



# CARIBBEAN FINANCIAL ACTION TASK FORCE

Haiti Eleventh follow-up report

**Summary:** This report details the progress made by Haiti since the publication of its 10<sup>th</sup> follow-up report in June 2016.

**Meeting Date:** May 31<sup>st</sup> 2017

**Port of Spain, Trinidad and Tobago**

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## HAITI: ELEVENTH FOLLOW-UP REPORT

### I. INTRODUCTION

1. This report represents an analysis of Haiti's report back to the CFATF Plenary concerning the progress that it has made regarding correcting the deficiencies that were identified in its third-round Detailed Assessment Report (DAR). The DAR of Haiti was adopted by the CFATF Council of Ministers in St. Kitts and Nevis in November of 2008 and Haiti was placed in expedited follow-up. In November 2014 Haiti was placed in the second stage of enhanced follow-up and a high-level mission was undertaken to Haiti on April 27<sup>th</sup>, 2015. Based on a review of actions taken by Haiti a recommendation was made for Haiti to be asked to consider applying to exit the CFATF third-round follow-u process.
2. Haiti received ratings of PC or NC on fourteen (14) of the sixteen (16) Core and Key Recommendations as follows:

**Table 1: Ratings for Core and Key Recommendations**

| Rec.   | 1      | 3  | 4  | 5      | 10 | 13 | 23 | 26 | 35     | 36 | 40     | I      | II     | III    | IV     | V      |
|--------|--------|----|----|--------|----|----|----|----|--------|----|--------|--------|--------|--------|--------|--------|
| Rating | N<br>C | PC | PC | N<br>C | LC | NC | NC | PC | N<br>C | LC | P<br>C | N<br>C | N<br>C | N<br>C | N<br>C | N<br>C |

3. With regard to the other non-core or key Recommendations, Haiti was rated partially compliant and non-compliant, as follows:

**Table 2: 'Other' Recommendations rated as PC and NC**

| Partially Compliant   | Non-Compliant   |
|---|---|
| R.2 (Money laundering offence)                                | R.6 (Politically exposed persons)   |
| R.15 (Internal controls and compliance)                       | R.7 (Correspondent banking)   |
| R.18 (Shell banks)  | R.8 (New Technologies and non-face-to-face banking)                                     |
| R.27 (Law enforcement authorities)                            | R.9 (Third parties and business introducers)  |
| R.28 (Powers of competent authorities)                        | R.12 (DNFBPs 6, 8-11)   |
| R.29 (Supervisors)  | R.16 (DNFBPs 13-15 & 21)  |
| R.31 (National cooperation)                                   | R.17 (Sanctions)  |
| R.38 (Mutual legal assistance on confiscation and freezing)   | R.20 (Other non-financial businesses and professions and secure transaction techniques) |
| SR. IX (Reporting/communication of cross border transactions. | R.21 (Special attention for higher risk countries)                                      |
|   | R.22 (Foreign Branches and subsidiaries)  |
|   | R.24 (DNFBPs regulation supervision and monitoring)                                     |
|   | R.25 (Guidelines and feedback)  |
|   | R.30 (Resources, integrity and training)  |
|   | R.32 (Statistics)   |
|   | R.33 (Legal persons – beneficial owners)  |

|  |  |
|--|--|
|  | SR.VI AML/CFT requirements for money/value transfer services |
|  | SR.VII (Wire transfer rules)                                 |
|  | SR.VIII (Non-profit organizations)                           |

4. The following financial information table is intended to assist in providing insight into the level of risk in the main financial sector in Haiti.

**Table 3: Size and integration of Haiti's financial sector as at December 2016**

|                               |                     | <b>Banks</b> | <b>Other Credit institutions <sup>1</sup></b> | <b>Securities</b> | <b>Insurance</b> | <b>Total</b> |
|-------------------------------|---------------------|--------------|---|-------------------|------------------|--------------|
| <b>Number of institutions</b> | Total               | 9            | 92  | 0                 | 12               | 113          |
| <b>Assets</b>                 | US \$               | 4,185.26     | 220.40  | NA                | NA               | NA           |
| <b>Deposits</b>               | Total : US \$       | 3,423.10     | 101.25  | NA                | NA               | NA           |
|                               | % Non-resident      | 3.17%        | NA  | NA                | NA               | NA           |
| <b>International links</b>    | % Foreign owned     | NA           | 0   | NA                | NA               | NA           |
|                               | Subsidiaries Abroad | 2            | 0   | 0                 | 0                | 0            |

## **II. SCOPE OF THIS REPORT**

5. This report will review all Core and Key Recommendations rated as PC or NC and the other outstanding Recommendations. Tables 1 and 2 above show Haiti's level of compliance with all Recommendations at the time of the Mutual Evaluation. However, based on actions by Haiti to close the deficiencies noted in their DAR since then, the following Core and Key Recommendations can be considered to be fully compliant: R 4, 10, 23 and SRV. As a result, these Recommendations will not be presented in this report. For the other Recommendations R 2, 8, 21, 22 and SR.VII have also been closed.

## **III. SUMMARY OF PROGRESS MADE BY HAITI**

6. On August 22, 2016, Haiti issued a Decree establishing the procedure for the implementation of measures aimed at freezing funds and other assets connected with the financing of terrorism. This positively affected Special Recommendation III.
7. On September 28, 2016, Haiti enacted amendments to the 2013 Law Sanctioning Money Laundering and Terrorist Financing (LSMLTF). Provisions of this amendment positively affected Core Recommendations 1, 5, 13, SR. II and SR. IV, and Key Recommendations 3 and 26, 40 and SR. I.
8. On May 8, 2017, Haiti enacted the Law Bearing on the Organization and Functioning of UCREF. This law had a positive effect on Recommendation 26. Haiti has also produced

<sup>1</sup> These data concern 90 credit unions and 13 IMF

translated copies of the 2001 Law Bearing on the Control and Suppression of Illicit Drug Trafficking which had a positive effect on Recommendation 35.

### Core Recommendations

9. For **Recommendation 1** which was rated **NC**, there were three deficiencies, two of which were fully addressed and closed in the 9<sup>th</sup> follow-up report. The outstanding deficiency is related to **art.8** of the **LSMLTF** where the origin of money or property is considered to be illegal when such money or property is the product of an offense originating from any of a number of listed offenses detailed in the said article. However, the deficiency was that the detailed offenses did not include fraud, piracy, environmental crime, robbery or theft. Haiti has now significantly closed this gap through by enacting the law modifying the LSMLTF. At art 3 of this amendment all these missing offenses are now included with the exception of piracy. Haiti has advised the Secretariat that piracy has not yet been established in Haitian Criminal Law as an offence, hence its exclusion from the AML/CFT legal framework. It is anticipated that it will be criminalized with the revision of Penal Code. Recommendation 1 is now significantly improved but remains *outstanding*.
10. Relative to **Recommendation 5**, which was rated **NC**, the Assessors made eight (8) recommendations intended to close the deficiencies they noted in the DAR. Haiti's action thus far is detailed below:
  - i. *Strengthen the banks on anonymous accounts and accounts in fictitious name* - At **art.13** of the 2013 **LSMLTF** financial institutions and listed businesses are prohibited from having anonymous accounts and accounts in fictitious names. This gap is *closed*.
  - ii. *Lower the customer identification threshold for wire transfers to US\$1,000* – Here Haiti has reported that this was “Done by regulations issued by the Central Bank in October 30<sup>th</sup>, 2008 (Circular 95-1-A)” Haiti first made mention of this circular in its updated matrix which informed the fourth follow-up report of December 2012. The second paragraph of circular 95-1 A stipulates that: “*Transfer companies are required to collect cash transaction statements from all regular or occasional clients for any amount greater than or equal to forty thousand gourdes (Gdes 40,000.00) or its equivalent in foreign currency*”. It is relevant to mention that the aforesaid amount in gourdes is equal to US\$1,000. Similarly, at paragraph seven of circular 99-1, as part of the electronic transfer of funds, banks are required to conduct CDD on the principal and beneficiaries of amounts equal to or in excess of Forty thousand Gourdes (HTG40,000.00), or the equivalent in foreign currency. This gap is *closed*.
  - iii. *Clarify the legal identification threshold for occasional transactions in forms consistent with the anti-money laundering law of 2001* – This clarity was provided through art. 17 (b) of the LSMLTF whereby Financial institutions are required to identify their costumers and verify information for the execution of occasional transactions. This deficiency is now *closed*.
  - iv. *Clarify the customer identification requirement in occasional transactions, independent of the threshold, when there is a suspicion of money laundering or terrorist financing* – Haiti is relying on **art.17** of the **LSMLTF** to close this deficiency. At art.17 (d) & (e), once a financial institution suspects money laundering or terrorist financing, identification and verification requirements are required irrespective of the amount of funds involved in the transaction. This gap is *closed*.

- v. *Institute a requirement to identify and to verify the identity of beneficial owners, based in particular on a requirement that financial institutions understand the way in which ownership and control of a legal person are organized* –Pursuant paragraph 4 of **1.** of circular 99 “when the client is a legal entity, the identification and verification of identity are based on the corporate name, the legal form, the certificate of existence, the registered address, the names of the directors and knowledge of the provisions governing the right to engage the corporation. Moreover, **1.1.2.** puts forward in details all relevant provisions as to the verification on the basis of ownership and control of legal entities. This gap is **closed**.
- vi. *Establish a requirement to collect information on the purpose and nature of the business relationship and to update identification data on a regular basis* – The customer due diligence requirement for banks to obtain information on the purpose and intended nature of the business relationship is now found at section 1 of Circular 99-1. This obligation is applicable to customers who are either natural or legal persons. The regularity at which such information should be updated can be chosen by the bank and depends on the “context of the transaction”, however, the regularity at which such information must be updated cannot exceed three (3) years and in situations of elevated risk cannot exceed two (2) years. This gap is **closed**.
- vii. *Implement a risk management approach for the highest risks* – Haiti, through Circular 99-1, now prescribes enhanced due diligence measures for certain situations which are likely to create a high risk of money laundering. These provisions are found at section 5 of Circular 99-1 and include:
  - a) If the customer or his/her effective beneficiary is not physically present;
  - b) If the customer or his/her effective beneficiary is a politically exposed person who resides abroad;
  - c) If transactions are performed with individuals or legal entities from countries that do not enforce or that do not sufficiently enforce international anti-money laundering and financing of terrorism norms;
  - d) Correspondent banking relations.

This gap is now **closed**.

- viii. *Based on a risk analysis, consider adopting flexible requirements for demonstrably low risks* – According to **art. 26** of the **LSMLTF** the Banque de la République d’Haïti (BRH) in collaboration with UCREF (the FIU) can determine the situations under which reduced or simplified identification and verification measures may be applied to customers or ‘real beneficiaries’. The forerunner to this determination is a risk assessment which is addressed at section 4 of Circular 100. Consequently, this gap is **closed**.
- ix. At section 4 of circular 100, all banks have to put in place policies and procedures in relation to a risk assessment that they need to conduct periodically. The recommendation to close this deficiency was made in relation to sub-criterion 5.9 which specifically refers to lower risk situations where the identity of the customers and beneficial owners of a customer is publicly known or where checks and controls exists elsewhere in the Haiti’s system. *Set in place a risk-based customer identification mechanism for business relationships predating 2001, in connection with a stronger and more direct requirement regarding anonymous accounts and accounts in fictitious names.* This recommendation by the Assessors is referring to retrospective due diligence with an emphasis on anonymous accounts or accounts held in fictitious names. According to part 4 of circular 99, banks are required to apply due diligence measures to their existing customers as

of the date of this circular, depending on how much risk they represent. When this obligation is coupled with the prohibition against anonymous accounts imposed by **art 13** of the **LSMLTF** the resulting effect is the full implementation of the Assessors recommendation. Consequently, this gap is *closed*.

11. Haiti has addressed all of the nine (9) noted deficiencies through the enactment of the LSMLTF together with part 4 of circulars 99 and 99-1. Recommendation 5 is now *closed*.
12. **Recommendation 13** was rated **NC**. There were two noted deficiencies whilst two recommendations were made to cure them. The first cure was for Haiti to “*Expand the scope of suspicious transaction reporting to include terrorism and its financing*”. **Art 31** of the 2013 **LSMLTF** has extended the scope to include terrorism financing by mandating the reporting of an STR where financial institutions and non-financial businesses and professions suspect, or have reasonable grounds to suspect, that funds or assets are the proceeds of criminal activity or are related to terrorism financing. The outstanding issue whereby the **LSMLTF** had not provided a clear definition of ‘*funds or other assets*’ has now been addressed by the 2016 amendment to the LSMLTF. At **art. 1** funds has now been clearly defined to include: assets of all nature, material and non-material, movable and real, tangible and intangible, or intangibles acquired by any means whatsoever, as well as documents and juridical instruments in any form whatsoever, including in electronic or numerical format, attesting of the ownership or vested interest in such assets, including but not limited to bank loans, travellers’ checks, bank checks, Powers-of- Attorney, shares, securities, bonds, drafts and letters of credit, as well as eventual interest, dividends, or other income or values drawn from, or generated by such assets. This Recommendation is now *closed*.
13. For **Special Recommendation II** which was rated **NC** the two (2) deficiencies noted by the Assessors were: i. *no legislation on the financing of terrorism* and ii. *no signature or ratification for the International Convention for the Suppression of the Financing of Terrorism*. The cures recommended were for Haiti to i. *Criminalize terrorist financing, in compliance with the Convention on the Financing of Terrorism* and ii. *Ensure that the future criminalization of terrorist financing and the sanctions meet the standards set by the Convention*. The legislative provisions of the LSMLTF are detailed below:

*SRII.I (a)*

14. Terrorism financing has been criminalised pursuant to **art.6** of the **LSMLTF**. Here any individual of legal entity that intentionally provides or assembles goods with the intention of using them, or intentionally provides or assembles goods knowing that they will be used to commit: a. one or more acts of terrorism b. one or more acts of terrorism by one or more acts of terrorism by a terrorist or group of terrorists, commits an offence.

*SRII.I (b)*

15. The LSMLTF has referenced TF offences to the provision of *goods*. At **art.4** of the LSMLTF however there was the deficiency whereby the definition of goods excluded assets in electronic or digital form. This has now been addressed by the 2016 amendment of the LSMLTF. Here art. 1 has amended art. 4 and to include assets ‘in electronic or numerical format.

*SRII.I (c)*

16. The offense is committed whether the action(s) noted above occurs or not and whether the *assets* were actually used to commit the actions noted above or not. Any attempt in this regard also constitute an offense. Additionally, the infraction is committed whether the act targeted by the foregoing article is perpetrated or not, or whether or not the use

of funds generally whatsoever could be determined in the perpetration of that that act.

*SR II.1 (d)*

17. An attempt to commit, aid induce or assist someone to commit or facilitate the implementation of terrorist financing is punishable as though the offence was actually committed.

*SR II.1 (e)*

18. The types of conduct set out at Article 2(5) of the Convention have been covered at Article 6 of the LSMLTF. Here where a person participates by as an accomplice or organizes or incites others to do, such a person would have committed the offence. Pursuant to article 6, paragraph 5, of the LSMLTF of 2013, the offence is committed if the action under this article occurs or not and whether the assets have been used to commit this action or not. The offence is also committed by any individual or legal entity that participates as an accomplice or organizes or incites others to commit these actions.

*SR II.2*

19. **Art.6** of the **LSMLTF** specifically designates terrorist financing as a predicate for money laundering.

*SR II.3*

20. At **art.9** of the **LSMLTF** the terrorism financing offenses created at art.6 are applicable to any person and legal entity or organisation subject to litigation in Haiti irrespective of where the act was committed.

*SR II.4*

21. **Art.6** allows the knowledge and intention, in relation to the offences noted above, to be deduced from objective factual circumstances. However, whilst liability extends to legal entities, *the LSMLTF is silent on whether parallel criminal, civil or administrative proceedings is possible*. Haiti has noted that the AML/CFT regime falls under the broad penal regime in force in the Civil Law System of Haiti. This system operates *inter alia* on the basis of principles of law generally accepted. As such, the AML/CFT regime applies the following principle: “*criminal proceedings take precedence over civil proceedings*”. That means a civil proceeding can be undertaken only on the basis of a proven criminal offence.

*SR II.5*

22. Natural and legal persons are subject to the criminal and administrative sanctions applicable at **art.57**, **art.58** and **art.59** of the **LSMLTF**.

*SR II overall conclusion*

23. Haiti has on January 13, 2010 acceded to the UN International Convention for the Suppression of the Financing of Terrorism. As can be seen from the analysis above, the enactment of the LSMLTF has positively affected the Jurisdiction’s implementation of SR II. This Special Recommendation is *closed*.
24. For **Special Recommendation IV** which was rated **NC** the comments relative to Recommendation 13 above are also relevant. This Special Recommendation is *closed*. See comments for Rec. 13

**Key Recommendations**

25. **Recommendation 3** was rated **PC** on account of the lone deficiency relating to the *System being ineffective due to confusion in the implementation and management of conservatory measures and seizures*. Here the Assessors recommended that Haiti *Ensure that the funds seized by the competent authorities (Police, Customs) are managed by those same authorities pending a final court decision on whether the funds are to be released or confiscated by the State*. Haiti has provided, at **art.68** of the **LSMLTF**, for all goods confiscated by default to be vested in the state and liquidated according to established procedures. In practice, the funds are deposited to the State account held in the Central Bank pending a final court order. Notwithstanding, the specific issue relating to funds being seized by competent authorities being managed by those same authorities does not seem to have been addressed, the fact that all funds seized are required to be deposited to the State's account now make the basis for this recommendation irrelevant. This Recommendation is **closed**.
26. For **Recommendation 26** Haiti was rated as PC and the examiners made six (6) recommendations aimed at closing the gaps they discerned. Please see the fifth follow-up report for details of previous actions by Haiti towards rectifying these deficiencies. For this reporting period Haiti's actions are as follows:
- i. *Clearly redefine UCREF's scope of action in line with the anti-money laundering law of 2001*- Haiti has made several administrative changes to the structure of UCREF. New staff has been hired and there is now operational and financial independence from BRH. On May 8, 2017, Haiti enacted the Law Bearing on the Organization and Functioning of UCREF. At art, 2 of this law UCREF has been mandated to with the responsibilities of receiving, analyzing and processing declarations from individuals and legal persons that are required to forward to UCREF information and data within the framework of the fight against ML and TF. This action now aligns the scope of UCREF's legislative responsibilities with the Haiti's AML/CFT reporting obligations. This gap is **closed**.
  - ii. *Build awareness on the part of professions subject to the suspicious transaction reporting requirement* – This is an ongoing effort by Haiti. The CNLBA is reportedly in the process of defining mechanisms which will lead to greater awareness and coordination by magistrates and LEAs.
  - iii. *Ensure that UCREF exchanges information only with persons authorized to receive same (foreign counterparts)* – This is addressed through the Law Bearing on the Organization and Functioning of UCREF. At art. 3 (d) UCREF has been given the authority to exchange financial information in connection with ML and TF with foreign counterparts within the framework of conventions or in enforcement of the principle of reciprocity. This ensures that there is a set basis upon which UCREF can exchange information and that the exchange of such information is done based on a formal agreement. This gap is **closed**.
  - iv. *Reinforce UCREF's operational independence in relation to CNLBA and establish real functional autonomy in relation to BRH* – The Law Bearing on the Organization and Functioning of UCREF was enacted to, among other things, confer both economic and administrative autonomy on UCREF and to also provide it legislative measures that will ensure its independence and autonomy. Art. 1 of the said law created UCREF as an autonomous organization, of administrative nature, provided with legal personality, and enjoying administrative and financial autonomy under the Ministry of Justice and Public Security. This ensures that UCREF

is now delinked from the CNLBA thus erasing any independence it would have had to that agency. This gap is *closed*.

- i. Charge UCREF with publishing a periodic status report* – This has been addressed through The Law Bearing on the Organization and Functioning of UCREF. At art. 3 (c) UCREF now has the power to prepare quarterly reports on its activities that analyze the developments in AML/CFT. This gap is *closed*.
  - ii. Bring Haitian law in line with the conditions required for membership in the Egmont Group* – Now that the Law the Law Bearing on the Organization and Functioning of UCREF has been enacted an administrative type FIU with full autonomy and independence has been created in Haiti. The structure of the unit has been solidified through a Board of Directors which is to be appointed through Decree taken by the Council of Ministers after approval by the Jurisdictions’ Senate. The UCREF now has direct and specific AML/CFT functions directly in line with the LSMLTF. This gap is *closed*.
27. Haiti has now address all the deficiencies noted in the DAR Consequently, Recommendation 26 is *closed*.
28. As for **Recommendation 35** which was rated **NC**, there were three (3) cures prescribed by the Assessors as follows:
  - i. Take measures to implement the Vienna Convention* – Haiti has put forward the 2001 law Bearing on the Control and Suppression of Illicit Drug Trafficking as one of the measures that was utilized to implement the Assessors recommendation. This law reportedly addresses articles 1, 2, 4, 6, 9, 10, 12, 45 of the Vienna Convention.
  - ii. Ratify and implement the Palermo Convention* – Haiti signed the Palermo Convention on December 13, 2000 and ratified it on April 19, 2011. Haiti has informed the Secretariat that *ex-post* its ratification, the Palermo Convention has been implemented geared to the comprehensive regime built as from the Act on drugs trafficking of 2001, the Act on the laundering of assets derived from drugs trafficking of 2001 and LSMTF of 2013. This gap is *closed*.
  - iii. Sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism* – This Convention was ratified by Haiti on January 13, 2010. Pursuant the Convention for the suppression of the Financing of Terrorism, Articles 6 to 9 of the LSMLTF establish the financing of terrorism as a predicate offense to money laundering. Subsequently, these articles aim various offenses under the scope of the offense of financing of terrorism offense. According to paragraph 511 of the DAR, Haiti had, at the time of the onsite, signed just five (5) of the 13 UN conventions relating to terrorism. It is still unclear whether the eight (8) Conventions that were outstanding have since been signed and implemented.
29. Haiti on May 23, 2017 presented information on the Articles of the Vienna Convention which the 2001 law Bearing on the Control and Suppression of Illicit Drug Trafficking addressed. Additionally, the jurisdiction has promised to provide an update on the eight remaining conventions noted at paragraph 27 (iii) following the May 2017 plenary meetings.
30. **Recommendation 40** had two noted deficiencies. *i.* Clarify the possibility of exchanging financial information with UCREF non-counterpart foreign agencies, and *ii.* Authorize all

the financial sector supervisory bodies to participate actively in international cooperation between supervisors. For this it was rated **PC**. Regarding the first deficiency, this report has already detailed that The Law Bearing on the Organization and Functioning of UCREF addressed this Assessors' recommended. Art. 3 (d) gives UCREF the authority to exchange financial information in connection with ML and TF with foreign counterparts within the framework of conventions or in enforcement of the principle of reciprocity. This gap is **closed**. For the second recommended action, Haiti has pointed to art. 98 of the Law bearing on banks and other financial institutions. Here the Central Bank may cooperate with foreign supervisory institutions with the view to exchange information, and for the purpose of local supervision, on the basis of agreements signed between and the latter. Contextually, the Central Bank is the only supervisory body. Additionally, according to art. 98 of The Law Bearing on the Organization and Functioning of UCREF, the said UCREF may exchange information, subject to reciprocity, with a foreign FIU. The combined effect of art. 27 of the Law bearing on banks and other financial institutions and art. 27 of The Law Bearing on the Organization and Functioning of UCREF has endowed the jurisdiction with the basis for allowing its supervisory authorities to participate in international cooperation with other supervisory authorities outside of Haiti. Recommendation 40 is now **closed**.

31. For **Special Recommendation I** which was rated **NC** the Assessors recommended that Haiti *Sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism* – This Convention was ratified by Haiti on January 13, 2010. In accordance to the Convention for the suppression of the Financing of Terrorism, Articles 6 to 9 of the LSMLTF establish the financing of terrorism as a predicate offense to money laundering. The comments for Recommendation 35 relating to Haiti having signed just five (5) of the 13 UN conventions relating to terrorism are also relevant here. Additionally, there are still no provisions under Haitian laws for freezing assets used for terrorist financing either under UN S/RES/1267 (1999) and S/RES/1373(2001). This Recommendation remains **outstanding**.
32. **Special Recommendation III** was rated **NC** on account that there was “*No legal framework for freezing assets used for terrorist financing*” The recommended cure was for Haiti to *Introduce measures to provide for the freezing of assets used for terrorist financing, in accordance with the requirements of Resolutions 1267 and 1373. Art. 47* of the **LSMLTF** provides for the freezing, by ministerial decree, of the *funds* of terrorists, persons, entities or organizations that finance terrorism, or terrorist organizations so designated by the UN Security Council. An order from the Cabinet issued by three (3) government Ministries will define the conditions and duration of the freezing and will be published in the Haitian Gazette. Financial institutions and any other person holding such funds are then required to immediately freeze them following notification of the Ministerial Order. This provision sets the basis upon which the freezing of terrorist funds can occur in Haiti.
33. Haiti issued a Decree in August 2016, which established the procedure governing the implementation of freezing measures against funds and other assets connected with the financing of terrorism, in accordance with resolutions 1267 (1999) and 1989 (2011), and with the ensuing resolutions, resolution 1988 (2011) and resolution 1373 (2001) of the United Nations Security Council Decree. Art.7, 8, 9, 10, 11, 12 and 13 are concerned with the procedures for designating individuals or legal persons whilst art. 14 and 15 are specifically concerned with requests for freezing funds or other assets submitted by foreign states. Specifically, art. 4 of the August 2016 Decree provides for communicating Haiti's action under the Jurisdiction's freezing mechanism whilst art. 5 provides the guidance to the *declaring entities* (financial institutions and DNFBPs) which may be holding targeted funds or other assets. Art. 6 provides for frozen funds to be released, by a Ministerial decree,

when the designated individual or legal person is removed from the list issued by the United Nations' Security Council. Art.8 establishes the delisting procedures which are to be followed by the Ministry of Justice and Public Security in removing any individual or legal person included in the list of individuals and entities designated in accordance with the UN/RES. Arts. 12 and 13 have established the procedures to be followed for authorising access to funds or other assets that are required for basic expenses and the payment of certain types of fees. Art. 16 charges UCREF and other regulatory entities with ensuring, within the frame work of their duties, that financial institutions and DNFBPs comply with the provisions of the Decree. In the event of non-compliance, UCREF or any other regulator is empowered to impose sanctions provided by law or regulations. Finally, art. 66 of the LSMLTF provides for the confiscation of assets for which a terrorist organisation has the power of disposal. Accordingly, such assets must be confiscated once they relate to the offense, unless their lawful purpose is established.

34. Haiti now has a framework which will allow it to provide for the freezing of assets used for terrorist financing, in accordance with the requirements of Resolutions 1267 and 1373 as recommended by the Assessors. Special Recommendation III is now *closed*.
35. Recommendation 7 which was rated **NC** because there was an *absence of requirements pertaining to the establishment of correspondent banking or equivalent relationships*. **Art. 24** of the **LSMLTF** is concerned with cross-border correspondent banking relationship. At article 24 b) and c) there are obligations which are intended to implement the requirements of essential criterion 7.1. Article 24 e) implements essential criteria 7.2 by mandating that financial institutions evaluate the ML and TF controls implemented by their client (correspondent) institution. Article 24 f) prescribes the approval from senior management of the financial institution before establishing a new correspondent banking relationship. The 9<sup>th</sup> follow-up report had note that *“There appears to be no obligation for the two institutions involved in the relationship to document or at least have a clear understanding as to which institution will perform the required measure”* For this reporting period the situation remains the same therefore even though the enactment of the noted provisions have had the effect of greatly advancing Haiti's implementation of Recommendation 7 there still remains a minor deficiency. This Recommendation is *outstanding*.
36. **Recommendation 9** was rated **NC** on account of there being an absence of obligations on the part of intermediaries and business introducers; lack of certainty regarding the ultimate responsibility of the financial institution to meet the requirements of due diligence. The recommended action was for Haiti to: *Clarify the requirements of due diligence in situations where a financial institution provides a role to third parties or business introducers, specifically by indicating the conditions (regarding obligations to fight money laundering) that must be met by the intermediary and by affirming the principle that responsibility for the customer identification process always falls to the financial institution*. Haiti has pointed to the art. 10 of enacting the law modifying the LSMLTF as addressing this gap in its AML/CFT infrastructure. It is immediately noted that art. 10 does not address R. 9.1 in so far as the financial institution relying on the third party must immediately obtain from that third party the necessary information concerning elements of the CDD process relating to R. 5.3 to R. 5.6. Additionally, R. 9.4, which is concerned with determining in which countries the third party that meets the reliance conditions can be based, has not been addressed. This Recommendation remains *outstanding*.
37. **Recommendation 12** was rated **NC** and there were two (2) recommended cures. The first cure was for an expansion of the AML and CFT measures to other non-financial businesses

and professions, especially notaries, accountants, independent legal professionals, lawyers, traders of precious metals and stones and art dealers. Of the business types recommended by the Assessors for expansion under Haiti's AML/CFT regime art dealers have not been taken up. Notwithstanding Haiti's action to include these business types, **art. 4** of the **LSMLTF** has defined financial institutions to include the legal entities particularised at art. 2. At art. 3, DNFBPs are particularised and the obligations of the LSMLTF is applicable to the extent that such obligations are expressly stipulated. Haiti's preventative measures are found at Chapter 3 of the LSMLTF however, these measures are set only in relation to the legal entities found at art. 2 (financial institution). At art. 29 that are specific additional obligations in relation to record keeping and identification applicable to casinos and gaming establishments. At art. 30 there is the requirement that 'those' that carry out, supervise or advise on real estate conduct identification according to art. 18. Based on this it appears that only an extremely limited implementation of essential criteria 5.3 has been achieved specifically for casinos, gaming establishments and 'those' that carry out, supervise or advise on real estate. None of the other requirements of Recommendation 5 (Criteria 5.1 - 5.18) appear to have been captured. The second cure in relation to implementation of existing measures through training has not as yet been done. This Recommendation is **outstanding**.

38. For **Recommendation 15** a **PC** rating was applied and the Assessors noted one deficiency and two recommended actions to cure it. The recommended actions were: i. *Clarify internal control obligations, based on the 2001 law and the circular on internal controls, especially as regards: especially as regards: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training and ii. Adopt stronger administrative sanctions as a way to enhance the effectiveness of internal control obligations.*
39. Haiti has referred to circulars 61-2, 89-1 and 100-1, issued by the Central Bank of Haiti, as providing the measures to address the noted deficiency. The analyses of the related provisions are as follows:
- i.i *Access to customer information by the compliance auditors* – Circular 61-2 is concerned with banks and their Independent Auditors. Whilst the main focus of this circular is to ensure that there is a requirement for all banks to have their annual financial statements audited, by an Independent Auditor, at the end of the bank's financial year, chapter 5 of this circular is concerned with the Independents Auditor's work and reports. Here, the Independent Auditor is required to audit the methods and procedures implemented within the framework of the bank for preventing ML and TF. There is however no obligation for the auditor to have access to customer information. In fact, the Administrators, Managers, employees or other representatives of the bank are required to make available all the information and explanations necessary to the auditor but this if for the purpose of auditing the agreements entered into between the bank and individuals and legal entities connected with the banks. This sub-deficiency is not **addressed**.
  - i.ii *Capacity of internal auditors to undertake verification of samples* – At section 5 of Circular 100-1 there is a list of issues which are required to be addressed during independent periodic testing. The reference to sampling here is limited to a review of a sample of filing forms of documents, and information forms on suspicious financial transactions. Notwithstanding, the review of the listed issues can only be carried out through testing or sampling outputs on the various issues. This sub-deficiency is only partially **addressed**.

- i.iii *Verification of staff backgrounds prior to recruitment* – This has not been specifically addressed through any of the circulars issued by the Central Bank of Haiti. This sub-deficiency is not fully **addressed**.
  - i.iv *Minimum content of compulsory training* – Circular 100-1 is concerned with the development and implementation of a programme aimed at prevention ML and TF. Chapter 4 is concerned with re-training. However, training here is limited to endowing employees with the ability to understand the requirement to declare, to identify customers and to maintain records. This sub-deficiency is not **addressed**.
  - i.v *Adopt stronger administrative sanctions as a way to enhance the effectiveness of internal control obligations*. At paragraph 6 of circular 100-1 sanctions are applicable but only in relation to deficiencies in the organization of internal procedures aimed at preventing ML and TF. This sub-deficiency is not **addressed**.
40. The issuance of circulars 61-2, 89-1 and 100-1 by the Central Bank of Haiti has had no positive effect on the implementation. Recommendation 15 remains **outstanding**.
41. For **Recommendation 16** the Assessors had made one recommendation that *that non-financial businesses covered by the anti-money laundering law meet their obligations with respect to detecting and reporting suspicious transactions. In addition, they should expand the suspicious transaction reporting obligation to include all designated non-financial businesses and professions. Art 31* of the 2013 **LSMLTF** has covered DNFBBPs by mandating the reporting of an STR where financial institutions and non-financial businesses and professions suspect, or have reasonable grounds to suspect, that funds or assets are the proceeds of criminal activity or are related to terrorism financing. This Recommendation is now **closed**.
42. **Recommendation 17** was rated **NC** owing to the *absence of a dissuasive, proportionate, and effective system of sanctions and lack of implementation of the current system of sanctions*. At **Ch.2 s.1** of the **LSMLTF** administrative and criminal penalties are created to deal with natural persons and legal entities that fail to comply with Haiti's AML/CFT requirements. A conviction for money laundering or terrorist financing carries a punishment by imprisonment for a term of three (3) to fifteen (15) years and a fine of two million (2,000,000) to one hundred million (100,000,000) gourdes, depending on the seriousness of the case. Legal entities are liable to a fine equal to five times that specified for individuals and administrative sanctions which include prohibition from carrying out certain professional services and closure of the premises used to commit the offense, among other sanctions. Financial institutions and DNFBBPs are subject to administrative sanctions, pursuant to the "*professional and administrative regulations*" including the Central Bank's circulars when they disregard any financial obligations assigned to them by the **LSMLTF**. Such sanctions can be applied by the 'supervisory authority' (Central Bank of Haiti) Officers and officials of financial institutions and DNFBBPs are liable to criminal sanctions for the money laundering and terrorist financing offenses noted at articles 5 and 6 of the **LSMLTF**. This Recommendation is **closed**.
43. For **Recommendation 18** a **PC** rating was applied for the lone deficiency relating to an *absence of any obligation for Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts* – **Art 7** of the 2016 amendment to the **LSMLTF** has amended **art. 24** of the **LSMLTF** thereby prohibiting financial institutions from establishing correspondent banking relations with fictitious banks. Here as well, financial institutions are required to take the appropriate measures in order to ensure that they do not enter or maintain correspondent banking relations with a bank that is known for enabling fictitious banks to use their accounts. This Recommendation is now **closed**.

44. As for **Recommendation 20** which was rated **NC**, Haiti has now included vehicle dealers thus the recommended action that the Jurisdiction *consider expanding (based on risk) the anti-money laundering and anti-terrorist financing system to include other non-financial businesses and professions has been taken on board.* This gap is **closed**.
45. For the other recommended action that a review of the *provisions aimed at promoting the use of other payment instruments besides cash* be undertaken, Haiti reported that *“since the mutual evaluation some measures have been taken to ensure the promotion of other payment instruments besides cash. The central bank focused and supported the financial institutions in the use of debit cards, electronic transfers and mobile banking.”* Haiti has not provided any details to substantiate this statement. Recommendation 20 is now significantly improved.
46. **Recommendation 21** was rated **NC** *absence of a legal framework and operational mechanism enabling Haiti to guard against countries with weak systems for combating money laundering.* The recommended cure was for Haiti to *Develop mechanisms to inform financial institutions about the shortcomings of certain systems to combat money laundering and terrorist financing, as well as a legal framework that will enable them to enforce countermeasures against countries that continue to not adequately implement the FATF Recommendations* – The legal framework has been put in place through **art.13** of the **LSMLTF** which mandates that financial institutions give special attention to countries with weak AML/CFT systems. With regard to the *operational mechanism*, Haiti has however not provided any details on how this measure is being implemented. Recommendation remains has been significantly improved.
47. **Recommendation 24** which was rated **NC** remains just as noted in the DAR. This Recommendation is **outstanding**.
48. For **Recommendation 25**, which was rated **NC**, there were four deficiencies. The lone recommended action intended to cure them was for Haiti to: *Provide information to, and raise the awareness of, financial and non-financial entities subject to the legal obligations of the anti-money laundering law, by issuing guidelines and particularly money laundering typologies, so as to enable these entities to fulfil their obligations under optimal conditions. Similarly, strengthen the training of private and public actors involved in preventing and cracking down on money laundering.* UCREF has not as yet implemented a system that would result in appropriate feedback to financial institutions and DNFBPs. This Recommendation remains **outstanding**.
49. For **Recommendation 27** which was rated **PC** Haiti has not as yet taken the measures necessary to close the deficiencies noted by the Assessors. This Recommendation remains **outstanding**.
50. Haiti has reported that **Recommendation 28** which was rated **PC** is the subject of revisions of the Penal Code and the Criminals Investigations Code. This Recommendation remains **outstanding**.
51. With regard to **Recommendation 29** Haiti was rated **PC** and the Assessors noted two deficiencies and two recommendations to cure them. The recommended actions were: i. *Lift bank secrecy for inspectors involved in banking supervision;* and ii. *Adopt a less formalistic approach to compliance with obligations related to the prevention and detection of money laundering and terrorist financing, particularly by placing greater emphasis on obligations regarding suspicious transaction reporting.* *“Lift bank secrecy for inspectors involved in banking supervision”* Haiti has pointed to art. 106 of the law governing banks

and other financial institutions which obliges all banks to provide the Central Bank with information and article 178 of the said law which provided for “Professional Secrecy” and lists the types of information covered by such. At art. 179 financial institutions cannot claim professional secrecy but only in limited circumstances involving the Central Bank UCREF where these two (2) entities are acting in furtherance of an investigation concerning assets of ML, TF. Additionally, according to art. 98, the Central Bank may cooperate with foreign supervision institutions with the view to exchange information, and for the purpose of local supervision. Finally, at art. 99 the Central Bank is bound to have free access to any and all information that it deems necessary for the needs of its mandate. For the second recommended action Haiti has reported that this is addressed during the inspection of financial institutions. However, no information has been provided to support this statement so even though the action has resulted in the significant improvement of the implementation of Recommendation 29 it remains *outstanding*.

52. For **Recommendation 30** which was rated **NC** with the two (2) deficiencies being: Insufficient human and budget resources overall, and less than optimal use of same; and overly generalized training. Haiti reported that UCREF runs in-depth scrutiny on its personnel with polygraph testing being conducted during August of 2014. Training concerning drugs trafficking and money laundering was carried out by the French Embassy in February 2015 with additional training expected to be conducted in June 2015. No information was provided on the human and budgetary resources, training details or training for the other UCREF employees. Additionally, the Assessors had noted that the training being provided at the time was overly generalised. Haiti has reported that training was provided by the French Embassy. The main theme of the training: cartography of drugs trafficking in Haiti; seriousness of the scheme of drugs trafficking in the community; how the products of drugs trafficking are laundered; Various techniques for money laundering; Prospective in AML fight. This training was intensively conducted throughout one day. It was organized in a very interactive manner which allows a genuine sharing of best practices. Regarding the recommended action to regularly ensure the integrity of UCREF’s staff, art. 23 of Law Bearing on the Organization and Functioning of UCREF has mandated that no employee can be recruited to UCREF unless a prior investigation has been conducted on the integrity and morality of the applicant. This action has resulted in the significant improvement of the implementation of Recommendation 30. Notwithstanding, the Assessors recommended action was for the integrity of staff to be ensured regularly which suggests that this should be an ongoing process. This Recommendation remains *outstanding*.
53. For **Recommendation 31** which was rated **PC** the Assessors had noted two (2) deficiencies in i. *Ineffectiveness of the coordinating body* and ii. *Lack of operational coordination between Haitian actors involved in the fight against money laundering and the fight against terrorist financing*. Haiti has not as yet addressed these deficiencies. Recommendation 31 is *outstanding*.
54. **Recommendation 32** was rated **NC** on account of there being an absence of a reliable mechanism for collecting statistical data. The recommended action was for Haiti to develop reliable statistics on UCREF activities. Haiti has not as yet addressed this deficiency. Recommendation 33 is *outstanding*.
55. For **Recommendation 33**, which was rated **NC** had found that the system of transparency for legal persons, did not allow for rapid access to reliable, up-to-date beneficial ownership and control information. The recommended action to cure this deficiency was for the authorities to monitor effectively and record any changes in the bearers of bearer shares of corporations. This action has not as yet been taken on board by Haiti. This Recommendation is *outstanding*.

56. As for **Recommendation 38** which was rated **PC**, Haiti previously reported that they were preparing a mechanism to coordinate confiscation initiatives with all countries. No further details were since provided.
57. **Special Recommendation VI** was rated **NC** and the Assessors had recommended that Haiti *adopt a more proactive approach toward money transfer services currently provided in the informal sector*. Haiti has reported that they are aware of the risk of high use of cash in the Haitian economy and have taken measures to encourage the use of other payment instruments, such as debit card, for the entire financial system and to stimulate the access to the formal sector.
58. **Special Recommendation VIII** which was rated **NC** has not as yet been addressed by Haiti.
59. **Special Recommendation IX** was rated **PC** and there were four (4) cures made by the Assessors. The 7<sup>th</sup> follow-up report had provided the analysis which showed that Haiti's response had not as yet resulted in the closure of the stated deficiencies. For this reporting period Haiti has advised that UCREF is at the stage of drafting MOUs, on information exchange, to be signed with Customs administration, Tax administration. Haiti has also reported that guidelines issued by the UCREF provide the means by which Customs may send information to the said UCREF when relevant. This Special Recommendation remains *outstanding*.

#### **IV. CONCLUSION**

60. For this reporting period, the analysis of Haiti's actions has shown that the Jurisdiction has made significant improvement with the implementation of its AML/CFT infrastructure and its Core and Key Recommendations.
61. The following is noted for the Core Recommendations which were rated PC/NC:
- R.1 has been significantly improved but with the offence of piracy still needing to be criminalised;
  - R.5 is now closed;
  - R.13 is now closed;
  - SR. II is now closed;
  - SR. IV is now closed
62. The following is noted for the Key Recommendations which were rated PC/NC:
- R. 3 is now closed;
  - R. 4 was closed in the 4<sup>th</sup> follow-up report;
  - R. 23 was closed in the 7<sup>th</sup> follow-up report;
  - R. 26 is now closed;
  - R. 35 is significantly addressed pending receipt of additional information from Haiti;
  - R. 40 is now closed;

- SR. I is significantly addressed pending receipt of additional information from Haiti;
  - SR. III is now closed;
  - SR. V was closed in the 7<sup>th</sup> follow-up report.
63. For the other Recommendations, Haiti was rated PC/NC with a total of 27 Recommendations. For this reporting period Haiti's actions have resulted in the closure of R.17 and 18. Consequently, Recommendations 2, 6, 8, 16, 17, 18, 21, 22, and SR. VII are closed.
64. It is noted that Core Recommendation 1 has not been fully addressed because of the non-criminalisation of piracy (pirates at sea) in the LSMLTF. This is considered to be a minor deficiency in the context of the nature of the offence for this jurisdiction, therefore, R. 1 can be assessed to have attained the level of LC. All of the other deficiencies and recommended actions for the Core Recommendations have been fully addressed.
65. Also, all of the Key Recommendations with the exception of R. 35 have been conclusively attended to.
66. Haiti has now met the criteria, set by the May 2014 Plenary, to exit the CFATF third-round follow-up process. The Plenary, having considered the progress made by Haiti asked the Jurisdiction to consider applying to exit the CFATF third-round follow-up process in time for the November 2017 plenary meetings. Pending that application, Haiti was kept in the status quo which is enhanced follow-up.

CFATF Secretariat  
May 31<sup>st</sup> , 2017

**Matrix with Ratings and Follow-up Action Plan 3rd Round Mutual Evaluation  
Haiti – May 2017**

| Forty Recommendations       | Rating | Summary of factors underlying rating <sup>2</sup>   | Recommended Actions   | Undertaken Actions  |
|-----------------------------|--------|---|---|---|
| <b>Legal systems</b>        |        |   |   |   |
| 1. Money laundering offence | NC     | <ul style="list-style-type: none"> <li>• The criminalization of money laundering does not cover all of the serious offences listed by the FATF, such as corruption, smuggling, arms exports, counterfeiting, migrant smuggling, sexual exploitation, and terrorist financing.</li> <li>• The criminal law policy on combating money laundering and terrorist financing is currently ineffective.</li> </ul> | i. Adopt a criminal law policy with regard to serious offences that takes account more systematically of the laundering of the proceeds from the offences being prosecuted, by raising the awareness of prosecutors, investigative magistrates, and the police. | <p>The AML/CFT law modifying the law of November 11, 2013 suppressing money laundering and terrorist financing in its article 3 criminalize the offences listed by the FATF as follows:</p> <p>“Article 8.- For the purpose of enforcing the foregoing law, the origin of funds or assets is illicit when the latter come from the perpetration of an offence connected with:</p> <ul style="list-style-type: none"> <li>a) terrorism or terrorist financing;</li> <li>b) organized crime;</li> <li>c) illicit trafficking in narcotic drugs and psychotropic substances;</li> <li>d) illicit trafficking in weapons;</li> <li>e) illicit trafficking in stolen goods and merchandises;</li> <li>f) trafficking of human beings;</li> <li>g) smuggling of migrants and in human beings;</li> <li>h) sexual exploitation, including that of children;</li> <li>i) contraband;</li> </ul> |

<sup>2</sup> These factors are only required to be set out when the rating is less than Compliant.

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|  |  |  | <p>j) kidnapping, sequestration and hostage taking;</p> <p>k) misappropriation of public funds by public servants and corruption;</p> <p>l) counterfeiting of money or bank notes;</p> <p>m) counterfeiting goods or title deeds;</p> <p>n) trafficking in human organs;</p> <p>o) moral corruption and exploitation of minors;</p> <p>p) extortion ;</p> <p>q) fraud;</p> <p>r) insider offences;</p> <p>s) corruption ;</p> <p>t) environmental crimes;</p> <p>u) theft. ’’</p> <p>This recommendation is addressed in the Bill on Money Laundering and Financing of Terrorism in article 8.</p> <p><b>Article 8.-</b> For the purposes of this law, the origin of money or property is illegal when it is the product of an offense originating from:</p> <p>a) terrorism or terrorist financing;</p> <p>b) organized crime;</p> <p>c) illegal trafficking in narcotic drugs and psychotropic substances;</p> <p>d) illegal arms trafficking;</p> <p>e) illegal trafficking in stolen property and goods;</p> |
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|  |  |  |  | <p>f) trafficking illegal labor;<br/> g) the smuggling of migrants and trafficking in human beings;<br/> h) sexual exploitation, including that of children;<br/> i) smuggling;<br/> j) kidnapping, illegal restraint and hostage-taking;<br/> k) embezzlement of public funds by persons exercising a public function and corruption;<br/> l) counterfeiting currency or bank notes;<br/> m) Counterfeiting goods or property titles.<br/> n) trafficking in human organs;<br/> o) the misuse or exploitation of minors;<br/> p) extortion;<br/> q) looting of the wealth of the people by anyone.</p> <p>In principle, the AML/CFT regime is reflective of the broader penal regime in force in Haiti. Therefore, the penal code, as per its forthcoming revision, shall entail all offenses such as fraud, piracy, environmental crime... Given that b) organized crime appears to bear <i>per se</i> all unlisted offenses as in the new LSMLTF. Hence, the passing of the revision of the Penal Code shall fulfil any lacuna insofar</p> |
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|  |  |  |   | that the implementation of the latter reflects directly on the special AML/CFT regime.   |
|  |  |  | ii. Take a census of the cases where money laundering is considered from the outset of the preliminary investigation or when criminal proceedings are started.  | <p><b>The Minister of Justice and Public Security is fully aware of the need to collect statistics from the outset of the preliminary investigation or when criminal proceedings are started. There is a process being set up since last December for the purpose of collecting census and to publish them at the end of the fiscal year.</b></p> <p>Authorities are fully aware of the need to collect statistics regarding AML crimes. On January 31<sup>st</sup> 2013 the Minister of Justice has sent a memorandum to the prosecutors in addressing this issue.</p> <p><b>The Minister of Justice and Public Security issued a memorandum in August 3<sup>rd</sup>, 2015 pertained to Courts, prosecutor's offices obligations to gather information in relation to ML/FT cases.</b></p> |
|  |  |  | iii. In a subsidiary move, provide that, where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted an offence in | <b>Closed (refer to seventh follow-up report)</b>  |

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|  |    |  | Haiti, this constitutes a money laundering offence in Haiti.   |  |
| 2. Money laundering offence – mental element and corporate liability | PC | <ul style="list-style-type: none"> <li>The requirements for invoking the criminal liability of legal persons are too restrictive, notwithstanding the inherent weaknesses of the predicate offences and the offence of money laundering (see Recommendation 1).</li> </ul> | <ul style="list-style-type: none"> <li>Reword the sentence about the liability of legal persons and lower the threshold for invoking legal persons’ liability by removing the reference to the commission of an offence by a structure or a representative of the legal person.</li> </ul> | <b>Closed (refer to tenth follow-up report)</b>  |
| 3. Confiscation and provisional measures                             | PC | <ul style="list-style-type: none"> <li>System is ineffective due to confusion in the implementation and management of conservatory measures and seizures.</li> </ul>   | <p>i. Ensure that the funds seized by the competent authorities (Police, Customs) are managed by those same authorities pending a final court decision on whether the funds are to be released or confiscated by the State.</p>  | <p><b>With regard to the law, Police and Customs are not allowed to manage funds seized. The funds are actually deposited to the State account held in the Central Bank pending a final court decision.</b></p> <p>See <b>articles 68 and 69</b> of the LSMLFT of 2013.</p> <p><b>Article 68.-</b> Confiscated resources or goods shall vest in the state, which shall place them in a fund to combat organized crime. They remain encumbered up to their real, lawfully established value for third parties.</p> <p><b>Article 69.-</b> Money or other goods confiscated become the property of the state and will be placed in the Special Fund to Combat Organized Crime. Seized property will be auctioned by order of the Board of Directors of the Fund according to the procedure laid down in Articles 895 and subsequent of the of Civil Procedures</p> |

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|  |  |  |  | <p>Code and the amount collected, after deduction of costs, will be paid to the Special Fund to Combat Organized Crime.</p> <p>In case of confiscation issued by default, the confiscated goods shall vest in the state and be liquidated according to the appropriate established procedures. However, if the court rules for the defendant and he is acquitted, it shall order the State to reimburse the value of the confiscated property.</p> <p>A fund has been created under this law called the "Special Fund to Combat Organized Crime." A law will determine the organization and operation of the Fund. Pending the establishment of the Fund, the proceeds of forfeited goods will be deposited into the Deposit and Consignment Fund.</p> |
|  |  |  | <p>ii. Require courts, Government agencies, and departments concerned to keep accurate statistics about the conservatory measures taken and confiscations made by each of them. One authority should be designated to centralize the statistics.</p> | <p>CNLBA initiated an intersectorial monitoring committee monthly, now quarterly meeting. As results following agencies: BAFE, BAFOS, BRH, AGD, &amp; UCREF do provide statistics.</p> <p>The Ministry of Justice and Public Security issued a Ministerial Decree on December</p>  |

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|   |    |   |   | 20 <sup>th</sup> , 2016 by which the Unit of AML/CFT Statistics and Strategy has been created. \  |
| <b>Preventive measures</b>                          |    |   |   |   |
| 4. Secrecy laws consistent with the Recommendations | PC | <ul style="list-style-type: none"> <li>Bank secrecy too broad in scope and excessively restrictive, thus undermining the effectiveness of the anti-money laundering mechanism</li> <li>Excessive access to bank information by UCREF, apt to result in defiance by informant entities and create legal risks harmful to judicial proceedings</li> </ul>   | Revise the obligations pertaining to bank secrecy so that the current restrictions, which pose a potential impediment to the fight against money laundering (scope and depth of banking supervision, domestic and international cooperation), are lifted. In addition, ensure that UCREF's practices regarding access to banking information are performed in full compliance with the letter and spirit of the law of 2001 | <p><b>Closed (refer to seventh follow-up report)</b></p> <p>See article 179 of the law governing banks and other financial institutions.</p>          |
| 5. Customer due diligence                           | NC | <ul style="list-style-type: none"> <li>Too limited scope of the ban on anonymous accounts and accounts in fictitious names; lack of risk-based identification mechanism for customers predating 2001 (or 1994 for bank deposit accounts)</li> <li>Identification threshold too high for customers performing wire transfers</li> <li>Legal uncertainties about the identification threshold for occasional customers</li> </ul> | i. Strengthen the banks on anonymous accounts and accounts in fictitious names  | <p><b>Closed (refer to seventh follow-up report)</b></p> <p>See <b>article 13</b> (first paragraph) of the LSMLFT Act of 2013.</p>                    |
|   |    |   | ii. Lower the customer identification threshold for wire transfers to US\$1,000   | <p><b>Closed (refer to tenth follow-up report)</b></p> <p>See circulars 95-1 A and 99-1 of the Central Bank and article 21 of the LSMLFT of 2013.</p> |
|   |    |   | iii. Clarify the legal identification threshold for occasional  | <p><b>The AML/CFT law modifying the law of November 11, 2013 suppressing money</b></p>  |

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|  |  | <ul style="list-style-type: none"> <li>• Absence of an identification requirement, independent of the threshold, when there is a suspicion of money laundering or terrorist financing</li> <li>• Absence of requirements to identify and verify the identity of beneficial owners and to understand the way in which the ownership and control of a legal person are organized</li> <li>• Absence of a requirement to collect information on the purpose and nature of the business relationship, and to ensure due diligence (including the updating of identification data)</li> <li>• Absence of a requirement of enhanced diligence for high risks</li> <li>• Lack of objective data on the effectiveness of the requirements of due diligence</li> </ul> | <p>transactions in forms consistent with the anti-money laundering law of 2001</p> | <p>laundering and terrorist financing in is article 4 clarify the legal identification threshold as follow:</p> <p>“Article 11.- Persons targeted by articles 2 and 3 of the law of November 11, 2013, are required to report to the Central Financial Information Unit (UCREF) all transactions in cash for amounts equal to or exceeding six hundred thousand Gourdes (Gdes 600.000.00) or the equivalent in foreign currency, whether in a lump sum or in several transactions that appear to be interconnected.</p> <p>This threshold for making declarations is set at sixty thousand Gourdes (Gdes 60,000.00) or the equivalent in foreign currency for funds transfer companies as well as all other financial institutions authorized to make funds transfers or electronic wires.”</p> <p>See article 17 of the LSMLFT of 2013.</p> <p><b>Article 17.-</b> Financial institutions are required to identify their customers and verify information through documents,</p> |
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|  |  |  |  | <p>data sources or independent and reliable information for:</p> <p>....</p> <p>b) the execution of occasional transactions, when the client wishes to make:</p> <ol style="list-style-type: none"> <li>1. a transaction in an amount equal to or greater than the regulatory amount, whether in a single transaction or by means of several transactions that appear to be linked. The identification is also required even if the transaction amount is less than the threshold when the lawful origin of the funds is not certain;</li> <li>2. a transfer of funds whether nationally or internationally;</li> </ol> <p>This legal provision addresses this gap in reference to the Central Bank Circular 99-1.</p> <p>In accordance to article 11 of the LSMLTF, the threshold can only be established through circulars issued by the Central Bank. In result of this, two considerations are to be made:</p> <ol style="list-style-type: none"> <li>1) No prescription can be made in the LSMLTF to the extent that such would be precluding any change other than amendments issued by the Parliament (in another law), besides the lack of flexibility that would be caused thereto.</li> </ol> |
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|  |  |  |   | <p>2) By referring to “the threshold”, full compliance to recommended action iii is to be acknowledged as through the regulatory power of the lone Central Bank in this matter. In light of the aforementioned, it appears that the actual wording of article 17 is in line with recommendation 5 to the extent that the law refers to the regulations of the Central Bank. Also, any relevant change may be promptly operated without any legal amendment which is administratively burdensome.</p> |
|  |  |  | <p>iv. Clarify the customer identification requirement in occasional transactions, independent of the threshold, when there is a suspicion of money laundering or terrorist financing</p>   | <p><b>Closed by article 17 of the LSMLFT of 2013.</b></p>  |
|  |  |  | <p>v. Institute a requirement to identify and to verify the identity of beneficial owners, based in particular on a requirement that financial institutions understand the way in which ownership and control of a legal person are organized</p> | <p><b>Closed (refer to seventh follow-up report)</b></p> <p>See article 18 of the LSMLFT of 2013 and circular 99-1 issued by Central Bank.</p>   |
|  |  |  | <p>Establish a requirement to collect information on the purpose and nature of</p>  | <p><b>Closed (refer to tenth follow-up report)</b></p>   |

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|  |  |  | <p>the business relationship and to update identification data on a regular basis</p>                    | <p>This recommendation is addressed in <b>article 13</b> of the LSMLFT of 2013 and circular 99-1 issued by Central Bank.</p> <p><b>Article 13.-</b> The persons referred to in Article 2 shall exercise constant vigilance on any business relationship and scrutinize transactions to ensure that they are consistent with what they know about their customers, their business, their risk profile and if necessary, the source of their funds. Having anonymous accounts or accounts in fictitious names is prohibited.</p> <p>Section 9- The frequency of updates to information on the identity of customers depends on the context in which transactions occur, from one situation to another. Banks must ensure to choose the frequency without exceeding three (3) years. However, in cases of high risks, information must be updated every two (2) years.</p> |
|  |  |  | <p>vi. Implement a risk management approach for the highest risks</p>                                    | <p><b>Closed</b> (refer to seventh follow-up report)</p> <p>See circulars 99-1 and 100-1 of the Central Bank.</p>   |
|  |  |  | <p>vii. Based on a risk analysis, consider adopting flexible requirements for demonstrably low risks</p> | <p><b>Closed (refer to tenth follow-up report)</b></p> <p>See article 26 of the LSMLFT of 2013 and circular 99-1 issued by Central Bank.</p>  |

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|                                |    |   |  | <p>In accordance to <b>Article 26</b>, the Bank of the Republic of Haiti in collaboration with the UCREF may, accordingly with a risk assessment and by ruling, define the circumstances under which the obligations (stated in article 18) may be reduced or simplified regarding the identification and the verification of the identity of the customer or real beneficiary.</p> <p>With regard to technical compliance, this legal provision puts forth the possibility for BRH jointly with UCREF to adjust the obligations in relation to the level of risk proffered through the risks assessment approach, complying fully and technically with recommendation 5.</p> <p>Should not the achievement of the risks assessment be taken into consideration within the fourth round of Mutual Evaluations?</p> |
|                                |    |   | viii. Set in place a risk-based customer identification mechanism for business relationships predating 2001, in connection with a stronger and more direct requirement regarding anonymous accounts and accounts in fictitious names | <p>This recommendation is addressed in <b>Closed (refer to seventh follow-up report)</b></p> <p>See circulars 99-1 and 100-1 of the Central Bank.</p>  |
| 6. Politically exposed persons | NC | <ul style="list-style-type: none"> <li>Absence of a requirement of enhanced diligence toward foreign politically exposed persons</li> </ul> | i. Institute requirements of enhanced diligence toward politically exposed persons   | <b>Closed (refer to tenth follow-up report)</b>  |

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|                          |    |  |  | <p>This article stipulates that the financial institutions are required to have adequate risk management systems to determine whether the customer is a politically exposed person and, if applicable:</p> <ul style="list-style-type: none"> <li>a) obtain approval from senior management before establishing a business relationship with the client;</li> <li>b) take all reasonable steps to identify the source of funds; and</li> <li>c) Provide an enhanced and permanent surveillance of the relationship.</li> </ul> <p>Circular 99-1 of the Central Bank. Pursuant to 3), page 7, "... Banks must have adequate risk management systems that allow accurate identification of politically exposed persons. As soon as a client is identified as so, they must:</p> <ul style="list-style-type: none"> <li>a) Obtain authorization from senior management before starting or continuing a business relationship with the client;</li> <li>b) Take all relevant measures in order to identify the origin of funds;</li> <li>c) Ensure enhanced and permanent monitoring of the business relationship.</li> </ul> |
| 7. Correspondent banking | NC | <ul style="list-style-type: none"> <li>• Absence of requirements pertaining to the establishment of correspondent</li> </ul> | <ul style="list-style-type: none"> <li>i. Institute specific and enhanced requirements for establishing correspondent</li> </ul> | <p>The AML/CFT law modifying the law of November 11, 2013 suppressing money laundering and terrorist financing in is</p>  |

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|  |  | <p>banking or equivalent relationships</p> | <p>banking or equivalent relationships</p> | <p>article 7 institute specific requirements such as:</p> <p>As regards correspondent banking relations, financial institutions are required:</p> <ul style="list-style-type: none"> <li>a) to identify and to verify the identity of client institutions with which they maintain correspondent banking relations;</li> <li>b) to collect information on the nature of the client institution's activities;</li> <li>c) to assess the client institution's reputation on the basis of information known to the public, as well as the level of surveillance to which it is subject;</li> <li>d) to assess the control mechanisms established by the client institution to fight money laundering and terrorist financing;</li> <li>e) to obtain their upper Management's authorization prior to entering into new correspondent banking relations;</li> <li>f) to ensure that in the case of payable-through accounts, the client institution has enhanced forced due diligence measures</li> </ul> |
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|  |  |  |  | <p>regarding customers having direct access to the correspondent bank's accounts, and that they are capable of providing the relevant identification information upon request.</p> <p>Financial institutions are forbidden to establish correspondent banking relations with fictitious banks they are required to take the appropriate measures in order to warrant that they do not enter or maintain correspondent banking relations with a bank that is known for enabling fictitious banking company to use their accounts.</p> <p>See article 58 of the LSMLFT of 2013 and circular 99-1 issued by Central Bank.</p> <p><b>Article 24.-</b> For cross-border correspondent banking relationships, financial institutions are required to:</p> <ul style="list-style-type: none"> <li>a) identify and verify the identification of client institutions with which they maintain correspondent banking relationships;</li> <li>b) collect information on the nature of the client institution's activities;</li> <li>c) assess the reputation of the client institution and the degree of supervision to</li> </ul> |
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|  |  |  |  | <p>which it is subject, based on publicly available information;</p> <p>d) obtain approval from senior management before establishing a relationship with the correspondent bank;</p> <p>e) evaluate the money laundering and financing of terrorism controls implemented by the client institution;</p> <p>f) obtain approval from senior management before establishing new correspondent banking relationships.</p> <p>They are also responsible for ensuring that their foreign subsidiaries if any, which conduct the same activities, develop and implement the principles and measures consistent with their obligations under this law.</p> <p>Establishing a correspondent banking relationship with a shell bank is forbidden. Pursuant to 3), page 7 of Circular 99-1, “all banks must have policies, procedures and mechanisms likely to allow great knowledge of legitimate activities of their cross-border correspondent banks and other similar relationships. Banks must ensure:</p> <p>a) Identification and verification of identity for customer institutions with which they maintain</p> |
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|   |    |  |   | <p>correspondent banking relationship;</p> <p>b) Collection of information concerning the nature of activities of the customer institution;</p> <p>c) Assessment, as per information publicly available, the reputation of the customer institution and the level of monitoring for which it is liable;</p> <p>d) Authorization procurement from senior management before starting a relationship with the correspondent bank;</p> <p>e) Assessment of the monitoring implemented by the customer institution aimed at fighting money laundering and terrorist financing;</p> <p>f) Authorization procurement from senior management before setting up new relationships of correspondent banking.</p> |
| 8. New technologies and non-face-to-face business | NC | <ul style="list-style-type: none"> <li>• Absence of requirements pertaining to business relationships conducted at a distance or risks associated with new technologies</li> </ul> | <p>i. Institute requirements proportional to risk for business relationships conducted at a distance and with no face-to-face contact</p> | <p><b>Closed (refer to seventh follow-up report)</b></p> <p>See article 14 of the LSMLFT of 2013 and relevant circulars from the central Bank.</p>   |

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| <p>9. Third parties and business introducers</p> | <p>NC</p> | <ul style="list-style-type: none"> <li>• Absence of obligations on the part of intermediaries and business introducers; lack of certainty regarding the ultimate responsibility of the financial institution to meet the requirements of due diligence.</li> </ul> | <p>i. Clarify the requirements of due diligence in situations where a financial institution provides a role to third parties or business introducers, specifically by indicating the conditions (regarding obligations to fight money laundering) that must be met by the intermediary and by affirming the principle that responsibility for the customer identification process always falls to the financial institution</p> | <p>The AML/CFT law modifying the law of November 11, 2013 suppressing money laundering and terrorist financing in is article 10 clarify the requirements regarding third parties and business introducers:</p> <p><b>Article 10.-</b> Financial institutions are authorized to use intermediaries or other third-parties to identify clients in accordance with the requirements of article 17 and 18 of the law of November 11, 2013, suppressing money laundering and terrorist financing if they were able to ensure that:</p> <p>a) the third-party is able to provide upon request and without delay, copies of the identification information and other documents in accordance with due diligence requirements;</p> <p>b) the third-party is subject to regulation, control and surveillance, and has taken measures towards abiding by the due diligence requirements as regards its clients, and that it abides by the requirement to keep records, when another financial institution is involved.</p> |
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|  |  |  | <p>The final responsibility rests upon financial institutions that use the services of third-parties.</p> <p>This recommendation is addressed in <b>article 19</b> of the Bill on Money Laundering and Financing of Terrorism.</p> <p>Pursuant to this article, the financial institutions are required, where it is not certain that the client is acting for his own account, to seek the information on the real client by any means at the disposal. Refer to guidelines issued by the Central Bank.</p> <p>must not share his confidential information with anyone.</p> <p style="text-align: center;"><b>7. COMBATTING MONEY LAUNDERING AND TERRORISM FINANCING</b></p> <p>Financial institutions must comply with the laws and regulations concerning combatting money laundering and the financing of terrorism.</p> <p>In the event of a security breach of all or part of the system, the issuing financial institution shall ensure that it has adequate</p> |
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|                    |    |   |   | <p>means to ensure the traceability of suspicious transactions. It shall ensure the traceability of charging and cashing of electronic money units for at least five years.</p> <p>When the electronic media includes at least two applications, including those of banking, charging mobile phones, internet payment or money transfer, and allows the holder of electronic money to make separate transactions, the issuer is required to ensure the traceability of all transactions.</p> <p>Issuers and distributors must put in place an automated system for monitoring unusual transactions based on electronic money.</p> <p>In reference to the additional note pertained to the aforementioned guidelines, “<b>the ultimate responsibility for customer identification and verification rests with the financial institution</b>”.</p> |
| 10. Record keeping | LC | <ul style="list-style-type: none"> <li>Lack of a legal basis for authorities to request an extension of the length of time that records must be held</li> </ul> | <ol style="list-style-type: none"> <li>Ensure that it is possible for competent authorities to request an extension of the length of time that records must be held.</li> </ol> | <p>This recommendation is addressed in <b>article 23</b> the Bill on Money Laundering and Financing of Terrorism.</p> <p><b>Article 23.-</b> The financial institutions shall maintain records on the identity of</p>  |

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|                          |    | <ul style="list-style-type: none"> <li>Lack of objective data on the effectiveness of the system in place, and delays in transmitting records</li> </ul>   |   | customers for at least five (5) years after the closing of accounts or the termination of the relationship with the customer. They shall also retain records on transactions carried out by customers, on customer due diligence information and the report listed in article 20 for at least five (5) years after completion of the transaction.  |
| 11. Unusual transactions | LC | <ul style="list-style-type: none"> <li>Existence of a (monetary) threshold that triggers requirements for unusual or complex transactions</li> <li>Uncertain implementation of the requirements</li> </ul> | <ol style="list-style-type: none"> <li>Revise the requirements pertaining to unusual and complex transactions to eliminate the threshold of 200,000 gourdes, below which there is no requirement at present.</li> </ol> | <p>This recommendation is addressed in the draft law on money laundering and terrorist financing.</p> <p>This law addresses this deficiency insofar that its <b>article 20</b> draws the obligation for financial institutions to draft a report and to store the following under the terms of article 23. Subsequently, this legal provision eliminates the threshold of 200.000 gourdes and raises the unusual and unjustified complexity of a transaction (within the C.D.D.) as the main criterion for the drafting of such report.</p> <p><b>Article 20.-</b> When a transaction is for an amount greater than or equal to the statutory amount and is carried out under conditions of unusual or unjustified complexity or appears to have no economic justification or lawful purpose, the financial institution is required to obtain information on the origin and destination of the funds as well as on the</p> |

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|  |    |   |   | purpose of the transaction and the identity of the actors.  |
| 12. Designated non-financial businesses and professions – R.5, 6, 8-11 | NC | <ul style="list-style-type: none"> <li>• Absence of coverage, under the mechanism to fight money laundering and terrorist financing, of many of the designated non-financial businesses and professions, and (except for casinos) identification of activities that are covered, and not of professions that are covered for a given range of activities.</li> <li>• Absence of enforcement of existing legal provisions for non-financial businesses and professions covered by the law. Absence of awareness-raising efforts and lack of monitoring of the enforcement of prevention and detection obligations for casinos and real estate transactions.</li> </ul> | <ol style="list-style-type: none"> <li>i. Expand the anti-money laundering and anti-terrorist financing obligations to include other designated non-financial businesses and professions, especially notaries, accountants, independent legal professionals, lawyers, traders of precious metals and stones, art dealers – for all the activities listed by FATF (for each of these professions). Consideration should be given, based on an analysis of the gravity of money laundering risks, to the possibility of including other non-financial professionals, such as traders of assets of value (luxury automobiles in particular).</li> <li>ii. Enforce the obligations already stipulated by law for casinos and real estate transactions, specifically through a major effort to mobilize and train the professionals involved.</li> </ol> | <p>1. <b>The 2013 AML/CFT law expand the obligations to include other designated non-financial businesses and professions, especially notaries, accountants, lawyers, traders of precious metals and stones, vehicle dealers, etc. in is article 3.</b></p> <p><b>Article 3.-</b> To the extent that they are expressly stipulated, the provisions of this law shall also apply to the following persons or entities, in the exercise of their business or profession:</p> <ol style="list-style-type: none"> <li>a) casinos, lotteries, borlette keepers, gaming establishments;</li> <li>b) non-governmental organizations working in development;</li> <li>c) vehicle dealers;</li> <li>d) dealers of precious metals and stones;</li> <li>e) those that carry out, supervise or advise on real estate transactions;</li> <li>f) law (notaries and lawyers) and accounting professionals:</li> </ol> <p>1. when assisting their client in the planning or execution of transactions for the:</p> |

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|  |  |  | <ul style="list-style-type: none"> <li>i. purchase or sale of real estate or business entities;</li> <li>ii. management of funds, securities or other assets belonging to the client;</li> <li>iii. opening or management of bank accounts;</li> <li>iv. provision of the support necessary for the creation, management or administration of companies;</li> <li>v. creation, operation or management of entities or legal arrangements, and the buying and selling of business entities;</li> </ul> <p>2. or when acting on behalf of their client as an intermediary in any financial or real estate transaction;</p> <p>g) service providers to trusts and companies when providing a head office, a business address or accommodation, an administrative or postal address to a partnership or any other legal entity or legal arrangement or when they act:</p> <ul style="list-style-type: none"> <li>1. as agent for the formation of legal entities;</li> <li>2. as manager or secretary of a corporation, partner in a partnership or holds a similar function for other types of legal entities;</li> <li>3. as a shareholder acting on behalf of another person.</li> </ul> <p>2. The obligations for casinos and real estate entities stipulated in the law on</p> |
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|                                      |    |  |  | money laundering (2001) have been reinforced in the new law in articles 29 and 30.   |
| 13. Suspicious transaction reporting | NC | <ul style="list-style-type: none"> <li>• Absence of suspicious transaction reporting regarding terrorist financing</li> <li>• Virtual absence of implementation of the system of suspicious transaction reporting by financial institutions</li> </ul> | i. Expand the scope of suspicious transaction reporting to include terrorism and its financing | <p>This recommendation is addressed in <b>article 1</b> of the AML/CFT Act of 2013.</p> <p><b>Article 31.-</b> Financial institutions and non-financial businesses and professions who suspect or have reasonable grounds to suspect that funds or assets are the proceeds of criminal activity or are related to or associated with money laundering or terrorist financing or are for these purposes are required to submit a suspicious transaction report promptly to UCREF. This requirement also applies to transactions that were rejected in accordance with article 19 of this law.</p> <p>Article 1 of the Amendment Law dated as September 28<sup>th</sup>, 2016 set forth a definition of “<i>funds</i>” in line with international norms: “Funds: assets of all nature, material and non-material, movable and real, tangible and intangible, or intangibles acquired by any means whatsoever, as well as documents and juridical instruments in any form whatsoever, including in electronic or numerical format, attesting of the ownership or vested interest in such assets, including but not limited to bank loans,</p> |

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|  |  |  |   | <p>travelers' checks, bank checks, Powers-of-Attorney, shares, securities, bonds, drafts and letters of credit, as well as eventual interest, dividends, or other income or values drawn from, or generated by such assets.”</p>   |
|  |  |  | <p>ii. Make all persons covered by the 2001 law aware of suspicious transaction reporting and automatic transaction reporting</p> | <p>The Organic Law on UCREF was passed by Parliament on May 8<sup>th</sup> 2017.</p> <p>Pursuant to article 3 of said law, UCREF is charged to:</p> <p>e) to develop civic education campaigns on the economic, political, and social consequences entailed by money laundering and terrorist financing;</p> <p>f) to develop a database concerning money laundering operations and terrorist financing;</p> <p>g) to coordinate public and private sector efforts in view of preventing the economic, financial, commercial and service systems being used for money laundering and terrorist financing;</p> <p>h) to analyze and assess the implementation of legal and regulatory dispositions concerning money laundering and terrorist financing;</p> |

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|                                      |    |  |   | <p>With respect to article 32 of the LSMLFT, UCREF issued guidelines on filing STRs on September 20<sup>th</sup>, 2016.</p> <p>Most recently, a seminar was held jointly by the Head Office of Judiciary and the French Embassy from December 6-9, 2016 on the behalf of LEAs : magistrates, prosecutors and police officers.</p> <p>In addition, periodical forums are organized by the FIU with the Banks, with the assistance and monitoring of the Central Bank.</p> |
| 14. Protection and no tipping-off    | C  |  |   |  |
| 15. Internal controls and compliance | PC | <ul style="list-style-type: none"> <li>• Lack of information regarding internal control obligations, both general and specific to anti-money laundering efforts, on the following points: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to</li> </ul> | <ul style="list-style-type: none"> <li>i. Clarify internal control obligations, based on the 2001 law and the circular on internal controls, especially as regards: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training.</li> </ul> | <p>The Central Bank issued circulars regarding these recommendations. Based on 2013 law, the Central bank require in circulars 61-2, 89-1 and 100-1 that banks should exercise constant vigilance and build internal organization and procedures to ensure compliance and prevent any attempted money laundering.</p> <p>(please find enclosed Circulars 61-2, 89-1 and 100-1)</p> <p><b>1. - Internal Control Procedures</b></p>  |

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|  |  | <p>recruitment; minimum content of compulsory training</p> | <p>ii. Adopt stronger administrative sanctions as a way to enhance the effectiveness of internal control obligations.</p> | <p>Banks should exercise constant vigilance and build internal organization and procedures to ensure compliance with the statutory provisions and enable operations managers to identify and prevent any attempted money laundering. One of the purposes of this is to avoid the use of the financial system for money laundering purposes and to minimize the risks faced by institutions.</p> <p>This system of internal controls must include, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>• a mechanism to monitor money laundering policies, procedures and internal systems;</li> <li>• a structure that guarantees the confidentiality of the processed information;</li> <li>• money laundering risk identification measures and systems for evaluating these risks;</li> <li>• a monitoring system that can guarantee the</li> </ul> |
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|  |  |  |  | <p>control of money laundering risks;</p> <ul style="list-style-type: none"> <li>• a centralized documentation and information system; and</li> <li>• an information system on compliance initiatives, deficiencies and corrective actions taken.</li> </ul> <p>The control system in place must extend to all parts of the institution. Every institution is therefore required to take the necessary measures to ensure the strict implementation of current policies, procedures, and systems, especially those relating to money laundering.</p> <p>Following periodic independent internal procedures and risk monitoring compliance tests, a specific money laundering examination must be made by the institution's internal audit department.</p> <p>Audits should specifically apply to the following :</p> <ul style="list-style-type: none"> <li>• assessment of the quality of risk management and</li> </ul> |
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|  |  |  |  | <p>control in all operations and at all branches;</p> <ul style="list-style-type: none"><li>• interviews with operations staff and their supervisors to assess their level of knowledge of and compliance with money laundering and terrorist financing procedures adopted by the institution;</li><li>• compliance with procedures for opening and closing accounts;</li><li>• examination of a sample of document archiving forms and suspicious financial transactions information forms;</li><li>• an audit of the recordkeeping system;</li><li>• the existence of attached or referenced supporting documentation with the accounting records;</li></ul> |
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|  |  |  |  | <ul style="list-style-type: none"> <li>• Knowledge of the customer by branches and operations managers, including the following: professional activity, account operations, financial position and financial and accounting documentation consistent with the credit extended and the volume of business being transacted. Particular attention should be paid to the business rationale of the operations and their consistency with the customer's known circumstances;</li> <li>• periodic reviews of all established correspondent relationships with foreign banks to detect high-risk partners; and</li> <li>• employee knowledge of internal money</li> </ul> |
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|  |  |  |  | <p style="text-align: center;">laundering regulations.</p> <p>The results of all audits must be reported to the Board. Following the hierarchical structure of the institution, issues concerning the measures taken or to be taken and timelines must be known and disclosed to the operations staff.</p> <p>Also, refer to Circular 89-1.</p> <p>2- Internal Control framework: Any bank along with its branches altogether must have an adequate and efficient internal control framework that guarantees great management and monitoring of its activities a safe and prudential fashion.</p> <p>This framework must consist of:</p> <ul style="list-style-type: none"> <li>a) managers and directors who grasp their responsibilities and take care of them with loyalty and diligence by ensuring the bank's business is managed and monitored efficiently with regard to pointed objectives;</li> <li>b) managers and directors who are kept updated on a regular basis about the course of activities, great risks as well as outcomes as per a management information system</li> </ul> |
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|  |  |  |  | <p>that provides a high quality financial information;</p> <ul style="list-style-type: none"> <li>c) an internal control system settled and well-suited to great risks and significant operations of the bank;</li> <li>d) an internal audit function that allows: i) the monitoring of effectiveness and consistency of the internal control system and the quality of the financial information for internal and external use, ii) the improvement of problematic situation generated by failure to respect, shortfall and lack of control;</li> <li>e) An independent audit function that allows control of effectiveness of the internal control system and the system Anti-Money Laundering.</li> </ul> <p>Circular 61-2 lay out the detailed procedures of internal control as per specifically :</p> <ul style="list-style-type: none"> <li>i) The criteria for appointment of the independent inspector (par. 3);</li> <li>ii) The nomination of the independent inspector (par. 4);</li> <li>iii) Duties of the independent inspector (par. 5)</li> </ul> |
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|  |  |  |  | <ul style="list-style-type: none"> <li>iv) Relations between the Central Bank and the independent inspector (par. 6);</li> <li>v) Certification of information conveyed to the Central Bank (par. 8);</li> <li>vi) Sanctions (par. 9).</li> </ul> <p>2. Already Done By Law on Banks and financial institutions<br/>Circular 61-2 and 89-1</p> <p>Pursuant to Circular 89-1, 8- In case of non-compliance, the Central Bank (BRH) may impose the following administrative sanctions:</p> <ul style="list-style-type: none"> <li>a) Information availability for inspection;</li> <li>b) Late production of compliance reports: fees are imposed in accordance to circular applicable to the matter;</li> <li>c) Late conveyance of compliance reports: fees are imposed in accordance to circular applicable to the matter;</li> <li>d) Failure to submit compliance reports: fees are imposed in accordance to circular applicable to the matter.</li> </ul> |
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|   |    |  |   | <p>The Central Bank may require any bank to improve situation in relation to:</p> <ul style="list-style-type: none"> <li>a) Offences related to provisions in the current circular;</li> <li>b) Shortfalls of internal controls pointed by internal inspector, independent inspector or inspector from the Central Bank;</li> <li>c) Shortcomings in relation to basic principles of an internal control system as per Annex1 of the current circular (translation of this document is ongoing).</li> </ul> <p>Pursuant to Circular 100-1, 6-Following a weakness in the organization's money laundering internal procedures and compliance with section 4.2.4 of the Act of February 21, 2001, the BRH reserves the right to assess administrative penalties ranging from a warning, reprimand, temporary suspension of activities or withdrawal of approval to a total operational injunction, in the most serious cases, without prejudice to those prescribed by law.</p> |
| 16. Designated non-financial businesses and | NC | <ul style="list-style-type: none"> <li>• Weaknesses of the suspicious transaction reporting</li> </ul> | <ul style="list-style-type: none"> <li>i. Make sure that non-financial businesses covered by the anti-money laundering law</li> </ul> | <p>The 2013 AML/CFT law requires in article 31 expand the suspicious transaction reporting obligation to the</p>  |

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| <p>professions – R.13-15 &amp; 21</p> |           | <p>mechanism (cf. Recommendation 13)</p> <ul style="list-style-type: none"> <li>• Overly restrictive coverage of designated non-financial businesses and professions</li> <li>• Absence of suspicious transaction reporting by non-financial professions</li> <li>• Absence of enforcement of existing legal provisions</li> </ul> | <p>meet their obligations with respect to detecting and reporting suspicious transactions. In addition, they should expand the suspicious transaction reporting obligation to include all designated non-financial businesses and professions</p>   | <p>designated non-financial businesses and professions.</p> <p><b>Article 31.-</b> Financial institutions and non-financial businesses and professions who suspect or have reasonable grounds to suspect that funds or assets are the proceeds of criminal activity or are related to or associated with money laundering or terrorist financing or are for these purposes are required to submit a suspicious transaction report promptly to UCREF. This requirement also applies to transactions that were rejected in accordance with article 19 of this law.</p> |
| <p>17. Sanctions</p>                  | <p>NC</p> | <ul style="list-style-type: none"> <li>• Absence of a dissuasive, proportionate, and effective system of sanctions</li> <li>• Lack of implementation of the current system of sanctions</li> </ul>   | <ol style="list-style-type: none"> <li>i. Revise the system of sanctions for breaches of anti-money laundering and anti-terrorist financing obligations, particularly by (a) rebalancing criminal and administrative sanctions and (b) establishing a wider scale of (administrative) sanctions and a broader definition of breaches triggering these sanctions;</li> <li>ii. Adopt a more proactive approach in supervising these</li> </ol> | <p>This recommendation is addressed in the Bill on Money Laundering and Financing of Terrorism in articles 57 and 61.</p> <p><b>Article 57.-</b> Any person convicted of money laundering or terrorist financing shall be punished by imprisonment for a term of three (3) to fifteen (15) years and a fine of two million (2,000,000) to one hundred million (100,000,000) gourdes, depending on the seriousness of the case.</p>   |

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|  |  |  | <p>obligations, especially in the case of non-bank financial institutions.</p> | <p>The attempt to launder money or finance terrorism or to aid, counsel or incite, participate in an association or conspire to launder money or finance terrorism shall be punished by the penalties referred to in the previous paragraph.</p> <p><b>Article 61.-</b> The following shall be punished by imprisonment of three (3) to fifteen (15) years and a fine of twenty million (20,000,000) to one hundred million (100,000,000) gourdes, depending on the seriousness of the case:</p> <p>a) officers or officials of the institutions designated in articles 2 and 3, who have knowingly revealed to the owner of laundered money or to a person who has committed the offences referred to in articles 5 and 6, information about the declaration they are required to make or any follow-up to this declaration;</p> <p>b) those that have knowingly destroyed or removed records or documents for which the storage is required under articles 23, 28 and 29;</p> <p>c) those that have made or attempted to make one of the operations referred to in Articles 5 and 6 using a false identity;</p> <p>d) those who, having knowledge due to their job of a money laundering or terrorism financing investigation,</p> |
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|  |  |  | <p>deliberately inform the person or persons under investigation by any means;</p> <p>e) those that have knowingly transferred truncated or erroneous certificates or documents to the judicial authorities or the relevant officials to attest to original and subsequent crimes, without informing them of it;</p> <p>f) those that have provided information or documents to anyone other than those specified by this law;</p> <p>g) those who have not made a suspicion transaction declaration under article 31, while the circumstances of the transaction led them to conclude that the funds could come from one of the offenses referred to in this article;</p> <p>h) those who commit the offense of money laundering or terrorist financing within the framework of a criminal organization; or</p> <p>i) those that knowingly violate the provisions of Articles 47 and 48 of this law.</p> <p>Respective to administrative law in force in Haiti, administrative sanctions can be imposed by superiors. Furthermore, reference is being made to regulations of each financial institution and/or DNFPB, not restricting the authority of the Central Bank as the Supervisory body for the latter</p> |
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| 18. Shell banks | <b>PC</b> | <ul style="list-style-type: none"> <li>• Absence of any obligation for Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts</li> </ul> | <ul style="list-style-type: none"> <li>i. Require Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts</li> </ul> | <p>With regard to comments in the Tenth Follow-up report of Haiti, Article 24 of the November 11, 2013 AML/CFT law was modified and actually the law requires in article 24 of modified law of 2016 as follows:</p> <p>“Article 24.- .....Financial institutions are forbidden to establish correspondent banking relations with fictitious banks they are required to take the appropriate measures in order to warrant that they do not enter or maintain correspondent banking relations with a bank that is known for enabling fictitious banking company to use their accounts.”</p> <p>This recommendation is addressed in <b>article 24</b> of the Bill on Money Laundering and Financing of Terrorism. Pursuant to article 24, Haitian financial institutions cannot establish correspondent banking relationship with a shell bank. Most importantly, this article lays down all the drastic requirements for any financial institution that wish to establish cross-border correspondent banking relationship...</p> |

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|  |    |   |  | <p>Pursuant to paragraph 6 of Circular 99-1, banks must have in place policies, procedures and mechanisms that foster a good understanding of the legitimate activities of the cross-border correspondent banks and other relationships of the same type...</p> <p>In addition, banks must never establish a correspondent banking relationship with shell banks.</p>                                       |
| 19. Other forms of reporting   | LC | <ul style="list-style-type: none"> <li>No access to the computerized database by authorities other than UCREF</li> </ul>  | <p>i. Provide for access to the UCREF data base for other authorities involved in the fight against money laundering and terrorist financing</p>   | Already done  |
| 20. Other non-financial businesses and professions and secure transaction techniques | NC | <ul style="list-style-type: none"> <li>Absence of attention given to expanding the anti-money laundering and anti-terrorist financing system to include non-financial businesses and professions based on the specific risk level in Haiti</li> <li>Ineffective mechanisms for promoting the use of other payment instruments besides cash</li> </ul> | <p>i. Consider expanding (based on risk) the anti-money laundering and anti-terrorist financing system to include other non-financial businesses and professions (cf. also the recommendation under Recommendation 12)</p> <p>ii. Review the provisions aimed at promoting the use of other payment instruments besides cash, in view of the present</p> | <p><b>i. Closed (refer to Tenth follow-up report)</b></p> <p>This recommendation is addressed by <b>article 3</b> of the law sanctioning money laundering and terrorist financing. This article expands the AML/CFT system to include</p> <p>a) casinos, lotteries, borlette keepers, gaming establishments;</p> <p>b) non-governmental organizations working in development</p> <p>c) vehicle dealers;</p> |

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|  |  |  | <p>ineffectiveness of such provisions</p> | <p>d) dealers of precious metals and stones;</p> <p>e) those that carry out, supervise or advise on real estate transactions;</p> <p>f) law (notaries and lawyers) and accounting professionals:</p> <ol style="list-style-type: none"> <li>1. when assisting their client in the planning or execution of transactions for the: <ol style="list-style-type: none"> <li>i. purchase or sale of real estate or business entities;</li> <li>ii. management of funds, securities or other assets belonging to the client;</li> <li>iii. opening or management of bank accounts;</li> <li>iv. provision of the support necessary for the creation, management or administration of companies;</li> <li>v. creation, operation or management of entities or legal arrangements, and the buying and selling of business entities;</li> </ol> </li> <li>2. or when acting on behalf of their client as an intermediary in any financial or real estate transaction;</li> </ol> <p>g) service providers to trusts and companies when providing a head office, a business address or accommodation, an administrative or postal address to a partnership or any other legal entity or legal arrangement or when they act:</p> |
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|   |    |   |  | <p>1. as agent for the formation of legal entities;</p> <p>2. as manager or secretary of a corporation, partner in a partnership or holds a similar function for other types of legal entities;</p> <p>3. as a shareholder acting on behalf of another person.</p>   |
| 21. Special attention for higher risk countries | NC | <ul style="list-style-type: none"> <li>Absence of a legal framework and operational mechanism enabling Haiti to guard against countries with weak systems for combating money laundering</li> </ul> | <p>i. Develop mechanisms to inform financial institutions about the shortcomings of certain systems to combat money laundering and terrorist financing, as well as a legal framework that will enable them to enforce countermeasures against countries that continue to not adequately implement the FATF Recommendations</p> | <p><b>Closed (refer to Tenth follow-up report)</b></p> <p>This recommendation is taken into account in the law on money laundering and terrorist financing in article 13.</p> <p>Article 13.- ...The persons referred to in Articles 2 and 3 shall give special attention to business relationships and transactions with individuals or entities from countries that do not, or insufficiently apply international standards in the fight against money laundering and the financing of terrorism.</p> <p>Pursuant to paragraph 5 of same, banks must apply, with regard to the risks assessed, enhanced due diligence measures in situations that may, by nature, generate a high risk of money laundering</p> |

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|   |    |   |   | and terrorist financing and, at least, in following cases (non-restrictive list):<br>.....<br>a) Operations carried out with persons and legal entities of countries that do not apply or apply insufficiently the AML/CFT international norms; |
| 22. Foreign branches and subsidiaries       | NC | <ul style="list-style-type: none"> <li>Absence of obligations aimed at foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory measures to fight money laundering and terrorist financing</li> </ul>  | i. Establish obligations aimed at the foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory anti-money laundering mechanisms in their host country.   | <b>Closed</b> (refer to seventh follow-up report)<br>This recommendation is taken into account in the law on money laundering and terrorist financing in article 24.  |
| 23. Regulation, supervision, and monitoring | NC | <ul style="list-style-type: none"> <li>Absence of requirements of integrity and competence for many pillars of the financial sector, particularly money changers, insurance companies, and microfinance institutions</li> <li>Absence of coverage of beneficial owners under the obligations of integrity and competence for the banking sector and savings and loan cooperatives</li> <li>Existence of an unregulated, informal sector of money/value transfer services</li> </ul> | i. Strengthen the obligations of integrity and competence for the entire financial sector and for beneficial owners, business introducers, shareholders, and senior officials of financial institutions, by incorporating, in particular, professional disqualification in the event of a conviction for money laundering or terrorist financing; | <b>Closed (refer to seventh follow-up report)</b>   |

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| <p>24. Designated non-financial businesses and professions – regulation, supervision, and monitoring</p> | <p>NC</p> | <ul style="list-style-type: none"> <li>• Inadequate framework of supervision for non-financial businesses and professions</li> <li>• Lack of monitoring and oversight of legal obligations of non-financial professions at present covered by the mechanism</li> </ul> | <p>i. Set in place the necessary mechanisms to ensure the execution of obligations related to money laundering prevention by non-financial professions, especially casinos, and provide oversight of proper implementation of these mechanisms.</p> | <p>This recommendation is addressed in article 29 in the AML Bill.</p> <p><b>Article 29.-</b> Casinos and gaming establishments are required to:</p> <p>a) keep proper accounts and related documents for at least five (5) years, following international accounting principles, current legislation and the directives of the regulatory authority;</p> <p>b) ensure the identity, by means of an original, current photo identification, of which it makes a copy, of players who purchase, provide or exchange tokens or chips for an amount greater than or equal to the amount established by the Ministry of Economy and Finance or any other organ or institution that it designates for the task;</p> <p>c) record all transactions referred to in paragraph b of this article in chronological order in a register, including their nature and amount, and indicating the names of the players and the identification number of the document presented, and keep said register for at least five (5) years after the last recorded transaction;</p> |
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|   |    |  |   | <p>d) record, in chronological order, all transfers of funds between casinos and gambling clubs in a register and retain such records for at least five (5) years after the last recorded transaction.</p> <p>When the gaming establishment is run by a corporation with several subsidiaries, the chips must identify the subsidiary for which they are issued. In no case may chips issued by a subsidiary be refunded in another subsidiary, including one that is abroad.</p> |
| 25. Guidelines and feedback             | NC | <ul style="list-style-type: none"> <li>• BRH guidelines not widely distributed and not well known to the financial professions; no feedback from UCREF to the financial professions</li> <li>• Absence of guidelines issued for the entire financial sector</li> <li>• Absence of guidelines for designated non-financial businesses and professions</li> <li>• Absence of any mechanism for feedback from UCREF (DNFBPs)</li> </ul> | <p>i. Provide information to, and raise the awareness of, financial and non-financial entities subject to the legal obligations of the anti-money laundering law, by issuing guidelines and particularly money laundering typologies, so as to enable these entities to fulfill their obligations under optimal conditions. Similarly, strengthen the training of private and public actors involved in preventing and cracking down on money laundering</p> <p>ii.</p> | <p>UCREF has issued guidelines for reporting financial institutions and DNFBPs on the date of September 20<sup>th</sup>, 2016 concerning the filing of STRs.</p> <p>Please see report enclosed</p>  |
| <b>Institutional and other measures</b> |    |  |   |   |

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| <p>26. Financial Intelligence Unit</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• Ambiguities (especially in practice) as regards the operational independence and autonomy of UCREF</li> <li>• Lack of mobilization of all professions subject to the law</li> <li>• Absence of status reports and reliable statistics</li> <li>• Ambiguity in the practices followed for exchanging information with foreign authorities</li> <li>• Absence of a policy on employee integrity and appropriate training</li> <li>• Ineffectiveness of the Financial Intelligence Unit due to its atypical functioning, pursuant to a broad interpretation of its legal framework</li> </ul> | <p>i. Clearly redefine UCREF's scope of action in line with the anti-money laundering law of 2001</p> | <p>If UCREF had exercised in the past a few investigation in judicial matters, since the mutual evaluation UCREF is a fully administrative body.</p> <p>The Organic Law on UCREF was passed by Parliament on May 8<sup>th</sup> 2017.</p> <p>Pursuant to Article 2.- UCREF is responsible for receiving, analyzing and processing declarations from individuals and legal persons that are required to forward to UCREF information and data within the framework of the fight against money laundering and terrorist financing. UCREF also receives all other information generally whatsoever that are useful for it to fulfill its mission.</p> <p>Indeed, since 2008, some major administrative changes have been made as shown hereby: the appointment of a new Managing Director at the end of the mandate of previous director; the reorganization of UCREF at organizational level; reinforcement of staff (hiring new analysts); improvement of institutional relations with the financial institutions; operational independence</p> |
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|  |  |  |  | towards the central bank; complete takeover of the staff.   |
|  |  |  | ii. Build awareness on the part of professions subject to the suspicious transaction reporting requirement | <p>In an effort to keep reporting entities well aware of their obligation to report, UCREF held a two-day as follows:</p> <p>1- Forum of February 15, 2017, with:</p> <ul style="list-style-type: none"> <li>- Public notaries at a national level;</li> <li>- Gaming entities;</li> <li>- Credit unions.</li> </ul> <p>2- Forum of February 17, 2017, with:</p> <ul style="list-style-type: none"> <li>- Banks;</li> </ul> <p>The above was conducted with the view of promoting UCREF guidelines and sensitizing the reporting entities about their role and showing them how to be more efficient in so doing.</p> <p>Also, UCREF agents have been trained at:</p> <ul style="list-style-type: none"> <li>- American Bar Association (Petion-ville, Haiti), October 11, 2016;</li> <li>- ILEA (New Mexico, USA), November 14- December 9 2016;</li> <li>- AECID (Cartagena, Colombia), 5-9 December 2016;</li> <li>- BLTS (National Police Academy, Haiti), December 22, 2016;</li> <li>- ENAPP (Port-au-Prince, Haiti) 16-20 January 2017 and 6-10 February 2017 ;</li> <li>- AECID (Cartagena, Colombia) 6-10 March 2017.</li> </ul> |

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|  |  |  | <p>iii. Ensure that UCREF exchanges information only with persons authorized to receive same (foreign counterparts)</p> | <p>Please see report enclosed</p> <p>The Organic Law on UCREF was passed by Parliament on May 8<sup>th</sup> 2017.</p> <p>Pursuant to <b>article 3</b>, UCREF has the authority <b>d)</b> to exchange financial information in connection with money laundering and terrorist financing with foreign institutions, this within the framework of conventions or in enforcement of the principle of reciprocity; <b>Article 27.-</b> Subject to reciprocity, UCREF may exchange information with foreign services in charge of receiving and processing declarations of suspicious transactions, when these entities are subject to similar secrecy requirements, this regardless of the nature of these services. As such, UCREF may conclude cooperative agreements with these entities.</p> <p>When UCREF is presented with a request for information or transmission by a foreign counterpart entity processing a declaration of suspicious transaction, it shall follow-upon same within the framework of the powers vested upon it by the foregoing law, to process such declarations.</p> |
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|  |  |  | <p>UCREF has engaged discussions with FIU Bahamas with the view of signing an MOU during May 2017 Plenary</p> <p>In terms of measures taken to ensure that the information shared by UCREF with authorized persons, the CNLBA particular scrutiny based on the law. In fact, UCREF submits to the committee periodic reports which show the details of the activities of the Unit. As form those reports, the CNLBA ensures that information is being shared with authorized bodies in compliance with the law and the MOUs. The draft bill on UCREF shall enforce the modalities under which UCREF exchanges information with foreign counterparts. Besides, UCREF signed in November 2014 an MOU with Sint Maarten geared to information exchange.</p> |
|  |  | <p>iv. Reinforce UCREF's operational independence in relation to CNLBA and establish real functional autonomy in relation to BRH</p> | <p>The Organic Law on UCREF was passed by Parliament on May 8<sup>th</sup> 2017. Article 1 of the organic law clearly provides that UCREF is an autonomous organization of administrative nature provided with legal personality and enjoying administrative and financial autonomy.</p>   |

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|  |  |   | <p>Pursuant to <b>articles 5 to 12</b>, under section 1, UCREF has its own board of directors inherent to the organization chart.</p> <p>The National Committee Anti-Money Laundering (CNLBA) is now an consultative body that is adjoined to UCREF.</p> <p>Please see in that regard <b>articles 19 to 22</b>, under section of said law.</p>  |
|  |  | v. Charge UCREF with publishing a periodic status report                                      | <p>According to <b>article 3</b>, UCREF has <b>c) to prepare quarterly and annual reports on its activities that analyze the developments in anti-money laundering activities and terrorist financing at the national and international level;</b></p> <p>Pursuant to a resolution of CNLBA issued on October 11<sup>th</sup> 2012, UCREF actually edits report on a quarterly basis.</p> |
|  |  | vi. Bring Haitian law in line with the conditions required for membership in the Egmont Group | <p>The provisions of the organic Law on UCREF fully provide for the conditions required for EG membership.</p> <p>A copy of same was conveyed to the Sponsors and EG regional representative</p>  |

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|                                 |    |  |  | <p>for insight at the stage of pre-analysis within the integration procedure.</p> <p>This recommendation is addressed in the Bill on Money Laundering and Financing of Terrorism.</p> <p>In addition, the law on UCREF makes provisions for the financial intelligence unit in terms of statistics keeping, administrative structure, financial and functional autonomy...</p>  |
| 27. Law enforcement authorities | PC | <ul style="list-style-type: none"> <li>• Lack of mobilization and utilization of police services in criminal investigations of money laundering</li> <li>• Lack of implementation of specific investigative techniques appropriate to the fight against money laundering, particularly delivery surveillance, undercover operations, and interception of communications</li> <li>• Absence of a group devoted to investigations of personal property or assets suspected to be of criminal origin</li> </ul> | <ul style="list-style-type: none"> <li>i. Equip the Financial and Economic Investigation Bureau (BAFE) of DCPJ with a sufficient number of investigators and offer specialized training in the fight against money laundering. Examine the total or partial reassignment of original BAFE investigators attached to UCREF since its creation. <ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul> </li> <li>ii. Create a specialized jurisdiction of national scope to fight against money laundering and terrorist financing. <ul style="list-style-type: none"> <li>•</li> </ul> </li> </ul> | <p>1. All BAFE investigators that were seconded to the UCREF are exclusively related to BAFE since May 2008. These investigators have received training in special's techniques of economic and financial investigations.</p> <p>2. Article 70 of Law on Money Laundering and Financing of Terrorism addresses this recommendation.</p> <p><b>Article 70.-</b> One or more substitute government commissioners, specializing in financial crimes, shall be appointed at each Public Prosecutor's office near the Lower National Courts.</p> |

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|  |  |  | <ul style="list-style-type: none"><li>•<ul style="list-style-type: none"><li>iii. Provide DCPJ with adequate financial and material resources, as well as pre-service and in-service training to implement special techniques for investigating money laundering, such as interception of telephone calls, delivery surveillance, and infiltration of criminal groups to track their management of funds from their activities.</li><li>iv. Perform a property investigation for investigations of drug trafficking and other crimes falling within the scope of enforcement of the crime of money laundering.</li><li>v. Undertake a rigorous monitoring and centralization of legal actions and results of money laundering investigations within the Ministry of Justice, along with the development of statistics. Centralize and work up reliable statistics on money laundering investigations.</li></ul></li></ul> |  |
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| 28. Powers of competent authorities | PC | <ul style="list-style-type: none"> <li>• Impossibility of assessing the effectiveness of the existing legal framework because of the absence of money laundering investigations completed to date.</li> <li>• Current laws relating to criminal procedure are vague with respect to procedures for submitting matters other than crimes <i>in flagrante delicto</i> to the police for investigation, and with respect to providing support to cases being investigated by the investigative magistrate.</li> </ul> | <ol style="list-style-type: none"> <li>i. Clarify the Criminal Investigation Code in order to expand and strengthen the legal bases for submitting cases to the DCPJ that involve money laundering, drug trafficking, and other crimes and offences sanctioned by law. Redefine and regulate more strictly, in relation to the functions of the national police officers who are officers of the court, the various frameworks for investigation, and in particular investigations of cases other than crimes <i>in flagrante delicto</i> or those providing support to the investigative magistrate.</li> <li>ii. Reconsider, in terms of how legal action is organized, the role of specialized police agencies as sole point of interface with magistrates in money laundering investigation.</li> </ol> | The draft Penal Code and the draft Criminal Investigation Code are being finalized and shall be submitted to Parliament in due course.                     |
| 29. Supervisors                     | PC | <ul style="list-style-type: none"> <li>• Excessive restrictions on the ability of financial sector supervisors to gain access to all necessary records</li> </ul>  | <ol style="list-style-type: none"> <li>i. Lift bank secrecy for inspectors involved in banking supervision;</li> </ol>  | <ol style="list-style-type: none"> <li>1. Already Done</li> </ol> <p>Refer to Articles 98 and 99 of the Law on Banks and other financial institutions.</p> |

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|  |    | <ul style="list-style-type: none"> <li>Weaknesses in the ability of supervisors to impose sanctions on financial institutions, their directors, and their shareholders</li> </ul> | <ul style="list-style-type: none"> <li>ii. Adopt a less formalistic approach to compliance with obligations related to the prevention and detection of money laundering and terrorist financing, particularly by placing greater emphasis on obligations regarding suspicious transaction reporting;</li> </ul> | <p>2. This recommendation has been addressed during the inspection of the financial institutions by the bank examiners of the Central Bank.</p>  |
| 30. Resources, integrity, and training | NC | <ul style="list-style-type: none"> <li>Insufficient human and budget resources overall, and less than optimal use of same</li> <li>Overly generalized training</li> </ul>         | <ul style="list-style-type: none"> <li>i. Regularly ensure the integrity of UCREF employees and see to their training</li> </ul>  | <p>Pursuant to <b>Article 23.- No employee can be recruited by UCREF unless a prior investigation has been conducted on the integrity and morality of the applicant.</b></p> <p>Following instructions of CNLBA through resolution dated October 11<sup>th</sup>, 2012, UCREF must ensure the integrity of its employees on an annual basis and provide an annual training calendar.</p> <p>Concurring with the end of every fiscal year, UCREF runs in-depth scrutiny on its personnel. Last polygraph test was prepared during the period of two weeks, starting from the 18<sup>th</sup> of August 2014, with the assistance of the OTA, whilst the renewal of employees' contracts will be based on efficiency and background check.</p> |

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|                          |    |  |  | <p>5 to 9 of October 2015, training with assistance of the French Embassy for: FIU staff, magistrates, police officers, prosecutors.</p> <p>UCREF is preparing/finalizing a training plan for the fiscal year 2015-2016 aimed at providing utmost training to technical staff, the analyst in particular.</p>   |
| 31. National cooperation | PC | <ul style="list-style-type: none"> <li>• Ineffectiveness of the coordinating body</li> <li>• Lack of operational coordination between Haitian actors involved in the fight against money laundering and the fight against terrorist financing</li> </ul> | i. Ensure that the CNLBA fully plays its role      | <p>After the mutual evaluation, CNLBA put serious emphasis on:</p> <ul style="list-style-type: none"> <li>- Awareness of all the stakeholders concerned by the fight against money laundering;</li> <li>- Coordination between all the entities fighting against money laundering;</li> <li>- Monitor all the improvement made in the legal aspects.</li> </ul>         |
| 32. Statistics           | NC | <ul style="list-style-type: none"> <li>• Absence of a reliable mechanism for collecting statistical data</li> </ul>  | i. Develop reliable statistics on UCREF activities | <p>According to <b>article 3</b>, UCREF has <b>c) to prepare quarterly and annual reports on its activities that analyze the developments in anti-money laundering activities and terrorist financing at the national and international level;</b></p> <p>Since 2010 a unit of Statistics has been created in the UCREF. Periodical reports are available at UCREF.</p> |

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| 33. Legal persons – beneficial owners      | NC | <ul style="list-style-type: none"> <li>Ineffective system of transparency for legal persons, which does not allow for rapid access to reliable, up-to-date beneficial ownership and control information</li> </ul> | i. Enable the authorities to monitor effectively and record any changes in the bearers of bearer shares of corporations. | <p>Already done<br/>Refer to Circular 99-1, paragraph 1.1.2 <i>Limited Corporation</i>:</p> <p>f) Names of stakeholders, country of residence, mandated persons or related beneficiaries, percentage of shares held;<br/>g) Name of Board members and managers.</p>  |
| 34. Legal arrangements – beneficial owners | NA | <ul style="list-style-type: none"> <li>Absence of the concept of trusts in Haiti</li> </ul>  |  |  |
| <b>International cooperation</b>           |    |  |  |  |
| 35. Conventions                            | NC | <ul style="list-style-type: none"> <li>No implementation of the Vienna, Palermo, and Merida Conventions</li> </ul>   | i. Take measures to implement the Vienna Convention;   | <p>1) The adoption of the law of August 7, 2001 which confers the criminal nature of trafficking narcotics</p> <p>2) The adoption of measures for the confiscation of proceeds related to offenses punishable by law.</p> <p>3) The legal provisions for extradition and mutual legal assistance</p> <p>Refer to the Act of August 7<sup>th</sup>, 2001 on drugs trafficking.</p> <p style="background-color: #00FF00; display: inline-block; padding: 2px;">Please find copy enclosed</p> |

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|                             |    |  | <p>ii. Ratify and implement the Palermo Convention;</p>  | <p>The Palermo Convention has been ratified by Haiti in September 2009</p> <p>1. The Bill on money laundering and financing of terrorism addresses all the measures in the Palermo Convention related to the fight against money laundering.</p> <p>2. The law on corruption was voted on March 12<sup>th</sup>, 2014 and is published in the official Gazette.</p> <p>The law of May 9<sup>th</sup>, 2014 on corruption has already been conveyed to the CFATF Secretariat in this regard.</p> |
|                             |    |  | <p>iii. Sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.</p> | <p>Ratified by Haiti in January 2010</p> <p>Implementation will be done through the bill on Money Laundering and Financing of Terrorism.</p>  |
| 36. Mutual legal assistance | LC | <ul style="list-style-type: none"> <li>Ineffectiveness of the legal system in place</li> </ul> | <p>i. Set up a framework for mutual legal assistance concerning offences in the area of terrorist financing.</p>   | <p>With the assistance of the OTA, Haiti is working on a model treaty to be signed with countries interesting in pursuing AML matters. In the meantime, the legal framework provides for assistance to be given on a reciprocal basis, without the existence of a treaty.</p>   |

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| 37. Dual criminality                                     | LC | <ul style="list-style-type: none"> <li>• Ineffectiveness of international mutual assistance on criminal matters</li> <li>• Dual criminality required, but “similar” offences taken into account; absence of data on effective implementation</li> </ul>   |   | While Haiti, though various mechanisms, is fully cooperating with countries requesting MLAs and Extraditions, a more clarified legal framework is being implemented in the new draft AML/CFT legislation.   |
| 38. Mutual legal assistance on confiscation and freezing | PC | <ul style="list-style-type: none"> <li>• Absence of effective implementation of legal provisions and lack of a mechanism to coordinate seizure and confiscation actions with foreign jurisdictions</li> </ul>   | <ol style="list-style-type: none"> <li>Set up a mechanism for coordinating seizure and confiscation initiatives with other countries.</li> </ol>  | With the assistance of the OTA, Haiti is preparing a mechanism to coordinate confiscation initiative with all the countries. The collaboration is already ongoing with the US.  |
| 39. Extradition  | LC | <ul style="list-style-type: none"> <li>• Insufficient effectiveness of the legal mechanism in place</li> </ul>  |   | While Haiti, though various mechanisms, is fully cooperating with countries requesting extradition, a more clarified legal framework is being implemented in the new draft AML/CFT legislation.   |
| 40. Other forms of cooperation                           | NC | <ul style="list-style-type: none"> <li>• Restrictions on international cooperation due to excessive requirements for lifting bank secrecy</li> <li>• Incapacity of financial sector supervisory bodies to participate in international cooperation</li> <li>• Absence of strict oversight of the exchange of financial information reserved for foreign counterpart intelligence units</li> </ul> | <ol style="list-style-type: none"> <li>Clarify the possibility of exchanging financial information with UCREF non-counterpart foreign agencies.</li> <li>Authorize all the financial sector supervisory bodies to participate actively in international cooperation between supervisors.</li> </ol> | <ol style="list-style-type: none"> <li>The Organic Law on UCREF was passed by Parliament on May 8<sup>th</sup> 2017.<br/><br/>Pursuant to <b>article 3</b>, UCREF has the authority <b>d)</b> to exchange financial information in connection with money laundering and terrorist financing with foreign institutions, this within the framework of conventions or in enforcement of the principle of reciprocity;</li> </ol> |

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|                                     |               |   |  | <p><b>Article 27.-</b> Subject to reciprocity, UCREF may exchange information with foreign services in charge of receiving and processing declarations of suspicious transactions, when these entities are subject to similar secrecy requirements, this regardless of the nature of these services. As such, UCREF may conclude cooperative agreements with these entities.</p> <p>When UCREF is presented with a request for information or transmission by a foreign counterpart entity processing a declaration of suspicious transaction, it shall follow-upon same within the framework of the powers vested upon it by the foregoing law, to process such declarations.</p> <p>2. Already Done</p> |
| <b>Nine Special Recommendations</b> | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |  |   |
| SR.I Implement UN instruments       | NC            | <ul style="list-style-type: none"> <li>No signature of the United Nations International Convention for the Suppression of the Financing of Terrorism</li> </ul> | <ul style="list-style-type: none"> <li>i. Sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism</li> </ul> | <p>The implementation will be done through the Bill on Money Laundering and Financing of Terrorism.</p> <p>This has been addressed through articles 6 to 9 of the LSMLTF. And that seems to</p>   |

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|                                       |    |  |  | close the gap. Should there be any ambiguity, please notify.  |
| SR.II Criminalize terrorist financing | NC | <ul style="list-style-type: none"> <li>• No legislation on the financing of terrorism</li> <li>• No signature or ratification of the International Convention for the Suppression of the Financing of Terrorism</li> </ul> | <ol style="list-style-type: none"> <li>i. Criminalize terrorist financing, in compliance with the Convention on the Financing of Terrorism.</li> <li>ii. Ensure that the future criminalization of terrorist financing and the sanctions meet the standards set by the Convention</li> </ol> | <p>Article 1 of the Amendment Law dated as September 28<sup>th</sup>, 2016 set forth a definition of “<i>funds</i>” in line with international norms: “Funds: assets of all nature, material and non-material, movable and real, tangible and intangible, or intangibles acquired by any means whatsoever, as well as documents and juridical instruments in any form whatsoever, including in electronic or numerical format, attesting of the ownership or vested interest in such assets, including but not limited to bank loans, travelers’ checks, bank checks, Powers-of-Attorney, shares, securities, bonds, drafts and letters of credit, as well as eventual interest, dividends, or other income or values drawn from, or generated by such assets.”</p> <p>Articles 6 to 9 implement the Palermo Convention insofar that the offence of terrorist financing is criminalized in its various aspects...The focus is brought in aligning the provisions of this law to the standards set by the Convention.</p> <p>As to the scope of these provisions of the LSMLTF within time, it is important to highlight the fact that this law does not have any retroactive effect. As a result of</p> |

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|   |    |   |  | <p>this, the provisions set out are relevant in the fight against money laundering and terrorist financing, going forward. This consideration somewhat impedes comment SR.II.3 to the extent that terrorist financing is considered to be an offense as from the time the LSMLTF was enacted. Should the need arises, paragraph 3 of article 6 concerns the attempt to commit, which refers invariably to an offense not yet committed.</p> <p>Besides, Haiti signed and ratified the UN Convention for the suppression of the Financing of Terrorism and such came into force on February 20<sup>th</sup>, 2010.</p> <p>Please follow this link for reference: <a href="#">ly</a></p> |
| SR.III Freeze and confiscate terrorist assets | NC | <ul style="list-style-type: none"> <li>No legal framework for freezing assets used for terrorist financing</li> </ul> | <ol style="list-style-type: none"> <li>Introduce measures to provide for the freezing of assets used for terrorist financing, in accordance with the requirements of Resolutions 1267 and 1373.</li> </ol> | <p>Article 47 of the new AML/CFT law puts a particular focus upon the mechanism pertained to the freezing of funds associated with terrorism and its financing. This article stipulates that “the funds of terrorists, persons, entities or organizations that finance terrorism and terrorist organizations designated by the Security Council of the United Nations acting under Chapter VII of the UN Charter shall be frozen by ministerial decree. An order from the Cabinet, issued by the Ministries of Economy and Finance, Justice and</p>  |

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|  |    |  |   | <p>Public Security and of Planning and External Cooperation, defines the conditions and the duration applicable to the freezing and is published in the official gazette. Financial institutions and any other person or entity holding such funds shall freeze them immediately upon notification of the Ministerial Order and until it is rescinded by the United Nations Security Council or by another order of the Minister of Justice and Public Security”. In the context of the article 47 , the word “<i>funds</i>” clearly refers to “<i>goods</i>” as per the definition of the latter provided in article 4 paragraph 2). The semantics plays an important factor as the Law has been translated from French to English.</p> <p>The Draft Executive Order has been submitted to Minister of Justice. Adoption process by the Council of Ministers is ongoing. A copy will be conveyed to the CFATF Secretariat in due course.</p> |
| SR.IV Suspicious transaction reporting | NC | <ul style="list-style-type: none"> <li>The scope of suspicious transaction reporting does not cover terrorist financing</li> </ul> | <ol style="list-style-type: none"> <li>Expand the scope of suspicious transaction reporting to include terrorism and its financing</li> </ol> | <p>Pursuant to article 31 of the new AML/CFT law, the STRs now encompass all funds or assets suspicious of being related to criminal activities or associated with money laundering and terrorist financing.</p>  |

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|                                      |    |   |   | Article 1 of the Amendment Law dated as September 28 <sup>th</sup> , 2016 set forth a definition of “ <i>funds</i> ” in line with international norms: “Funds: assets of all nature, material and non-material, movable and real, tangible and intangible, or intangibles acquired by any means whatsoever, as well as documents and juridical instruments in any form whatsoever, including in electronic or numerical format, attesting of the ownership or vested interest in such assets, including but not limited to bank loans, travelers’ checks, bank checks, Powers-of-Attorney, shares, securities, bonds, drafts and letters of credit, as well as eventual interest, dividends, or other income or values drawn from, or generated by such assets.” |
| SR.V<br>International<br>cooperation | NC | <ul style="list-style-type: none"> <li>• Absence of criminalization of terrorist financing, blocking participation in international cooperation</li> <li>• Restrictions on international cooperation due to excessive requirements for lifting bank secrecy</li> <li>• Incapacity of financial sector supervisory bodies to participate in international cooperation</li> </ul> | <ol style="list-style-type: none"> <li>i. Authorize all the financial sector supervisory bodies to participate actively in international cooperation between supervisors.</li> <li>ii. Expand the existing mechanism for extradition to include the offence of terrorist financing, once it has been criminalized.</li> </ol> | <ol style="list-style-type: none"> <li>1. Already Done<br/>Addressed through article 98 of Law on banks.</li> <li>2. The articles previously referred to seem to largely close this gap for they criminalize the offence of terrorist financing. <b>Closed (refer to seventh follow-up report)</b></li> </ol> <p>According to article 84 (first paragraph), the persons sought by a foreign state in the context of the offences of money</p>  |

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|   |           |    |   | laundrying and terrorist financing may be the subject of extradition.   |  |
| SR.VI<br>requirements for money/value transfer services | AML/CFT   | NC | <ul style="list-style-type: none"> <li>• See the summary of weaknesses of the Haitian system for Recommendations 4-11, 13-15, 21-23, and 17 and Special Recommendation VII</li> </ul>   | <p>i. Adopt a more proactive approach toward money transfer services currently provided in the informal sector.</p>   | Aware of the risk of high use of cash in the Haitian economy, measures have been taken to encourage the use of other payment instruments, such as debit card, for the entire financial system and also to stimulate the access to the formal sector. |
| SR.VII Wire transfer rules                              |           | NC | <ul style="list-style-type: none"> <li>• Identification threshold set too high</li> <li>• Absence of requirements regarding wire transfers (conveyance of identification data)</li> </ul>   | <p>ii. Implement wire transfer regulations concerning the conveyance of identification data on the originator, in accordance with Special Recommendation VII – with specific attention (in view of the pattern of wire transfers in Haiti, where virtually all transfers are received, not sent) focused on the obligations of banks receiving cross-border wire transfers.</p> | <b>Closed (refer to fifth follow-up report)</b>  |
| SR.VIII<br>organizations                                | Nonprofit | NC | <ul style="list-style-type: none"> <li>• Absence of legal framework to combat terrorist financing</li> <li>• Ineffective supervision of nonprofit organizations from the perspective of the fight against terrorist financing</li> <li>• Absence of any assessment of the risks of</li> </ul> | <p>i. Strengthen the oversight of the identity of founding members and directors, their operations in terms of implementation of their projects, and their financial position, in order to guarantee that this sector cannot be used for money</p>  | <p>1. This recommendation will be addressed in the new bill related to the non-profit organizations.</p>   |

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|   |    | Haitian nonprofit organizations being misused for terrorist financing purposes  | <ul style="list-style-type: none"> <li>ii. laundering or terrorist financing purposes</li> <li>ii. Undertake a study of the risks of charitable organizations being misused for terrorist financing purposes should be conducted.</li> <li>iii. Raise awareness of the NGO Coordination Unit (UCAONG) on the problems of money laundering and terrorist financing and develop a preventive program of oversight in these areas.</li> </ul>   | 2. Seeking technical assistance for the realization of a study as recommended by the evaluators.  |
| SR.IX<br>Reporting/communication of cross-border transactions | PC | <ul style="list-style-type: none"> <li>• Ineffectiveness of the system due to its unsuitability to the Haitian context and, as a result, deficiencies in implementation</li> <li>• Absence of proportionate, deterrent, and effective penalties</li> <li>• Lack of coordination among authorities in charge of implementing the mechanism currently in place</li> </ul> | <ul style="list-style-type: none"> <li>i. Establish either a declaration system or a reporting system;</li> <li>ii. Incorporate this law into the customs code so as to ensure the legal basis for seizures and subsequent investigations;</li> <li>iii. Implement reporting arrangements among and between customs, the police, and UCREF concerning information gathered after funds are seized;</li> <li>iv. Establish penalties that tie the severity of punishment to the absence or presence of</li> </ul> | <p>These recommendations are addressed in the Bill on Money Laundering and Financing of Terrorism. In consideration of the significance of the customs in the AML/CFT structure, the article 10 can be seen as the centrepiece of this law.</p> <p>Pending the renewal of the customs code, arrangements are made through article 10 in allowing the customs administration to send CTRs to UCREF on a regular basis, along with STRs under the conditions of the articles 50 to 56.</p> <p><b>UCREF is at the stage of drafting MOUs to be signed with Customs administration.</b></p> |

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|  |  |  | evidence of an illicit origin or destination for the funds. | Tax administration... on information exchange.<br><br>On the basis of articles 50 and succeeding of the AML/CFT Act of 2013, the guidelines issued by UCREF provide for the means and ways the Customs may send information to the FIU when relevant. |
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