act. There is however, no legislative or regulatory framework for the implementation of any of the provisions of the SFT Convention.</p>		
<p>497. Ratification of AML/CFT Related Conventions (c. 35.1 & c. I.1): Sierra Leone ratified the Vienna Convention in June 1994. The SFT Convention was ratified in September 2003. With regard to the Palermo Convention, Sierra Leone has signed but not ratified the Convention..</p>		
<p>498. Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1): Sierra Leone has fully implemented the provisions in Article 3 (on offences and sanctions related to narcotics and psychotropic substances); Article 4 (on establishing jurisdiction over offences related to narcotics and psychotropic substances); and Articles 6 and 7 (on extradition and mutual legal assistance). These Articles have been implemented pursuant to AML Act, the Pharmacy and Drugs Act, and the Extradition Act, 1974.</p>		
<p>499. However, Article 5 that deals with confiscation of instrumentalities used in or intended for use in any manner in offences related to narcotics has not been fully implemented. There are no provisions for the confiscation of instrumentalities of crime. There are no provisions for the transfer of proceedings, cooperation and training, international cooperation and assistance for transit states, commercial carriers, illicit traffic by sea, and use of mail for illicit purposes.</p>		
<p>500. Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1): Although Sierra Leone has ratified the Convention it has not fully implemented any of the provisions in Articles 2-18 of the SFT Convention.</p>		

501. **UN Special Resolutions (c. I.2):** As discussed in Section 1.4 (Freezing of funds used for terrorist), Sierra Leone has not established any mechanism for implementing UN Security Council Resolutions 1267, 1373 and its successor resolutions.

502. **Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):** Sierra Leone has fully implemented the provision in Articles 6, 10, 11, 13-16 and 18 (on criminalization of the laundering of proceeds of crime; liability of legal persons; prosecution, adjudication and sanctions for ML; providing international cooperation for purposes of confiscation; asset sharing; establishing jurisdiction over ML offences; extradition and mutual legal assistance). These provisions have been either fully or partially implemented in the AML Act, the Extradition Act, and the CPA. There has been partial implementation of MLA, in the sense that freezing, seizure and confiscation of assets related to FT, instrumentalities of ML and FT is not provided for under any law.

503. With respect to, Article 5 (on criminalization of participation in an organized criminal group); Article 7 (on establishing the FIU and introducing measures to detect and monitor the movement of cash across borders); Article 12 (on confiscation and seizure of instrumentalities of crime); Article 20 (on use of special investigative techniques or controlled delivery); Article 24-27 (on protection of witnesses and enhancing law enforcement cooperation); and Article 31 (on establishing and promoting best practices to deter transnational organized crime), Sierra Leone has not implemented the requirements of the aforementioned provisions.

504. **Additional Elements (Other relevant international conventions, c. 35.2):** Sierra Leone has ratified the following international instruments related to counter terrorism:

- The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft – ratified in February 1971;
- The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft – ratified in November 1974; and
- The 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation – ratified in September 1974.

The 1970 and 1971 Conventions were given effect to in the Unlawful Seizure of Aircraft Act and the Unlawful Interference of Civil Aviation Act, both of 1974.

505. Furthermore, according to the National Report on the Implementation of the UN Programme of Action on Illicit Trade in Small Arms and Light Weapons in All its Aspects¹⁰, Sierra Leone has taken steps through the necessary legislative procedures to ratify or accede to the following international instruments, although this could not be verified with the authorities,:

- The Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988;
- The Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991;
- The International Convention against the Taking of Hostages, 1979;
- The International Convention for the Suppression of Terrorist Bombings, 1997; and
- The Convention of the Organization of Islamic Conference on Combating International Terrorism, 1999.

In addition to these international instruments, Sierra Leone has signed the following regional and sub-regional instruments:

¹⁰ Government of the Republic of Sierra Leone, June 2005

- The Judicial Convention between the State of Sierra Leone and the Republic of Guinea,;
- The ECOWAS Protocol on Mutual Legal Assistance in Matters Relating to Defense, 1981;
- The Convention on Mutual Assistance in Criminal Matters, 1992;
- The ECOWAS Convention on Extradition, 1994;
- The ECOWAS Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons, 1998; and
- The Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism in Africa, 1999.

However, the provisions of all these conventions cited above have not been fully implemented and there is no indication as to when they will be codified into domestic law.

Recommendations and comments

506. Legislative and regulatory action, as discussed under section 1.3 (Freezing, seizure and confiscation), is necessary to implement the provisions dealing with instrumentalities of crime.

507. Ratify the Palermo Convention and then take the necessary legislative and regulatory action to fully implement the provisions under the Convention as discussed above.

508. Legislative and regulatory action, as discussed under the section dealing with criminalization of FT, is necessary to fully implement the SFT convention.

Compliance with FATF Recommendation 35 and SR I

R.35	PC	<ul style="list-style-type: none"> • Palermo Convention has not been ratified • Not all provisions under the Palermo Convention have been provided for in domestic law. • Provisions related to instrumentalities of crime have not been domesticated. • Has signed but not ratified regional conventions.
SR.I	NC	<ul style="list-style-type: none"> • The SFT Conventions and UN Special Resolutions have not been implemented.

5.3 Mutual Legal Assistance (R.32, 36-38, SR.V)

Description and analysis

509. **Legal Framework:** The mutual legal assistance framework for ML is found in Part V of the AML Act in sections 27-41 and the Evidence on Commission Act, 1962. In addition, there is the Supreme Court Rules, Order XXVI of 1960. The competent authority responsible for receiving and sending MLA requests is the MoFA. The authorities informed the assessors that the agency responsible for giving effect to MLA requests is the Minister of Justice and Attorney-General. There is no legislative or regulatory framework for FT.

510. **Widest Possible Range of Mutual Assistance (c. 36.1 & c. 36.1.1):** Sections 28 and 29 of the AML Act provides for the competent authority with the power to assist another jurisdiction in executing their requests for assistance. As discussed earlier, the competent authority includes the BSL, CISU and the AG. The power relates to obtaining search warrants, production and seizure of documents in the possession of a financial institution. The power is exercised pursuant to an order of the court upon application by the competent authority. In addition, in section 31, the execution of the request for MLA deals with the giving of evidence by any person named in the request made by a foreign jurisdiction. The giving of evidence entails a court in Sierra Leone issuing an order directing a person to deliver oneself to the court or any document or material in their possession for the purpose of adducing evidence in a ML matter.

511. Section 3 of the Evidence on Commission Act provides for a requesting State to make an application to the Minister of Justice to get evidence in Sierra Leone through the diplomatic channels. Upon receiving such request and the Minister is satisfied that the application is authentic, he will transmit it to a Judge or magistrate for purposes of taking and recording evidence from a witness whose attendance is required, or the production of documents by any person or institution. Furthermore, in Order XXVI (1), where any civil or criminal matter is pending before a court or tribunal of a foreign jurisdiction, and it is made to appear to a judge through a letter of request or other evidence, that the foreign jurisdiction seeks to obtain the testimony of a witness, then the judge may on an *ex parte* application make an order to give effect to the request.

512. Moreover with respect to the identification, freezing, seizure or confiscation of assets/property, section 30 of the AML Act provides for their execution of requests made by a foreign jurisdiction for the purpose of ordering the freezing or forfeiture of property of, or in the possession of the person named in the request. However, as discussed earlier in section 1.3 – Confiscation, freezing and seizing of proceeds of crime, MLA cannot be provided for the freezing, seizure and confiscation of assets related to FT, instrumentalities of ML and FT.

513. **Restrictions on Mutual Assistance (c. 36.2):** A MLA request may be denied by the Sierra Leonean authorities on the grounds that it is contrary to the Constitution of Sierra Leone, or the execution of the request is likely to prejudice national interest (section 32 of the AML Act). MLA is not subject to unreasonable, disproportionate or unduly restrictive conditions. The AML Act in section 39 provides that a request for MLA cannot be invalidated simply because there is a defect in the application made by a requesting country such as for example failure to confirm whether an investigation or prosecution is being conducted, or providing sufficient particulars on the identity of a person referred to in the request made. The defect can be overcome if the competent authority satisfies itself that there is sufficient compliance with the law or regulation to enable it to properly give effect to the request. The authorities however did not provide examples of requests that they have received in the past other than to advise the assessors that Sierra Leone does not impose any restrictions. Without any illustrative examples it was not possible to verify that what is in the law happens in practice.

514. **Efficiency of Processes (c. 36.3 & c. 38.1):** The authorities did not provide any feedback on the efficiency of the process of providing MLA to a requesting jurisdiction.

515. **Fiscal Matters and Mutual Assistance (c. 36.4):** There is no provision in any law that would create an impediment to MLA. In discussions with the authorities, they advise that this would not be an impediment to providing MLA.

516. **Secrecy and Confidentiality (c. 36.5):** There is no impediment to providing MLA due to secrecy or confidentiality matters (See Section 2.4 – Financial Institution Secrecy or Confidentiality)

517. **Powers of Competent Authorities (applying R.28, c. 36.6):** The powers of the competent authorities to obtain documents and information for use in investigations related to ML and prosecution of ML cases are available for purposes of MLA. See the discussion above on providing the widest possible range of mutual assistance.

518. **Avoiding Conflicts of Jurisdiction (c. 36.7):** Sierra Leone is not a party to any arrangement that deals with the issue of avoiding conflicts of jurisdiction and the mechanism for resolving such matters.

519. **International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):** As discussed earlier in sections 1.2 – Criminalization of terrorist financing, and section 1.4 – Freezing of funds used for terrorist financing, there is no legislative or regulatory framework for facilitating MLA for matters

related to FT.		
520. Dual Criminality and Mutual Assistance (c. 37.1 & 37.2): Dual criminality is not a pre-condition for rendering MLA.		
521. Property of Corresponding Value (c. 38.2): There is no provision for MLA for purposes of seizing property of corresponding value.		
522. Coordination of Seizure and Confiscation Actions (c. 38.3): There is no coordination done by the authorities for seizure and confiscation actions with other countries.		
523. Asset Forfeiture Fund (c. 38.4): The authorities have not considered establishing an asset forfeiture fund.		
524. Sharing of Confiscated Assets (c. 38.5): Section 41 of the AML Act does provide the legislative framework whereby the Minister of Finance may, if he considers appropriate, pursuant to an international treaty or in the interest of comity, order that the whole or any part of confiscated property or the equivalent value be given or remitted to a requesting country.		
525. Additional Elements (applying c. 3.7 in R.3, c. 38.6): Under the Supreme Court Rules, Sierra Leone courts can give effect to any foreign judgment that has been obtained in a foreign jurisdiction under Order XXIX on Reciprocal Judgments.		
526. International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3): There is no 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 Sierra Leone upon receipt of a request for cooperation in relation to FT.		
527. Statistics (applying R.32): There is no statistical data available with respect to the number of requests sent or received regarding MLA related to ML or FT.		
528. Analysis of Effectiveness: Sierra Leone provides a framework for the widest possible range of MLA in relation to ML Authorities responsible for international cooperation indicates that the process is not efficient and they were not able to clearly explain how the MLA process works. Indeed, there appears to be confusion as to the responsibilities of the various Ministries. The authorities were not able to provide cases in which MLA has been provided in order to illustrate whether the process is effective and efficient. It is evident that there has been minimal experience in this area on the part of the authorities.		
Recommendations and comments		
529. The authorities should consider –		
<ul style="list-style-type: none"> • Defining, documenting and implementing the MLA mechanism. • Making MLA applicable to FT cases. 		
Compliance with FATF Recommendation 32, 36-38 and SR V		
R.32	NC	<ul style="list-style-type: none"> • There are no statistics available. • The rating in this box is an aggregate rating of R.32 across the various parts of the report.
R.36	NC	<ul style="list-style-type: none"> • The process for effecting MLA is not effective • There is no provision to provide MLA for FT purposes.
R.37	PC	<ul style="list-style-type: none"> • MLA in relation to ML has never been tested. • The rating in this box is an aggregate rating of R.37 across the various parts of the report.

R.38	NC	<ul style="list-style-type: none"> • There is no provision for the seizure of instrumentalities of crime. • There is no provision for FT. • There has been no consideration of establishing an asset forfeiture fund.
SR.V	NC	<ul style="list-style-type: none"> • There is no provision for FT.
5.4 Extradition (R.32, 37 & 39, & SR.V)		
Description and analysis		
<p>530. Legal Framework: The extradition framework for ML is found in the Extradition Act, 1974 and section 42 of the AML Act. The AG is responsible for processing all requests for extradition of fugitive criminals defined as a person who is accused or convicted of having committed an offence in any part of the Commonwealth or other foreign state.</p> <p>531. Dual Criminality and Extradition (c. 37.1 - 2, & c. 39.1): Under Section 17 of the Extradition Act, dual criminality is required for purposes of effecting extradition requests.</p> <p>532. Under section 17 of the Extradition Act, extradition can be granted for any of the offences provided for in the Fourth Schedule., which are; murder; manslaughter; counterfeiting of money; forgery; embezzlement; theft; obtaining money by false pretences; bankruptcy related offences; rape; abduction; child stealing; burglary; arson; robbery; bribery; sinking or destroying a vessel at sea; offences aboard a ship; kidnapping; false imprisonment; perjury; malicious damage to property; drugs related offences; any offence punishable in Sierra Leone; and any conspiracy or attempt to commit any of the offences outlined in the schedule. Furthermore, Section 42 of the AML Act makes money laundering an offence for which extradition may be granted under the procedure laid down in the Extradition Act. FT is not listed as an extraditable offence. However, when an offence for which extradition is requested is not an offence in Sierra Leone, extradition can be granted with the consent of the Attorney-General.</p> <p>533. The exception under section 17 does not apply to certain countries listed in the Third Schedule to the Extradition Act. Specifically pursuant to section 23 of the Extradition Act, the dual criminality principle applies without any exception in cases involving the following countries: Albania, Argentine Republic, Belgium, Bolivia, Cameroon, Chile, Columbia, Cuba, The Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, Iraq, Israel, Italy, Liberia, Luxembourg, Mexico, Monaco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, El Salvador, San Marino, Spain, Switzerland, Tonga, The United States, Uruguay and Serbia.</p> <p>534. Extradition of Nationals (c. 39.2): Under section 20 no extradition of a Sierra Leonean national can be granted. However, when the fugitive is also national of a commonwealth state, extradition can be conducted with the consent of the Attorney-General.</p> <p>535. Prosecution of Nationals (applying c. 39.2(b), c. 39.3): The Extradition Act does not provide for the prosecution of a national or permanent resident who is not extradited.</p> <p>536. Efficiency of Extradition Process and Statistics (c. 39.4 & R.32): The authorities were unable to provide any cases of extradition and thus the efficiency of the process could not be measured. Also, statistics were not available concerning the number of requests sent or received regarding extradition related to ML or FT.</p> <p>537. Analysis of Effectiveness: The legal framework for extradition in relation to ML is adequate although it has not been tested. As in the case of MLA, the authorities were not able to give the assessors any indication on the effectiveness and efficiency of the extradition process. Because FT is not criminalized, there is potential that legal technicalities could impede the extradition of a person accused</p>		

of engaging in FT.		
Recommendations and comments		
538. The authorities should consider – <ul style="list-style-type: none"> • Providing for the prosecution of Sierra Leonean nationals who cannot be extradited to a requesting State. • Expediting the implementation of the SFT Convention in domestic law in order to make FT an offence in Sierra Leone in order to remove any impediments in extraditing a person accused of engaging in FT. 		
Compliance with FATF Recommendations		
R.32	NC	<ul style="list-style-type: none"> • There are no statistics available.
R.37	PC	<ul style="list-style-type: none"> • Dual criminality is required for extradition purposes but no provision to prosecute national if not extradited. • The rating in this box is an aggregate rating of R.37 across the various parts of the report.
R.39	NC	<ul style="list-style-type: none"> • There is no provision to prosecute nationals who are not extradited. • The process is not effective and efficient.
SR.V	NC	<ul style="list-style-type: none"> • FT is not an extraditable offence.
5.5 Other Forms of International Cooperation (R.32 & 40, & SR.V)		
Description and analysis		
539. Legal Framework: There is no framework for international cooperation outside the MLA and extradition regimes.		
540. Widest Range of International Cooperation and Exchange of Information (c. 40.1, 40.1.1, 40.2 & 40.3): The BSL, the SLP, the MoD, the Ministry of Mines and the NRA do engage in cooperation and exchange of information outside of normal MLA channels as follows:		
<i>Cooperation by Supervisory Authorities</i>		
<i>BSL</i> - The BSL has entered into a MOU with the Central Bank of Nigeria because of the presence of Guaranty Trust Bank a Nigerian owned subsidiary. BSL does not have other active bilateral relations with counterpart central banks or supervisory agencies other than Nigeria.		
<i>Cooperation by Law Enforcement Agencies</i>		
<i>SLP</i> – They have an Interpol office in the SLP and work through them to cooperate with counterpart police forces. In addition, the SLP works closely with other counterparts within the West African Chiefs of Police and ECOWAS frameworks.		
<i>Cooperation by Other Competent Authorities</i>		
<i>Ministry of Mines</i> – There is a close working relationship with diamond border countries, namely, Guinea, Liberia and Cote d’Ivoire. The Ministry is also active in the African Mining Partnership annual meetings held in Cape Town, South Africa.		
<i>NRA</i> – The NRA has entered into tax treaties with the United Kingdom and the United States. Treaty discussions are ongoing with the People’s Republic of China and an agreement should be agreed upon soon. In addition, the NRA does work closely on a bilateral basis with the Ghana Revenue Authority. They are plans to interact closely with Rwanda and Tanzania Revenue Authorities.		
NRA has not entered into any bi-lateral or regional arrangements for the exchange of customs related		

information exchange though information exchange does occur on an ad-hoc basis.

541. **Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts (c. 40.4, 40.4.1, & 4.5):** The authorities can conduct inquiries or investigations on behalf of their foreign counterparts through the appropriate formal channels such as the MoFA or MoJ or within the context of ECOWAS or Interpol. There is no operational FIU through which foreign counterparts can request inquiries.

542. **No Undue Restrictions on Exchange of Information (c. 40.6):** 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.

543. **Secrecy or Confidentiality and Cooperation (c. 40.8):** Secrecy issues are not an obstacle to complying with requests for cooperation. (See Section 2.4 - Financial Institution Secrecy or Confidentiality)

544. **Safeguards in Use of Exchanged Information (c. 40.9):** The authorities did not indicate mechanisms in place whereby information exchanged is safeguarded.

545. **SR V (applying c. 40.1-40.9 in R. 40, c. V.5):** The authorities have not been involved in any FT matter to provide assistance to other countries.

546. **Additional Elements (SR V applying c. 40.10-40.11 in R. 40, c. V.9):** See the preceding paragraph.

547. **Statistics (applying R.32):** There is no statistical data available with respect to the number of requests sent or received regarding ML or FT.

548. **Analysis of Effectiveness:** 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 Sierra Leone competent authorities and their counterparts in the region.

Recommendations and comments

549. The authorities should enhance agency to agency cooperation with their counterparts in the region.

Compliance with FATF Recommendations

R.32	NC	<ul style="list-style-type: none"> There are no statistics available.
R.40	NC	<ul style="list-style-type: none"> There is minimal agency to agency cooperation.
SR.V	NC	<ul style="list-style-type: none"> No agency to agency cooperation with regard to FT matters.

6. OTHER ISSUES

550. **Proof of Identity -** Sierra Leone has no comprehensive national identity card scheme and few people have passports or driving licenses. The working population is required to register for a national social security number from the National Social Security Insurance Trust. However there is little compliance with the requirement outside of the major urban areas. There is a requirement to register births and to obtain a birth certificate but again, this is predominately limited to the urban areas. The authorities have been encouraging registration of children by making it a requirement for birth certificates to be produced in the application process for schooling.

551. In April 2006, a policy on the implementation of a national identify card scheme was endorsed by the Cabinet. It is intended the scheme will require all persons over the age of 6, both citizens and non-citizens, to register and obtain a national identity card. The card which will contain the holder's photograph and biometric data will be issued by the National Registration Secretariat. The scheme is aimed at improving immigration control and access to social services. It is intended that 70-80% of the population will have national identity cards by 2020.

TABLE 2: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC), or could, in exceptional cases, be marked as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	PC	<ul style="list-style-type: none"> • Significant flaws in the wording of the offence and its related definitions. • No consideration of applying the offence of ML. • The effectiveness of criminalization has not been tested before the court.
2. ML offence—mental element and corporate liability	PC	<ul style="list-style-type: none"> • The prescribed sanctions are not proportionate and dissuasive.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • There is no provision for confiscating instrumentalities used in commission of a predicate offence or offences related to FT. • There have been no ML or FT related cases to determine how effective and efficient the system is.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	NC	<ul style="list-style-type: none"> • There are no rules concerning CDD measures for existing customers. • There is ineffective implementation of certain MLR requirements, including those with respect to ID of beneficial owners or controllers. • There is ineffective implementation of MLR requirements by FOREX dealers
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There are no specific provisions regarding appropriate risk management systems to address PEPs.. • There is no effective implementation of MLR requirements, including PEPs.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There are no rules concerning documenting CDD by correspondent banks. • There are no rules concerning payable through accounts
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no rules regarding policies on the specific risk faced by non-face to face transactions. • There are no rules regarding policies on the misuse of technological developments in ML or TF schemes.
9. Third parties and introducers	NA	
10. Record keeping	PC	<ul style="list-style-type: none"> • There is no effective implementation of

		MLR requirements beyond basic customer ID records nor implementation of any requirements by FOREX dealers.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There is no effective implementation of most of the MLR requirements. • Supervision of compliance does not extend to FOREX dealers.
12. DNFBP–R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • There are serious gaps in the rules with respect to CDD. • There has been no implementation of the AML Act.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There is no provision for reporting of suspicious FT transactions in the AML Act. • There is no effective implementation of many key MLR. • There is no effective implementation of MLR requirements by FOREX dealers.
14. Protection & no tipping-off	NC	<ul style="list-style-type: none"> • Only good faith reporting of an STR under AML Act Section 6(4) is protected against criminal and civil liability. • There is no tipping off provision in relation to reports made pursuant to AML Act Section 14 (b).
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> • There is no effective implementation of requirements of the AML Act and the MLR.
16. DNFBP–R.13-15 & 21	NC	<ul style="list-style-type: none"> • There has been no implementation of the AML Act by DNFBPs.
17. Sanctions	NC	<ul style="list-style-type: none"> • There is no comprehensive system of sanctions application for failure to comply with AML/CFT rules.
18. Shell banks	NC	<ul style="list-style-type: none"> • There are no rules with respect to correspondent banking with shell banks and use of shell banks. • There is no effective implementation of requirements of the AML Act and the MLR..
19. Other forms of reporting	NC	<ul style="list-style-type: none"> • Officials have not considered feasibility of reporting all transactions in currency above a fixed threshold.
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> • No assessment on the need to extend AML/CFT requirements to non-financial businesses and professions other than those listed in the FATF standards. • Efforts have been made to reduce the reliance upon cash for transactions.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • 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.

		<ul style="list-style-type: none"> There is no effective implementation of MLR requirements.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> There are no rules with respect to communication with home country supervisor or compliance with CDD measures at the group level. There is no effective implementation of requirements of the AML Act and the MLR.
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> Only aspects of AML contained in the Examination Manual are subject to examination and supervision.
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> Licensing requirements and supervision of casinos do not relate to any gaming or financial transactions performed by them There are no effective measures to prevent ownership, control or operation of the casino by criminals
25. Guidelines & Feedback	PC	<p>The rating in this box is an aggregate rating of R.25 across the various parts of the report.</p> <ul style="list-style-type: none"> There is no STR form. There is no formal feedback process for either financial institutions or DNFBPs There is currently no AML/CFT guidelines for DNFBPs
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> The FIU has not been set up. The AMLD which is expected to become the formal FIU is not currently performing the functions of a FIU.
27. Law enforcement authorities	NC	<ul style="list-style-type: none"> There is no law enforcement agency which has full investigative powers and has been assigned responsibility to investigate ML and TF cases. No money laundering investigations have been conducted to date
28. Powers of competent authorities	NC	<ul style="list-style-type: none"> There is no evidence to demonstrate the effective implementation and use of the investigative powers of the AML Act.
29. Supervisors	C	
30. Resources, integrity and training	NC	<p>The rating in this box is an aggregate rating of R.30 across the various parts of the report.</p> <p>FIU</p> <ul style="list-style-type: none"> Current resources are insufficient. <p>Law Enforcement</p> <ul style="list-style-type: none"> There are significant resources and capacity constraints which limit the relevant agencies' capabilities to effectively conduct investigations into

		<p>ML and TF</p> <p>Supervisor</p> <ul style="list-style-type: none"> The BSL needs additional AML/CFT training.
31. National co-operation	NC	<ul style="list-style-type: none"> No agency has been mandated to coordinate the Government's AML/CFT policies and international relations. The mechanisms for domestic cooperation and coordination has not been effective. The level of consultation among the critical AML/CFT relevant bodies has been minimal.
32. Statistics	NC	<p>The rating in this box is an aggregate rating of R.32 across the various parts of the report.</p> <p>FIU</p> <ul style="list-style-type: none"> Current resources are insufficient. <p>Law Enforcement</p> <ul style="list-style-type: none"> The absence of ML or TF investigation means the collection of statistics has not been conducted There is no system to maintain statistics on investigations and prosecutions of ML and TF, or of the use of powers under AML Act with regard to asset recovery <p>MLA & Extradition</p> <ul style="list-style-type: none"> There are no statistics available.
33. Legal persons–beneficial owners	PC	<ul style="list-style-type: none"> There is no enforcement mechanism to compel companies to submit annual returns in a timely manner. Because the information is recorded manually, the accuracy and reliability is doubtful.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> There are no transparency mechanisms in place.
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> Palermo convention has not been ratified Not all provisions under the Palermo Convention have been provided for in domestic law. Provisions related to instrumentalities of crime have not been domesticated. Has signed but not ratified regional conventions.
36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> The process for effecting MLA is not effective There is no provision to provide MLA for FT purposes.
37. Dual criminality	PC	<p>The rating in this box is an aggregate rating of</p>

		R.37 across the various parts of the report. <ul style="list-style-type: none"> • MLA in relation to ML has never been tested • Dual criminality is required for extradition purposes but no provision to prosecute national if not extradited.
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> • There is no provision for the seizure of instrumentalities of crime. • There is no provision for FT. • There has been no consideration of establishing an asset forfeiture fund.
39. Extradition	NC	<ul style="list-style-type: none"> • There is no provision to prosecute nationals who are not extradited. • The process is not effective and efficient.
40. Other forms of co-operation	NC	<ul style="list-style-type: none"> • There is minimal agency to agency cooperation.
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • The SFT Conventions and UN Special Resolutions have not been implemented.
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • FT has not been criminalized.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • No legislative, regulatory or institutional action has been taken. • There are no processes for dealing with all matters related to 1267 & 1373.
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There are no guidelines for implementation of TF requirements.
SR.V International cooperation	NC	<ul style="list-style-type: none"> • There is no provision for FT. • FT is not an extraditable offence. • No agency to agency cooperation with regard to FT matters
SR.VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • The supervision, examination, and monitoring of compliance by banks with AML/CFT measures is incomplete.
SR.VII Wire transfer rules	NC	<ul style="list-style-type: none"> • There is no effective implementation of wire transfer rules.
SR.VIII Nonprofit organizations	NC	<ul style="list-style-type: none"> • There is no legal framework for the supervision of NPOs • The sanctions are not dissuasive and proportionate.
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • The requirement to report cross border transportation of currency and bearer negotiable securities, pursuant to Section 20 of the AML Act has not been implemented.

TABLE 3: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System 2. Legal System and Related Institutional Measures	Recommended Action (listed in order of priority)
Criminalization of Money Laundering (R.1, 2 & 32)	<ul style="list-style-type: none"> • Amending the definition of the scope of the predicate offences with an eye to narrowing the scope to include only those foreign offences which had they occurred in Sierra Leone would have constituted an offence. • Amending the definition of proceeds of crime by replacing ‘unlawful transactions’ with ‘unlawful activity’. • Increasing the severity of the sanctions imposed for ML both in the prison term and the monetary penalty.
Criminalization of Terrorist Financing (SR.II, R.32)	<ul style="list-style-type: none"> • Criminalize FT. • Fully implement all the other provisions of the SFT Convention.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	<ul style="list-style-type: none"> • Providing for legislative and regulatory measures for the freezing, seizing and confiscation of instrumentalities used or intended to be used in the commission of predicate offences or offences related to FT. • Providing a criteria or guide for determining elements that would constitute control on the part of a person suspected of engaging in ML or person convicted of ML. • Extending the time or make provision for extending the period so as to facilitate further investigations in a ML case and thereby to continue freeze a suspect’s property. • Resolving the conflict that exists in the AML Act between section 13(j) on one hand and sections 16 and 23 on the other. • Enabling the SLP as the primary agency responsible for the investigation of criminal cases to apply for the relevant orders.
Freezing of funds used for terrorist financing (SR.III, R.32)	<ul style="list-style-type: none"> • As a matter of urgency, establish the regulatory and institutional framework for implementing the requirements in the 1267 and 1373 resolutions. The authorities can consider using the Counter Terrorism Committee as one mechanism by which this can be done. • Establish regulatory and institutional mechanism to give effect to initiatives taken by other jurisdictions pursuant to resolution 1373. • 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. • Through the BSL provide appropriate guidance to the commercial banks and other financial institutions it licenses to advise them of their obligations in taking action under the UN Resolutions.

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

- The authorities should ensure that in setting up the regulatory and institutional framework for implementing 1267 and 1373 resolutions includes processes by which listed persons can be de-listed; the unfreezing of funds of de-listed persons and innocent third parties; and reviewing of freezing decisions.
- Reviewing the AML Act to provide for the following:
- Empower the FIU as the authority to analyze and disseminate reports received under Section 6 and 14 of the AML Act.
- The FIU to receive information from other government departments to assist in its analysis of the reports.
- Reviewing whether there is need to disseminate reports to agencies other than the CISU and the AG's Office to enable effective investigation of the matters.
- Organizing training for the staff of the AMLD on the operations of the FIU, the role of the FIU within an AML/CFT regime, and STR analysis.
- Clarifying whether the 'Authority' referred to throughout the AML Act will be the same unit as the FIU.
- Reviewing the staffing levels for the FIU to ensure the responsibilities assigned to the FIU by the AML Act and by the Governor of the BSL, can be met.
- Reviewing the job descriptions of the FIU staff to ensure compliance with the AML Act.
- Providing accommodation for the FIU with the necessary measures to secure the FIU's records.
- Finalizing the draft suspicious transaction report forms after consultation with all appropriate bodies including the reporting institutions.
- Issuing guidelines to the reporting institutions with guidance on the reporting requirements contained within the AML Act and how the reports should be submitted to the FIU. The regulations should include the finalized reporting forms.
- Introducing measures to ensure the operational independence and autonomy of the FIU.
- Developing an operations manual for the FIU.

Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)

- Designating an investigative agency with the capability to perform all aspects of an investigation, to conduct ML or TF investigations.
- Conducting awareness raising on money laundering and terrorist financing within law enforcement agencies, including the powers available under the AML Act.
- Conducting a detailed review of the resources available to investigate and prosecute ML and TF.
- Organizing training on financial investigations for the relevant

investigative agencies.

Cash Couriers (SR. IX)

- Developing procedures to facilitate the collection of detailed statistics relating to money laundering and terrorist financing investigations conducted by law enforcement agencies and on the use of the powers under the AML Act.
- Determining the full consequences of the introduction of Section 3 of the AML Act.
- Implementing the requirements of Sections 3 and 20, after consulting with the authorities involved with the effects of the implementation, and issuing exceptions in accordance with Section 3, where required.
- Finalizing the cross border reporting form.
- Introducing systems to ensure the proper collection and storage of the completed forms and which enable access to the appropriate information by the FIU.

3. Preventive Measures – Financial Institutions

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

- The MLR should be revised to include provisions consistent with FATF Recommendation 5 regarding application of CDD to existing customers, and Recommendation 7 regarding payable through accounts, and Recommendation 8, regarding AML risk from new technologies.
- Banks have noted that it is sometimes difficult to obtain one of the photo customer IDs required for customer ID. The assessment team was informed by Ministry of Internal Affairs that the government had approved a new national identification card with photo and that it will be available for issuance in the future (see discussion under Section 6 - Other Issues). Until such time, banks should be given some leeway as to which forms of ID are adequate for individual customers based on their profile.
- The BSL should cover all CDD measures in its supervision and examination. It should start developing an ongoing program to analyze AML/CFT CDD risks, create an AML/CFT CDD supervisory methodology for its supervision manual, train supervisors in the use of the methodology and manual, consult with supervised persons (especially the commercial banking sector) on the design of a compliance training program, and begin examinations based on the new methodology and manual.
- A number of banks have noted that current customer ID procedures are particularly cumbersome for poorer and often illiterate clients, which further discourages broader use of the formal financial system. The BSL should consider the appropriateness of allowing supervised persons to apply reduced CDD rules in low risk cases.

Third parties and introduced business (R.9)

Nil

Financial institution secrecy or

- Conduct a review of all laws to ensure that none inhibits the

<p>confidentiality (R.4)</p> <p>Record keeping and wire transfer rules (R.10 & SR.VII)</p> <p>Monitoring of transactions and relationships (R.11 & 21)</p>	<p>operation of AML/CFT rules.</p> <ul style="list-style-type: none"> • The BSL should cover formally all rules relating to record keeping and wire transfer in its supervision and examination. • The BSL should cover formally all rules relating to complex and unusual large transactions and their examination, record keeping of those examinations, special attention to countries not applying the Recommendations, and to the application of countermeasures in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.
<p>Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)</p>	<ul style="list-style-type: none"> • The BSL should cover formally all rules relating to suspicious transaction reporting in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.
<p>Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<ul style="list-style-type: none"> • The MLR should be updated to include provisions consistent with FATF Recommendation 22. • The BSL should cover formally all rules relating to internal controls, audit function, employee training, screening procedures, compliance officers, and application of AML/CFT measures to foreign branches or subsidiaries in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.
<p>Shell banks (R.18)</p>	<ul style="list-style-type: none"> • The MLR should be revised to include provisions consistent with FATF Recommendation 18. • The BSL should cover formally all rules relating to correspondent banking with shell banks and use of shell banks in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD.
<p>The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)</p>	<ul style="list-style-type: none"> • The BSL should cover formally the entire MLR in its supervision and examination as discussed in the recommendations and comments section under Section 2.2 on CDD. It should apply sanctions as appropriate. • The BSL should provide substantial additional AML/CFT training.
<p>Money value transfer services (SR.VI)</p>	<ul style="list-style-type: none"> • The BSL should conduct supervision of the money or value transfer service operators with respect to the MLR.

4. Preventive Measures –Non-Financial Businesses and Professions

<p>Customer due diligence and record-keeping (R.12)</p>	<ul style="list-style-type: none"> • The authorities should issue regulations applicable to DNFBPs which address the following issues : gathering information on business relationship; requiring ongoing due diligence and enhanced due diligence; identifying occasional customers except when the transaction exceeds a specific amount; requiring CDD for existing customers, PEPs and domestic PEPs; and managing the risks of misuse of new technology for ML/FT, and non-face to face relationships. The authorities should consider
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	<p>introducing the thresholds and transaction types relevant to DNFBPs as specified in Recommendations 12 and 16 of the FATF Standards.</p> <ul style="list-style-type: none"> • The Authority should develop and implement a plan for ensuring compliance with the regulation. • Awareness raising on the impact of the AML Act for DNFBPs should be conducted.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The blanket application of preventative measures to DNFBPs without regard to the specific transaction types and the introduction of appropriate thresholds for certain transactions, is over-burdensome and does not reflect the risk associated with the DNFBPs. The authorities should consider introducing the thresholds and transaction types relevant to DNFBPs as specified in Recommendation 12 and 16 of the FATF Standards. • The Authority should develop and implement a plan for ensuring compliance with the regulation. Awareness raising on the impact of the AML Act for DNFBPs should be conducted.
Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> • Designating an authority with the necessary expertise and resources, to license and supervise casinos in relation to their gaming operations and any related financial transactions. • Introducing measures to enable the identification of persons involved with the operation, management and ownership of the casinos, and the checking of their background. • Designating an appropriate authority for each of the DNFBPs sectors for the monitoring and ensuring compliance with AML/CFT measures.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Devising a strategy to develop the formal financial sector and to increase access to financial services. • Conduct awareness raising to the general public on the benefits of use of the formal financial sector. • Introducing a mechanism to monitor the types of businesses and professions identified in the course of investigations that are being misused for money laundering and terrorist financing.

5. Legal Persons and Arrangements & Non-Profit Organizations

Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • The authorities should provide the OARG with appropriate enforcement powers to compel companies to submit annual returns in a timely manner.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Clarifying the rules on customer due diligence in relation to express trusts. • Adopting rules and practices that enhance the transparency of trusts.
Non-Profit Organizations (SR.VIII)	<ul style="list-style-type: none"> • In order to further deepen the effectiveness of the authorities should introduce appropriate and adequate enforcement powers and sanctions for the NGO Unit. These sanctions should be underpinned by legislative or regulatory force in order to be

effective.

6. National and International Co-operation

National co-operation and coordination (R.31 & 32)

- The authorities should designate an agency with responsibility to coordinate the implementation of the Government's AML/CFT policies.

The Conventions and UN Special Resolutions (R.35 & SR.I)

- Legislative and regulatory action, as discussed under section 1.3 (Freezing, seizure and confiscation), is necessary to implement the provisions dealing with instrumentalities of crime.
- To ratify the Palermo Convention
- Legislative and regulatory action is necessary to implement the provisions under the Palermo Convention as discussed above.
- Legislative and regulatory action, as discussed under the section dealing with criminalization of FT, is necessary to fully implement the SFT convention.

Mutual Legal Assistance (R.36-38, SR.V, and R.32)

- Defining, documenting and implementing the MLA mechanism.
- Making MLA applicable to FT cases.

Extradition (R.39, 37, SR.V & R.32)

- Providing for the prosecution of Sierra Leonean nationals who cannot be extradited to a requesting State.
- Expediting the implementation of the SFT Convention in domestic law in order to make FT an offence in Sierra Leone in order to remove any impediments in extraditing a person accused of engaging in FT.

Other Forms of Co-operation (R.40, SR.V & R.32)

- The authorities should enhance agency to agency cooperation with their counterparts in the region.

7. Other Issues

No text required

AUTHORITIES' RESPONSE TO THE ASSESSMENT

The authorities consider the report to be a fair assessment of the Sierra Leone situation.

ANNEX 1: LIST OF MINISTRIES, AGENCIES AND INSTITUTIONS MET

Public Sector

Anti-Corruption Commission
Bank of Sierra Leone
Central Intelligence and Security Unit
Gold and Diamond Department
Law Reform Commission
Ministry of Defense
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Internal Affairs
Ministry of Justice
Ministry of Mines and Minerals
Ministry of Trade and Industry
National Drugs Control Agency
National Revenue Authority
National Tourist Board of Sierra Leone
NGO Unit, Ministry of Development and Economic Planning
Office of the Administrator and Registrar General
Office of the Director of Public Prosecutions
Office of the Ombudsman
Office of the Solicitor General
Sierra Leone Armed Forces
Sierra Leone Insurance Commission
Sierra Leone Police

Private Sector

First International Bank
Guaranty Trust Bank
Institute of Chartered Accountants of Sierra Leone
International Commercial Bank
Rokel Commercial Bank
Sierra Leone Bankers Association
Sierra Leone Bar Association
Sierra Leone Commercial Bank
Standard Chartered Bank

ANNEX 2: LIST OF LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED

Laws

Anti-Corruption Act, 2000
Anti-Human Trafficking Act, 2005
Anti-Money Laundering Act, 2005
Arms and Ammunition Act, 1974
Banking Act, 2000
Bank of Sierra Leone Act, 2000
Collective Investment Scheme, 2005/Securities Act, 2005
Companies Ordinance, 1938
Constitution, 1991
Criminal Procedure Act, 1965
Environment Protection Act, 2000
Evidence on Commission Act, 1962
Exchange Control Act, 1965
Extradition Act, 1974
Institute of Chartered Accountants of Sierra Leone Act, 1988
Insurance Act, 2000
Investment Promotion Act, 2004
Legal Practitioners Act, 2004
Liquor Licensing Act
Mines and Minerals Act, 1999
Mines and Mineral Decree, 1994
National Revenue and Authority Act, 2002
National Security and Central Intelligence Act, 2002
Other Financial Services Act, 2001
Pharmacy and Drugs Act, 2001
Police Force Act
Unlawful Interference of Civil Aviation Act, 1974
Unlawful Seizure of Aircraft Act, 1974

Subsidiary regulations, circulars, directives and instructions

Exchange Control Regulations
Money Laundering Regulations, 2002
Police (Discipline) Regulations, 2001
Policy Regulations For Operations of Non-Government Organizations, 2004
Supreme Court Rules

Miscellaneous reports

Anti-Corruption Commission Annual Reports, 2001-2003
Bank of Sierra Leone Annual Report, 2004
Sierra Leone Report to United Nations Security Council, March 2003